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9 Attorneys for Receiver
10 THOMAS C. HEBRANK

11
12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**
14

15 SECURITIES AND EXCHANGE
COMMISSION,

16 Plaintiff,

17 v.

18 LOUIS V. SCHOOLER and FIRST
19 FINANCIAL PLANNING
CORPORATION d/b/a WESTERN
20 FINANCIAL PLANNING
CORPORATION,

21 Defendants.
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Case No. 3:12-cv-2164-GPC-JMA

PROOF OF SERVICE

Date: February 1, 2019
Time: 1:30 p.m.
Ctrm: 2D
Judge: Hon. Gonzalo P. Curiel

1 I am employed in the County of San Diego, State of California. I am over the
 2 age of eighteen (18) and am not a party to this action. My business address is
 3 501 West Broadway, 15th Floor, San Diego, California 92101-3541.

4 On November 20, 2017, I served the within document(s) described as:

- 5 ➤ **RECEIVER'S NOTICE OF MOTION AND MOTION FOR
 APPROVAL OF FREETRADE/ SUNTEC/VIA 188 PROPERTY
 AND AUTHORITY TO PAY BROKER'S COMMISSION**
- 6 ➤ **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
 OF RECEIVER'S MOTION FOR APPROVAL OF SALE OF
 7 FREETRADE/SUNTEC/VIA 188 PROPERTY AND AUTHORITY
 TO PAY BROKER'S COMMISSION**
- 8 ➤ **DECLARATION OF THOMAS C. HEBRANK IN SUPPORT OF
 9 RECEIVER'S MOTION FOR APPROVAL OF SALE OF
 10 FREETRADE/SUNTEC/VIA 188 PROPERTY AND AUTHORITY
 TO PAY BROKER'S COMMISSION**

11 on the interested parties in this action by:

12 ☒ **BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"):** the
 13 foregoing document(s) will be served by the court via NEF and hyperlink to the
 14 document. On March 10, 2017, I checked the CM/ECF docket for this
 15 bankruptcy case or adversary proceeding and determined that the following
 16 person(s) are on the Electronic Mail Notice List to receive NEF transmission at
 17 the email addressed indicated below:

- 18 • Gary J. Aguirre - gary@aguirrelawapc.com; maria@aguirrelawapc.com
- 19 • John Willis Berry - berryj@sec.gov; LAROFiling@sec.gov
- 20 • Lynn M. Dean - deanl@sec.gov; larofiling@sec.gov; berryj@sec.gov;
 21 irwinma@sec.gov; cavallones@sec.gov
- 22 • Timothy P. Dillon - tdillon@dghmalaw.com; kramirez@dghmalaw.com;
 23 sahuja@dghmalaw.com
- 24 • Philip H. Dyson - phildysonlaw@gmail.com; jldossegger2@yahoo.com;
 25 phdtravel@yahoo.com
- 26 • Edward G. Fates - tfates@allenmatkins.com; bcrfilings@allenmatkins.com;
 27 jholman@allenmatkins.com
- 28 • Dennis Frisman - gary@aguirrelawapc.com
- Eric Hougen - eric@hougenlaw.com
- Sara D. Kalin - kalins@sec.gov; chattoop@sec.gov; irwinma@sec.gov

- Carol Elizabeth Schultze - schultzec@sec.gov; masseym@sec.gov; caroleschultze@gmail.com; clarket@sec.gov
- David R. Zaro - dzaro@allenmatkins.com; mdiaz@allenmatkins.com

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on November 20, 2018, at San Diego, California.

Edward G. Fates

(Type or print name)

/s/ *Edward Fates*

(Signature of Declarant)

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MALLORY & NATSIS LLP
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9 Attorneys for Receiver
10 THOMAS C. HEBRANK

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12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**
14

15 SECURITIES AND EXCHANGE
COMMISSION,

16 Plaintiff,

17 v.

18 LOUIS V. SCHOOLER and FIRST
19 FINANCIAL PLANNING
CORPORATION d/b/a WESTERN
20 FINANCIAL PLANNING
CORPORATION,

21 Defendants.
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Case No. 3:12-cv-02164-GPC-JMA

**DECLARATION OF THOMAS C.
HEBRANK IN SUPPORT OF
RECEIVER'S MOTION FOR
APPROVAL OF SALE OF
FREETRADE/SUNTEC/VIA 188
PROPERTY AND AUTHORITY TO
PAY BROKER'S COMMISSION**

Date: February 1, 2019
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

1 I, Thomas C. Hebrank, declare:

2 1. I am the Court-appointed receiver for First Financial Planning
3 Corporation d/b/a Western Financial Planning Corporation ("Western"), its
4 subsidiaries, and the General Partnerships listed on Schedule 1 to the Preliminary
5 Injunction Order entered on March 13, 2013 (collectively, "Receivership Entities").
6 I make this declaration in support of my Motion for Approval of Sale of Freetrade/
7 Suntec/Via 188 Property and Authority to Pay Broker's Commission ("Motion"). I
8 have personal knowledge of the facts stated herein, and if called upon to do so, I
9 could and would personally and competently testify to them.

10 2. The properties in the receivership include certain parcels of
11 undeveloped land located in the Tecate area of San Diego County and known as the
12 Tecate properties. The Tecate properties consist of seven separate properties, three
13 of which are owned by multiple GPs as co-tenants and four of which are owned
14 outright by one GP. One of the properties is owned by Freetrade Partners, Suntec
15 Partners, and Via 188 Partners (collectively, "Freetrade"), each of which own an
16 undivided 33.33% interest in the property ("Freetrade Property").

17 3. On March 7, 2016, I recommended that the six¹ Tecate properties be
18 listed for sale with Real Blue Properties, a licensed broker located in Carlsbad,
19 California ("Broker"). Dkt. No. 1203. The proposed list price for the Freetrade
20 Property was \$260,000. *Id.* On May 25, 2016, the Court approved my
21 recommendation. Dkt. No. 1305. Broker promptly listed and advertised the
22 Freetrade Property for sale and marketed it to interested parties.

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26 ¹ The seventh Tecate property, which is owned by ABL Partners and Mex-Tec
27 Partners in co-tenancy, was not included in the original recommendation as those
28 GPs had sufficient cash to cover their 2016 Expenses. Once my orderly
sale/distribution plan motion was approved, I proposed that the ABL/Mex-Tec
property be listed with the same broker as the other six Tecate properties and that
recommendation was approved by the Court.

1 4. In January 2017, I received an all cash offer to purchase the Freetrade
2 Property for \$250,000. Unfortunately, after my motion for approval of the sale was
3 filed, the buyer declined to move forward with the transaction.

4 5. Unfortunately, no offers for the Property were received for many
5 months thereafter. In consultation with Broker, I determined that gradually reducing
6 the list price was the best course of action to generate more interest in the Freetrade
7 Property. Accordingly, the list price was gradually reduced until it reached
8 \$149,000, at which point an offer for \$149,000 was received from D. Jean Becker
9 Osbourne and Michael James Osbourne ("Buyer"). I gave notice of the offer to
10 investors and entered into negotiations with Buyer. The Buyer and I then executed a
11 Vacant Land Purchase Agreement and Joint Escrow Instructions ("Agreement"),
12 subject to overbid and Court approval. Buyer conducted their due diligence and
13 removed all contingencies (other than Court approval) on November 15, 2018.

14 6. Therefore, in accordance with the Court-approved Modified Orderly
15 Sale Procedures, I hereby request approval of the sale to Buyer, pursuant to the
16 Agreement, which is attached hereto as Exhibit A. I will follow the publication of
17 notice, qualification of bidders, and public auction steps outlined below. In the
18 event one or more prospective purchasers qualify themselves to bid, the auction will
19 be conducted by me and I will then file a notice advising the Court of the result of
20 the auction (*i.e.*, the highest bid) and seek entry of an order confirming the sale. In
21 the event no prospective purchasers qualify themselves to bid, I will notify the Court
22 and seek entry of an order approving the sale to Buyer.

23 7. As noted above, pursuant to the Modified Orderly Sale Procedures
24 (Dkt. No. 1309), I provided notice of the offer from Buyer to investors via email
25 shortly after it was received. No substantive responses were received.

26 8. The proposed sale to Buyer pursuant to the Agreement is in the best
27 interests of the estate. The proposed purchase price is in line with the 2015 value
28 estimate for the Freetrade Property, the Freetrade Property has been thoroughly

1 marketed over the last 31 months, and \$149,000 is the best offer received, with the
2 exception of the sale that did not go through.

3 9. The proposed sale is subject to overbid to further ensure the highest and
4 best price is obtained. I propose to conduct a public auction consistent with the
5 requirements of Section 2001(a). Specifically, I will publish the following notice of
6 the sale once a week for four weeks in the San Diego Union-Tribune:

7 In the action pending in U.S. District Court for the
8 Southern District of California, Case No. 12-CV-2164-
9 GPC-JMA, Securities and Exchange Commission v.
10 Louis V. Schooler et al., notice is hereby given that the
11 court-appointed receiver will conduct a public auction for
12 the undeveloped real property with APNs 652-110-06-00,
13 652-110-09-00, 652-110-10-00, and 652-110-11-00,
14 located in the City of San Diego, San Diego County,
15 California. Sale is subject to Court confirmation after the
16 auction is held. Minimum bid price is \$160,000. The
17 auction will take place on December 20, 2018, at
18 1:30 p.m. in front of the entrance to the United States
19 Courthouse, 221 W. Broadway, San Diego, California.
20 To be allowed to participate in the auction, prospective
21 purchasers must meet certain bid qualification
22 requirements, including submitting a signed purchase and
23 sale agreement, an earnest money deposit of \$4,400, and
24 proof of funds. All bidders must be qualified by 5:00 p.m.
25 PST on December 17, 2018, by submitting the required
26 materials to the receiver at 401 W. A Street, Suite 1830,
27 San Diego, California, 92101. If interested in qualifying
28 as a bidder, please contact Geno Rodriguez at (619) 567-
7223 or grodriguez@ethreadvisors.com or Thomas C.
Hebrank, at thebrank@ethreadvisors.com.

10. I will inform all interested persons of the opportunity to overbid at the
public auction, provided they qualify themselves to bid by the Bid Qualification
Deadline by (a) signing a purchase and sale agreement for the properties on the
same terms and conditions as Buyer, but with a purchase price of at least \$160,000,
(b) providing me with an earnest money deposit of \$4,400, and (c) providing proof
of funds necessary to close the sale transaction in the form of a current bank
statement, cashier's check delivered to me, or other evidence deemed sufficient by
me.²

² In the event an investor or group of investors seeks to qualify to overbid, I will

1 11. In the event one or more prospective purchasers qualify themselves to
2 bid, the auction will be conducted by me as noted above and bids will be allowed in
3 increments of \$5,000. I will then file a notice advising the Court of the result of the
4 auction (*i.e.*, the highest bid) and seek entry of an order confirming the sale. Earnest
5 money deposits provided by bidders who are unsuccessful will be promptly returned
6 to them. In the event no prospective purchasers qualify themselves to bid by the Bid
7 Qualification Deadline, I will notify the Court and seek entry of an order approving
8 the sale to Buyer.

9 12. With respect to Broker's commission, Broker has worked diligently to
10 broadly advertise the Freetrade Property for sale and market the Freetrade Property
11 to prospective purchasers, including to potential overbidders after the Agreement
12 was signed. The listing agreement was approved as being consistent with industry
13 standards for commissions paid to brokers for sales of undeveloped land.
14 Accordingly, I should be authorized to pay Broker the commission amount in
15 accordance with the listing agreement.

16 I declare under penalty of perjury under the laws of the United States of
17 America that the foregoing is true and correct.

18 Executed this 20th day of November 2018, at San Diego, California.

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20 THOMAS C. HEBRANK

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28 allow the investor(s) to include their projected distributions under the approved
One Pot Approach in their bid.

EXHIBIT INDEX

Exhibit A	Vacant Land Purchase Agreement and Joint Escrow Instructions	7
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EXHIBIT A

EXHIBIT A



VACANT LAND PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(C.A.R. Form VLP/A, Revised 12/15)

Date Prepared: October 13, 2018

1. OFFER:

- A. THIS IS AN OFFER FROM Kimberly K Osborne ("Buyer").
 B. THE REAL PROPERTY to be acquired is 652 Tecate, situated in Tecate (City), San Diego (County), California, 91989 (Zip Code), Assessor's Parcel No. 652110000 ("Property").
 Further Described As 652-110-06-00 Tecate 06, 09, 10 & 11
 C. THE PURCHASE PRICE offered is One Hundred Forty-Nine Thousand Dollars \$ 149,000.00
 D. CLOSE OF ESCROW shall occur on ☒ 18 days after court approval (date) (or ☐ Days After Acceptance).
 E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.

2. AGENCY:

- A. DISCLOSURE: The Parties each acknowledge receipt of a ☒ "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
 B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:
 Listing Agent Resonate Real Estate (Print Firm Name) is the agent of (check one):
☒ the Seller exclusively; or ☐ both the Buyer and Seller.
 Selling Agent Socal Real Investments (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one): ☒ the Buyer exclusively; or ☐ the Seller exclusively; or ☐ both the Buyer and Seller.
 C. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a ☒ "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

3. FINANCE TERMS: Buyer represents that funds will be good when deposited with Escrow Holder.

- A. INITIAL DEPOSIT: Deposit shall be in the amount of \$ 4,400.00
 (1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, ☐ cashier's check, ☒ personal check, ☐ other within 3 business days after Acceptance (or);
 OR (2) ☐ Buyer Deposit with Agent: Buyer has given the deposit by personal check (or) to the agent submitting the offer (or to), made payable to . The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or).
 Deposit checks given to agent shall be an original signed check and not a copy.
 (Note: Initial and increased deposits checks received by agent shall be recorded in Broker's trust fund log.)

- B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of \$ within Days After Acceptance (or).
 If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder.

- C. ☒ ALL CASH OFFER: No loan is needed to purchase the Property. This offer is NOT contingent on Buyer obtaining a loan. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or ☐ Buyer shall, within 3 (or) Days After Acceptance, Deliver to Seller such verification.

D. LOAN(S):

- (1) FIRST LOAN: in the amount of \$
 This loan will be conventional financing or ☐ FHA, ☐ VA, ☐ Seller financing (C.A.R. Form SFA), ☐ assumed financing (C.A.R. Form AFA), ☐ subject to financing, ☐ Other . This loan shall be at a fixed rate not to exceed % or, ☐ an adjustable rate loan with initial rate not to exceed %. Regardless of the type of loan, Buyer shall pay points not to exceed % of the loan amount.
 (2) ☐ SECOND LOAN in the amount of \$
 This loan will be conventional financing or ☐ Seller financing (C.A.R. Form SFA), ☐ assumed financing (C.A.R. Form AFA), ☐ subject to financing, ☐ Other . This loan shall be at a fixed rate not to exceed % or, ☐ an adjustable rate loan with initial rate not to exceed %. Regardless of the type of loan, Buyer shall pay points not to exceed % of the loan amount.
 (3) FHA/VA: For any FHA or VA loan specified in 3D(1), Buyer has 17 (or) Days After Acceptance to Deliver to Seller written notice (C.A.R. Form FVA) of any lender-required repairs or costs that Buyer requests Seller to pay for or otherwise correct. Seller has no obligation to pay or satisfy lender requirements unless agreed in writing. A FHA/VA amendatory clause (C.A.R. Form FVAC) shall be a part of this transaction.

- E. ADDITIONAL FINANCING TERMS: full funds deposit to be provided to escrow within 7 days of court approval

Buyer's Initials: [Signature]
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 VLP/A REVISED 12/15 (PAGE 1 OF 11)

Seller's Initials: [Signature]

VACANT LAND PURCHASE AGREEMENT (VLP/A PAGE 1 OF 11)

BeCat Real Investments, PO Box 1167 Imperial Beach CA 91933 Phone: 619-383-5968 Fax: 619-343-7327 652-110-06-00
 Produced with zipForms by zipLegal, 18070 Folsom Nile Road, Fraser, Michigan 48028 www.zipLegal.com



Property Address: 652 Tecate, Tecate, CA 91980

Date: October 13, 2018

- F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE** in the amount of \$ 144,800.00
to be deposited with Escrow Holder pursuant to Escrow Holder instructions.
- G. PURCHASE PRICE (TOTAL):** \$ 149,000.00
- H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Buyer (or Buyer's lender or loan broker pursuant to paragraph 3J(1)) shall, within 3 (or ____) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. (☐ Verification attached.)
- I. APPRAISAL CONTINGENCY AND REMOVAL:** This Agreement is (or ☐ is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 19B(3), in writing, remove the appraisal contingency or cancel this Agreement within 17 (or ____) Days After Acceptance.
- J. LOAN TERMS:**
- (1) **LOAN APPLICATIONS:** Within 3 (or ____) Days After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate. (☐ Letter attached.)
- (2) **LOAN CONTINGENCY:** Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above is a contingency of this Agreement unless otherwise agreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs are not contingencies of this Agreement.
- (3) **LOAN CONTINGENCY REMOVAL:**
Within 21 (or ____) Days After Acceptance, Buyer shall, as specified in paragraph 19; in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
- (4) **NO LOAN CONTINGENCY:** Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.
- (5) **LENDER LIMITS ON BUYER CREDITS:** Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.
- K. BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price and to sell to Buyer in reliance on Buyer's covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.
- L. SELLER FINANCING:** The following terms (or ☐ the terms specified in the attached Seller Financing Addendum) (C.A.R. Form SFA) apply ONLY to financing extended by Seller under this Agreement.
- (1) **BUYER'S CREDIT-WORTHINESS:** Buyer authorizes Seller and/or Brokers to obtain, at Buyer's expense, a copy of Buyer's credit report. Within 7 (or ____) Days After Acceptance, Buyer shall provide any supporting documentation reasonably requested by Seller.
- (2) **TERMS:** Buyer's promissory note, deed of trust and other documents as appropriate shall incorporate and implement the following additional terms: (i) the maximum interest rate specified in paragraph 3D shall be the actual fixed interest rate for Seller financing; (ii) deed of trust shall contain a REQUEST FOR NOTICE OF DEFAULT on senior loans; (iii) Buyer shall sign and pay for a REQUEST FOR NOTICE OF DELINQUENCY prior to Close Of Escrow and at any future time if requested by Seller; (iv) note and deed of trust shall contain an acceleration clause making the loan due, when permitted by law and at Seller's option, upon the sale or transfer of the Property or any interest in it; (v) note shall contain a late charge of 6% of the installment due (or ____) if the installment is not received within 10 days of the date due; (vi) title insurance coverage in the form of a joint protection policy shall be provided insuring Seller's deed of trust interest in the Property (any increased cost over owner's policy shall be paid by Buyer); and (vii) tax service shall be obtained and paid for by Buyer to notify Seller if property taxes have not been paid.
- (3) **ADDED, DELETED OR SUBSTITUTED BUYERS:** The addition, deletion or substitution of any person or entity under this Agreement or to title prior to Close Of Escrow shall require Seller's written consent. Seller may grant or withhold consent in Seller's sole discretion. Any additional or substituted person or entity shall, if requested by Seller, submit to Seller the same documentation as required for the original named Buyer. Seller and/or Brokers may obtain a ____ report, at Buyer's expense, on any such person or entity.
- M. ASSUMED OR "SUBJECT TO" FINANCING:** Seller represents that Seller is not delinquent on any payments due on any loans. Seller shall, within the time specified in paragraph 19, provide Copies of all applicable notes and deeds of trust, loan balances and current interest rates to Buyer. Buyer shall then, as specified in paragraph 19B(3), remove this contingency or cancel this Agreement. Differences between estimated and actual loan balances shall be adjusted at Close Of Escrow by cash down payment, impound accounts, if any, shall be assigned and charged to Buyer and credited to Seller. Seller is advised that Buyer's assumption of an existing loan may not release Seller from liability on that loan. If this is an assumption of a VA Loan, the sale is contingent upon Seller being provided a release of liability and substitution of eligibility, unless otherwise agreed in writing. If the Property is acquired subject to an existing loan, Buyer and Seller are advised to consult with legal counsel regarding the ability of an existing lender to call the loan due, and the consequences thereof.

Buyer's Initials (AB)
VLPA REVISED 12/15 (PAGE 2 OF 11)

Seller's Initials (PH)



VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 2 OF 11)

Produced with zipiform by zipiform, 1870 Fifth Mile Road, Fraser, Michigan 48026 www.zipiform.com

833-219-6630

Property Address: 652 Tecate, Tecate, CA 91980

Date: October 13, 2018

4. SALE OF BUYER'S PROPERTY:

A. This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer.
OR B. ☐ This Agreement and Buyer's ability to obtain financing are contingent upon the sale of property owned by Buyer as specified in the attached addendum (C.A.R. Form COP).

5. ☐ **MANUFACTURED HOME PURCHASE:** The purchase of the Property is contingent upon Buyer acquiring a personal property manufactured home to be placed on the Property after Close Of Escrow. Buyer ☐ has ☐ has not entered into a contract for the purchase of a personal property manufactured home. Within the time specified in paragraph 19, Buyer shall remove this contingency or cancel this Agreement, (or ☐ this contingency shall remain in effect until the Close Of Escrow of the Property).

6. ☐ **CONSTRUCTION LOAN FINANCING:** The purchase of the Property is contingent upon Buyer obtaining a construction loan. A draw from the construction loan ☐ will ☐ will not be used to finance the Property. Within the time specified in paragraph 19, Buyer shall remove this contingency or cancel this Agreement (or ☐ this contingency shall remain in effect until Close Of Escrow of the Property).

7. ADDENDA AND ADVISORIES:

A. ADDENDA:

<input type="checkbox"/> Addendum # _____ (C.A.R. Form ADM)
<input type="checkbox"/> Back Up Offer Addendum (C.A.R. Form BUO)
<input type="checkbox"/> Court Confirmation Addendum (C.A.R. Form CCA)
<input type="checkbox"/> Septic, Well and Property Monument Addendum (C.A.R. Form SWPI)
<input type="checkbox"/> Short Sale Addendum (C.A.R. Form SSA)
<input type="checkbox"/> Other _____

B. BUYER AND SELLER ADVISORIES:

<input checked="" type="checkbox"/> Buyer's Inspection Advisory (C.A.R. Form BIA)
<input type="checkbox"/> Probate Advisory (C.A.R. Form PA)
<input type="checkbox"/> Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
<input type="checkbox"/> Trust Advisory (C.A.R. Form TA)
<input type="checkbox"/> REO Advisory (C.A.R. Form REO)
<input type="checkbox"/> Short Sale Information and Advisory (C.A.R. Form SSIA)
<input type="checkbox"/> Other _____

8. **OTHER TERMS:** Buyer is a licensed California broker entitled to 3% CBB and would like that as a credit in the transaction through escrow.

9. ALLOCATION OF COSTS

A. INSPECTIONS, REPORTS AND CERTIFICATES: Unless otherwise agreed, in writing, this paragraph only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report.

(1) ☐ Buyer ☒ Seller shall pay for a natural hazard zone disclosure report, including tax ☐ environmental ☐ Other: _____
prepared by sellers choice

(2) ☐ Buyer ☐ Seller shall pay for the following Report _____
prepared by _____

(3) ☐ Buyer ☐ Seller shall pay for the following Report _____
prepared by _____

B. ESCROW AND TITLE:

(1) (a) ☒ Buyer ☒ Seller shall pay escrow fee each side to pay their own
(b) Escrow Holder shall be sellers choice

(c) The Parties shall, within 5 (or _____) Days After receipt, sign and return Escrow Holder's general provisions.

(2) (a) ☒ Buyer ☒ Seller shall pay for owner's title insurance policy specified in paragraph 18E each side to pay their own

(b) Owner's title policy to be issued by Lawyers Title

(Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

C. OTHER COSTS:

(1) ☐ Buyer ☒ Seller shall pay County transfer tax or fee _____

(2) ☐ Buyer ☒ Seller shall pay City transfer tax or fee _____

(3) ☐ Buyer ☐ Seller shall pay Homeowners' Association ("HOA") transfer fee _____

(4) Seller shall pay HOA fees for preparing all documents required to be delivered by Civil Code §4525.

(5) Buyer to pay for any HOA certification fee.

(6) ☐ Buyer ☐ Seller shall pay HOA fees for preparing all document other than those required by Civil Code §4525.

(7) ☐ Buyer ☒ Seller shall pay for any private transfer fee _____

(8) ☐ Buyer ☐ Seller shall pay for _____

(9) ☐ Buyer ☐ Seller shall pay for _____

10. CLOSING AND POSSESSION: Possession shall be delivered to Buyer: (i) ☐ at 6 PM or ☐ 12 ☐ AM/ ☒ PM on the date of Close Of Escrow; (ii) ☐ no later than _____ calendar days after Close Of Escrow; or (iii) ☐ at _____ AM/ ☐ PM on _____. The Property shall be unoccupied, unless otherwise agreed in writing. Seller shall provide keys and/or means to operate all Property locks. If Property is located in a common interest subdivision, Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.

11. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:

A. NOTE TO BUYER AND SELLER: Items listed as included or excluded in the MLS, flyer or marketing materials are not included in the purchase price or excluded from the sale unless specified in 11B or C.

Buyer's Initials: [Signature]

Seller's Initials: [Signature]

VLPA REVISED 12/15 (PAGE 3 OF 11)

VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 3 OF 11)

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403-118-86-00



Property Address: 852 Tocate, Tocate, CA 91080

Date: October 13, 2018

B. ITEMS INCLUDED IN SALE:

- (1) All EXISTING fixtures and fittings that are attached to the Property;
- (2) The following items: _____

(3) Seller represents that all items included in the purchase price, unless otherwise specified, are owned by Seller.

(4) All items included shall be transferred free of liens and without Seller warranty.

C. ITEMS EXCLUDED FROM SALE: _____

12. STATUTORY AND OTHER DISCLOSURES AND CANCELLATION RIGHTS:

A. NATURAL AND ENVIRONMENTAL HAZARD DISCLOSURES AND OTHER BOOKLETS: Within the time specified in paragraph 19A, Seller shall, if required by Law, (i) Deliver to Buyer earthquake guide(s) (and questionnaire), ~~hazardous booklet~~, (ii) disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; and Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.

B. WITHHOLDING TAXES: Within the time specified in paragraph 19A, to avoid required withholding, Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law (C.A.R. Form AS or QS).

C. MEGAN'S LAW DATABASE DISCLOSURE: Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer's inspection contingency period. Brokers do not have expertise in this area.)

D. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES: This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.

E. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:

(1) SELLER HAS: 7 (or) Days After Acceptance to disclose to Buyer whether the Property is a condominium, or is located in a planned development or other common interest subdivision (C.A.R. Form VLQ).

(2) If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has 3 (or) Days After Acceptance to request from the HOA (C.A.R. Form HOA1): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; and (v) the names and contact information of all HOAs governing the Property (collectively, "CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 19B(3). The Party specified in paragraph 9, as directed by escrow, shall deposit funds into escrow or direct to HOA or management company to pay for any of the above.

13. SELLER DOCUMENTATION AND ADDITIONAL DISCLOSURE:

A. Within the time specified in paragraph 19, if Seller has actual knowledge, Seller shall provide to Buyer, in writing, the following information:

(1) **LEGAL PROCEEDINGS:** Any lawsuits by or against Seller, threatening or affecting the Property, including any lawsuits alleging a defect or deficiency in the Property or common areas, or any known notices of abatement or citations filed or issued against the Property.

(2) **AGRICULTURAL USE:** Whether the Property is subject to restrictions for agricultural use pursuant to the Williamson Act (Government Code §§51200-51295).

(3) **DEED RESTRICTIONS:** Any deed restrictions or obligations.

(4) **FARM USE:** Whether the Property is in, or adjacent to, an area with Right to Farm rights (Civil Code §3482.5 and §3482.6).

(5) **ENDANGERED SPECIES:** Presence of endangered, threatened, 'candidate' species, or wetlands on the Property.

(6) **ENVIRONMENTAL HAZARDS:** Any substances, materials, or products that may be an environmental hazard including, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the Property.

(7) **COMMON WALLS:** Any features of the Property shared in common with adjoining landowners, such as walls, fences, roads, and driveways, and agriculture and domestic wells whose use or responsibility for maintenance may have an effect on the Property.

(8) **LANDLOCKED:** The absence of legal or physical access to the Property.

(9) **EASEMENTS/ENCROACHMENTS:** Any encroachments, easements or similar matters that may affect the Property.

(10) **SOIL FILL:** Any fill (compacted or otherwise), or abandoned mining operations on the Property.

(11) **SOIL PROBLEMS:** Any slippage, sliding, flooding, drainage, grading, or other soil problems.

(12) **EARTHQUAKE DAMAGE:** Major damage to the Property or any of the structures from fire, earthquake, floods, or landslides.

(13) **ZONING ISSUES:** Any zoning violations, non-conforming uses, or violations of "setback" requirements.

(14) **NEIGHBORHOOD PROBLEMS:** Any neighborhood noise problems, or other nuisances.

B. RENTAL AND SERVICE AGREEMENTS: Within the time specified in paragraph 19, Seller shall make available to Buyer for inspection and review, all current leases, rental agreements, service contracts and other agreements, licenses, and permits pertaining to the operation or use of the Property.

C. ☐ TENANT ESTOPPEL CERTIFICATES: Within the time specified in paragraph 19, Seller shall deliver to Buyer tenant estoppel certificates (C.A.R. Form TEC) completed by Seller or Seller's agent, and signed by tenants, acknowledging: (i) that tenants' rental or lease agreements are unmodified and in full force and effect (or if modified, stating all such modifications); (ii) that no lessor defaults exist; and (iii) stating the amount of any prepaid rent or security deposit.

Buyer's Initials:

Seller's Initials:

VLPA REVISED 12/15 (PAGE 4 OF 11)

VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 4 OF 11)

Produced with zip code by zip code 18070 Fifteen Mile Road, Fraser, Michigan 48038 www.zipcode.com

872-318-04-00



Property Address: 652 Tecate, Tecate, CA 91980

Date: October 13, 2018

- D. MELLO-ROOS TAX; 1915 BOND ACT:** Within the time specified in paragraph 19, Seller shall: (i) make a good faith effort to obtain a notice from any local agencies that levy a special tax or assessment on the Property (or, if allowed, substantially equivalent notice), pursuant to the Mello-Roos Community Facilities Act, and Improvement Bond Act of 1915, and (ii) promptly deliver to Buyer any such notice obtained.
- E. SELLER VACANT LAND QUESTIONNAIRE:** Seller shall, within the time specified in paragraph 19, complete and provide Buyer with a Seller Vacant Land Questionnaire (C.A.R. Form VLQ).
- 14. SUBSEQUENT DISCLOSURES:** In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer of which Buyer is otherwise unaware, Seller shall promptly provide a subsequent or amended disclosure or notice, in writing, covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies disclosed in reports ordered and paid for by Buyer.
- 15. CHANGES DURING ESCROW:**
- A. Prior to Close Of Escrow, Seller may engage in the following acts, ("Proposed Changes"), subject to Buyer's rights in paragraph 15B: (i) rent or lease any part of the premises; (ii) alter, modify or extend any existing rental or lease agreement; (iii) enter into, alter, modify or extend any service contract(s); or (iv) change the status of the condition of the Property.
 - B. At least 7 (or ____) Days prior to any Proposed Changes, Seller shall give written notice to Buyer of such Proposed Changes. Within 5 (or ____) Days After receipt of such notice, Buyer, in writing, may give Seller notice of Buyer's objection to the Proposed Changes. In which case Seller shall not make the Proposed Changes.
- 16. CONDITION OF PROPERTY:** Unless otherwise agreed in writing: (i) the Property is sold (a) "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's investigation rights; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow.
- A. Seller shall, within the time specified in paragraph 19A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.
 - B. Buyer has the right to conduct Buyer Investigations of the property and, as specified in paragraph 19B, based upon information discovered in those investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.
 - C. Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.
- 17. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**
- A. Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 19B. Within the time specified in paragraph 19B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards; (ii) inspect for wood destroying pests and organisms; (iii) review the registered sex offender database; (iv) confirm the insurability of Buyer and the Property; and (v) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA). Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations except for minimally invasive testing; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
 - B. Seller shall make the Property available for all Buyer Investigations. Buyer shall (i) as specified in paragraph 19B, complete Buyer Investigations and, either remove the contingency or cancel this Agreement, and (ii) give Seller, at no cost, complete Copies of all investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
 - C. Buyer indemnify and Seller protection for entry upon property. Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs of Buyer's investigations. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination or cancellation of this Agreement and Close Of Escrow.
 - D. BUYER IS STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY AND ALL MATTERS AFFECTING THE VALUE OR DESIRABILITY OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE ITEMS SPECIFIED BELOW. IF BUYER DOES NOT EXERCISE THESE RIGHTS, BUYER IS ACTING AGAINST THE ADVICE OF BROKERS. BUYER UNDERSTANDS THAT ALTHOUGH CONDITIONS ARE OFTEN DIFFICULT TO LOCATE AND DISCOVER, ALL REAL PROPERTY CONTAINS CONDITIONS THAT ARE NOT READILY APPARENT AND THAT MAY AFFECT THE VALUE OR DESIRABILITY OF THE PROPERTY. BUYER AND SELLER ARE AWARE THAT BROKERS DO NOT GUARANTEE, AND IN NO WAY ASSUME RESPONSIBILITY FOR, THE CONDITION OF THE PROPERTY. BROKERS HAVE NOT AND WILL NOT VERIFY ANY OF THE ITEMS IN THIS PARAGRAPH 17, UNLESS OTHERWISE AGREED IN WRITING.
 - E. **SIZE, LINES, ACCESS AND BOUNDARIES:** Lot size, property lines, legal or physical access and boundaries including features of the Property shared in common with adjoining landowners, such as walls, fences, roads and driveways, whose use or responsibility for maintenance may have an effect on the Property and any encroachments, easements or similar matters that may affect the Property. (Fences, hedges, walls and other natural or constructed barriers or markers do not necessarily identify true Property boundaries. Property lines may be verified by survey.) (Unless otherwise specified in writing, any numerical statements by Brokers regarding lot size are APPROXIMATIONS ONLY, which have not been and will not be verified, and should not be relied upon by Buyer.)
 - F. **ZONING AND LAND USE:** Past, present, or proposed laws, ordinances, referendums, initiatives, votes, applications and permits affecting the current use of the Property, future development, zoning, building, size, governmental permits and inspections. Any zoning violations, non-conforming uses, or violations of "setback" requirements. (Buyer should also investigate whether these matters affect Buyer's intended use of the Property.)
 - G. **UTILITIES AND SERVICES:** Availability, costs, restrictions and location of utilities and services, including but not limited to, sewerage, sanitation, gas and electric, water, electricity, gas, telephone, cable TV and drainage.

Buyer's Initials

Seller's Initials

VACANT LAND PURCHASE AGREEMENT (VLP) REVISED 12/15 (PAGE 5 OF 11)

VACANT LAND PURCHASE AGREEMENT (VLP) PAGE 5 OF 11

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555-178-0000



Property Address: 652 Tecate, Tecate, CA 91980

Date: October 13, 2018

- H. ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel, oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, including mold (airborne, toxic or otherwise), fungus or similar contaminant, materials, products or conditions.
- I. GEOLOGIC CONDITIONS:** Geologic/seismic conditions, soil and terrain stability, suitability and drainage including any slippage, sliding, flooding, drainage, grading, fill (compacted or otherwise), or other soil problems.
- J. NATURAL HAZARD ZONE:** Special Flood Hazard Areas, Potential Flooding (Inundation) Areas, Very High Fire Hazard Zones, State Fire Responsibility Areas, Earthquake Fault Zones, Seismic Hazard Zones, or any other zone for which disclosure is required by Law.
- K. PROPERTY DAMAGE:** Major damage to the Property or any of the structures or non-structural systems and components and any personal property included in the sale from fire, earthquake, floods, landslides or other causes.
- L. NEIGHBORHOOD, AREA AND PROPERTY CONDITIONS:** Neighborhood or area conditions, including Agricultural Use Restrictions pursuant to the Williamson Act (Government Code §§51200-51295), Right To Farm Laws (Civil Code §3482.5 and §3482.6), schools, proximity and adequacy of law enforcement, crime statistics, the proximity of registered felons or offenders, fire protection, other government services, availability, adequacy and cost of any speed-wired, wireless internet connections or other telecommunications or other technology services and installations, proximity to commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, abandoned mining operations on the Property, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.
- M. COMMON INTEREST SUBDIVISIONS: OWNER ASSOCIATIONS:** Facilities and condition of common areas (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others), Owners' Association that has any authority over the subject property, CC&Rs, or other deed restrictions or obligations, and possible lack of compliance with any Owners' Association requirements.
- N. SPECIAL TAX:** Any local agencies that levy a special tax on the Property pursuant to the Mello-Roos Community Facilities Act or Improvement Bond Act of 1915.
- O. RENTAL PROPERTY RESTRICTIONS:** Some cities and counties impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants and the right of a landlord to terminate a tenancy.
- P. MANUFACTURED HOME PLACEMENT:** Conditions that may affect the ability to place and use a manufactured home on the Property.
- 18. TITLE AND VESTING:**
- A.** Within the time specified in paragraph 19, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 19B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities. Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information.
- B.** Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record (which Seller is obligated to pay off) unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.
- C.** Within the time specified in paragraph 19A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- D.** At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.
- E.** Buyer shall receive a "CLTA/ALTA Homeowner's Policy of Title Insurance", if applicable to the type of property and buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and shall pay any increase in cost.
- 19. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS:** The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).
- A. SELLER HAS: 7 (or) Days After Acceptance** to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 3M, 7A, 8, 9, 12A, B, and E, 13, 16A and 18A. Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement if Seller has not Delivered the items within the time specified.
- B. (1) BUYER HAS: 17 (or 60) Days After Acceptance**, unless otherwise agreed in writing, to:
- (i) complete all Buyer investigations; review all disclosures, reports, and other applicable information, which Buyer receives from Seller, and approve all matters affecting the Property; and (ii) Deliver to Seller Signed Copies of Statutory Disclosures and other disclosures Delivered by Seller in accordance with paragraph 12A.
- (2) Within the time specified in paragraph 19B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to (C.A.R. Form RRRR) Buyer's requests.
- (3) By the end of the time specified in paragraph 19B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 19A, then Buyer has 5 (or) Days After Delivery of any such items, or the time specified in paragraph 19B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.

Buyer's Initials [Signature]

Seller's Initials [Signature]

VLPA REVISED 12/18 (PAGE 6 OF 11)

VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 6 OF 11)

Produced with ZEP Form® by ZEP, 18070 Filshie Mill Road, Fraser, Michigan 48024 www.zep.com

402-319-8666



Property Address: 652 Tecate, Tecate, CA 91980

Date: October 13, 2018

- (4) Continuation of Contingency: Even after the end of the time specified in paragraph 19B(1) and before Seller cancels, if at all, pursuant to paragraph 19C, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 19C(1).

C. SELLER RIGHT TO CANCEL:

- (1) Seller right to Cancel; Buyer Contingencies: If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
- (2) Seller right to Cancel; Buyer Contract Obligations: Seller, after first delivering to Buyer a NBP, may cancel this Agreement if, by the time specified in this Agreement Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3A or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited; (ii) Deliver a notice of FHA or VA costs or terms as required by paragraph 3D(3) (C.A.R. Form FVA); (iii) Deliver a letter as required by paragraph 3J(1); (iv) Deliver verification as required by paragraph 3C or 3H or if Seller reasonably disapproves of the verification provided by paragraph 3C or 3H; (v) Return Statutory Disclosures as required by paragraph 12A; or (vi) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 27B; or (vii) Provide evidence of authority to sign in a representative capacity as specified in paragraph 19. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

- D. NOTICE TO BUYER OR SELLER TO PERFORM:** The NBP or NSP shall: (i) be in writing; (ii) be signed by the applicable Buyer or Seller; and (iii) give the other Party at least 2 (or ____) Days After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP or NSP may not be Delivered any earlier than 2 Days Prior to the expiration of the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 19.

- E. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES:** If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in writing, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.

- F. CLOSE OF ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: (i) be signed by the applicable Buyer or Seller; and (ii) give the other Party at least 3 (or ____) Days After Delivery to close escrow. A DCE may not be Delivered any earlier than 3 Days Prior to the scheduled close of escrow.

- G. EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Except as specified below, release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. If either Party fails to execute mutual instructions to cancel escrow, one Party may make a written demand to Escrow Holder for the deposit (C.A.R. Form BDRD or SDRD). Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within 10 Days After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursement of the deposit. Escrow Holder, at its discretion, may nonetheless require mutual cancellation instructions. A Party may be subject to a civil penalty of up to \$1,000 for refusal to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).

- 20. REPAIRS:** Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.

- 21. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property within 5 (or ____) Days Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 16; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).

- 22. ENVIRONMENTAL HAZARD CONSULTATION:** Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Broker(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Broker(s) has/have made no representation concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property.

- 23. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment

Buyer's Initials [Signature]

Seller's Initials [Signature]

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VACANT LAND PURCHASE AGREEMENT VLPA PAGE 7 OF 11)

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652-110-9600



Property Address: 652 Tecate, Tecate, CA 91980

Date: October 13, 2018

District bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: Prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.

24. BROKERS:

A. **COMPENSATION:** Seller or Buyer, or both, as applicable, agrees to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.

B. **SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal tax, insurance, title and other desired assistance from appropriate professionals.

25. REPRESENTATIVE CAPACITY: If one or more Parties is signing the Agreement in a representative capacity and not for him/herself as an individual then that Party shall so indicate in paragraph 37 or 38 and attach a Representative Capacity Signature Disclosure (C.A.R. Form RCSD). Wherever the signature or initials of the representative identified in the RCSD appear on the Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Party acting in a representative capacity (i) represents that the entity for which that party is acting already exists and (ii) shall deliver to the other Party and Escrow Holder, within 3 Days After Acceptance, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code §18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).

26. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:

A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3, 4B, 5, 6, 7A, 8, 9, 12B, 18, 19G, 23, 24A, 25, 26, 32, 35, 36, 37, 38 and paragraph D of the section titled Real Estate Brokers on page 11. If a Copy of the separate compensation agreement(s) provided for in paragraph 24A, or paragraph D of the section titled Real Estate Brokers on page 10 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 9B(1)(c). To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within 3 (or _____) Days, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 9, 12 or elsewhere in this Agreement.

B. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within 3 Days After Acceptance (or _____). Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title company when received from Seller. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 12B, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.

C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 24A and paragraph D of the section titled Real Estate Brokers on page 11. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 24A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.

D. Upon receipt, Escrow Holder shall provide Seller and Seller's Broker verification of Buyer's deposit of funds pursuant to paragraph 3A and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (i) If Buyer's initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) If Buyer and Seller instruct Escrow Holder to cancel escrow.

E. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 3 Days after mutual execution of the amendment.

Buyer's Initials ([Signature])

Seller's Initials ([Signature])

VLPA REVISED 12/18 (PAGE 8 OF 11)

VACANT LAND PURCHASE AGREEMENT LPA PAGE 8 OF 11



652-115-64-00

Property Address: 652 Tecate, Tecate, CA 91980

Date: October 13, 2018

27. REMEDIES FOR BUYER'S BREACH OF CONTRACT:

- A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.
- B. **LIQUIDATED DAMAGES:** If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, signed release instructions from both Buyer and Seller, judicial decision or arbitration award. AT TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM RID).

Buyer's Initials DL

Seller's Initials DL

28. DISPUTE RESOLUTION:

- A. **MEDIATION:** The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action through the C.A.R. Consumer Mediation Center (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the Parties involved. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED. Exclusions from this mediation agreement are specified in paragraph 28C.
- B. **ARBITRATION OF DISPUTES:** The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 28C.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials DL

Seller's Initials DL

C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:

- (1) **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.
- (2) **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- (3) **BROKERS:** Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to the Agreement.
29. **SELECTION OF SERVICE PROVIDERS:** Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
30. **MULTIPLE LISTING SERVICE ("MLS"):** Brokers are authorized to report to the MLS a pending sale and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS.

Buyer's Initials DL

Seller's Initials DL

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VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 9 OF 11)

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652-119-96-25



Property Address: 652 Tecate, Tecate, CA 91980

Date: October 13, 2018

31. **ATTORNEY FEES:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorneys fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 28A.
32. **ASSIGNMENT:** Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the written consent of Seller. Such consent shall not be unreasonably withheld unless otherwise agreed in writing. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Seller (C.A.R. Form ACAA).
33. **EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination laws.
34. **TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a counteroffer or addendum. If at least one but not all Parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.
35. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the Laws of the State of California. Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.
36. **DEFINITIONS:** As used in this Agreement:
- A. "Acceptance" means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this offer or a final counter offer.
 - B. "Agreement" means this document and any counter offers and any incorporated addenda, collectively forming the binding agreement between the Parties. Addenda are incorporated only when Signed by all Parties.
 - C. "C.A.R. Form" means the most current version of the specific form referenced or another comparable form agreed to by the parties.
 - D. "Close Of Escrow" means the date the grant deed, or other evidence of transfer of title, is recorded.
 - E. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.
 - F. "Days" means calendar days. However, after Acceptance, the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
 - G. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
 - H. "Days Prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
 - I. "Deliver", "Delivered" or "Delivery", unless otherwise specified in writing, means and shall be effective upon personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in the section titled Real Estate Brokers on page 11, regardless of the method used (i.e., messenger, mail, email, fax, other).
 - J. "Electronic Copy" or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
 - K. "Law" means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
 - L. "Repairs" means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
 - M. "Signed" means either a handwritten or electronic signature on an original document, Copy or any counterpart.
37. **EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by DJean Becker Osborne who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by ☐ AM ☐ PM on (date)).

☐ One or more Buyers is signing the Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-B) for additional terms.

Date 10/13/18 BUYER DJean Becker Osborne

(Print name) DJean Becker Osborne

Date 10/13/18 BUYER Michael James Osborne

(Print name) Michael James Osborne

☐ Additional Signature Addendum attached (C.A.R. Form ASA).

Buyer's Initials BJS

Seller's Initials JB

VLPA REVISED 12/15 (PAGE 10 OF 11)

VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 10 OF 11)

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652-110-04-00

Property Address: 852 Tecate, Tecate, CA 91980

Date: October 13, 2018

38. ACCEPTANCE OF OFFER: Seller warrants that Seller is the owner of the Property, or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions, and agrees to the above confirmation of agency relationships. Seller has read and acknowledges receipt of a Copy of this Agreement, and authorizes Broker to Deliver a Signed Copy to Buyer.

☐ (If checked) SELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:

☐ One or more Sellers is signing the Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCD-S) for additional terms.

Date 10/14/18 SELLER

(Print name) Thomas C. Hebrank/Receiver

Date SELLER

(Print name)

☐ Additional Signature Addendum attached (C.A.R. Form ASA).

(/) (Do not initial if making a counter offer.) CONFIRMATION OF ACCEPTANCE: A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) at

☐ AM/ ☐ PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.

REAL ESTATE BROKERS:

A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.

B. Agency relationships are confirmed as stated in paragraph 2.

C. If specified in paragraph 3A(2), Agent who submitted the offer for Buyer acknowledges receipt of deposit.

D. COOPERATING BROKER COMPENSATION: Listing Broker agrees to pay Cooperating Broker (Selling Firm) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow, the amount specified in the MLS, provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Listing Broker and Cooperating Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC), Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.

Real Estate Broker (Selling Firm) Social Real Investments

DRE Lic. #01793330

By D. Jean Becker Osborne DRE Lic. # 01324924

Date

By DRE Lic. #

Date

Address 538 12th street

City IMPERIAL BEACH

State CA Zip 91932

Telephone (658) 213-5543

Fax

E-mail D Osborne@SCRICA.com

Real Estate Broker (Listing Firm) Resonate Real Estate

DRE Lic. #02029323

By Todd Busch DRE Lic. # 01935333

Date

By DRE Lic. #

Date

Address 5755 Oberlin Dr Ste 301

City San Diego

State CA Zip 92121

Telephone (658) 720-0974

Fax

E-mail todd@tbuschrealestate.com

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, ☐ a deposit in the amount of \$ _____), counter offer numbers _____ ☐ Seller's Statement of Information and _____, and agrees to act as Escrow Holder subject to paragraph 28 of this Agreement, any

supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is _____

Escrow Holder

Escrow #

By

Date

Address

Phone/Fax/E-mail

Escrow Holder has the following license number # _____

☐ Department of Business Oversight, ☐ Department of Insurance, ☐ Department of Real Estate.

PRESENTATION OF OFFER:

() Listing Broker presented this offer to Seller on _____ (date).
Broker or Designee Initials _____

REJECTION OF OFFER:

() No counter offer is being made. This offer was rejected by Seller on _____ (date).
Seller's Initials _____

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Buyer's Acknowledgment that page 11 is part of this Agreement.



VACANT LAND PURCHASE AGREEMENT (VLPB PAGE 11 OF 11)

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CALIFORNIA
ASSOCIATION
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BUYER'S VACANT LAND ADDITIONAL INSPECTION ADVISORY

(C.A.R. Form BVLIA, 11/13)

Property Address: 652 Tecate, Tecate, CA 91980

(Property)

A. IMPORTANCE OF PROPERTY INVESTIGATION: The physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. For this reason, you should conduct thorough investigations of the Property personally and with professionals who should provide written reports of their investigations. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If the professionals recommend further investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional investigations. Additionally, some inspections, such as those listed below, may be of particular importance when purchasing vacant land.

B. BUYER RIGHTS AND DUTIES: You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation. The purchase agreement gives you the right to investigate the Property. If you exercise this right, and you should, you must do so in accordance with the terms of that agreement. This is the best way for you to protect yourself. It is extremely important for you to read all written reports provided by professionals and to discuss the results of inspections with the professional who conducted the inspection. You have the right to request that Seller make repairs, corrections or take other action based upon items discovered in your investigations or disclosed by Seller. If Seller is unwilling or unable to satisfy your requests, or you do not want to purchase the Property in its disclosed and discovered condition, you have the right to cancel the agreement if you act within specific time periods. If you do not cancel the agreement in a timely and proper manner, you may be in breach of contract.

C. SELLER RIGHTS AND DUTIES: Seller is required to disclose to you material facts known to him/her that affect the value or desirability of the Property. However, Seller may not be aware of some Property defects or conditions. Seller does not have an obligation to inspect the Property for your benefit nor is Seller obligated to repair, correct or otherwise cure known defects that are disclosed to you or previously unknown defects that are discovered by you or your inspectors during escrow. The purchase agreement obligates Seller to make the Property available to you for investigations.

D. BROKER OBLIGATIONS: Brokers do not have expertise in all areas and therefore cannot advise you on many items, such as soil stability, geologic or environmental conditions, hazardous or illegal controlled substances, structural conditions of the foundation or other improvements, or the condition of the roof, plumbing, heating, air conditioning, electrical, sewer, septic, waste disposal, or other system. The only way to accurately determine the condition of the Property is through an inspection by an appropriate professional selected by you. If Broker gives you referrals to such professionals, Broker does not guarantee their performance. You may select any professional of your choosing. If you have entered into a written agreement with a Broker, the specific terms of that agreement will determine the nature and extent of that Broker's duty to you. **YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.**

E. YOU ARE ADVISED TO CONDUCT INVESTIGATIONS OF THE ENTIRE PROPERTY, INCLUDING, BUT NOT LIMITED TO THE FOLLOWING:

- 1. FINANCE:** Financing the purchase of vacant land finance and especially financing construction loans for the improvement of vacant land can provide particular challenges, including subordination agreements and insurance requirements. Buyer is advised to seek the assistance of reputable lenders in assistance with their decisions regarding financing of the property.
- 2. CONSTRUCTION COSTS:** If Buyer is contemplating building improvements on the property, Buyer is advised that they will have to contact directly any contractors, service providers, suppliers, architects, utility companies regarding the costs of improvements. Buyer is advised to get written bids from all such persons regarding their decision to develop the property.
- 3. UTILITIES:** Unimproved property may or may not have utilities available to the property. Buyer(s) is advised to obtain information from the public or private utility provider about the availability and cost of providing utilities to the property and whether necessary easements are in place to allow such utilities to the property.
- 4. ENVIRONMENTAL SURVEY:** Unimproved land may have had or may have hazardous materials stored upon or under the land or been used by persons engaged in activities exposing the land to hazardous materials. The land may also be host to protected vegetation or animal life. Buyer(s) is advised to satisfy themselves as what hazards or protected plant or animal life are on the property and what impact they may have on Buyer's future plans for the property by seeking the help of a qualified professional.

Buyer's Initials [Signature]

Seller's Initials [Signature]

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BVLIA 11/13 (PAGE 1 OF 2)

BUYER'S VACANT LAND ADDITIONAL INSPECTION ADVISORY (BVLIA PAGE 1 OF 2)

SoCal Real Investments, PO Box 1163 Imperial Beach CA 91933
Lizette Bricker Osborne

Produced with ZPL Form by zpl, cpl, 16070 Fithian Mills Road, Fraser, Michigan 48026

Phone: 619-383-0948

Fax: 619-543-7327

www.zplcpl.com



602-110-8446

Property Address: 652 Tecate, Tecate, CA 91980

Date: October 13, 2018

5. **NATURAL HAZARDS REPORTS:** Buyer(s) is advised that while certain disclosures are required by state, federal and local laws, hazard disclosure companies can provide additional disclosures for both natural and man-made hazards or nuisances for a cost. Buyer is advised to seek the advice of a natural hazards reporting company regarding additional reports and disclosures that buyer may wish to obtain.
6. **SUBDIVISION OF THE PROPERTY:** If Buyer's plans include future subdivision of the property (whether under the Subdivision Map Act or the Subdivided Lands Law) multiple, complex issues regarding city, county, state, and federal laws may be presented. Buyer is strongly advised to seek the advice of California legal counsel familiar with federal, state and local subdivision requirements.

Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (x) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

By signing below, Buyer and Seller each acknowledge that they have read, understand, accept and have received a Copy of this Advisory. Buyer is encouraged to read it carefully.

SELLER

Thomas C. Hebrank
Thomas C. Hebrank, Receiver

Date

10/16/18

SELLER

[Signature]
Jean Becker Osborne

Date

10/13/18

BUYER

BUYER

[Signature]
Michael James Osborne

Date

10/13/18

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BVLIA 11/13 (PAGE 2 OF 2)

BUYER'S VACANT LAND ADDITIONAL INSPECTION ADVISORY (BVLIA PAGE 2 OF 2)

Produced with information by ziplogic, 18070 Fitts Road, Fraser, Michigan 48033



10-118-04-00



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ADDITIONAL SIGNATURE ADDENDUM
(C.A.R. Form ASA, 4/06)

This form is not an assignment. It should not be used to add new parties after a contract has been formed.

The following are additional signatories to the ☐ Residential Purchase Agreement, ☐ Residential Listing Agreement,
☒ Other VLPA

, dated October 13, 2018, for the
property known as 652 Tecate, Tecate, CA 91980
between D. Jean Becker Osborne, Michael James Osborne and Kimberly K Osborne

and Thomas C. Hebrank, Receiver (☒ Buyer ☐ Seller ☐ Landlord ☐ Tenant ☐ Other)

(☐ Buyer ☒ Seller ☐ Landlord ☐ Tenant ☐ Broker ☐ Other)
By signing below, the undersigned (i) acknowledges receipt of the document identified above, and, except as specified below
(i) agrees to the terms, conditions, representations and disclosures in the document.

☒ Buyer ☐ Seller ☐ Landlord ☐ Tenant ☐ Other

(Print Name) Kimberly K Osborne

(If applicable) By

Title

(Signature)

Date

(Only initial the following if the document identified above contains an arbitration or liquidated damages provision which has been initiated by one or more parties.)

I (☒) agree (☐) do not agree to have disputes decided in accordance with the arbitration provision.

I (☒) agree (☐) do not agree to the liquidated damages provision.

☐ Buyer ☐ Seller ☐ Landlord ☐ Tenant ☐ Other

(Print Name)

(If applicable) By

Title

(Signature)

Date

(Only initial the following if the document identified above contains an arbitration or liquidated damages provision which has been initiated by one or more parties.)

I (☐) agree (☐) do not agree to have disputes decided in accordance with the arbitration provision.

I (☐) agree (☐) do not agree to the liquidated damages provision.

☐ Buyer ☐ Seller ☐ Landlord ☐ Tenant ☐ Other

(Print Name)

(If applicable) By

Title

(Signature)

Date

(Only initial the following if the document identified above contains an arbitration or liquidated damages provision which has been initiated by one or more parties.)

I (☐) agree (☐) do not agree to have disputes decided in accordance with the arbitration provision.

I (☐) agree (☐) do not agree to the liquidated damages provision.

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ASA 4/06 (PAGE 1 OF 1)

ADDITIONAL SIGNATURE ADDENDUM (ASA PAGE 1 OF 1)



SoCal Real Investments, PO Box 1162 Imperial Beach CA 91933
D. Jean Becker Osborne

Produced with zipForm by zipForm, 18070 Fleen Mile Road, Fraser, Michigan 48028

Phone: 419-343-5948

Fax: 419-343-7271

800-419-3443



CALIFORNIA
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ADDITIONAL SIGNATURE ADDENDUM
(C.A.R. Form ASA, 4/06)

This form is not an assignment. It should not be used to add new parties after a contract has been formed.

The following are additional signatories to the ☐ Residential Purchase Agreement, ☐ Residential Listing Agreement,
☒ Other VLPA

dated October 13, 2018 for the
property known as 652 Tecate, Tecate, CA 91980 ("Property"),
between D. Jean Becker Osborne, Michael James Osborne and Kimberly K Osborne

and Thomas C. Hebrank, Receiver (☒ Buyer ☐ Seller ☐ Landlord ☐ Tenant ☐ Other)

(☐ Buyer ☒ Seller ☐ Landlord ☐ Tenant ☐ Broker ☐ Other).
By signing below, the undersigned (i) acknowledges receipt of the document identified above; and, except as specified below
(ii) agrees to the terms, conditions, representations and disclosures in the document.

☒ Buyer ☐ Seller ☐ Landlord ☐ Tenant ☐ Other

(Print Name) Kimberly K Osborne

(If applicable) By [Signature]

Title

(Signature) [Signature]

Date 10/13/18

(Only initial the following if the document identified above contains an arbitration or liquidated damages provision which has
been initiated by one or more parties.)

I ☒ agree ☐ do not agree to have disputes decided in accordance with the arbitration provision.

I ☒ agree ☐ do not agree to the liquidated damages provision.

☐ Buyer ☒ Seller ☐ Landlord ☐ Tenant ☐ Other

(Print Name) Thomas C. Hebrank

(If applicable) By Receiver

Title

(Signature) [Signature]

Date 10/16/18

(Only initial the following if the document identified above contains an arbitration or liquidated damages provision which has
been initiated by one or more parties.)

I ☐ agree ☐ do not agree to have disputes decided in accordance with the arbitration provision.

I ☐ agree ☐ do not agree to the liquidated damages provision.

☐ Buyer ☐ Seller ☐ Landlord ☐ Tenant ☐ Other

(Print Name)

(If applicable) By

Title

(Signature)

Date

(Only initial the following if the document identified above contains an arbitration or liquidated damages provision which has
been initiated by one or more parties.)

I ☐ agree ☐ do not agree to have disputes decided in accordance with the arbitration provision.

I ☐ agree ☐ do not agree to the liquidated damages provision.

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ASA 4/06 (PAGE 1 OF 1)

ADDITIONAL SIGNATURE ADDENDUM (ASA PAGE 1 OF 1)



SoCal Real Estate Services, PO Box 1162 Imperial Beach, CA 91933
D. Jean Becker Osborne

Phone: 619-383-5968 Fax: 619-343-7127
Produced with zipForm® by zipLogix 18070 Pheen Mills Road, Fraser, Michigan 48078 www.ziplogix.com

653-118-06-00



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SELLER COUNTER OFFER No. 1
May not be used as a multiple counter offer.
(C.A.R. Form SCO, 11/14)

This is a counter offer to the: ☒ Purchase Agreement, ☐ Buyer Counter Offer No. _____, or ☐ Other _____ Date October 15, 2018
dated October 13, 2018, on property known as VACANT LAND - APN's 652-110-06, 09, 10 & 11-00, Tecate, CA 91980 ("Offer"),
between DJean Becker Osborne, Michael James Osborne ("Property"),
and Thomas C. Hebrank, Receiver ("Buyer"),
("Seller").

1. **TERMS:** The terms and conditions of the above referenced document are accepted subject to the following:
- A. Paragraphs in the Offer that require initials by all parties, but are not initialed by all parties, are excluded from the final agreement unless specifically referenced for inclusion in paragraph 1C of this or another Counter Offer or an addendum.
 - B. Unless otherwise agreed in writing, down payment and loan amount(s) will be adjusted in the same proportion as in the original Offer.
 - C. **OTHER TERMS:** Item #1 - See Addendum Number One (1) attached - That certain Addendum to California Vacant Land Purchase Agreement (VLPA) and Joint Escrow Instructions (Addendum) is hereby incorporated by reference as a material term of this Seller Counter Offer. Item #2 - Purchase Agreement (VLPA) - 1 B includes APN's 652-110-06-00, 652-110-09-00, 652-110-10-00, and 652-110-11-00.

D. The following attached addenda are incorporated into this Seller Counter offer: ☒ Addendum No. One (1)

2. **EXPIRATION:** This Seller Counter Offer shall be deemed revoked and the deposits, if any, shall be returned:
- A. Unless by 5:00pm on the third Day After the date it is signed in paragraph 4 (if more than one signature then, the last signature date)(or by ☐ AM ☐ PM on _____ (date)) (i) it is signed in paragraph 5 by Buyer and (ii) a copy of the signed Seller Counter Offer is personally received by Seller or _____, who is authorized to receive it.
 - OR B. If Seller withdraws it anytime prior to Acceptance (CAR Form WOO may be used).
 - OR C. If Seller accepts another offer prior to Buyer's Acceptance of this counter offer.

3. **MARKETING TO OTHER BUYERS:** Seller has the right to continue to offer the Property for sale. Seller has the right to accept any other offer received, prior to Acceptance of this Counter Offer by Buyer as specified in 2A and 5. In such event, Seller is advised to withdraw this Seller Counter Offer before accepting another offer.

4. **OFFER: SELLER MAKES THIS COUNTER OFFER ON THE TERMS ABOVE AND ACKNOWLEDGES RECEIPT OF A COPY.**

Seller Thomas C. Hebrank, Receiver Date _____
Seller _____ Date _____

5. **ACCEPTANCE: I/WE** accept the above Seller Counter Offer (If checked ☐ SUBJECT TO THE ATTACHED COUNTER OFFER) and acknowledge receipt of a Copy.

Buyer DJean Becker Osborne Date 10/16/18 Time 7:30 ☐ AM ☒ PM
Buyer Michael James Osborne Date 10/16/18 Time 7:31 ☐ AM ☒ PM

CONFIRMATION OF ACCEPTANCE:

(____/____/____) (Initials) Confirmation of Acceptance: A Copy of Signed Acceptance was personally received by Seller, or Seller's authorized agent as specified in paragraph 2A on (date) _____ at _____ ☐ AM ☐ PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Seller or Seller's authorized agent whether or not confirmed in this document.

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Reviewed by _____ Date _____



SCO 11/14 (PAGE 1 OF 1)

SELLER COUNTER OFFER (SCO PAGE 1 OF 1)

Real Blue Properties, 2956 Roosevelt Street Suite 1 Carlsbad, CA 92008 Phone: (619) 292-1020 Fax: _____ Tecate - Free Trade
Cynthia Busch Produced with zipForm® by zipLogix 100 Fifteen Mile Road, Fraser, Michigan 48228 www.zipLogix.com



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ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. One (1)

The following terms and conditions are hereby incorporated in and made a part of the: ☒ Purchase Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), ☐ Other Vacant Land Purchase Agreement (VLPA)
dated October 13, 2018, on property known as VACANT LAND - APN's 652-110-06, 09, 10 & 11-00

in which Tecate, CA 91980
and DJean Becker Osborne, Michael James Osborne is referred to as ("Buyer/Tenant")
Thomas C. Hebrank, Receiver is referred to as ("Seller/Landlord").

This Addendum Number One (1) is for the following APN's: 652-110-06-00, 652-110-09-00, 652-110-10-00, & 652-110-11-00.

The property is currently subject to litigation filed in the United States District Court Southern District of California Case No. 12 CV 2164 GPC JMA and is under the authority of that Court. Notwithstanding any other provisions in this agreement, any disputes arising from this agreement will be heard in that venue.

All references to seller will mean Thomas C. Hebrank, solely in his capacity as Court Appointed Receiver.

Broker's commission is subject to District Court approval and Broker agrees to accept as full compensation the amount approved and authorized to be paid by the District Court. The Receiver will request authority from the District Court to pay Broker the commission provided for in this Agreement. Broker shall inform any and all brokers and agents of the Buyer of the requirement of District Court approval of the commission to be paid and obtain their written acknowledgement.

Sale may be subject to overbid procedures.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.
Date 10/16/18

Buyer/Tenant DJean Becker Osborne

Buyer/Tenant Michael James Osborne

Date 10/16/18

Seller/Landlord Thomas C Hebrank
Thomas C. Hebrank, Receiver

Seller/Landlord

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ADM REVISED 12/15 (PAGE 1 OF 1)

Reviewed by _____ Date _____



Real Estate Properties, 2956 Roosevelt Street Suite 1, Carlsbad, CA 92008
Gerald Busch

ADDENDUM (ADM PAGE 1 OF 1)

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Fax:

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**DISCLOSURE REGARDING
REAL ESTATE AGENCY RELATIONSHIP**

(Selling Firm to Buyer)
(As required by the Civil Code)
(C.A.R. Form AD, Revised 12/14)

☐ (If checked) This form is being provided in connection with a transaction for a leasehold interest exceeding one year as per Civil Code section 2079.13(k), (l), and (m).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.
To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.
To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).

☒ Buyer ☐ Seller ☐ Landlord ☐ Tenant
Agent Michael Jones Osborne Date 10/13/18
Michael Jones Osborne
Social Real Investments DRE Lic. # 01793330
Real Estate Broker (Firm)
By [Signature] DRE Lic. # 01324934 Date 10/13/18
(Salesperson or Broker-Associate) D. Jean Becker Osborne

Agency Disclosure (Civil Code §2079.14):

- When the listing brokerage company also represents Buyer/Tenant: The Listing Agent shall have one AD form signed by Seller/Landlord and a different AD form signed by Buyer/Tenant.
- When Seller/Landlord and Buyer/Tenant are represented by different brokerage companies: (i) the Listing Agent shall have one AD form signed by Seller/Landlord and (ii) the Buyer's/Tenant's Agent shall have one AD form signed by Buyer/Tenant and either that same or a different AD form presented to Seller/Landlord for signature prior to presentation of the offer. If the same form is used, Seller may sign here:

Thomas C. Hebrank Date 10/16/18
Seller/Landlord
Thomas C. Hebrank, Receiver

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AD REVISED 12/14 (PAGE 1 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)

SuCal Real Investments, PO Box 1162 Torrance Beach CA 91333 Phone: 619-383-9998 Fax: 619-243-7127 657-110-06-00
D. Jean Becker Osborne Produced with eDocForm by eDocLogic 18070 E. 19th Mile Road, Fraser, Michigan 48078 www.rml.org.com

CIVIL CODE SECTIONS 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings: (a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensee who performs as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (f) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (h) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (i) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. (k) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (m) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2065, and for the creation of a leasehold exceeding one year's duration. (n) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address; in which case no signed acknowledgement of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstances in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.

(c) The confirmation required by subdivisions (a) and (b) shall be in the following form.

(DO NOT COMPLETE, SAMPLE ONLY) is the agent of (check one): ☐ the seller exclusively; or ☐ both the buyer and seller.
(Name of Listing Agent)
(DO NOT COMPLETE, SAMPLE ONLY) is the agent of (check one): ☐ the buyer exclusively; or ☐ the seller exclusively; or ☐ both the buyer and seller.
(Name of Selling Agent if not the same as the Listing Agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)

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11
12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**
14

15 SECURITIES AND EXCHANGE
COMMISSION,

16 Plaintiff,

17 v.

18 LOUIS V. SCHOOLER and FIRST
19 FINANCIAL PLANNING
CORPORATION d/b/a WESTERN
20 FINANCIAL PLANNING
CORPORATION,

21 Defendants.
22
23
24
25
26
27
28

Case No. 3:12-cv-02164-GPC-JMA

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
RECEIVER'S MOTION FOR
APPROVAL OF SALE OF
FREETRADE/SUNTEC/VIA 188
PROPERTY AND AUTHORITY TO
PAY BROKER'S COMMISSION**

Date: February 1, 2019
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

1 Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial
2 Planning Corporation d/b/a Western Financial Planning Corporation ("Western"), its
3 subsidiaries and the General Partnerships listed in Schedule 1 to the Preliminary
4 Injunction Order entered on March 13, 2013 (collectively, "Receivership Entities"),
5 submits this Memorandum of Points and Authorities in Support of his concurrently-
6 filed Motion for Approval of Sale of Freetrade/Suntec/Via 188 Property and
7 Authority to Pay Broker's Commission ("Motion").

8 I. BACKGROUND FACTS

9 The properties in the receivership include certain parcels of undeveloped land
10 located in the Tecate area of San Diego County and known as the Tecate properties.
11 The Tecate properties consist of seven separate properties, three of which were
12 owned by multiple GPs as co-tenants and four of which were owned outright by one
13 GP. One of the properties is owned by Freetrade Partners, Suntec Partners, and
14 Via 188 Partners, each of which held an undivided 33.33% interest in the property
15 ("Freetrade Property"). Declaration of Thomas Hebrank filed herewith ("Hebrank
16 Decl."), ¶ 2.

17 Several valuations of the Freetrade Property have been done since the
18 inception of the receivership. In 2013, with the Court's permission, the Receiver
19 obtained an appraisal estimating the value to be \$317,000. Dkt. No. 1405, Ex. A. In
20 2015, with the Court's permission, the Receiver obtained a broker opinion of value
21 estimating the value to be \$181,000. *Id.* In early 2016, Xpera Group valued the
22 Property between \$346,084 - \$519,126; however, the valuation was based on the
23 Property being held for an indefinite period until San Diego County finalizes the
24 development plan in the area. Dkt. No. 1234-2, p. 128 of 172.

25 The County has been working on this development plan for over 30 years and
26 there is no current timeframe for when the development plan will be finalized.
27 Additionally, Xpera noted the very limited sales transactions in the area, explaining
28 that in 2014 and 2015, only two properties sold each year and that "the sale of

1 properties in Tecate has virtually ground to a halt." *Id.* Additionally, in their
2 schedule detailing transactions that took place between 2012 and 2015, almost all
3 transactions in the area were for between \$25,000 and \$42,000. The only exception
4 was a property that sold for \$250,000, which they noted was different from the
5 Tecate Properties in that it was a "prime property directly on the border." *Id.* at
6 p. 124 of 172. The Court expressly rejected the indefinite timing proposed by
7 Xpera. Dkt. No. 1304, p. 17-18.

8 On March 7, 2016, the Receiver recommended that the six¹ Tecate properties
9 be listed for sale with Real Blue Properties, a licensed broker located in Carlsbad,
10 California ("Broker"). Dkt. No. 1203. The proposed list price for the Freetrade
11 Property was \$260,000. *Id.* On May 25, 2016, the Court approved the Receiver's
12 recommendation. Dkt. No. 1305. Broker promptly listed and advertised the
13 Freetrade Property for sale and marketed it to interested parties. Hebrank Decl., ¶ 3.

14 In January 2017, the Receiver received an all cash offer to purchase the
15 Freetrade Property for \$250,000. Unfortunately, after the Receiver filed his motion
16 for approval of the sale, the buyer declined to move forward with the transaction.
17 Hebrank Decl., ¶ 4.

18 Unfortunately, no offers for the Property were received for many months
19 thereafter. The Receiver, in consultation with Broker, determined that gradually
20 reducing the list price was the best course of action to generate more interest in the
21 Freetrade Property. Accordingly, the list price was gradually reduced until it
22 reached \$149,000, at which point an offer for \$149,000 was received from D. Jean
23 Becker Osbourne and Michael James Osbourne ("Buyer"). The Receiver gave
24 notice of the offer to investors and entered into negotiations with Buyer. The
25

26 ¹ The seventh Tecate property, which is owned by ABL Partners and Mex-Tec
27 Partners in co-tenancy, was not included in the original recommendation as those
28 GPs had sufficient cash to cover their 2016 Expenses. Once the Receiver's
orderly sale/distribution plan motion was approved, the Receiver proposed that
the ABL/Mex-Tec property be listed with the same broker as the other six Tecate
properties and that recommendation was approved by the Court.

Receiver and Buyer then executed a Vacant Land Purchase Agreement and Joint Escrow Instructions ("Agreement"), subject to overbid and Court approval. Buyer conducted their due diligence and removed all contingencies (other than Court approval) on November 15, 2018. Hebrank Decl., ¶ 5.

Therefore, in accordance with the Court-approved Modified Orderly Sale Procedures, the Receiver hereby requests approval of the sale to Buyer, pursuant to the Agreement, which is attached to the Hebrank Declaration as Exhibit A. The Receiver will follow the publication of notice, qualification of bidders, and public auction steps outlined below. In the event one or more prospective purchasers qualify themselves to bid, the auction will be conducted by the Receiver and he will then file a notice advising the Court of the result of the auction (*i.e.*, the highest bid) and seek entry of an order confirming the sale. In the event no prospective purchasers qualify themselves to bid, the Receiver will notify the Court and seek entry of an order approving the sale to Buyer. Hebrank Decl., ¶ 6.

II. PROPOSED SALE

The key terms of the proposed purchase and sale agreement ("Agreement") are summarized as follows:

Purchase Price. The purchase price is \$149,000, which is to be paid in all cash.

Deposit. Buyer has deposited \$4,400 into escrow.

Closing Date. Closing shall occur within 18 days of Court approval.

As Is. The sale is on an "as is, where is" basis with no representations or warranties made by the Receiver.

Broker's Commission. Pursuant to the Court-approved listing agreement, Broker is to be paid a commission of 9% of the purchase price. If the sale to Buyer is approved, the commission owed will be \$13,410, which will be split between Broker and Buyer's broker. If an overbid is received and an auction takes place, the commission would be adjusted to 9% of the final purchase price.

III. INVESTOR FEEDBACK

As noted above, pursuant to the Modified Orderly Sale Procedures (Dkt. No. 1309), the Receiver provided notice of the offer from Buyer to investors via email shortly after it was received. No substantive responses were received. Hebrank Decl., ¶ 7.

IV. LEGAL STANDARD

"The power of a district court to impose a receivership or grant other forms of ancillary relief does not in the first instance depend on a statutory grant of power from the securities laws. Rather, the authority derives from the inherent power of a court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment of a receiver is authorized by the broad equitable powers of the court, any distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*, 953 F.2d 1560, 1569 (11th Cir. 1992).

District courts have the broad power of a court of equity to determine the appropriate action in the administration and supervision of an equity receivership. *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth Circuit explained:

A district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. The district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership. The basis for this broad deference to the district court's supervisory role in equity receiverships arises out of the fact that most receiverships involve multiple parties and complex transactions. A district court's decision concerning the supervision of an equitable receivership is reviewed for abuse of discretion.

Id. (citations omitted); *see also CFTC. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,

1 and 'we generally uphold reasonable procedures instituted by the district court that
2 serve th[e] purpose' of orderly and efficient administration of the receivership for
3 the benefit of creditors."). Accordingly, the Court has broad discretion in the
4 administration of the receivership estate and the disposition of receivership assets.

5 **A. The Court's Authority to Approve Sales**

6 It is widely accepted that a court of equity having custody and control of
7 property has power to order a sale of the same in its discretion. *See, e.g., SEC v.*
8 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers
9 and wide discretion to determine relief in an equity receivership). "The power of
10 sale necessarily follows the power to take possession and control of and to preserve
11 property." *See SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir.
12 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (*citing*
13 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)
14 (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of equity
15 orders property in its custody to be sold, the court itself as vendor confirms the title
16 in the purchaser." 2 Ralph Ewing Clark, Treatise on Law & Practice of
17 Receivers § 487 (3d ed. 1992).

18 "A court of equity, under proper circumstances, has the power to order a
19 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*
20 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing
21 Clark, Treatise on Law & Practice of Receivers § 500 (3d ed. 1992). To that end, a
22 federal court is not limited or deprived of any of its equity powers by state statute.
23 *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925)
24 (state statute allowing time to redeem property after a foreclosure sale not applicable
25 in a receivership sale).

26 Generally, when a court-appointed receiver is involved, the receiver, as agent
27 for the court, should conduct the sale of the receivership property. *Blakely Airport*
28 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156

(N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491 (3d ed. 1992). "In authorizing the sale of property by receivers, courts of equity are vested with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354, 357 (9th Cir. 1925).

B. 28 U.S.C. § 2001

Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of real property under subsection (a) and specific requirements for private sales of real property under subsection (b). Although both involve unnecessary cost and delay, the cost and delay of a public sale are significantly less than those for a private sale. *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at *5 (N.D. Cal. 2013) ("Section 2001 sets out two possible courses of action: (1) property may be sold in public sale; or (2) property may be sold in a private sale, provided that three separate appraisals have been conducted, the terms are published in a circulated newspaper ten days prior to sale, and the sale price is no less than two-thirds of the valued price."). Therefore, by proceeding under Section 2001(a), the receivership estate can avoid the significant costs and delay of (a) the Court having to appoint three disinterested appraisers, and (b) obtaining three appraisals from such appraisers.

The requirements of a public sale under Section 2001(a) are that notice of the sale be published as proscribed by Section 2002 and a public auction be held at the courthouse "as the court directs." 28 U.S.C. § 2001(a); *SEC v. Capital Cove Bancorp LLC*, 2015 U.S. Dist. LEXIS 174856, at *13 (C.D. Cal. 2015); *SEC v. Kirkland*, 2007 U.S. Dist. LEXIS 45353, at *5 (M.D. Fla. 2007). In terms of publication of notice, Section 2002 provides:

A public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county,

1 state, or judicial district of the United States wherein the
2 realty is situated.

3 If such realty is situated in more than one county, state,
4 district or circuit, such notice shall be published in one or
5 more of the counties, states, or districts wherein it is
6 situated, as the court directs. The notice shall be
7 substantially in such form and contain such description of
8 the property by reference or otherwise as the court
9 approves. The court may direct that the publication be
10 made in other newspapers.

11 This section shall not apply to sales and proceedings under
12 Title 11 or by receivers or conservators of banks appointed
13 by the Comptroller of the Currency.

14 The notice of sale is sufficient if it describes the property and the time, place,
15 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*
16 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to
17 qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and
18 binding offer to purchase the [property]; and (ii) demonstrate . . ., to the satisfaction
19 of the Receiver, that it has the current ability to consummate the purchase of the
20 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*,
21 2009 U.S. Dist. LEXIS 111381, at *8 (E.D. Mo. 2009).

22 V. DISCUSSION

23 The proposed sale to Buyer pursuant to the Agreement is in the best interests
24 of the estate. The proposed purchase price is in line with the 2015 value estimate
25 for the Freetrade Property, the Freetrade Property has been thoroughly marketed
26 over the last 31 months, and \$149,000 is the best offer received, with the exception
27 of the sale that did not go through. Hebrank Decl., ¶ 8. As noted above, the Court
28 rejected the Xpera Group valuation as being too speculative and uncertain as to
timing. Dkt. No. 1304, pp. 17-18.

Moreover, the proposed sale is subject to overbid to further ensure the highest
and best price is obtained. The Receiver proposes to conduct a public auction
consistent with the requirements of Section 2001(a). Specifically, the Receiver will

1 publish the following notice of the sale once a week for four weeks in the San Diego
2 Union-Tribune:

3 In the action pending in U.S. District Court for the
4 Southern District of California, Case No. 12-CV-2164-
5 GPC-JMA, Securities and Exchange Commission v.
6 Louis V. Schooler et al., notice is hereby given that the
7 court-appointed receiver will conduct a public auction for
8 the undeveloped real property with APNs 652-110-06-00,
9 652-110-09-00, 652-110-10-00, and 652-110-11-00,
10 located in the City of San Diego, San Diego County,
11 California. Sale is subject to Court confirmation after the
12 auction is held. Minimum bid price is \$160,000. The
13 auction will take place on December 20, 2018, at
14 1:30 p.m. in front of the entrance to the United States
15 Courthouse, 221 W. Broadway, San Diego, California.
16 To be allowed to participate in the auction, prospective
17 purchasers must meet certain bid qualification
18 requirements, including submitting a signed purchase and
19 sale agreement, an earnest money deposit of \$4,400, and
20 proof of funds. All bidders must be qualified by 5:00 p.m.
21 PST on December 17, 2018, by submitting the required
22 materials to the receiver at 401 W. A Street, Suite 1830,
23 San Diego, California, 92101. If interested in qualifying
24 as a bidder, please contact Geno Rodriguez at (619) 567-
25 7223 or grodriguez@ethreadvisors.com or Thomas C.
26 Hebrank, at thebrank@ethreadvisors.com.

27 In order to conduct an orderly auction and provide sufficient time for the publication
28 of notices discussed above, the Receiver will require bidders to complete the above
steps by December 17, 2018 ("Bid Qualification Deadline"), and conduct the live
public auction on December 20, 2018, immediately in front of the courthouse.
Hebrank Decl., ¶ 9.

The Receiver will inform all interested persons of the opportunity to overbid
at the public auction, provided they qualify themselves to bid by the Bid
Qualification Deadline by (a) signing a purchase and sale agreement for the
properties on the same terms and conditions as Buyer, but with a purchase price of
at least \$160,000, (b) providing the Receiver with an earnest money deposit of
\$4,400, and (c) providing proof of funds necessary to close the sale transaction in

1 the form of a current bank statement, cashier's check delivered to the Receiver, or
2 other evidence deemed sufficient by the Receiver.² Hebrank Decl., ¶ 10.

3 In the event one or more prospective purchasers qualify themselves to bid, the
4 auction will be conducted by the Receiver as noted above and bids will be allowed
5 in increments of \$5,000. The Receiver will then file a notice advising the Court of
6 the result of the auction (*i.e.*, the highest bid) and seek entry of an order confirming
7 the sale. Earnest money deposits provided by bidders who are unsuccessful will be
8 promptly returned to them. In the event no prospective purchasers qualify
9 themselves to bid by the Bid Qualification Deadline, the Receiver will notify the
10 Court and seek entry of an order approving the sale to Buyer. Hebrank Decl., ¶ 11.

11 With respect to Broker's commission, Broker has worked diligently to broadly
12 advertise the Property for sale and market the Property to prospective purchasers,
13 including to potential overbidders after the Agreement was signed. The listing
14 agreement was approved as being consistent with industry standards for
15 commissions paid to brokers for sales of undeveloped land. Accordingly, the
16 Receiver should be authorized to pay Broker the commission amount in accordance
17 with the listing agreement. Hebrank Decl., ¶ 12.

18 VI. CONCLUSION

19 For the reasons discussed above, the Receiver requests (a) approval of the sale
20 of the Freetrade Property to Buyer pursuant to the Agreement attached to the
21 Hebrank Declaration as Exhibit A, (b) authority to take all steps necessary to close
22 the sale, and (c) authority to pay Broker's commission as described above.

23 Dated: November 20, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

24 By: /s/ Edward Fates

25 EDWARD G. FATES
26 Attorneys for Receiver
THOMAS C. HEBRANK

27 _____
28 ² In the event an investor or group of investors seeks to qualify to overbid, the Receiver will allow the investor(s) to include their projected distributions under the approved One Pot Approach in their bid.