

1 DAVID R. ZARO (BAR NO. 124334)  
2 NORMAN M. ASPIS (BAR NO. 313466)  
3 ALLEN MATKINS LECK GAMBLE  
4 MALLORY & NATSIS LLP  
5 865 South Figueroa Street, Suite 2800  
6 Los Angeles, California 90017-2543  
7 Phone: (213) 622-5555  
8 Fax: (213) 620-8816  
9 E-Mail: dzaro@allenmatkins.com  
10 naspis@allenmatkins.com

11 EDWARD G. FATES (BAR NO. 227809)  
12 ALLEN MATKINS LECK GAMBLE  
13 MALLORY & NATSIS LLP  
14 One America Plaza  
15 600 West Broadway, 27th Floor  
16 San Diego, California 92101-0903  
17 Phone: (619) 233-1155  
18 Fax: (619) 233-1158  
19 E-Mail: tfates@allenmatkins.com

20 Attorneys for Receiver  
21 KRISTA FREITAG

22 UNITED STATES DISTRICT COURT  
23 SOUTHERN DISTRICT OF CALIFORNIA

24 SECURITIES AND EXCHANGE  
25 COMMISSION,

26 Plaintiff,

27 v.

28 GINA CHAMPION-CAIN and ANI  
DEVELOPMENT, LLC,

Defendants,

AMERICAN NATIONAL  
INVESTMENTS, INC.,

Relief Defendant.

Case No. 3:19-cv-01628-LAB-AHG

**DECLARATION OF KRISTA L.  
FREITAG IN SUPPORT OF  
RECEIVER'S MOTION FOR  
APPROVAL OF SALE OF CARMEL  
PROPERTY**

Date: March 16, 2020

Time: 2:00 p.m.

Courtroom: 3B

Mag. Judge: Hon. Allison H. Goddard

1 I, Krista L. Freitag, declare:

2 1. I am the Court-appointed permanent receiver for Defendant ANI  
3 Development, LLC, Relief Defendant American National Investments, Inc., and their  
4 subsidiaries and affiliates ("Receivership Entities"). I make this declaration in  
5 support of my Motion for (A) Approval of Sale of Real Property Located at  
6 132 Keller Street Free and Clear of Mechanic's Lien; and (B) Authority To Pay  
7 Broker's Commission ("Motion"). I have personal knowledge of the facts stated  
8 herein, and if called upon to do so, I could and would personally and competently  
9 testify to them.

10 2. One of the residential real properties included in the receivership estate  
11 is a single-family residence located at SE CNR Casanova & Palou, Carmel by the  
12 Sea, California 93921 ("Carmel Property"). The Carmel Property is 1,562 square  
13 feet with three bedrooms and two bathrooms. The Carmel Property was purchased  
14 on September 30, 2016 for \$1,395,000 and title was taken in the name of The Cain  
15 Family Trust.<sup>1</sup>

16 3. Prior to my appointment, Defendant Gina Champion-Cain and her  
17 husband Steven Cain, as Trustees of The Cain Family Trust, engaged licensed broker  
18 Carmel Realty Company ("Broker") to list the Carmel Property for sale.<sup>2</sup> The  
19 property was put on the market in May 2019 and the list price was \$1,950,000.

20 4. Upon my appointment, my staff and I performed an analysis of the  
21 value of the Carmel Property, including a review of automated valuation scores for  
22 the property and a survey of the market comparable properties. We also consulted  
23

24 <sup>1</sup> Although the Carmel Property is held by The Cain Family Trust, Defendant Gina  
25 Champion-Cain and her husband Steven Cain do not dispute that the property is  
26 an asset of the receivership estate and may be sold by the Receiver. The title  
company has also confirmed that I can sign closing documents for the sale on  
behalf of the trust.

27 <sup>2</sup> Because the Carmel Property was already subject to a listing agreement with a  
28 licensed broker at the time of my appointment, I did not (and could not) consider  
other licensed brokers for the listing. Therefore, I request relief from this aspect  
of the Court's Order Establishing Uniform Property Sale Procedures.



1 with Broker and reviewed the listing agreement with Broker. After detailed  
2 discussions with the broker, and the passage of time with no offers, I determined that  
3 Broker had properly marketed and advertised the Carmel Property for sale,<sup>3</sup> but that  
4 the list price was too high to garner an offer. Additionally, closed sales comparisons  
5 in the market pointed towards a significant reduction in price. Accordingly, I  
6 instructed the Broker to lower the price intermittently to generate more interest from  
7 prospective buyers.

8         5. In early December 2019, an offer in the amount of \$1,450,000 was  
9 received from Michael Ward McColl and Gwyn Fawcett McColl ("Buyer"). The  
10 Buyer and I negotiated terms and ultimately agreed on a price of \$1,550,000. The  
11 Buyer and I signed a California Residential Purchase Agreement and Joint Escrow  
12 Instructions, along with an Addendum thereto that provides for the terms of the sale  
13 of the Carmel Property from the receivership estate, including the overbid and  
14 auction process and Court approval.

15         6. The Carmel Property is encumbered by a deed of trust in favor of Select  
16 Portfolio Servicing, Inc. ("SPS"). The outstanding principal balance on the loan as  
17 of February 1, 2020, was approximately \$908,000, and the loan is being paid current.  
18 Depending on when the sale closes (assuming a late March/early April 2020 closing),  
19 the amount required to pay off the loan will likely be in the range of \$905,000 to  
20 \$915,000. Depending on when the sale closes, I estimate that property taxes paid at  
21 closing will likely be in the range of \$4,000 to \$6,000. The Broker's commission  
22 pursuant to the listing agreement is 5% of the sale price, or \$77,500, which amount  
23 will be split with Buyer's broker. The costs of sale, including escrow, title and  
24 recording fees are estimated to be approximately \$8,000. Finally, the cost to fix the  
25

26  
27 <sup>3</sup> According to information provided by Broker, the Carmel Property was  
28 advertised through (a) multiple real estate websites and databases, including the  
MLS, Realtor.com, and a custom website, (b) print media (a local newspaper and  
luxury magazine), (c) holding a total of 21 open houses and 21 private showings,  
and (d) multiple broker tours.

1 sewer line and install carbon monoxide detectors, both statutorily mandated repairs,  
2 plus a few additional minor maintenance items are expected to total approximately  
3 \$9,000, which will also need to be paid from escrow. While exact amounts will be  
4 determined at closing, after all of the aforementioned amounts are paid out of  
5 escrow, the net sale proceeds for the receivership estate are estimated to be in the  
6 range of \$535,000 to \$545,000.

7 7. I believe the proposed sale to Buyer pursuant to the Agreement is in the  
8 best interests of the receivership estate. The Carmel Property was listed on the MLS  
9 with a licensed broker and shown to interested parties. The property was properly  
10 marketed, an offer was received, terms negotiated, and the Agreement signed. The  
11 purchase price therefore reflects the market value for the property, and is \$155,000  
12 greater than the original purchase price.

13 8. With respect to Broker's commission, Broker appears to have broadly  
14 marketed and advertised the Carmel Property for sale and diligently responded to  
15 inquiries from interested parties. The listing agreement is consistent with industry  
16 standards for commissions paid to brokers for sales of residential properties.  
17 Accordingly, I request authorization to pay Broker the commission amount in  
18 accordance with the listing agreement.

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

21 Executed this 12th day of February 2020, at Los Angeles, California.

22  
23   
24 KRISTA L. FREITAG  
25  
26  
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28

**EXHIBIT INDEX**

<b>EXHIBIT NO.</b>	<b>DESCRIPTION</b>	<b>PAGE NO.</b>
Exhibit A	Residential Purchase Agreement and Joint Escrow Instructions	6

# EXHIBIT A

# EXHIBIT A



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CALIFORNIA  
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OF REALTORS®

**CALIFORNIA**  
**RESIDENTIAL PURCHASE AGREEMENT**  
**AND JOINT ESCROW INSTRUCTIONS**  
(C.A.R. Form RPA-CA, Revised 12/18)

## COMPASS

Date Prepared: 12/07/2019

**1. OFFER:**

- A. THIS IS AN OFFER FROM Michael Ward McColl Te, Gwyn Fawcett McColl Te ("Buyer").  
B. THE REAL PROPERTY to be acquired is 0 SE Corner of Casanova & Palou Avenue, Carmel, CA 93921, situated in  
Carmel (City), Monterey (County), California, 93921 (Zip Code), Assessor's Parcel No. 010-225-004-000 ("Property").  
C. THE PURCHASE PRICE offered is One Million, Four Hundred Fifty Thousand  
Dollars \$ 1,450,000.00.  
D. CLOSE OF ESCROW shall occur on \_\_\_\_\_ (date) or ☒ 50 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 confirmed for this transaction:
- Seller's Brokerage Firm** Carmel Realty Company License Number 01217466
- Is the broker of (check one): ☒ the seller; or ☐ both the buyer and seller. (dual agent)
- Seller's Agent** Lisa Dean License Number 01401218
- Is (check one): ☒ the Seller's Agent. (salesperson or broker associate) ☐ both the Buyer's and Seller's Agent. (dual agent)
- Buyer's Brokerage Firm** Compass License Number 01527235
- Is the broker of (check one): ☒ the buyer; or ☐ both the buyer and seller. (dual agent)
- Buyer's Agent** Dana Bambace / Bambace Peterson Team License Number 01731448
- Is (check one): ☒ the Buyer's Agent. (salesperson or broker associate) ☐ both the Buyer's and Seller's Agent. (dual agent)
- 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).
- FINANCE TERMS:** Buyer represents that funds will be good when deposited with Escrow Holder.

**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 \_\_\_\_\_ \$ 43,500.00
- (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.)

- D. 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 ..... \$ 1,000,000.00  
This loan will be conventional financing **OR** ☐ FHA, ☐ VA, ☐ Seller financing (C.A.R. Form SFA), ☐ assumed financing (C.A.R. Form AFA), ☐ 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 1.000 % 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), ☐ 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 Agreement.

E. ADDITIONAL FINANCING TERMS: Closing funds will come from sale of primary home, see attached COP

- F. **BALANCE OF DOWN PAYMENT OR PURCHASE PRICE** in the amount of ..... \$ 406,500.00  
to be deposited with Escrow Holder pursuant to Escrow Holder instructions.
- G. **PURCHASE PRICE (TOTAL):** ..... \$ 1,450,000.00

Buyer's Initials **X**( ) **X**( )  
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Seller's Initials: **X**( )**X**( )

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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 1 OF 10)



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Property Address: 0 SE Corner of Casanova & Palou Avenue, Carmel, CA 93921Date: December 7, 2019

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 (☐ 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 14B(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 1) Days After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or loan 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 14, 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 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.

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. **ADDENDA AND ADVISORIES:**

A. **ADDENDA:**

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

B. **BUYER AND SELLER ADVISORIES:**

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

6. **OTHER TERMS:** Seller to provide electronic copies of the plans by Craig Holdren. Seller to provide documents on current status of plans with the City of Carmel.

7. **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 JCP-LGS

(2) ☒ Buyer ☐ Seller shall pay for the following Report Any and all inspections deemed necessary. prepared by \_\_\_\_\_

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

B. **GOVERNMENT REQUIREMENTS AND RETROFIT:**

(1) ☐ Buyer ☒ Seller shall pay for smoke alarm and carbon monoxide device installation and water heater bracing, if required by Law. Prior to Close Of Escrow ("COE"), Seller shall provide Buyer written statement(s) of compliance in accordance with state and local Law, unless Seller is exempt.

Buyer's Initials X (MUMT) X (GNT)

Seller's Initials X ( ) X ( )



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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 2 OF 10)

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Property Address: 0 SE Corner of Casanova & Palou Avenue, Carmel, CA 93921Date: December 7, 2019

- (2) (i) ☐ Buyer ☒ Seller shall pay the cost of compliance with any other minimum mandatory government inspections and reports if required as a condition of closing escrow under any Law.
- (ii) ☐ Buyer ☒ Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards required as a condition of closing escrow under any Law, whether the work is required to be completed before or after COE.
- (iii) Buyer shall be provided, within the time specified in paragraph 14A, a copy of any required government conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of this sale of the Property.

**C. ESCROW AND TITLE:**

- (1) (a) ☒ Buyer ☒ Seller shall pay escrow fee 50/50 SPLIT BETWEEN BUYER AND SELLER.
- (b) Escrow Holder shall be Seller preference - local escrow company.
- (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 13E.
- (b) Owner's title policy to be issued by Seller's Preference - Local Title Company.
- (Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

**D. 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 documents required to be delivered by Civil Code §4525.
- (5) ☐ Buyer ☐ Seller shall pay HOA fees for preparing all documents other than those required by Civil Code §4525.
- (6) Buyer to pay for any HOA certification fee.
- (7) ☐ Buyer ☒ Seller shall pay for any private transfer fee if applicable.
- (8) ☐ Buyer ☒ Seller shall pay for any fees associated with the court confirmation.
- (9) ☐ Buyer ☐ Seller shall pay for.
- (10) ☒ Buyer ☐ Seller shall pay for the cost, not to exceed \$ 550.00, of a standard (or ☐ upgraded) one-year home warranty plan, issued by To be purchased for Buyers by Buyers' Agent, with the following optional coverages: ☐ Air Conditioner ☐ Pool/Spa ☐ Other: \_\_\_\_\_.
- Buyer is informed that home warranty plans have many optional coverages in addition to those listed above. Buyer is advised to investigate these coverages to determine those that may be suitable for Buyer.

OR ☐ Buyer waives the purchase of a home warranty plan. Nothing in this paragraph precludes Buyer's purchasing a home warranty plan during the term of this Agreement.

**8. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:**

- A. NOTE TO BUYER AND SELLER: Items listed as included or excluded in the MLS, flyers or marketing materials are **not** included in the purchase price or excluded from the sale unless specified in paragraph 8 B or C.
- B. ITEMS INCLUDED IN SALE: Except as otherwise specified or disclosed,
- (1) All EXISTING fixtures and fittings that are attached to the Property;
- (2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water features and fountains, water softeners, water purifiers, security systems/alarms and the following if checked: ☒ all stove(s), except \_\_\_\_\_; ☒ all refrigerator(s) except \_\_\_\_\_; ☒ all washer(s) and dryer(s), except \_\_\_\_\_;
- (3) The following additional items: all TVs and any/all supporting audio video equipment to operate them.
- (4) Existing integrated phone and home automation systems, including necessary components such as intranet and Internet-connected hardware or devices, control units (other than non-dedicated mobile devices, electronics and computers) and applicable software, permissions, passwords, codes and access information, are ( ☐ are NOT) included in the sale.
- (5) LEASED OR LIENED ITEMS AND SYSTEMS: Seller shall, within the time specified in paragraph 14A, (i) disclose to Buyer if any item or system specified in paragraph 8B or otherwise included in the sale is leased, or not owned by Seller, or specifically subject to a lien or other encumbrance, and (ii) Deliver to Buyer all written materials (such as lease, warranty, etc.) concerning any such item. Buyer's ability to assume any such lease, or willingness to accept the Property subject to any such lien or encumbrance, is a contingency in favor of Buyer and Seller as specified in paragraph 14B and C.
- (6) Seller represents that all items included in the purchase price, unless otherwise specified, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to 8B(5) and \_\_\_\_\_, and (ii) are transferred without Seller warranty regardless of value.
- C. ITEMS EXCLUDED FROM SALE: Unless otherwise specified, the following items are excluded from sale: (i) audio and video components (such as flat screen TVs, speakers and other items) if any such item is not itself attached to the Property, even if a bracket or other mechanism attached to the component or item is attached to the Property; (ii) furniture and other items secured to the Property for earthquake purposes; and (iii) \_\_\_\_\_.

\_\_\_\_\_ Brackets attached to walls, floors or ceilings for any such component, furniture or item shall remain with the Property (or ☐ will be removed and holes or other damage shall be repaired, but not painted).

**9. CLOSING AND POSSESSION:**

- A. Buyer intends (or ☐ does not intend) to occupy the Property as Buyer's primary residence.
- B. Seller-occupied or vacant property: Possession shall be delivered to Buyer: (i) at 6 PM or ( 10:00 ☒ 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 \_\_\_\_\_.

Buyer's Initials X (MUMT) X (GVM)Seller's Initials X ( ) X ( )

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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 3 OF 10)

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Property Address: 0 SE Corner of Casanova & Palou Avenue, Carmel, CA 93921Date: December 7, 2019

C. **Seller remaining in possession After Close Of Escrow:** If Seller has the right to remain in possession after Close Of Escrow, (i) the Parties are advised to sign a separate occupancy agreement such as ☐ C.A.R. Form SIP, for Seller continued occupancy of less than 30 days, ☐ C.A.R. Form RLAS for Seller continued occupancy of 30 days or more; and (ii) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; and (iii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan.

D. **Tenant-occupied property:** Property shall be vacant at least 5 (or     ) Days Prior to Close Of Escrow, unless otherwise agreed in writing. **Note to Seller:** If you are unable to deliver Property vacant in accordance with rent control and other applicable Law, you may be in breach of this Agreement.

OR ☐ **Tenant to remain in possession** (C.A.R. Form TIP).

E. At Close Of Escrow: Seller assigns to Buyer any assignable warranty rights for items included in the sale; and Seller shall Deliver to Buyer available Copies of any such warranties. Brokers cannot and will not determine the assignability of any warranties.

F. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems and intranet and Internet-connected devices included in the purchase price, and garage door openers. If the Property is a condominium or 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.

#### 10. STATUTORY AND OTHER DISCLOSURES (INCLUDING LEAD-BASED PAINT HAZARD DISCLOSURES) AND CANCELLATION RIGHTS:

A. (1) Seller shall, within the time specified in paragraph 14A, Deliver to Buyer: (i) if required by Law, a fully completed: Federal Lead-Based Paint Disclosures (C.A.R. Form FLD) and pamphlet ("Lead Disclosures"); and (ii) unless exempt, fully completed disclosures or notices required by sections 1102 et. seq. and 1103 et. seq. of the Civil Code ("Statutory Disclosures"). Statutory Disclosures include, but are not limited to, a Real Estate Transfer Disclosure Statement ("TDS"), Natural Hazard Disclosure Statement ("NHD"), notice or actual knowledge of release of illegal controlled substance, notice of special tax and/or assessments (or, if allowed, substantially equivalent notice regarding the Mello-Roos Community Facilities Act of 1982 and Improvement Bond Act of 1915) and, if Seller has actual knowledge, of industrial use and military ordnance location (C.A.R. Form SPQ or ESD).

(2) Any Statutory Disclosure required by this paragraph is considered fully completed if Seller has answered all questions and completed and signed the Seller section(s) and the Seller's Agent, if any, has completed and signed the Seller's Brokerage Firm section(s), or, if applicable, an Agent Visual Inspection Disclosure (C.A.R. Form AVID). Nothing stated herein relieves a Buyer's Brokerage Firm, if any, from the obligation to (i) conduct a reasonably competent and diligent visual inspection of the accessible areas of the Property and disclose, on Section IV of the TDS, or an AVID, material facts affecting the value or desirability of the Property that were or should have been revealed by such an inspection or (ii) complete any sections on all disclosures required to be completed by Buyer's Brokerage Firm.

(3) **Note to Buyer and Seller:** Waiver of Statutory and Lead Disclosures is prohibited by Law.

(4) Within the time specified in paragraph 14A, (i) Seller, unless exempt from the obligation to provide a TDS, shall, complete and provide Buyer with a Seller Property Questionnaire (C.A.R. Form SPQ); (ii) if Seller is not required to provide a TDS, Seller shall complete and provide Buyer with an Exempt Seller Disclosure (C.A.R. Form ESD).

(5) Buyer shall, within the time specified in paragraph 14B(1), return Signed Copies of the Statutory, Lead and other disclosures to Seller.

(6) In the event Seller or Seller's Brokerage Firm, 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, 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 of which Buyer is otherwise aware, or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.**

(7) If any disclosure or notice specified in paragraph 10A(1), or subsequent or amended disclosure or notice is Delivered to Buyer after the offer is Signed, Buyer shall have the right to cancel this Agreement within 3 Days After Delivery in person, or 5 Days After Delivery by deposit in the mail, or by an electronic record satisfying the Uniform Electronic Transactions Act (UETA), by giving written notice of cancellation to Seller or Seller's agent.

B. **NATURAL AND ENVIRONMENTAL HAZARD DISCLOSURES AND OTHER BOOKLETS:** Within the time specified in paragraph 14A, Seller shall, if required by Law: (i) Deliver to Buyer earthquake guide(s) (and questionnaire), environmental hazards booklet, and home energy rating pamphlet; (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.

C. **WITHHOLDING TAXES:** Within the time specified in paragraph 14A, 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).

D. **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](http://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.)

E. **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.

#### F. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:

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

Buyer's Initials X MMMT X GM

Seller's Initials X KA X     



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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 4 OF 10)

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Property Address: 0 SE Corner of Casanova & Palou Avenue, Carmel, CA 93921Date: December 7, 2019

(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"). (vi) private transfer fees; (vii) Pet fee restrictions; and (viii) smoking restrictions. 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 14B(3). The Party specified in paragraph 7, as directed by escrow, shall deposit funds into escrow or direct to HOA or management company to pay for any of the above.

**11. 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 14A, 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 14B, 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.

**12. 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 14B. Within the time specified in paragraph 14B(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: (i) a general physical inspection; (ii) an inspection specifically for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2); (iii) inspect for lead-based paint and other lead-based paint hazards; (iv) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA); (v) review the registered sex offender database; (vi) confirm the insurability of Buyer and the Property including the availability and cost of flood and fire insurance; and (vii) review and seek approval of leases that may need to be assumed by Buyer. Without Seller's prior written consent, Buyer shall neither make nor cause to be made: invasive or destructive Buyer Investigations, except for minimally invasive testing required to prepare a Pest Control Report; or 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 14B, complete Buyer Investigations and either remove the contingency or cancel this Agreement, and (ii) give Seller, at no cost, complete Copies of all such Investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.

C. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is made available to Buyer.

D. **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. 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 of this Agreement.

**13. TITLE AND VESTING:**

A. Within the time specified in paragraph 14, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title 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 14B. 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 14A, 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. If not, Escrow Holder shall notify Buyer. A title company can provide information about the availability, coverage, and cost of other title policies and endorsements. If the Homeowner's Policy is not available, Buyer shall choose another policy, instruct Escrow Holder in writing and shall pay any increase in cost.

Buyer's Initials X( ) X( )

Seller's Initials X( ) X( )

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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 5 OF 10)

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Property Address: 0 SE Corner of Casanova & Palou Avenue, Carmel, CA 93921Date: December 7, 2019**14. 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 5, 6, 7, 8B(5), 10A, B, C, and F, 11A and 13A. If, by the time specified, Seller has not Delivered any such item, Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement.

B. (1) **BUYER HAS: 17 (or \_\_\_\_ ) Days** After Acceptance, unless otherwise agreed in writing, to:

(i) complete all Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to paragraph 8B(5), 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 and Lead Disclosures and other disclosures Delivered by Seller in accordance with paragraph 10A.

(2) Within the time specified in paragraph 14B(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 14B(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 14A, then Buyer has **5 (or \_\_\_\_ ) Days** After Delivery of any such items, or the time specified in paragraph 14B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.

(4) **Continuation of Contingency:** Even after the end of the time specified in paragraph 14B(1) and before Seller cancels, if at all, pursuant to paragraph 14D, 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 14D(1).

(5) **Access to Property:** Buyer shall have access to the Property to conduct inspections and investigations for **17 (or \_\_\_\_ ) Days** After Acceptance, whether or not any part of the Buyer's Investigation Contingency has been waived or removed.

C. ☐ **REMOVAL OF CONTINGENCIES WITH OFFER:** Buyer removes the contingencies specified in the attached Contingency Removal form (C.A.R. Form CR). If Buyer removes any contingency without an adequate understanding of the Property's condition or Buyer's ability to purchase, Buyer is acting against the advice of Broker.

**D. 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, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by paragraph 3C or 3H; (v) In writing assume or accept leases or liens specified in 8B5; (vi) Return Statutory and Lead Disclosures as required by paragraph 10A(5); or (vii) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 21B; or (viii) 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.

E. **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 14.

F. **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.

G. **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.

H. **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).**

Buyer's Initials X( *AMM* ) X( *BM* )Seller's Initials X( *[Signature]* ) X( *[Signature]* )

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Property Address: **0 SE Corner of Casanova & Palou Avenue, Carmel, CA 93921**Date: December 7, 2019

- 15. 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 11; (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).
- 16. 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.
- 17. 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 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.
- 18. BROKERS:**
- A. COMPENSATION:** Seller or Buyer, or both, as applicable, agree 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.
- 19. REPRESENTATIVE CAPACITY:** If one or more Parties is signing this Agreement in a representative capacity and not for him/herself as an individual then that Party shall so indicate in paragraph 31 or 32 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 this 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).
- 20. 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, 5A, 6, 7, 10C, 13, 14G, 17, 18A, 19, 20, 26, 29, 30, 31, 32 and paragraph D of the section titled Real Estate Brokers on page 10. If a Copy of the separate compensation agreement(s) provided for in paragraph 18A, 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 in 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 7C(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 7, 10 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 10C, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.

Buyer's Initials AMM GM  
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Seller's Initials **X**( LA ) **X**(



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 7 OF 10)

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Property Address: 0 SE Corner of Casanova & Palou Avenue, Carmel, CA 93921Date: December 7, 2019

- C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 10A and paragraph D of the section titled Real Estate Brokers on page 10. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 18A, 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 or down payment 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.

**21. 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. If the Property is a dwelling with no more than four units, one of which Buyer intends to occupy, then the amount retained shall be no more than 3% of the purchase price. Any excess shall be returned to Buyer. Except as provided in paragraph 14H, release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. AT THE 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 MMT / GM

Seller's Initials \_\_\_\_\_ / \_\_\_\_\_

**22. 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. Real Estate Mediation Center for Consumers ([www.consumermediation.org](http://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 22C.

**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 residential 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 22C.

"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 MMT / GM

Seller's Initials \_\_\_\_\_ / \_\_\_\_\_

**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.

Buyer's Initials X ( MMT ) X ( GM )Seller's Initials X ( MMT ) X ( GM )

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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 8 OF 10)

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Property Address: **0 SE Corner of Casanova & Palou Avenue, Carmel, CA 93921**Date: **December 7, 2019**

- (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 this Agreement.
- 23. 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.
- 24. 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.
- 25. 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 attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 22A.
- 26. ASSIGNMENT:** Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee. Such consent shall not be unreasonably withheld. 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 AOA).
- 27. EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
- 28. 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 initiated by all Parties or if incorporated by mutual agreement in a counter offer 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. The Parties have read and acknowledge receipt of a Copy of the offer and agree 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.
- 29. 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.**
- 30. 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", including "COE", 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 10, 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.
- 31. 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 Dana Bambace / Mark Peterson, who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by ☒ 12:00PM ☐ AM ☐ PM, on 12/10/19 (date)).

☒ (One or more Buyers is signing this 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 12/08/2019 BUYER Mike McCall(Print name) Michael Ward McCall Jr.Date 12/08/2019 BUYER [Signature](Print name) Gwyn Fawcett McCall Te☐ Additional Signature Addendum attached (C.A.R. Form ASA).Seller's Initials X [Signature] X ( )

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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 9 OF 10)

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Property Address: 0 SE Corner of Casanova & Palou Avenue, Carmel, CA 93921Date: December 7, 2019

**32. 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. 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:** 12/13/2019

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

Date SELLER(Print name) Steven Cain TeDate SELLER(Print name) Gina Champion Cain Te

☐ 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 (BUYER'S) BROKER COMPENSATION:** Seller's Broker agrees to pay Buyer's Broker and Buyer's Broker agrees to accept, out of Seller's Broker's proceeds in escrow, the amount specified in the MLS, provided Buyer's Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Seller's Broker and Buyer's 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.

**E. PRESENTATION OF OFFER:** Pursuant to Standard of Practice 1-7, if Buyer's Broker makes a written request, Seller's Broker shall confirm in writing that this offer has been presented to Seller.

Buyer's Brokerage Firm Compass DRE Lic. # 01527235  
 By Dana Bambace Dana Bambace / Bambace Peterson Team DRE Lic. # 01731448 Date 12/08/2019  
 By                      DRE Lic. #                      Date                       
 Address 6th Avenue between Dolores and San Carlos City Carmel State CA Zip 93921  
 Telephone (831) 224-6353 Fax                      E-mail dana.bambace@compass.com  
 Seller's Brokerage Firm Carmel Realty Company DRE Lic. # 01217466  
 By Lisa Dean Lisa Dean DRE Lic. # 01401218 Date 12/13/2019  
 By                      DRE Lic. #                      Date                       
 Address Dolores South of 7th City Carmel By The Sea State                      Zip 93921  
 Telephone (831) 521-4855 Fax (831) 624-7338 E-mail lisa@carmelrealtycompany.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 20 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:** (                      ) Seller's 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 Acknowledges that page 10 is part of this Agreement ☒ (initials)                      ☒ (initials)                     

Buyer's Initials



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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 10 OF 10)

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

Date December 13, 2019

This is a counter offer to the: ☒ Purchase Agreement, ☐ Buyer Counter Offer No. \_\_\_\_\_, or ☐ Other \_\_\_\_\_ ("Offer"),  
dated December 8, 2019, on property known as SE CNR Casanova & Palou, Carmel by the Sea, CA 93921 ("Property"),  
between Michael Ward McColl, Gwyn Fawcett McColl ("Buyer")  
and Krista Freitag, Crt App'd Receiver ("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, but deposit amount(s) shall remain unchanged from the original Offer.

C. **OTHER TERMS:** 1. The Purchase Price shall be One Million Five Hundred Seventy Five Thousand Dollars (\$1,575,000).

2. This shall clarify that the Seller is Krista Freitag, solely in her capacity as court appointed receiver.

3. Paragraph 6 ("Other Terms") is hereby deleted.

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

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 Lisa Talley Dean, who is authorized to receive it.  
B. OR If Seller withdraws it anytime prior to Acceptance (C.A.R. Form WOO may be used).  
C. OR 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 Krista Freitag, Crt App'd Receiver Date 12/13/19  
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 Michael Ward McColl Date 12/15/2019 Time 5:15PM ☐ AM/ ☐ PM  
Buyer Gwyn Fawcett McColl Date 12/15/2019 Time \_\_\_\_\_ ☐ 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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SELLER COUNTER OFFER (SCO PAGE 1 OF 1)



Lisa Talley Dean, P.O. Drawer C Carmel CA 93921 Phone: (831) 521-4855 Fax: (831) 309-5792 SE CNR  
Lisa Talley Dean Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com





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**BUYER COUNTER OFFER No. 1**  
(C.A.R. Form BCO, 11/14)

Date December 15, 2019

This is a counter offer to the: ☒ Seller Counter Offer No. \_\_\_\_\_, ☐ Seller Multiple Counter Offer No. \_\_\_\_\_, or ☐ Other \_\_\_\_\_ ("Offer"), dated December 13, 2019, on property known as 0 SE Corner of Casanova & Palou Avenue, Carmel, CA 93921 ("Property"), between Michael Ward McColl Te, Gwyn Fawcett McColl Te ("Buyer") and Krista Freitag ("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, but deposit amount(s) shall remain unchanged from the original Offer.

C. **OTHER TERMS:**

1) Sale Price to be \$1,550,000 (One million five hundred fifty thousand dollars).

2) Physical contingency period length to be 21 days from date of acceptance.

D. The following attached addenda are incorporated into this Buyer Counter offer: ☐ Addendum No. \_\_\_\_\_

2. **EXPIRATION:** This Buyer 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 3 (if more than one signature then, the last signature date)(or by ☐ AM ☐ PM on \_\_\_\_\_ (date)) (i) it is signed in paragraph 4 by Seller and (ii) a copy of the signed Buyer Counter Offer is personally received by Buyer or Dana Ann Bambace, who is authorized to receive it.
- B. OR ☐ If Buyer withdraws it in writing (CAR Form WOO) anytime prior to Acceptance.

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

Buyer [Signature] Michael Ward McColl Te Date 12/15/2019  
Buyer [Signature] Gwyn Fawcett McColl Te Date 12/15/2019

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

Seller [Signature] Krista Freitag Date 12/16/19 Time 11:04 ☒ AM/ ☐ PM Pacific  
Seller [Signature] Sister in capacity as Receiver Date \_\_\_\_\_ Time \_\_\_\_\_ ☐ AM/ ☐ PM

**CONFIRMATION OF ACCEPTANCE:**

(\_\_\_\_ / \_\_\_\_ / \_\_\_\_ ) (Initials) **Confirmation of Acceptance:** A Copy of Signed Acceptance was personally received by Buyer or Buyer'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 Buyer or Buyer's authorized agent whether or not confirmed in this document.**

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**BUYER COUNTER OFFER (BCO PAGE 1 OF 1)**

Compass - San Francisco - Beach Street, 891 Beach Street San Francisco CA 94109  
Dana Bambace

Phone: 8312246353  
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**ADDENDUM TO CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW  
INSTRUCTIONS FOR CERTAIN REAL PROPERTY SITUATED AT THE SE CORNER CASANOVA &  
PALOU, CARMEL BY THE SEA, CALIFORNIA 93921 (APN: 010-225-004)**

THIS ADDENDUM ("ADDENDUM") CONTAINS IMPORTANT SELLER DISCLOSURES RELATING TO CHARACTERISTICS OF THE PROPERTY AND A WAIVER AND RELEASE BY BUYER OF KNOWN AND UNKNOWN CLAIMS AGAINST SELLER AND RECEIVER.

This Addendum to that certain California Residential Purchase Agreement and Joint Escrow Instruction dated December 8, 2019 ("Purchase Agreement") is made on December 9, 2019 by and between Gina Champion Cain and Steven Cain, as Trustees of the Cain Family Trust dated June 26, 2012 ("Seller") by and through Krista Freitag ("Receiver"), solely in her capacity as Receiver in the United States District Court, Southern District of California ("District Court") case entitled *SEC v. Champion-Cain et al.*, case no. 3:19-cv-01628-H-BLM ("SEC Action") and Michael Ward McColl and Gyn Fawcett McColl ("Buyer"). Buyer and Seller shall sometimes herein be referred to as the "Parties."

The Parties agree as follows:

1. Capitalized terms in this Addendum shall have the same meaning as those terms are defined in the Purchase Agreement.
2. The terms of this Addendum shall supersede and control over inconsistent terms in the Purchase Agreement.
3. The property is currently subject to a receivership ordered in the SEC Action and is under the authority of the District Court. Notwithstanding any other provision in this agreement, any disputes arising from or relating to this agreement will be heard in the District Court in the SEC Action.
4. Buyer and each party of Buyer acknowledges that the Property is being sold to Buyer "AS IS, WITH ALL FAULTS". Buyer and each party of Buyer understands and agree that neither Seller nor any Member of Seller has made or makes any representations or warranties, express or implied regarding the condition of the Property and its fitness for Buyer's intended use or for any particular purpose. Buyer and each party of Buyer further understands that Buyer is required to investigate the condition of the Property as set forth Sections 12 and 14B (1) of the Purchase Agreement. Buyer and each party of Buyer further understands that on the Close of Escrow, Buyer shall assume the risk that Buyer's investigation of the Property may not have revealed all conditions of the Property. Buyer and Buyer's respective successors and assigns (collectively "Waiver Parties") hereby

release Seller and its Members and representatives (collectively "Released Parties") from, and waive any and all liabilities, claims, demands and costs (including attorney's fees and expenses) of any and every kind or character, known or unknown, for, arising out of, or attributable to, any and all conditions of the Property, including, but not limited to any and all demands, losses, liabilities obligations, requirements or restrictions of every kind and nature, whether now known or unknown, whether foreseeable or unforeseeable, whether under any federal, state, or local law, and whether asserted or demanded by a third party against any of the Waiver Parties or incurred directly or indirectly by any of the Waiver Parties, that any of the Waiver Parties may now or hereafter have against any of the Released Parties (collectively "Claims"), and that arise in connection with or in any way relate to:

- i. the physical condition of the Property, the value of the Property or its suitability for Buyer's use or the accuracy or completeness of any information reviewed by Buyer in connection with Buyer's investigation of the Property and which may be relied on by Buyer in deciding to purchase the Property;
- and
- ii. any acts, omissions, services or other conduct related to any of the foregoing items in "5(i)" above, and/or any condition, activity or other matter respecting the Property that is not addressed by 5(i) above.

This Release shall survive the Close of Escrow and the recording of the Deed conveying the Property from Seller to Buyer.

TO THE FULLEST EXTENT NOT PROHIBITED BY LAW, BUYER AND EACH PARTY OF BUYER HEREBY SPECIFICALLY WAIVES SECTION 1542 OF THE CALIFORNIA CIVIL CODE ("SECTION 1542"). SECTION 1542 PROVIDES;


"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."


BUYER AND EACH PARTY OF BUYER ACKNOWLEDGES THAT THIS WAIVER AND RELEASE IS VOLUNTARY AND IS MADE WITHOUT ANY DURESS OR UNDUE INFLUENCE AND IS GIVEN AS PART OF THE CONSIDERATION FOR THE PURCHASE AND SALE OF THE PROPERTY. BUYER AND EACH PARTY BUYER EXPRESSLY ACKNOWLEDGES THAT BUYER AND EACH PARTY OF BUYER MAY HEREAFTER DISCOVER FACTS DIFFERENT FROM OR IN ADDITION TO THOSE WHICH BUYER AND EACH PARTY OF BUYER NOW BELIEVE TO BE TRUE WITH RESPECT TO THE RELEASE OF CLAIMS. BUYER AND EACH PARTY OF BUYER AGREES THAT THE FOREGOING RELEASE SHALL BE AND REMAIN EFFECTIVE IN ALL RESPECTS NOTWITHSTANDING SUCH DIFFERENT OR ADDITIONAL



## FACTS.

BUYER AND EACH PARTY OF BUYER SPECIFICALLY ACKNOWLEDGES THAT BUYER AND EACH PARTY OF BUYER HAS CAREFULLY REVIEWED THIS RELEASE AND THAT THE PROVISIONS OF THIS SECTION 5 OF THIS ADDENDUM ARE A MATERIAL PART OF THE PURCHASE AGREEMENT.

  
 Buyer 1  
 Initials

  
 Buyer 2  
 Initials

6. **Auction.** In connection with the receivership process, Receiver may be required to sell the Property pursuant to an overbid and auction process ("**Auction**"). Any such Auction shall be conducted by Receiver in accordance with the following sale procedures:

6.1. **Overbids and Bid Increments.** The minimum overbid shall be no less than Fifty Thousand Dollars (\$50,000) in excess of Buyer's current Purchase Price for the Property, as set forth in Section 1.C. of the Purchase Agreement, as modified by any ratified counter offers. Only Qualified Bidders (as defined below) may make bids at the Auction. All bids are subject to overbids in increments of Five Thousand Dollars (\$5,000.00). The Court may reject any and all bids following conclusion of the Auction.

6.2. **Due Diligence Information.** All prospective bidders ("**Prospective Bidders**") shall have had the opportunity to inspect the Property and any documentation relating thereto prior to the Auction. Prospective Bidders may also request access to information about the Property ("**Due Diligence Information**") and obtain a form purchase and sale agreement.

6.3. **No Representations and Warranties for Due Diligence Information.** Any Due Diligence Information provided to Prospective Bidders is for informational purposes only and provided without any warranty, guaranty or representation by Receiver. All Prospective Bidders shall conduct their own independent investigation and analysis regarding the condition of the Property and its suitability for Prospective Bidders' intended use. Neither the Receiver, nor the Receiver's Broker has made any representations, express or implied, regarding the completeness or accuracy of the Due Diligence Information.

6.4. **Qualified Bidders.** To be determined a qualified bidder (the "**Qualified Bidder**"), one must: (i) provide a fully executed purchase and sale agreement for the Property in form substantially similar to the Purchase Agreement, including this Addendum ("**Qualified Bid PSA**"), acceptable to the Receiver; (ii) provide an earnest money deposit (the "**Bid Deposit**") by wire transfer or cashier's check in the amount of 10% greater than the deposit in escrow, payable to the Receiver, which amount shall be non-refundable to the Qualified Bidder with the highest bid at the Auction (the "**High Bidder**") if for any reason (a) the High Bidder fails to finally close the purchase and sale such that title transfers by no later than the Close of Escrow or (b) the High Bidder fails to provide the balance of the purchase price to the Receiver one day prior to the Closing Date; and (iii) provide proof of funds in such form as shall be required by Receiver. Each

Qualified Bidder must provide the Qualified Bid PSA and Bid Deposit to the Receiver no later than Three (3) business days prior to the Auction. The Qualified Bidders shall appear at the Auction in person, or through a duly authorized representative. If there are multiple Qualified Bidders at the Auction, the Receiver shall obtain the Court's approval of the High Bidder and also the Qualified Bidder with the next highest bid at the Auction (the "**Backup Bidder**"). The Receiver shall retain the Backup Bidder's Bid Deposit until (x) the closing for the High Bidder occurs, in which event the Backup Bidder's Bid Deposit shall immediately be returned to the Backup Bidder, or (y) the closing for the High Bidder fails to occur, in which event the Backup Bidder's Bid Deposit shall be applied to the purchase price for the Backup Bidder's closing as set forth hereinbelow. If the High Bidder fails to close the purchase and sale of the Property, the Backup Bidder shall be deemed to be the High Bidder and the Receiver shall provide written notice thereof to the Backup Bidder. Within ten (10) days after the Backup Bidder's receipt of such notice from the Receiver, the closing for the Backup Bidder's purchase of the Property shall occur. Pursuant to the foregoing, if the initial High Bidder fails to close the purchase and sale of the Property and the Court has approved a Backup Bidder, the Receiver shall proceed to close with the Backup Bidder without any obligation to conduct another auction as a condition precedent to such closing. The High Bidder's Bid Deposit shall be applied to the purchase price at closing, if the sale is approved by the Court and the High Bidder closes the purchase and sale of the Property.

6.5 Consent to District Court Jurisdiction and Waiver of Jury Trial. All Qualified Bidders appearing at the Auction shall have deemed to have consented to the District Court's jurisdiction and waived any right to jury trial in connection with any disputes related to the Auction, or the closing of the sale. The District Court shall be the exclusive forum for any such disputes.

6.6 Receiver's Right to Determine Conduct of Auction. The Receiver reserves the right to deny any person admittance to the Auction, to postpone or cancel the Auction, to withdraw the Property from the Auction, and to change any terms or procedures of the Auction or the particular conditions of sale, as necessary, upon notice to Buyer, and any Qualified Bidders, prior to or at the Auction, without further Court order.

6.7 No Contingencies for Qualified Bidder. The sale to any Qualified Bidder of the Property shall not be contingent upon the validity, effectiveness, and or binding nature of the Qualified Bidder's offer, including without limitation, contingencies for financing, due diligence or inspection.

6.8 No Conditions Precedent for Qualified Bidder. The sale to any Qualified Bidder of the Property shall not be subject to any conditions precedent to the Qualified Bidder's obligation to timely consummate the sale transaction, and to pay the remainder of the purchase price.

6.9 Auction Confirmation Order. The only authorized condition subsequent to the Auction for the Qualified Bidder is entry of a Court order confirming the sale to the Qualified Bidder (the "**Auction Confirmation Order**").



6.10 Conditions to Consummation of Sale Transaction Prior to and Following Auction. The closing of any sale to a Qualified Bidder shall be subject to the following conditions: (i) Receiver's review and acceptance of the highest bid received from a Qualified Bidder, (ii) entry of the Auction Confirmation Order, (iii) receipt of full payment on or before the date which is three (3) business days after the date upon which the Court enters the Auction Confirmation Order such that the Property transfer can occur promptly thereafter, and (iv) prior to Auction, waiver and release of all claims against the Receiver. If any of these foregoing conditions are not satisfied, (a) the sale to the Qualified Bidder shall not be consummated, and (b) any obligations of the Receiver shall also be terminated, including any obligations under the Qualified Bid PSA.

6.11 Transfer of Title to Property Following Auction. Following the Auction, title to the Property shall be transferred by grant deed, "AS-IS", WITHOUT REPRESENTATIONS AND WARRANTIES, to the High Bidder.

6.12 Court Approval if No Qualified Bids are Received. In the event no Qualified Bids are provided to the Receiver, the Receiver will notify the Court that no Auction will take place and ask the District Court to approve the sale to Buyer pursuant to the Purchase Agreement, including this Addendum.

6.13 Termination of this Agreement. If Buyer is not the High Bidder at the Auction, the Deposit shall be returned to Buyer, but Buyer shall not be entitled to specifically enforce Seller's obligation to convey the Property, or recover any out of pocket costs, professional fees and costs, or other amounts.

7. NO LIABILITY TO RECEIVER. BUYER HEREBY ACKNOWLEDGES, UNDERSTANDS AND AGREES AS FOLLOWS:

7.1 BUYER ACKNOWLEDGES AND AGREES THAT RECEIVER IS ENTERING INTO THIS AGREEMENT SOLELY IN CONNECTION WITH HER DUTIES AS RECEIVER. IN NO EVENT SHALL RECEIVER BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY RECEIVER, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCE WHATSOEVER, EXCEPT IF THE RESULT OF RECEIVER'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. RECEIVER SHALL NOT BE PERSONALLY LIABLE IN CONNECTION WITH ANY DUTIES PERFORMED BY RECEIVER IN CONNECTION WITH THE MATTERS SET FORTH IN THE AGREEMENT.

7.2 NO PROVISION OF THE AGREEMENT SHALL OPERATE TO PLACE ANY OBLIGATION OR LIABILITY FOR THE CONTROL, CARE, MANAGEMENT OR REPAIR OF THE PROPERTY UPON RECEIVER NOR SHALL IT OPERATE TO MAKE RECEIVER RESPONSIBLE OR LIABLE FOR ANY WASTE COMMITTED ON THE PROPERTY BY ANY PERSON OR FOR ANY DANGEROUS OR DEFECTIVE CONDITION OF THE PROPERTY OR FOR ANY NEGLIGENCE IN MANAGEMENT, UPKEEP, REPAIR OR CONTROL OF THE PROPERTY RESULTING IN LOSS OR INJURY OR DEATH TO ANY PERSON.


This Addendum to California Residential Purchase Agreement and Joint Escrow Instruction is

made on December 13, 2019 at San Diego, California.

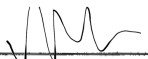
SELLER


Gina Champion-Cain and Steven Cain,  
as Trustees of the Cain Family Trust  
dated June 26, 2012

By: \_\_\_\_\_

  
Krista Freitag, Receiver  
Sole in capacity as  
Receiver

BUYER

  
\_\_\_\_\_  
Michael Ward McColl

  
\_\_\_\_\_  
Gwyn Fawcett McColl





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**CONTINGENCY REMOVAL No. 3 (three)**  
(C.A.R. Form CR, Revised, 6/16)

**COMPASS**

In accordance with the terms and conditions of the: ☒ Residential Purchase Agreement (C.A.R. Form RPA-CA), ☐ Request For Repair (C.A.R. Form RR), ☐ Response And Reply To Request For Repair (C.A.R. Form RRRR) or ☐ Other \_\_\_\_\_

dated 12/07/2019, on property known as 0 SE Corner of Casanova & Palou Avenue, Carmel, CA 93921 ("Agreement"),  
between Michael Ward McColl Te, Gwyn Fawcett McColl Te ("Property"),  
and Krista Freitag ("Buyer"),  
("Seller").

**I. BUYER REMOVAL OF BUYER CONTINGENCIES:**

1. With respect to any contingency and cancellation right that Buyer removes, unless otherwise specified in a separate written agreement between Buyer and Seller, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations and review of reports and other applicable information and disclosures; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and, expense, if any, for Repairs, corrections, or for the inability to obtain financing. Waiver of statutory disclosures is prohibited by law.

2. Buyer removes those contingencies specified below.

**A. ONLY the following individually checked Buyer contingencies are removed:**

1. ☐ Loan (Paragraph 3J)
2. ☐ Appraisal (Paragraph 3I)
3. ☐ Buyer's Investigation Contingency (Paragraph 12)
  - A. ☐ Only the physical inspection portion of Buyer's Investigation (Paragraph 12)
  - B. ☐ All Buyer Investigations other than a physical inspection (Paragraph 12)
  - C. ☐ Entire Buyer's Investigation Contingency (Paragraph 12)
4. ☐ Condominium/Planned Development (HOA or OA) Disclosures (Paragraph 10F)
5. ☐ Reports/Disclosures (Paragraphs 7 and 10)
6. ☐ Title: Preliminary Report (Paragraph 13)
7. ☐ Sale of Buyer's Property (Paragraph 4B)
8. ☐ Review of documentation for leased or lien items (Paragraph 8B(5))
9. ☐ Other: \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

**OR B.** ☐ ALL Buyer contingencies are removed, EXCEPT: ☐ Loan Contingency (Paragraph 3J); ☐ Appraisal Contingency (Paragraph 3I); ☐ Contingency for the Sale of Buyer's Property (Paragraph 4B); ☐ Condominium/Planned Development (HOA) Disclosures (Paragraph 10F); ☐ Other \_\_\_\_\_

**OR C.** ☒ BUYER HEREBY REMOVES ANY AND ALL BUYER CONTINGENCIES.

3. Once all contingencies are removed, whether or not Buyer has satisfied him/herself regarding all contingencies or received any information relating to those contingencies, Buyer may not be entitled to a return of Buyer's deposit if Buyer does not close escrow. This could happen even if, for example, Buyer does not approve of some aspect of the Property or lender does not approve Buyer's loan.

**NOTE:** Paragraph numbers refer to the California Residential Purchase Agreement (C.A.R. Form RPA-CA). Applicable paragraph numbers for each contingency or contractual action in other C.A.R. contracts are found in Contract Paragraph Matrix (C.A.R. Form CPM).

Buyer ☒ Michael Ward McColl Te Date 02/05/2020  
Buyer ☒ Gwyn Fawcett McColl Te Date 02/05/2020

**II. SELLER REMOVAL OF SELLER CONTINGENCIES:** Seller hereby removes the following Seller contingencies:

- ☐ Finding of replacement property (C.A.R. Form SPRP); ☐ Closing on replacement property (C.A.R. Form SPRP)  
☐ Other \_\_\_\_\_

Seller ☒ \_\_\_\_\_ Date \_\_\_\_\_

Seller ☒ \_\_\_\_\_ Date \_\_\_\_\_

(Initials) **CONFIRMATION OF RECEIPT:** A copy of this signed Contingency Removal was personally received by ☐ Buyer ☒ Seller or authorized agent on 2/5/2020 (date), at 12:30PM ☐ AM ☒ PM.

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**CR REVISED 6/16 (PAGE 1 OF 1)**

**CONTINGENCY REMOVAL (CR PAGE 1 OF 1)**

Compass - San Francisco - Beach Street, 891 Beach Street San Francisco CA 94109  
Dana Bambace

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**CONTINGENCY FOR SALE OF  
BUYER'S PROPERTY**  
(And Notice To Remove Contingencies)  
(C.A.R. Form COP, Revised 12/17)

COMPASS

This is an addendum to the Purchase Agreement, ☐ Other("Agreement"), dated December 7, 2019

on property known as 0 SE Corner of Casanova & Palou Avenue, Carmel, CA 93921 ("Seller's Property"),  
between Michael Ward McColl Te, Gwyn Fawcett McColl Te ("Buyer")  
and Steven Cain Te, Gina Champion-Cain Te ("Seller").

**SALE OF BUYER'S PROPERTY:**

1. **A. LENGTH OF CONTINGENCY:** The Agreement is contingent on the close of escrow of Buyer's property, described as: 13000 Blairwood Drive, Studio City, CA 91604 ("Buyer's Property") by the earliest of: (i) the scheduled close of escrow of Seller's Property specified in the Agreement; (ii) the date specified in paragraph 3; or (iii) Other ☐ Buyer shall within 2 (or     ) Days After close of escrow of Buyer's Property, provide documentation of close to Seller.
- B. CONTINUATION OF CONTINGENCY:** This contingency can only be removed in writing. Even if Buyer removes this contingency, unless Buyer also performs all actions pursuant to paragraph 8, Seller retains the right to cancel under paragraph 5. Once Buyer's Property closes, Buyer can no longer use this contingency to cancel the Agreement.
2. ☐ **BUYER'S PROPERTY NOT IN ESCROW:** Buyer's Property is not now in escrow and (check boxes as applicable):
  - A.** ☒ is ☐ is not yet listed for sale. If listed, Listing Broker is Leland Properties MLS, #19514252
  - B.** Buyer has 17 (or     ) Days After Acceptance to enter into escrow for the sale of Buyer's Property. Buyer shall, within the time specified, provide Seller with Copies of the contract, escrow instructions and all related documents ("Escrow Evidence") showing that Buyer's Property has entered escrow.
3. ☒ **BUYER'S PROPERTY IN ESCROW:** Buyer's Property is in escrow and escrow is scheduled to close on January 21, 2020 (date).
  - A.** Escrow Holder is Portfolio Escrow, (escrow # To follow).
  - B.** Buyer shall, within 5 Days After Acceptance, deliver to Seller Escrow Evidence that Buyer's Property is in escrow.
4. **CANCELLATION OF BUYER'S PROPERTY:** If Buyer's Property is in or enters escrow, and either party to that escrow gives notice to the other to cancel that contract, Buyer, within 2 (or     ) Days thereafter, shall give Seller written notice of that cancellation.
5. **SELLER RIGHT TO CANCEL:** Seller may cancel the Agreement in writing as follows:
  - A.** After first giving Buyer a Notice to Buyer to Perform to provide documentation of close of Buyer's Property, if Buyer's Property does not close escrow by the time specified in paragraph 1,
  - B.** After first giving Buyer a Notice to Buyer to Perform, if Buyer fails to provide Escrow Evidence within the time specified in paragraph 2(B) or 3(B), or
  - C.** If Buyer gives notice to Seller of either party's cancellation of contract for Buyer's Property, or
  - D.** If Buyer, after being given a notice to remove contingencies, fails to remove the contingencies specified in 8A.
6. **BUYER RIGHT TO CANCEL:** Buyer may cancel the Agreement in writing if, prior to Buyer's removal of the contingency for sale of Buyer's Property, (i) Buyer's Property does not close escrow by the time specified in paragraph 1, or (ii) the buyer for Buyer's Property gives notice to Buyer of intent to cancel the escrow for Buyer's Property.
7. **A. TIME PERIODS:** Time periods in the Agreement for inspections, contingencies, covenants, close of escrow, and other obligations shall begin as specified in the Agreement, or ☐ on the Day After Buyer Delivers to Seller any of the following: (i) Escrow Evidence for Buyer's Property, or (ii) Buyer's election in writing, signed by Buyer, to begin time periods, or (iii) Buyer's removal of this contingency for the sale of Buyer's Property.
- B. BUYER'S DEPOSIT:** Buyer's deposit shall be delivered to escrow within the time specified in the Agreement, or ☐ within 3 business days After Buyer Delivers to Seller any of the following: (i) Escrow Evidence for Buyer's Property, or (ii) Buyer's election in writing, signed by Buyer, to begin time periods, or (iii) Buyer's removal of this contingency for the sale of Buyer's Property.
8. **BACK UP OFFERS AND SELLER RIGHT TO HAVE BUYER REMOVE CONTINGENCIES OR CANCEL:** After Acceptance, Seller shall have the right to continue to offer Seller's Property for sale for back-up offers. If Seller accepts a written back-up offer and provides Buyer a Copy of the signed, accepted back-up offer:
  - A. Immediate Right to Notify Buyer to Remove Sale of Property Contingency:** Seller shall have the right to immediately give written notice to Buyer to, in writing: (i) remove this contingency; (ii) remove the loan contingency, if any; and (iii) provide verification of sufficient funds to close escrow without the sale of Buyer's Property. If Buyer fails to complete these actions within 3 (or     ) Days After Delivery of such notice, Seller may then immediately cancel the Agreement in writing.
  - B. OR ☒ (If checked) Delayed Right to Notify Buyer:** Seller shall not invoke the notice provisions in paragraph 8A: (i) within the first 17 (or     ) Days After Acceptance; or (ii) (if checked) ☒ during the term of the Agreement.

By signing below, Buyer and Seller each acknowledge that they have read, understand, accept and have received a Copy of this Addendum.

Date \_\_\_\_\_  
Buyer ☒ Mike McColl  
Buyer ☒ Michael Ward McColl Te  
Buyer ☒ Gwyn Fawcett McColl Te

Date \_\_\_\_\_  
Seller ☒ Steven Cain Te  
Seller ☒ Gina Champion-Cain Te  
Seller ☒ Krista Frencha, Selu in Capacitas Reverer

**NOTICE TO REMOVE CONTINGENCIES:** Seller hereby gives notice to Buyer to remove the contingencies and take the actions specified in paragraph 8A. (Note: Not to be delivered until the time specified in 8A or B.)

Seller ☒ \_\_\_\_\_ Date \_\_\_\_\_ Seller ☒ \_\_\_\_\_ Date \_\_\_\_\_

(\_\_\_\_\_/\_\_\_\_\_) (Initials) **CONFIRMATION OF RECEIPT:** A Copy of this Signed Notice to Buyer to remove contingencies and take actions was personally received by Buyer or authorized agent on \_\_\_\_\_ (date), at \_\_\_\_\_ ☐ AM ☐ PM. Completion of this confirmation is not legally required. It is solely intended to evidence the date that confirmation or receipt has occurred.



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CONTINGENCY FOR SALE OF BUYER'S PROPERTY (COP PAGE 1 OF 1)

Compass - San Francisco - Beach Street, 891 Beach Street San Francisco CA 94109  
Dana Bambace

Phone: 8312246353 Fax: \_\_\_\_\_  
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