

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 809 SAN
RAFAEL PLACE PROPERTY**

Date: August 3, 2020

Time: 2:00 p.m.

Courtroom: TBD

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 Approval of Sale of the 809 San Rafael Place Property
6 ("Motion"). I have personal knowledge of the facts stated herein, and if called upon
7 to do so, I could and would personally and competently testify to them.

8 2. The residential properties in the receivership estate include a single-
9 family residence located at 809 San Rafael Place in the Mission Beach neighborhood
10 of San Diego ("809 San Rafael Property"). The 809 San Rafael Property is
11 1,503 square feet with three bedrooms and three bathrooms. The 809 San Rafael
12 Property was purchased for \$1,430,000 on May 26, 2015. Attorney James Lance, a
13 friend of Defendant Gina Champion-Cain at the time, contributed \$200,000 of his
14 personal funds to the purchase price for the property and, after several changes, title
15 was ultimately taken jointly in the names of 809 San Rafael Place, LLC (an affiliated
16 Receivership Entity) and Con & Coop Beach Rentals, LLC (an entity owned by
17 Mr. Lance). The 809 San Rafael Property is used as a vacation rental property.

18 3. My staff and I performed an analysis of the value of the 809 San Rafael
19 Property, including a review of automated valuation scores for the property and a
20 survey of the market comparable properties. We also consulted with and interviewed
21 licensed brokers with experience selling residential properties in the Mission Beach
22 area. Ultimately, based on a combination of its experience and low listing
23 commission, I selected Pacific Pines Real Estate ("Broker") and the 809 San Rafael
24 Property was listed for sale on the Multiple Listing Service (MLS) on or about
25 January 5, 2020. The original list price was \$1,699,000.

26 4. To market the 809 San Rafael Property, Broker listed the property on
27 the local MLS and its website, held multiple open houses and showed the property to
28 all interested parties. Due to the lack of offers for the property at the \$1,699,900 list

1 price, and the fact that a global pandemic has negatively affected the short-term
 2 economic prospects for hospitality properties, in consultation with Broker, I decided
 3 to reduce the list price to a range from \$1,499,000 to \$1,599,000. Additionally, in
 4 compliance with guidance from the California Association of Realtors, 3D marketing
 5 and socially distant property tours were enforced. A total of two offers were
 6 received. I negotiated terms with the prospective buyers and the property went into
 7 escrow on or around June 25, 2020 with a purchase price of \$1,500,000. The buyer
 8 is Alan Peller, Shane McCool-Peller, Andrew Hannaman, and Silvia Hannaman
 9 ("Buyer"). Furthermore, I am informed and believe that the adjacent property, 807
 10 San Rafael Place, has been listed for nearly the same amount of time, is a model
 11 match for the 809 San Rafael Property, is currently listed for \$1,545,000, is currently
 12 under contract and the broker for that property has informed Broker that it is also
 13 expected to sell for \$1,500,000.

14 5. Like the 1617 Thomas Avenue, 805 Brighton Court and 724 Zanzibar
 15 Court properties previously sold with approval from the Court (as well as the 737
 16 Windemere Court Property, the proposed sale of which is pending Court approval),
 17 the 809 San Rafael Property is encumbered by a deed of trust in favor of Axos Bank.
 18 With 1617 Thomas Avenue, 805 Brighton Court and 724 Zanzibar Court properties
 19 now sold, the Axos Bank portfolio loan now covers four residential properties
 20 included in the receivership estate (including the 737 Windemere Court Property).
 21 Assuming an August 2020 sale closing with the August 2020 monthly payment
 22 having been made in the ordinary course, and assuming that the proposed
 23 737 Windemere Court Property sale closes first, (a) the release price for the 809 San
 24 Rafael Property is estimated to total \$315,000¹, (b) the property taxes owed at
 25 closing are estimated to be in the range of \$3,000 to \$3,500, (b) the estimated costs
 26

27
 28 ¹ This estimate is not the actual release price for the property, but is the estimated
 payoff amount for this portfolio loan after payment of the July and August
 mortgage and net of escrowed funds held by lender.

1 for title, escrow, and recording are \$7,500, and (d) the commission to be paid to
2 Broker is \$49,500 (\$37,500 of which is to be paid to Buyer's broker). Accordingly,
3 the net sale proceeds to be paid to the receivership estate after payment of the above
4 amounts (but before rental deposits received for post-closing reservations are
5 credited to the buyer) are estimated to be in the range of \$1,115,000 to \$1,125,000.

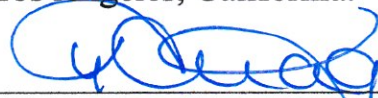
6 6. Mr. Lance's claims to share in the net sale proceeds from the 809 San
7 Rafael Property are disputed. For one thing, the Receivership Entity's accounting
8 records show that the property operated at a net loss, but Mr. Lance never
9 contributed any funds necessary to cover operating expenses. An agreement has not
10 been reached regarding his share of liability for operating expenses or net losses
11 suffered. Around the same time as the purchase of the 809 San Rafael Property,
12 Mr. Lance advanced an additional \$237,000 of his personal funds to the Receivership
13 Entities, for which it appears he was later given a promissory note and an option to
14 acquire a 50% interest in 812 San Rafael Place, a neighboring vacation rental
15 property also owned by the Receivership Entities. This property is likewise listed for
16 between \$1,499,000 to \$1,599,000. After my appointment, Mr. Lance purported to
17 exercise the option to acquire the 50% interest in 812 San Rafael Place. Mr. Lance's
18 interest in 812 San Rafael Place is also disputed. However, Mr. Lance and I have
19 agreed, subject to Court approval, that 809 San Rafael Place and 812 San Rafael
20 Place may be sold in the near term and \$635,000 in receivership funds will be held
21 by the receivership and not distributed until such time as Mr. Lance's claims have
22 been either settled (with Court approval of the settlement) or resolved by the Court.

23 7. I believe the proposed sale to Buyer pursuant to the Agreement is in the
24 best interests of the receivership estate. The 809 San Rafael Property was listed on
25 the MLS with a licensed broker and shown to interested parties. The property was
26 properly marketed, two offers were received, highest and best terms negotiated, and
27 the Agreement signed. The purchase price is fair and reasonable and reflects the
28

1 current market value of the property considering that the adjacent model match
2 property is expected to close for the same price.

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

5 Executed this 9th day of July 2020, at Los Angeles, California.

6 

7 KRISTA L. FREITAG

EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	PAGE NO.
Exhibit A	California Residential Purchase Agreement and Joint Escrow Instructions	7

EXHIBIT A

EXHIBIT A

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CALIFORNIA
ASSOCIATION
OF REALTORS®

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

Date Prepared: 06/01/2020

1. OFFER:

- A. THIS IS AN OFFER FROM Alan Peller, Shane McCool-Peller ("Buyer").
B. THE REAL PROPERTY to be acquired is 809 San Rafael Place, San Diego, CA 92109, situated in
San Diego (City), San Diego (County), California, 92109 (Zip Code), Assessor's Parcel No. 423-557-12-00 ("Property").
C. THE PURCHASE PRICE offered is One Million, Four Hundred Thousand

D. CLOSE OF ESCROW shall occur on _____ Dollars \$ 1,400,000.00
(date)(or) 30 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 Pacific Pines Real Estate License Number 02022466Is the broker of (check one): ☒ the seller; or ☐ both the buyer and seller. (dual agent)Seller's Agent David Zvaifler License Number 01901432Is (check one): ☒ the Seller's Agent. (salesperson or broker associate) ☐ both the Buyer's and Seller's Agent. (dual agent)Buyer's Brokerage Firm Big Block Realty License Number 01885775Is the broker of (check one): ☐ the buyer; or ☐ both the buyer and seller. (dual agent)Buyer's Agent Andrew M. Greenberg License Number 01362933Is (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).

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 _____ \$ 10,000.00(1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, ☐ cashier's check, ☒ personal check, ☐ other _____ within 3 business days after Acceptance (or _____);OR (2) ☐ Buyer Deposit with Agent: Buyer has given the deposit by personal check (or _____) to the agent submitting the offer (or to _____), made payable to _____.

The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or _____).

Deposit checks given to agent shall be an original signed check and not a copy.

(Note: Initial and increased deposits checks received by agent shall be recorded in Broker's trust fund log.)

B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of _____ \$ _____ within _____ Days After Acceptance (or _____).

If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder.

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

D. LOAN(S):

(1) FIRST LOAN: in the amount of _____ \$ 900,000.00This 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 _____ % 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: _____

F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE in the amount of _____ \$ 490,000.00 to be deposited with Escrow Holder pursuant to Escrow Holder instructions.G. PURCHASE PRICE (TOTAL) _____ \$ 1,400,000.00Buyer's Initials AP SH Seller's Initials JP SC

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

BIG BLOCK REALTY 2820 Camino Del Rio South #314 San Diego, CA 92108
Andrew Greenberg

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Phone: 619.248.4916

Fax: 619.568.3107

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Property Address: **809 San Rafael Place, San Diego, CA 92109**Date: **June 1, 2020**

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

B. BUYER AND SELLER ADVISORIES:

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

6. OTHER TERMS:**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 **Disclosure Source**

(2) ☐ Buyer ☒ Seller shall pay for the following Report **Termite Inspection and Clearance** prepared by **Seller's choice**

(3) ☒ Buyer ☐ Seller shall pay for the following Report **Home Inspection** prepared by **SDREI**

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 with state and local Law, unless Seller is e

Buyer's Initials

(AP)

(ST)

(ST)

Seller's Initials

(ST)

(ST)

(ST)

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

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Property Address: **809 San Rafael Place, San Diego, CA 92109**

Date: **June 1, 2020**

- (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 .
 (b) Escrow Holder shall be Oakwood Escrow - Pam Reifeiss .
 (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 Corinthian - Kachina Krafchow .
 (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 _____.
- (8) ☐ Buyer ☐ Seller shall pay for _____.
- (9) ☐ Buyer ☐ Seller shall pay for _____.
- (10) ☐ Buyer ☒ Seller shall pay for the cost, not to exceed \$ **795.00** _____, of a standard (or ☒ upgraded) one-year home warranty plan, issued by **First American Home Warranty** _____, with the following optional coverages: ☒ Air Conditioner ☐ Pool/Spa ☐ Other: **appliances, plumbing, roof** _____. 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: *furnishings* _____.
- (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:

- B. **Seller-occupied or vacant property:** Possession shall be delivered to Buyer: (i) at 6 PM or (☐ AM / ☐ PM) on the date of Close Of Escrow; (ii) no later than, ca DS ay DS Use Of Escrow; or (iii) ☐ at ☐ AM / ☐ PM on 11/11/2024

Buyer's Initials (AP) (SH) AH SH

Seller's Initials () ()

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Property Address: 809 San Rafael Place, San Diego, CA 92109

Date: June 1, 2020

- 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. 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

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Seller's Initials

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

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Property Address: 809 San Rafael Place, San Diego, CA 92109

Date: June 1, 2020

(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 indemnity 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 of the Homeowner's Policy. If not available, Buyer shall choose another policy, instruct Escrow Holder in writing and shall pay any increase in cost.

Buyer's Initials

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Seller's Initials

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

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Property Address: 809 San Rafael Place, San Diego, CA 92109

Date: June 1, 2020

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

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Seller's Initials

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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 6 OF 10)

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Property Address: **809 San Rafael Place, San Diego, CA 92109**Date: **June 1, 2020**

- 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 that complies with federal Law.**

Buyer's Initials

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Seller's Initials

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

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Property Address: 809 San Rafael Place, San Diego, CA 92109

Date: June 1, 2020

- C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 18A 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

AP / SM AH SH

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) 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

AP / SM AH SH

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; (iii) any matter that is within the jurisdiction of a small claims or bankruptcy court.

Buyer's Initials

AP / SM AH SH

Seller's Initials

/

RPA-CA REVISED 12/18 (PAGE 8 OF 10)

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

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Property Address: 809 San Rafael Place, San Diego, CA 92109

Date: June 1, 2020

- (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 initialed 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 who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by ☐ AM/ ☐ PM, on (date)).

☐ One or more Buyers is signing 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 6/2/2020 BUYER Alan Peller

(Print name) Alan Peller DocuSigned by: 0A5890D5627143E...

Date 6/1/2020 BUYER Shane McCool-Peller

(Print name) Shane McCool-Peller DocuSigned by: 41C9BD47838347E...

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

Seller's Initials (UA) (SL)

RPA-CA REVISED 12/18 (PAGE 9 OF 10)

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

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DocuSign Envelope ID: 4A7D12F8-A443-4724-B393-FA13C63CCDBE

Property Address: **809 San Rafael Place, San Diego, CA 92109**Date: **June 1, 2020**

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: **6/3/20**

☐ 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 **6/25/2020** SELLER

(Print name)

Date **6/25/2020** SELLER

(Print name)

Con & Coop Beach Rentals, LLC

☐ 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 **Big Block Realty**By **Andrew Greenberg****Andrew M. Greenberg** DRE Lic. # **01362933**DRE Lic. # **01885775**Date **6/1/2020**By **David Zvaifler**

DRE Lic. #

Date

Address **2820 Camino Del Rio South, Ste 314**City **San Diego**State **CA**Zip **92108**Telephone **(619) 248-4916**Fax **(619) 568-3107**E-mail **andrew.greenberg@hotmail.com**

DocuSigned by:

fic Pines Real EstateDRE Lic. # **02022466**By **David Zvaifler****David Zvaifler** DRE Lic. # **01901432**Date **6/5/2020**By **David Zvaifler**

DRE Lic. #

Date

Address **496FD1A7B63D42A...**

City

State

Zip

Telephone

Fax

E-mail

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

Buyer's Initials AP SM AT SH



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

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BUYER COUNTER OFFER No. 1

(C.A.R. Form BCO, 11/14)

Date **June 7, 2020**

This is a counteroffer to the: ☒ Seller Counter Offer No. **1**, ☐ Seller Multiple Counter Offer No. _____, or ☐ Other _____ ("Offer"),
dated _____, on property known as **809 San Rafael Place, San Diego, CA 92109** ("Property"),
between **Alan Peller, Shane McCool-Peller** ("Buyer") and **809 San Rafael Place, LLC** ("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) Purchase price to be 1,500,000

D. The following attached addenda are incorporated into this Buyer Counter offer: ☒ Addendum No. **ASA-1**

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 **1130** ☐ AM ☐ PM on **06/10/2020** (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 **Andrew M. Greenberg**, 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 **Alan Peller** Date **6/8/2020**
Buyer **Shane McCool-Peller** Date **6/8/2020**

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 **Jim Lance** Date **June 12, 2020** Time **10:18** ☒ AM ☐ PM
Seller **Con & Coop Beach Rentals, LLC** Date **6/25/2020** Time ☐ AM ☐ PM

DS **B44A4CDEBE8E472...**
AG **CONFIRMATION OF ACCEPTANCE:**

(Initials) **Confirmation of Acceptance:** A Copy of Signed Acceptance was personally received by Buyer or Buyer's agent as specified in paragraph 2A on (date) **6/15/2020** 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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BCO 11/14 (PAGE 1 OF 1)

BUYER COUNTER OFFER (BCO PAGE 1 OF 1)

BIG BLOCK REALTY 2820 Camino Del Rio South #314 San Diego, CA 92108
Andrew Greenberg

Phone: 619.248.4916 Fax: 619.568.3107
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ASSIGNMENT OF AGREEMENT ADDENDUM
(For Use As An Addendum To A Purchase Agreement)
(C.A.R. Form AOAA, 11/14)

The following terms and conditions are hereby incorporated in and made a part of the: ☒ California Residential Purchase Agreement, other _____

dated June 1, 2020, on property known as 809 San Rafael Place ("Agreement"),
San Diego, CA 92109 ("Property"),
between Alan Peller, Shane McCool-Peller ("Buyer"),
and 809 San Rafael Place, LLC ("Seller"):

In consideration, of the covenants contained herein, Buyer hereby assigns to assignee and assignee accepts the assignment, subject to Seller's consent, of all or a partial interest of Buyer's right, title, and interest under the Agreement, including without limitation, the right, title, and interest in any down payment or earnest money upon the following terms and conditions:

1. ☒ (a) **Partial Assignment (Adding a buyer):** Buyer is adding the Assignee(s) named below to the Agreement and granting to such Assignee(s) a partial interest in the Agreement.
- ☐ (b) **Total Assignment (New Buyer or Deleting a Buyer):** Buyer is assigning all of Buyer's interest in the Agreement to the new or remaining Buyers (Assignee(s)) named below.
- (c) **Assignee(s) Names:**
2. (a) Assignee acknowledges that Buyer has already provided Assignee all of the transaction documents previously approved by Buyer including, but not limited to, all contract documents, inspection reports, pamphlets, advisories, disclosures ("Prior Documents").
- (b) Assignee, within 3 (or _____) Days After Seller Delivers to Assignee a Signed copy of this Assignment of Agreement Addendum ("Assignment") shall initial, Sign and Deliver to Seller all Prior Documents (or, ☐ initialed Signed copies of all Prior Documents are attached to this Assignment).
- (c) If Assignee does not Deliver to Seller all Prior Documents within the time specified in 2(b), Seller may withdraw consent to the Assignment and the Assignment shall have no further force and effect.
3. Assignee represents for the benefit of Seller that Assignee ratifies and approves as Assignee's own acts all prior approvals and acts of Buyer pursuant to the Agreement up to and including the date of this Assignment.
4. Assignee assumes and agrees to perform and observe all of the obligations and covenants of Buyer in the Agreement to be performed after the date of this Assignment.
5. Buyer acknowledges and agrees that, notwithstanding Seller's agreement to this Assignment, Buyer is not released from any obligations or covenants under the Agreement.
6. Other terms:
7. Seller has been advised that Buyer has ☐ has not received monetary consideration from Assignee for this Assignment
8. Without releasing Buyer from any obligations or covenants under the Agreement and preserving all rights and remedies under the Agreement, in consideration of the covenants contained herein, Seller consents to the foregoing Assignment.
9. The parties acknowledge and agree that they have been advised to review this Assignment with their own attorney and/or accountant prior to signing this Assignment. The Brokers and agents make no representation as to the propriety, adequacy, legality or tax consequences of this Assignment.

By signing below, Buyer, Assignee, and Seller acknowledge that each has read, understands, received a copy of and agrees to the terms of this Assignment of Agreement Addendum.

Buyer Alan Peller 6/8/2020
Date

Buyer Shane McCool-Peller 6/8/2020
Date

☐ One or more assignees will sign by a representative. Attached is a Representative Capacity Signature Disclosure.

Assignee Andrew Hannaman 6/8/2020
Date

Assignee Silvia Hannaman 6/8/2020
Date

DocuSigned by: Jim Lance June 12, 2020
Date

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AOAA 11/14 (PAGE 1 OF 1)

ASSIGNMENT OF AGREEMENT ADDENDUM (AOAA PAGE 1 OF 1)

BIG BLOCK REALTY 2820 Camino Del Rio South #314 San Diego, CA 92108
Andrew Greenberg

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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 June 3, 2020

This is a counter offer to the: ☒ Purchase Agreement, ☐ Buyer Counter Offer No. _____, or ☐ Other _____ ("Offer"),
dated June 1, 2020, on property known as 809 San Rafael Pl, San Diego, CA 92109 ("Property"),
between Alan Peller, Shane Peller ("Buyer")
and 809 San Rafael Place LLC, Krista Freitag, 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:** Purchase price shall be \$1,525,000. Sale is AS-IS - no repairs, retrofits or termite clearance provided. Seller to select all services including NHD, title and escrow. Each to pay own escrow fees. Seller to pay a maximum of \$500 towards home warranty. Prior to closing the transaction, the Receiver must obtain a Court Order approving the specific sale terms agreed upon in the proposed contract of sale. The sale is subject to a public auction procedure. Once all contingencies have been removed (other than Court approval), the Receiver will file a noticed motion seeking approval of the sale, overbid procedures and broker's commissions. The property will continue to be marketed, and remain active on the MLS, throughout this process, to attempt to locate other Qualified Bidders to purchase the Property. Once the noticed motion is filed, the Receiver will publish notice of the sale for four consecutive weeks prior to the sale in a local newspaper.
 - D. The following attached addenda are incorporated into this Seller Counter offer: ☐ Addendum No. _____
☒ Addendum to Residential Purchase Agreement
2. **EXPIRATION:** This Seller Counter Offer shall be deemed revoked and the deposits, if any, shall be returned:
 - A. Unless by 5:00pm on the third Day After the date it is signed in paragraph 4 (if more than one signature then, the last signature date)(or by ☐ AM ☐ PM on _____ (date)) (i) it is signed in paragraph 5 by Buyer and (ii) a copy of the signed Seller Counter Offer is personally received by Seller or _____, who is authorized to receive it.
 - B. OR If Seller withdraws it anytime prior to Acceptance (CAR 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 809 San Rafael Place LLC, Krista Freitag Date 6/3/2020
Seller Seller Incorporating Receiver Date 6/25/2020
DocuSigned by: Jim Lane
B41ACDEBEE72
Con & Coop Beach Rentals, LLC

5. **ACCEPTANCE: I/WE accept the above Seller Counter Offer (If checked ☒ SUBJECT TO THE ATTACHED COUNTER OFFER)**

and ac DocuSigned by: _____ a Copy DocuSigned by: _____
Buyer Alan Peller Alan Peller Date 6/8/2020 Time ☐ AM/ ☐ PM
Buyer Shane Peller Shane Peller Date 6/8/2020 Time ☐ AM/ ☐ PM
0A5690D5627143E... signed by: _____ DocuSigned by: _____

CONFIRMATION OF ACCEPTANCE: 41C9BD47838347E...

(_____/_____) (Initials) **Confirmation of Acceptance:** _____
E833BF24E6A4BE... 131FBCE7E146494...
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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SCO Revised 11/14 (PAGE 1 OF 1)

SELLER COUNTER OFFER (SCO PAGE 1 OF 1)



Pacific Pines Real Estate 1001 Garnet Ave Suite 200 San Diego, CA 92109
David Zvaifler

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

Phone: 8583426038

Fax:

809 San Rafael

ADDENDUM TO CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTION

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

This Addendum to that certain California Residential Purchase Agreement and Joint Escrow Instruction dated June 1, 2020 ("Purchase Agreement") is made on June 4, 2020 by and between 809 San Rafael Place, LLC, a California limited liability company ("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-LAB-AHG ("SEC Action") and Allan & Shane Peller ("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. Broker's commission is subject to District Court approval and Broker agrees to accept as full compensation the amount approved and authorized to be paid by the District Court. The Receiver will request authority from the District Court to pay Broker the commission provided for in the Listing Agreement between Seller and broker. Broker shall inform any and all broker and agents of the buyer of the requirement of District Court approval of the commission to be paid and obtain their written acknowledgement.
5. 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."

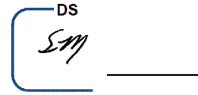
BUYER AND EACH PARTY OF BUYER ACKNOWLEDGES THAT THIS WAIVER AND RELEASE IS VOLUNTARY AND IS MADE WITHOUT ANY DURESS OR UNDUE INFLUENCE AND IS GIVEN AS

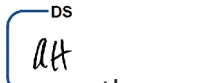
PART OF THE CONSIDERATION FOR THE PURCHASE AND SALE OF THE PROPERTY. BUYER AND EACH PARTY OF BUYER EXPRESSLY ACKNOWLEDGES THAT BUYER AND EACH PARTY OF BUYER MAY HEREAFTER DISCOVER FACTS DIFFERENT FROM OR IN ADDITION TO THOSE WHICH BUYER AND EACH PARTY OF BUYER NOW BELIEVE TO BE TRUE WITH RESPECT TO THE 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.

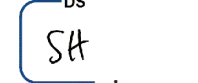
BUYER AND EACH PARTY OF BUYER SPECIFICALLY ACKNOWLEDGES THAT BUYER AND EACH PARTY OF BUYER HAS CAREFULLY REVIEWED THIS RELEASE AND THAT THE PROVISIONS OF THIS SECTION 5 OF THIS ADDENDUM ARE A MATERIAL PART OF THE PURCHASE AGREEMENT.

^{DS}

 Buyer 1
 Initials

^{DS}

 Buyer 2
 Initials

^{DS}

 Buyer 1
 Initials

^{DS}

 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 Twenty-Five Thousand Dollars (\$25,000.00) in excess of Buyer's current Purchase Price for the Property, as set forth in the _____ Counter Offer No. _____. Only Qualified Bidders (as defined below) may make bids at the Auction. All bids are subject to overbids in increments of One Thousand Dollars (\$1,000.00). 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 Ten Thousand Dollars (\$10,000.00) 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.

8. **Closing after Court approval.** Closing to occur within 10 days of the Court's Approval; however, this deadline may be extended at the sole discretion of the Receiver.
9. **Release of Deposit to Seller.** Concurrent with the Buyer's release of Buyer's contingencies, the buyer shall instruct escrow to release the Deposit to the Seller. The Deposit must be transferred to the Seller as a condition precedent to Seller seeking court approval of the sale.

This Addendum to California Residential Purchase Agreement and Joint Escrow Instruction is made on June 4, 2020 at San Diego, California.

SELLER

809 San Rafael Place LLC a California
limited liability company

By:


Krista Freitag, Receiver

Stem in capacity as Receiver
Con & Coop Beach Rentals, LLC

DocuSigned by:
Jim Lance
B5AATCDEB8E472

LISTING BROKER

Pacific Pines Real Estate

By:

DocuSigned by:
David Zvaifler
496FD1A7B63D42A...

David Zvaifler

BUYER

Alan Peller

DocuSigned by:



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41C9BD47838347E...

DocuSigned by:



E833BFB24E6A4BE...

DocuSigned by:



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BUYER'S BROKER

Big Block Realty

By:

DocuSigned by:



Andrew

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