

1 Edward Chang (SBN 268204)  
echang@mcnamarallp.com  
2 McNAMARA SMITH LLP  
655 West Broadway, Suite 1680  
3 San Diego, California 92101  
Tel.: 619-269-0400  
4 Fax: 619-269-0401

5 *Attorneys for Receiver,*  
*Thomas W. McNamara*

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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

10  
11 PEOPLE OF THE STATE OF CALIFORNIA,  
by and through the COMMISSIONER OF  
12 BUSINESS OVERSIGHT,

13 Plaintiff,

14 v.

15 SILVER SADDLE COMMERCIAL  
DEVELOPMENT, LP, a California limited  
16 partnership; SILVER SADDLE RANCH &  
CLUB, INC., a California corporation; THE  
17 GALILEO COMMERCIAL PROPERTY  
OWNERS ASSOCIATION, INC., a California  
18 non-profit corporation; THOMAS M. MANEY,  
an individual; ACCELERATED ASSETS,  
19 LLC, an Arizona limited liability company; SS  
PURCHCO, LLC, a Delaware limited liability  
20 company; PAHRUMP VALLEY REAL  
ESTATE CO., LLC, a Nevada limited liability  
21 company; and DOES 1 through 100, inclusive,

22 Defendants.

23 And,

24 MARIAN G. DUCREUX, an individual;  
CLIFFORD J. REYNOLDS, an individual;  
25 WAYNE A. PEDERSEN, an individual; and  
Relief Does 1 through 10, inclusive,

26 Relief Defendants.  
27

Case No. 37-2019-00049151-CU-MC-CTL

**RECEIVER'S MOTION TO APPROVE  
SALE OF REAL PROPERTY OWNED  
BY SILVER SADDLE RANCH & CLUB,  
INC.**

**IMAGED FILE**

Date: August 28, 2020  
Time: 9:00 a.m. [Via CourtCall]  
Judge: Hon. Joel R. Wohlfeil  
28 Dept.: C-73

Action filed: September 9, 2019  
Trial Date: None Set Yet

1 TO THIS HONORABLE COURT, THE PARTIES, AND OTHER PARTIES IN  
2 INTEREST AND/OR THEIR COUNSEL OF RECORD:

3 Thomas W. McNamara, as Court-appointed receiver (“Receiver”), hereby moves the  
4 Court for permission to sell real property located at 20751 Aristotle Drive, California City, CA  
5 93505, APN 457-020-12 and 457-020-27, which is owned by Receivership Defendant Silver  
6 Saddle Ranch & Club, Inc. The Silver Saddle Ranch and Club Resort (the “Ranch”) is located  
7 on the property. The Receiver has received an offer to purchase the Ranch from Kevin Feterik  
8 (the “Proposed Buyer”) for \$1,774,500. The Receiver has concurrently filed an *ex parte*  
9 application seeking a hearing on this motion on July 16, 2020 at 8:30 a.m., or as soon thereafter  
10 as the matter may be heard.

11 **I.**

12 **INTRODUCTION**

13 The Ranch is the Receivership Estate’s most significant asset, but also its most significant  
14 expense. Even when operational, it was not self-sustaining and was subsidized by Defendants’  
15 investment scheme (the “Galileo Project,” sometimes marketed to investors as “LandBanking  
16 Plus”). The Ranch was used as a loss leader to house and impress potential investors who had  
17 traveled to California City to attend Galileo sales events, running up losses of nearly \$1.5 million  
18 per year. Even though Defendants had shut down the Ranch before the Receiver’s appointment,  
19 basic upkeep costs and maintenance are substantial (water bills alone were staggering when the  
20 Receiver took over)<sup>1</sup> and constitute the Receivership’s largest ongoing expense by a wide  
21 margin. The sale of the Ranch for \$1,774,500 will maximize its value and minimize additional  
22 costs to the Receivership Estate and, ultimately, provide funds to initiate a distribution to  
23 investors. The Receiver believes the present offer for the Ranch is fair and reasonable and asks  
24 the Court to approve the sale.

25 ///

26  
27 <sup>1</sup> To date, the Receiver has paid \$201,373.85 for water alone. The highest water bill was  
28 \$46,864.18 for mid-October 2019 to mid-November 2019. The lowest water bill was \$4,339.21  
for mid-March 2020 to mid-April 2020.

1 **II.**

2 **FACTUAL BACKGROUND**

3 **A. The Silver Saddle Ranch and Club Resort**

4 The Ranch was the centerpiece of Defendants’ marketing efforts. It was used by  
5 Defendants to impress potential investors (who were given materials promoting and showcasing  
6 the Ranch, tours of the Ranch, and/or a free night’s stay at the Ranch) in order to convince them  
7 to invest in the nearby Galileo Project. (See generally Receiver’s Preliminary Report at pp. 8-  
8 11.) The Ranch was pivotal to Defendants’ operations; even though it consistently operated at a  
9 loss, Defendants kept it running with subsidies from other areas of their business. (*Ibid.*) While  
10 the Ranch may be the Receivership’s most valuable asset, its costly upkeep, utilities, and  
11 insurance will soon deplete the limited funds of the Receivership if it is not sold.

12 The property is owned by Receivership Defendant Silver Saddle Ranch & Club, Inc., and  
13 sits on roughly 130 acres of land, 62 of which comprise the Ranch, which was the area that  
14 guests and employees regularly frequented. The Ranch includes six primary buildings: a Club  
15 House with a restaurant, saloon, game room, library, hotel lobby, fitness center, and offices; an  
16 Administration building used by staff; a Sales Pavilion<sup>2</sup>; and three buildings with a total of  
17 48 motel-type rooms to house guests. In addition to these structures, the Ranch includes a stable  
18 and adjacent corrals for animals, as well as a variety of amenities which were offered to guests:

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26 <sup>2</sup> The Sales Pavilion, parking, and other related improvements are located on a 24-acre parcel,  
27 APN 457-020-11, which is owned by the City of California City and leased to Silver Saddle  
28 Ranch & Club, Inc. under a long-term ground lease which expires April 17, 2027. As part of the  
proposed sale, the Receiver and the Proposed Buyer will work cooperatively during the escrow  
period to secure the City of California City’s consent to an assignment of the ground lease to the  
Proposed Buyer.

1 two swimming pools, a hot tub, man-made lakes, an RV park, and space for various sporting  
2 activities (miniature golf, basketball, tennis, volleyball, and badminton courts, etc.).<sup>3,4</sup>

3 On June 11, 2020, the Receiver sent an email to all Galileo Project investors informing  
4 them of the Receiver's intention to list and sell the Ranch. (See Chang Decl. at Ex. 1.) Since  
5 then, approximately 25 investors have contacted the Receiver via email and letters expressing  
6 opposition to the sale. While some investors oppose the sale, the Galileo Project investors do not  
7 have an interest in the property as the Ranch is owned solely by Receivership Defendant Silver  
8 Saddle Ranch & Club, Inc.<sup>5</sup> Nonetheless, the Receiver has carefully considered the investors'  
9 objections. Given the significant and ongoing operating expenses, the sale of the property  
10 (which will eliminate operating costs, in addition to providing a recovery for the investors) is  
11 necessary and in the investors' best interests. Since the Receivership Estate has limited funds, it  
12 cannot continue to pay the costly expenses to maintain and protect the property indefinitely. For  
13 the reasons discussed below, the Proposed Buyer's purchase price of \$1,774,500 is fair, and  
14 accordingly the Receiver asks the Court to approve the sale of the Ranch.<sup>6</sup>

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17 \_\_\_\_\_  
18 <sup>3</sup> Previously, certain activities offered at the Ranch actually occurred on Galileo Project land.  
19 Specifically, a portion of a large man-made lake, camp group, archery range, and trap and skeet  
20 shooting range are located on approximately 19.7 acres of the Galileo Project (APN 457-020-  
05). The Proposed Buyer has also offered to purchase the Galileo Project parcels. After the sale  
of the Ranch is complete, the Receiver will file a separate motion to sell the Galileo Project  
parcels free and clear of liens and encumbrances to the Proposed Buyer for \$775,500.

21 <sup>4</sup> We note that many of these amenities were modestly constructed, outdated, and poorly  
22 maintained.

23 <sup>5</sup> The Galileo Commercial Property Owners Association, Inc. did at one point hold an  
24 irrevocable option to buy the Ranch at \$500,000, but the ability to exercise that option expired in  
January 2017. (See Receiver's Preliminary Report at pp. 9-10).

25 <sup>6</sup> As noted above, the Receiver will be filing a second motion in which he will seek Court  
26 permission to sell the Galileo Project parcels. These parcels are significantly less valuable than  
27 the Ranch and are presently encumbered by more than 1,700 fractional interests issued to Galileo  
28 investors by the Defendants as part of the investment scheme at the heart of this case. The  
Receiver will seek the Court's authorization to sell the parcels free and clear of liens and  
encumbrances. Absent the ability to sell the parcels free and clear of liens and encumbrances,  
the Galileo parcels will not be sellable. And, like the sale of the Ranch, the proceeds from the  
sale of the Galileo parcels will be ultimately be distributed to the investors.

1           **B.       Marketing Efforts for the Property**

2           The Receiver’s team interviewed several brokers before selecting the real estate firm  
3 Kidder Mathews to market and sell the property. Teresia Knight and Greg Myers are the listing  
4 agents with Ms. Knight being primarily responsible for marketing the Ranch. She is eminently  
5 qualified to do so: with 23 years of experience, Ms. Knight specializes in the sale of retreat/camp  
6 properties throughout California as well as commercial real estate sales and leasing throughout  
7 the Inland Empire area of Southern California, and is involved in more than two million square  
8 feet worth of transactions on a yearly basis. (Knight Decl. ¶ 1.)

9           The property was listed on May 8, 2020, for \$1,895,000. (Knight Decl. ¶ 5.) The  
10 original listing price included approximately 288 acres, which included one of the Galileo  
11 Project parcels of approximately 158 acres (APN 457-020-05). (*Ibid.*). The listing price was  
12 determined after Ms. Knight and her partner toured the Ranch, reviewed the appraisal, and  
13 assessed the condition and location of the property. (*Ibid.*) The asking price was later adjusted  
14 downward to \$1,769,500 to reflect the removal of a 158-acre Project Galileo parcel. This parcel  
15 is now part of the separate offering of the 1,022 acre Galileo Project parcels. Since its listing,  
16 Kidder Mathews and Ms. Knight have actively marketed the property, using a customized  
17 marketing strategy and promoting it through a number of channels. (*Id.* ¶ 6.) To date,  
18 12,695 emails have been sent directly to brokers in Kidder Mathews’ west coast offices  
19 (including Phoenix, Arizona), the American Industrial Real Estate Association, and LoopNet  
20 internet listing service. (*Id.* ¶¶ 6-7.) Kidder Mathews also developed a promotional brochure to  
21 distribute directly to potential buyers or brokers who expressed an interest, and to date, at least  
22 30 such brochures have been distributed. (*Id.* ¶ 8.)

23           **C.       Past Offers and the Current Offer**

24           The Receiver has received four offers for the property in the approximately two plus  
25 months the Ranch has been on the market. The first offer, which was made on May 30, 2020,  
26 did not appear to come from a legitimate and qualified buyer, and accordingly, the Receiver  
27 required a deposit of the full purchase price into escrow before he would consider signing a

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1 purchase agreement.<sup>7</sup> (See Knight Decl. ¶ 9.) This potential purchaser's proof of funds was  
2 suspicious, and he did not follow through with a deposit into escrow. (See *ibid.*)

3 After that, the Receiver quickly received offers from two competing parties. Kevin  
4 Feterik made his first offer on June 9, 2020, which was dependent on financing and only  
5 provided a minimal deposit. (Knight Decl. ¶ 10.) The Receiver countered, requiring a deposit of  
6 \$100,000 and an all-cash payment (*i.e.*, no financing contingency). (*Ibid.*)

7 On June 15, 2020 a third offer was made when an organization submitted an all cash  
8 offer with an earnest money deposit of \$100,000, a 30-day inspection period, and a 30-day  
9 escrow (Knight Decl. ¶ 11.) This third offeror later increased the earnest money deposit to  
10 \$250,000 and shortened the contingency period to 20 days and escrow closing to 15 days  
11 thereafter. (*Id.* ¶ 12.) While the Receiver considered the third offer, the organization's proof of  
12 funds was from an entirely different entity (as opposed to the organization itself). The third  
13 offeror was informed that the Receiver would hold their offer as a backup. (*Ibid.*)

14 On June 24, the Receiver received another offer from a fourth party who planned to  
15 operate an entertainment venue. (Knight Decl. ¶ 13.) While the fourth party provided proof of  
16 funds, they appeared to lack the necessary capital needed to develop an entertainment venue.  
17 (*Ibid.*) They also appeared to lack the necessary hospitality experience. (*Ibid.*) The fourth party  
18 was informed that the Receiver had decided to proceed with another buyer and would hold their  
19 offer as a backup. (*Ibid.*)

20 After making his initial offer, Mr. Feterik became interested in purchasing the Galileo  
21 Project parcels alongside the Ranch. (Knight Decl. ¶ 14.) He made an offer to purchase the  
22 Ranch for \$1,774,500 and the Galileo Project parcels for \$775,500, which the Receiver accepted  
23 on July 2, 2020. (*Ibid.*) Escrow for the sale of the Ranch (which is the only property addressed  
24 in this motion) opened on July 2, 2020. Mr. Feterik has deposited \$100,000 (\$75,000 for the  
25 Ranch and \$25,000 for the Galileo Project parcels) into escrow. (*Id.* ¶ 15.) He will have 30 days

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27 <sup>7</sup> The Receiver has omitted prices and party names for the competing offers in order to protect  
28 the interests of the Receivership Estate. If the property has to be listed again for any reason,  
publicly filing this information would give potential buyers a leg up that they would not have  
otherwise had.

1 from July 2 to satisfy his contingencies with an estimated closing date of 60 days after the Court  
2 approves the sale of the property.<sup>8</sup> (*Id.* ¶ 15.) Provided the Court approves the sale of the Ranch,  
3 Mr. Feterik will be required to deposit \$750,500 (the balance of the purchase price for the  
4 Galileo Project parcels) into escrow, pending the Court’s approval of that sale, which will be  
5 addressed in a separate motion.<sup>9</sup> (*Ibid.*)

6 **III.**

7 **LEGAL STANDARD**

8 “Most matters related to receiverships rest in the sound discretion of the trial court.”  
9 (*City of Sierra Madre v. SunTrust Mortg., Inc.* (2019) 32 Cal.App.5th 648, 657.) Likewise,  
10 “[t]here is wide discretion in the court in accepting a bid and confirming a judicial sale.” (*Lesser*  
11 *& Son v. Seymour* (1950) 35 Cal.2d 494, 503.) “Judicial confirmation of a receiver’s sale rests  
12 upon the appointing court’s sound discretion exercised in view of all the surrounding facts and  
13 circumstances and in the interest of fairness, justice and the rights of the respective parties.  
14 [Citation.] The proper exercise of discretion requires the court to consider all material facts and  
15 evidence and to apply legal principles essential to an informed, intelligent, and just decision.  
16 [Citation.]” (*Cal-Am. Income Prop. Fund VII v. Brown Dev. Corp.* (1982) 138 Cal.App.3d 268,  
17 274.) When evaluating whether to approve a sale, “[a] court must engage in a two-level analysis,  
18 first deciding whether a sale is required and then determining when the sale should take place.”  
19 (*Id.* at p. 275 and footnote 7.) “Deference to the trial court’s decision “is the rule, even where the  
20 court confirms extraordinary action by the receiver, such as a sale of real property.” (*City of*  
21 *Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 931.) “Where there is no evidence of fraud,  
22 unfairness, or oppression, the court has wide discretion in approving the receiver’s proposed  
23 actions.” (*Ibid.*)

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26 <sup>8</sup> In order to obtain title insurance, the property cannot close prior to 60 days after this Court’s  
27 order.

28 <sup>9</sup> As noted above, after the sale of the Ranch is completed, the Receiver will submit a separate  
motion to approve the sale of the Galileo Project parcels.

1 A receiver's sale of property, absent a court order, is controlled by California Code of  
2 Civil Procedure Section 568.5. Section 568.5 states that a receiver may sell real property in his  
3 or her possession "upon the notice and in the manner prescribed by Article 6 (commencing with  
4 Section 701.510) of Chapter 3 of Division 2 of Title 9." However, this statute does not affect  
5 "the inherent equitable power of the court to prescribe the manner in which a receiver may sell  
6 property." (*People v. Riverside Univ.* (1973) 35 Cal.App.3d 572, 585.) "[T]he trial court  
7 appointing the receiver has broad power to prescribe and, as necessary, change the manner in  
8 which property is to be sold." (*People v. Stark* (2005) 131 Cal.App.4th 184, 205.) Courts may,  
9 for example, authorize a receiver to sell property "at private sale, at the best price attainable  
10 under the circumstances." (*People v. Riverside Univ., supra*, at p. 585.)

#### 11 IV.

#### 12 DISCUSSION

13 The order appointing the Receiver authorizes him "to preserve investors' assets and to  
14 foreclose and/or actively seek and negotiate with potential buyers, assignees or other parties who  
15 may be interested in acquiring, purchasing, leasing, subleasing or renting real or personal  
16 property of Receivership Defendants and to sell, lease, sublease or rent such real or personal  
17 property of Receivership Defendants, subject to court approval." (PI ¶ 13.) As such, the PI  
18 issued by this Court authorizes the Receiver to market and sell real and personal property of the  
19 Receivership Defendants.<sup>10</sup> For the reasons discussed below, the Receiver asks the Court to  
20 approve the sale of the property to the Proposed Buyer for \$1,774,500, a price which reflects the  
21 fair market value of the property under the present circumstances.

#### 22 A. Sale of the Property Is Necessary

23 Courts must engage in a "two-level analysis" before permitting a receiver to sell property,  
24 "first deciding whether a sale is required and then determining when the sale should take place."  
25 (*Cal-Am. Income Prop. Fund VII v. Brown Dev. Corp., supra*, 138 Cal.App.3d at p. 275 and  
26 footnote 7.) The present circumstances satisfy that two-level analysis. Maintenance and

27 \_\_\_\_\_  
28 <sup>10</sup> The Receiver has kept both the DBO and Defendant Maney's counsel apprised of the property appraisal results and the intention to list and sell the property.



1 protection of the Ranch property constitute the Receivership’s largest monthly expense. (*See*  
2 *generally* Receiver’s First Interim Status Report at pp. 2-4.) As previously reported, Defendants  
3 shut down the Ranch before the Receiver’s appointment. But the Ranch was never profitable  
4 when it was operating, losing nearly \$1.5 million per year. As noted above and in the Receiver’s  
5 Preliminary Report, Defendants used the Ranch as a loss leader to lure investors. (*See*  
6 Receiver’s Preliminary Report at p. 2.) Even though the Receiver has gone to great lengths to  
7 minimize expenses, if the property is not sold in the near term, its upkeep will exhaust the  
8 Receivership Estate’s remaining funds. As such, the sale of the property is necessary (the Ranch  
9 cannot operate profitably and will continue to drain the Receivership Estate’s resources absent a  
10 sale) and must take place soon (the longer the property goes unsold, the greater the cost to the  
11 Receivership Estate).

12 **B. The Current Offer Should Be Approved**

13 When evaluating a receiver’s potential sale of property, courts look to “the surrounding  
14 facts and circumstances and in the interest of fairness, justice and the rights of the respective  
15 parties.” (*See Cal-Am. Income Prop. Fund VII v. Brown Dev. Corp., supra*, 138 Cal.App.3d at p.  
16 274.) The Receiver submits that the facts and circumstances present here support approval of the  
17 sale to the Proposed Buyer. As discussed above, the property was extensively marketed by the  
18 listing agents. The Proposed Buyer’s offer is the result of competitive bidding between  
19 motivated buyers, making the offer inherently fair and reasonable.<sup>11</sup>

20 **C. Private Sale Should Be Authorized**

21 The PI authorizes the Receiver to market and sell real and personal property of the  
22 Receivership Defendants. A receiver’s sale of such property is governed by Code of Civil  
23 Procedure § 568.5, which (absent a court order directing otherwise) provides for a sale “upon the  
24 notice and in the manner prescribed by Article 6.” (Code Civ. Proc., § 568.5.) Article 6 contains  
25 a number of antiquated and restrictive requirements, however, which would almost certainly  
26

27 <sup>11</sup> The Receiver obtained an appraisal of the property and the Galileo Project. A copy of the  
28 appraisal has already been provided to counsel for DBO and defendant Maney. If requested, the  
Receiver can submit a copy of the appraisal under seal for the Court’s consideration.

1 result in a smaller amount of net proceeds to the estate. (See, e.g., Code Civ. Proc., §§ 701.540  
2 [requiring posting of notice, service of notice on property occupant, publication of notice],  
3 701.545 [notice of sale cannot be given until 120 days after notice was served on judgment  
4 debtor], & 701.570 [sale at auction to highest bidder].) Complying with these requirements  
5 would cause the Receivership Estate to expend what little resources it has on unnecessary  
6 expenses without providing any value and, in fact, almost certainly resulting in decreased net  
7 proceeds to the estate. Compliance with Article 6 would inevitably push out the date of sale (at a  
8 minimum) and cause the Receivership Estate to incur more expenses in the interim. It would  
9 also jeopardize the present proposed sale to the Proposed Buyer. In short, the statutory  
10 mechanism is not a realistic alternative to a private sale here.

11 The property has already been extensively marketed as discussed above and received  
12 multiple offers from competing parties. The Court has the authority to authorize a receiver to  
13 sell property “at private sale, at the best price attainable under the circumstances.” (*People v.*  
14 *Riverside Univ., supra*, at p. 585.) The Receiver asks that the Court authorize him to sell the  
15 property as proposed to the Proposed Buyer.

16 V.

17 **CONCLUSION**

18 For the foregoing reasons, the Receiver asks that the Court approve the sale of the Ranch  
19 with clear title to the Proposed Buyer for \$1,774,500.

20 Dated: July 10, 2020

McNAMARA SMITH LLP

21  
22 By: 

Edward Chang  
Attorneys for Receiver,  
Thomas W. McNamara

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1 **PROOF OF SERVICE**

2 I, Jill Jacobs, declare as follows:

3 I am an employee of a member of the bar of this Court at whose direction was made in the  
4 County of San Diego, State of California. I am over the age of 18 and not a party to the within  
action; my business address is 655 West Broadway, Suite 1680, San Diego, California 92101.

5 On July 10, 2020, I served the foregoing document(s) described as:

- 6 • **RECEIVER’S MOTION TO APPROVE SALE OF REAL PROPERTY OWNED BY SILVER SADDLE RANCH & CLUB, INC.**
- 7
- 8 • **DECLARATION OF EDWARD CHANG IN SUPPORT OF RECEIVER’S MOTION TO APPROVE SALE OF REAL PROPERTY**
- 9
- 10 • **DECLARATION OF TERESIA KNIGHT IN SUPPORT OF RECEIVER’S MOTION TO APPROVE SALE OF REAL PROPERTY OWNED BY SILVER SADDLE RANCH & CLUB, INC.**

11 on interested parties in this action by sending  the original  true copy(ies) thereof as follows:

12  By First Class Mail: I am readily familiar with the firm’s practice of collection and  
13 processing correspondence for mailing with the United States Postal Service. Under that  
14 practice, it would be deposited with United States postal service on that same day with postage  
thereon fully prepaid at San Diego, California in the ordinary course of business. The envelope  
15 was sealed and placed for collection and mailing on that date following ordinary business  
practices.

16  By Email: I caused the documents to be sent to the persons at the email address(es) listed  
below. I did not receive, within a reasonable time after the transmission, any electronic message  
or other indication that the transmission was unsuccessful.

17 **VIA EMAIL & U.S. MAIL**

18 Robert R. Lux  
19 Boryana Arsova  
Department of Business Oversight  
1350 Front Street, #2034  
20 San Diego, CA 92101  
Tel.: 619-525-3729  
21 Fax: 619-525-4045  
robert.lux@dbo.ca.gov  
22 boryana.arsova@dbo.ca.gov  
*Attorneys for Plaintiff*

17 **VIA EMAIL & U.S. MAIL**

Mark T. Hiraide  
Mitchell Silberberg & Knupp LLP  
2049 Century Park East, 18th Floor  
Los Angeles, CA 90067-3120  
Tel.: 310-312-2000  
Fax: 310-312-3100  
mth@msk.com  
*Attorneys for Defendants Thomas M. Maney;  
Silver Saddle Commercial Development, LP;  
and Silver Saddle Ranch & Club, Inc.*

1 **VIA EMAIL & U.S. MAIL**

2 Orlando F. Cabanday  
3 Cabanday Law Group  
4 21221 South Western Avenue, Suite 208  
5 Torrance, CA 90501  
6 Tel.: 310-997-2558  
7 Fax: 310-984-1735  
8 orlando@cabandaylawgroup.com  
9 *Attorneys for Relief Defendant, Marian G.*  
10 *Ducreux*

11 **VIA EMAIL & U.S. MAIL**

12 Joseph Pertel  
13 Law Office of Joseph A. Pertel  
14 1717 Fourth Street, Suite 300  
15 Santa Monica, CA 90401  
16 jpertel@yahoo.com  
17 *Attorneys for Defendant Kelly A. Maney*

18 **VIA EMAIL & U.S. MAIL**

19 Antonio Garcia (United Owner Investors, Inc.)  
20 Carlos Novelo (United Owner Investors, Inc.)  
21 4636 Richins Lane  
22 Las Vegas, NV 89122  
23 Tel.: 702-351-6560  
24 galileounitowners@gmail.com  
25 *In Pro Per*

26 **VIA U.S. MAIL**

27 Clifford J. Reynolds  
28 2525 North 20th Avenue  
Pasco, WA 99301  
*Defendant in Pro Per*

**VIA U.S. MAIL**

Pahrump Valley Real Estate Co., LLC  
255 East Brown Street, Suite 300  
Birmingham, MI 48009

**VIA EMAIL & U.S. MAIL**

Jonah A. Toleno  
Joseph M. Mellano  
Shustak Reynolds & Partners, P.C.  
401 West "A" Street, Suite 2200  
San Diego, CA 92101  
Tel.: 619-696-9500  
Fax: 619-615-5290  
jtoleno@shufirm.com  
jmellano@shufirm.com  
*Attorneys for Relief Defendant, Wayne A.*  
*Pedersen*

**VIA EMAIL & U.S. MAIL**

Nicolas Morgan  
Paul Hastings LLP  
515 S. Flower Street, 25<sup>th</sup> Floor  
Los Angeles, CA 90071  
Tel.: 213-683-6000  
Fax: 213-627-0705  
nicolasmorgan@paulhastings.com  
*Attorneys for Relief Defendant SS Purchco,*  
*LLC*

**VIA U.S. MAIL**

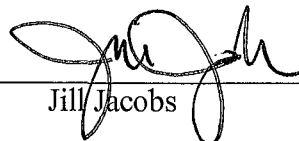
Galileo Commercial Property Owners  
Association, Inc.  
3430 E. Flamingo Road, Suite 251  
Las Vegas, NV 89121  
Tel.: 702-351-6560

**VIA U.S. MAIL**

Accelerated Assets, LLC  
255 East Brown Street, Suite 300,  
Birmingham, MI 48009

(STATE): I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed July 10, 2020, in San Diego, California.

  
\_\_\_\_\_  
Jill Jacobs

1 Edward Chang (SBN 268204)  
echang@mcnamarallp.com  
2 McNAMARA SMITH LLP  
655 West Broadway, Suite 1680  
3 San Diego, California 92101  
Tel.: 619-269-0400  
4 Fax: 619-269-0401

5 *Attorneys for Receiver,*  
*Thomas W. McNamara*  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

11 PEOPLE OF THE STATE OF CALIFORNIA,  
by and through the COMMISSIONER OF  
12 BUSINESS OVERSIGHT,

13 Plaintiff,

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15 SILVER SADDLE COMMERCIAL  
DEVELOPMENT, LP, a California limited  
16 partnership; SILVER SADDLE RANCH &  
CLUB, INC., a California corporation; THE  
17 GALILEO COMMERCIAL PROPERTY  
OWNERS ASSOCIATION, INC., a California  
18 non-profit corporation; THOMAS M. MANEY,  
an individual; ACCELERATED ASSETS,  
19 LLC, an Arizona limited liability company; SS  
PURCHCO, LLC, a Delaware limited liability  
20 company; PAHRUMP VALLEY REAL  
ESTATE CO., LLC, a Nevada limited liability  
21 company; and DOES 1 through 100, inclusive,

22 Defendants.

23 And,

24 MARIAN G. DUCREUX, an individual;  
CLIFFORD J. REYNOLDS, an individual;  
25 WAYNE A. PEDERSEN, an individual; and  
Relief Does 1 through 10, inclusive,  
26

27 Relief Defendants.  
28

Case No. 37-2019-00049151-CU-MC-CTL

**DECLARATION OF EDWARD CHANG  
IN SUPPORT OF RECEIVER'S MOTION  
TO APPROVE SALE OF REAL  
PROPERTY**

**IMAGED FILE**

Date: August 28, 2020  
Time: 9:00 a.m. [Via CourtCall]  
Judge: Hon. Joel R. Wohlfeil  
Dept.: C-73

Action filed: September 9, 2019  
Trial Date: None Set Yet

1 I, Edward Chang, hereby declare as follows:

2 1. I am counsel of record for Thomas W. McNamara in his capacity as Court-  
3 appointed Receiver of the Receivership Defendants. I have personal knowledge of the facts set  
4 forth in this Declaration and if called as a witness I could and would competently testify to the  
5 facts stated herein.

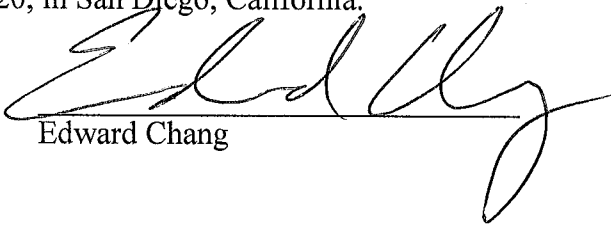
6 2. I make this declaration in connection with the Receiver's concurrently filed  
7 Motion to Approve Sale of Real Property.

8 3. I have personal knowledge of the facts set forth in this Declaration and if called as  
9 a witness I could and would competently testify to the facts stated herein.

10 4. On June 11, 2020, an email blast was sent out to the emails on file for the Galileo  
11 Project investors. A true and correct copy of the body of that email blast is attached hereto as  
12 Exhibit 1.

13 I declare under penalty of perjury under the laws of the United States that the foregoing is  
14 true and correct.

15 Executed this 10th day of July, 2020, in San Diego, California.

16   
17 Edward Chang

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**EXHIBIT INDEX**

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**Exhibit**

**Page**

1     Email Blast to Investors (June 11, 2020) ..... 1

# EXHIBIT 1



**Silver Saddle Receivership**  
**June 11, 2020 Email Blast to Investors**

**Silver Saddle Receivership Update**

\*\*\*DO NOT “REPLY” TO THIS EMAIL. If you have questions, send them to [info@regulatoryresolutions.com](mailto:info@regulatoryresolutions.com) with the subject **Silver Saddle**.\*\*\*

As you know, in September 2019, the California Department Business Oversight (“DBO”) filed a lawsuit regarding the **Galileo Project** (also known as Landbank Plus investment) offered through **Silver Saddle Ranch and Club, Inc.** The Court issued a Temporary Restraining Order (“TRO”) and appointed Thomas W. McNamara as receiver (“Receiver”) over **Silver Saddle Ranch and Club, Silver Saddle Commercial Development, and Galileo Commercial Property Owners Association.** In October 2019, the Court issued a Preliminary Injunction confirming the restraining order and the Receiver’s appointment. Prior to the TRO, the defendants had closed Silver Saddle Ranch and Club because it operated at a loss; the Ranch remains closed.

DBO also named a number of individuals as defendants. These include **Thomas Maney, Kelly Maney, Maria Rosales, Robert Kvassay, and Richard Huebner,** as defendants, and relief defendants **Marian Ducreux, Clifford Reynolds, and Wayne Pedersen.**

In May 2020, DBO filed an amended complaint, adding additional defendants, **Accelerated Assets, LLC, SS Purcho, LLC, and Pahrump Valley Real Estate Co., LLC.** DBO also filed a motion for preliminary injunction to stop these additional corporate defendants from collecting money related to the Galileo Project. The Court is currently scheduled to hear DBO’s motion for preliminary injunction on July 24, 2020 at 9:00 a.m.

Copies of the court filings and other relevant documents are available at the Receiver’s website: <https://regulatoryresolutions.com/case/people-v-silver-saddle-commercial-development-lp-et-al/>.

On March 13, 2020, the Receiver filed the first status report. In sum, the Receiver (1) completed the efforts to vacate the Burbank office and relocate the business records to the Ranch (which defendants had in process at the time of the TRO); (2) retained a former employee to be the full-time caretaker of the Ranch; (3) secured insurance for the Ranch; and (4) continued to minimize operating expenses at the Ranch. A copy of the report is available on the Receiver’s website.

Even though operating expenses have been reduced, maintaining the Ranch continues to drain the limited resources of the Receivership Estate. For the five-month period of September 2019 to March 2020, water, electricity, labor, and insurance costs for the Ranch was approximately \$230,000. Because of these ongoing costs, we have determined selling the Ranch is in the best interest of the Receivership Estate. After obtaining an extensive appraisal, the Receiver’s team interviewed and selected a broker, Kidder Mathews, to sell the Ranch. It is currently listed for \$1,895,000. A copy of the listing brochure is available on the Receiver’s website.

We will continue to send emails out periodically, but please check the Receiver’s website for updates: <https://regulatoryresolutions.com/case/people-v-silver-saddle-commercial-development-lp-et-al/>. There is also a list of Frequently Asked Questions (“FAQs”) on the website. After reviewing the website and FAQs fully if you still have a question that is not answered please email [info@regulatoryresolutions.com](mailto:info@regulatoryresolutions.com) with the subject **Silver Saddle**.

1 Edward Chang (SBN 268204)  
echang@mcnamarallp.com  
2 McNAMARA SMITH LLP  
655 West Broadway, Suite 1680  
3 San Diego, California 92101  
Tel.: 619-269-0400  
4 Fax: 619-269-0401

5 *Attorneys for Receiver,*  
*Thomas W. McNamara*  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

11 PEOPLE OF THE STATE OF CALIFORNIA,  
by and through the COMMISSIONER OF  
12 BUSINESS OVERSIGHT,

13 Plaintiff,

14 v.

15 SILVER SADDLE COMMERCIAL  
DEVELOPMENT, LP, a California limited  
16 partnership; SILVER SADDLE RANCH &  
CLUB, INC., a California corporation; THE  
17 GALILEO COMMERCIAL PROPERTY  
OWNERS ASSOCIATION, INC., a California  
18 non-profit corporation; THOMAS M. MANEY,  
an individual; ACCELERATED ASSETS,  
19 LLC, an Arizona limited liability company; SS  
PURCHCO, LLC, a Delaware limited liability  
20 company; PAHRUMP VALLEY REAL  
ESTATE CO., LLC, a Nevada limited liability  
21 company; and DOES 1 through 100, inclusive,

22 Defendants.

23 And,

24 MARIAN G. DUCREUX, an individual;  
CLIFFORD J. REYNOLDS, an individual;  
25 WAYNE A. PEDERSEN, an individual; and  
Relief Does 1 through 10, inclusive,  
26

27 Relief Defendants.  
28

Case No. 37-2019-00049151-CU-MC-CTL

**DECLARATION OF TERESIA KNIGHT  
IN SUPPORT OF RECEIVER'S MOTION  
TO APPROVE SALE OF REAL  
PROPERTY OWNED BY SILVER  
SADDLE RANCH & CLUB, INC.**

**IMAGED FILE**

Date: August 28, 2020  
Time: 9:00 a.m. [Via CourtCall]  
Judge: Hon. Joel R. Wohlfeil  
Dept.: C-73

Action filed: September 9, 2019  
Trial Date: None Set Yet

1 I, Teresia Knight, hereby declare as follows:

2 1. I am over the age of eighteen (18) and I have personal knowledge of the facts set  
3 forth in this Declaration and if called as a witness I could and would competently testify to the  
4 facts stated herein.

5 2. I make this declaration in connection with the Receiver's concurrently filed  
6 Motion to Approve Sale of Real Property Owned by Silver Saddle Ranch & Club, Inc.

7 3. I am a licensed real estate agent and Senior Vice President at Kidder Mathews. I  
8 specialize in the sale of retreat/camp properties throughout California as well as in commercial  
9 real estate sales and leasing throughout the Inland Empire area of Southern California. For the  
10 past 23 years, I have been a top producing agent, and have consistently been recognized as a top  
11 producer and a noted top broker in the industry. On a yearly basis, I am involved in over two  
12 million square feet worth of transactions.

13 4. I was retained Thomas W. McNamara, the Court-appointed Receiver of the  
14 Receivership Defendants (Silver Saddle Commercial Development, LP, Silver Saddle Ranch &  
15 Club, Inc., and The Galileo Commercial Property Owners Association, Inc.) to market and sell  
16 real property owned by the Receivership Defendants.

17 5. On May 8, 2020, the property located at 20751 Aristotle Drive, California City,  
18 CA 93505, approximately 288 acres (APN 457-020-12, 457-020-27, and 457-020-05)  
19 comprising the Silver Saddle Ranch & Club and referred to herein as the "Ranch" was listed for  
20 sale for \$1,895,000.00. Prior to its listing, my partner and I toured the property, reviewed the  
21 appraisal, and decided that based on the location and condition of the property, a listing price of  
22 \$1,895,000.00 was appropriate.

23 6. Since being listed the Ranch has been, and continues to be, actively marketed.  
24 Showings are by appointment only, and occur only if proof of funds are provided. I prepared a  
25 unique marketing strategy for the Ranch, which is attached hereto as Attachment A. That  
26 strategy utilizes a number of different channels to market the property, including the use of direct  
27 mailings (primarily to owners of resorts and camps within Southern California, but also to others  
28 who may have a non-standard use for the property); multiple listing services (AIR (American

1 Industrial Real Estate Association), Loop Net Internet listing service, Co-Star Internet listing  
2 service, MLS (Multiple Listing Service) and the Kidder Mathews of California Internal listing  
3 service); broker networks, and personal broker contact.

4 7. To date, 12,695 email blasts have been sent out directly to brokers with all Kidder  
5 Mathews offices on the entire West Coast (including Phoenix, Arizona), the AIR, and LoopNet.

6 8. At least thirty brochures have been provided to potential buyers and brokers (for  
7 their clients) to date. The marketing brochure for the property, attached hereto as Attachment B,  
8 is a professional, glossy publication with a detailed map of the property and pictures of the  
9 grounds. In addition to distribution of the brochures, information has been provided to interested  
10 buyers and brokers by telephone.

11 9. On May 30, 2020, an offer was made for the Ranch. I received proof of funds  
12 from the potential buyer, which I forwarded on to the Receiver. The Receiver did not believe the  
13 proof of funds was legitimate and instructed me to convey to the potential buyer that the entire  
14 purchase price would need to be deposited into escrow before he would move forward. The first  
15 potential buyer did not deposit the required funds.

16 10. On June 9, 2020, a second offer was made for the Ranch by Kevin Feterik. The  
17 offer was fully financed and initially Mr. Feterik was only willing to provide a \$20,000 deposit.  
18 The Receiver countered, requiring a deposit of \$100,000 and all cash (*i.e.*, no financing  
19 contingency).

20 11. On June 15, 2020, a third offer was made for the Ranch by an organization. The  
21 offer was all cash with an earnest money deposit of \$100,000, a 30-day inspection period, and a  
22 30-day escrow. The third potential buyer provided proof of funds in an account held under the  
23 name of a different company.

24 12. On June 22, 2020, the third offeror submitted a revised offer increasing the  
25 earnest money deposit to \$250,000 and shortening the inspection period to 20 days and escrow to  
26 15 days. The Receiver determined that this offer would be held as a backup and this was  
27 conveyed to the third offeror.

28



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**Attachment**

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A Kidder Mathews Marketing Strategy ..... 1  
B Kidder Mathews Sales Brochure..... 2  
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ATTACHMENT A



# MARKETING STRATEGY

## PROCESS & STRATEGY

### DIRECT MAILINGS

We prepare and distribute a mailing piece to owners of resorts and camps within Southern California using SIC Codes. We believe that targeting owners of this specific type of property will uncover potential Buyers.

We have also identified three uses for this property outside of the standard Camp/resort use as prospective Buyers that will also receive a direct mail piece.

### MULTIPLE LISTING SERVICES

Immediately upon being appointed exclusive agent to market a property, we prepare a custom informational brochure and then forward it for publication in the following multiple

services. The AIR (American Industrial Real Estate Association), Loop Net Internet listing service, Co-Star Internet listing service, MLS (Multiple Listing Service) and the Kidder Mathews of California Internal listing service.

### INTERNAL DISTRIBUTION

At our first staff meeting after receiving the assignment, we discuss the specifications of the property with our entire office teams of Kidder Mathews of California product specialists. The team brainstorms the current inventory or prospects whose requirements could be fulfilled by the features of the listed property. We make available to the entire company, the information they need to provide it to their prospective clients and we stand ready to assist them at all times.

### KIDDER MATHEWS OF CALIFORNIA

As the exclusive member of Kidder Mathews of California, we offer our clients expert representation and experience on a local, national and international level.

### HORIZONTAL MARKETING

We identify certain segments of the market, which would most likely benefit from the features of your property. We then conduct a comprehensive and continuous program of marketing to Buyers in that particular type of business so that they are constantly kept apprised of the availability of the property.

### BROKER NETWORK

We email our marketing brochure to every commercial brokerage office throughout Southern California including all of the Kidder Mathews offices in California, Oregon, Washington, Arizona and Nevada. We continue to follow-up this program with a broker direct mail piece.

### BROKER MAILINGS

The Cooperation of other Brokers and our frequent communication with them is crucial to our success in marketing the project. We shall insure all cooperating brokers receive the following on an on-going basis.

Marketing flyers including fact sheets on listed properties or modifications which reflect changes in offering terms for previously listed properties.

Site plans, property layout plans and parcel maps as well as brochures and marketing instructions.

### PERSONAL BROKER CONTACT

We personally contact Brokers on a regular basis to discuss the listed property. There is nothing like the personal touch to reinforce our good relationships with cooperating Brokers while elaborating on various intangibles that are difficult to express in a brochure.

We aggressively cultivate our established close working relationships with cooperating Brokers in order to maximize our effectiveness in representing your property. With our Stellar reputations and our collective years of 60 years' experience, our listings are noticed quickly by Brokers.

### RESPONSIVENESS

Our unique team concept allows us to be immediately responsive to a cooperating Broker's request, whether it is for a last-minute showing, a weekend tour, or dealing with a client if the client's Broker is unavailable. Selling your property and providing the best customer service possible is our priority.



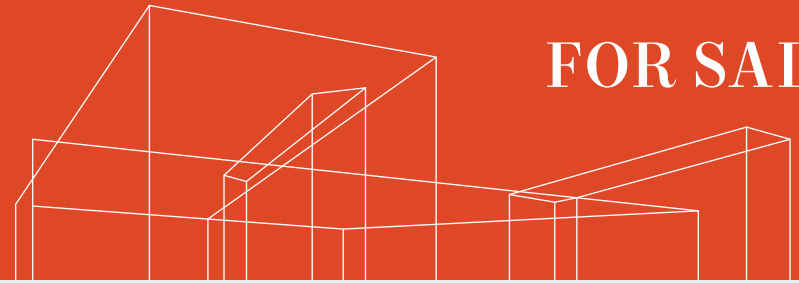
**ATTACHMENT B**



# Silver Saddle Ranch and Club Resort

20751 ARISTOTLE DRIVE, CALIFORNIA CITY, CA 93505

## FOR SALE



Approximately 288 acres of land, including multiple buildings totaling approximately 50,721 SF. Price \$1,895,000.00

**BUILDING A** (Two Story) 17 guest rooms

**BUILDING B** (Two Story) 20 guest rooms

**BUNGALOWS** (Two Buildings) 8 guest rooms

**COTTAGES** (One Building) 3 guest rooms

**CLUBHOUSE BUILDING** features a lobby, game room, billiards room, lounge, restaurant facility, commercial kitchen, and outdoor dining area

**TWO** swimming pools and Hot Tub with restrooms.

**ADMINISTRATION** building

**EQUESTRIAN CENTER** with stables

**CORRALS** and Rodeo Ring

**LARGE** central private lake with boat launch

**20** pull-through RV spaces with full hookups

**48** space campground for tents/ small RV's

**CONFERENCE** center

**TWO** small movie theaters

**TRADING** post building

**ONE** mobile home

**BOAT** house












**SPA** facility

**FOR SALE**

# Silver Saddle Ranch and Club Resort

20751 ARISTOTLE DRIVE, CALIFORNIA CITY, CA 93505

**KEY**

-  Hotel, Club House, & Pavilion
-  Parking
-  Amenities
-  Pools
-  Ponds & Lakes
-  Camping & CRV Sites
-  Park
-  Gas Tank  
250 Gallons
-  Diesel Tank  
500 Gallons
-  Propane Tank  
500-1,000 Gallons
-  Designated smoking areas

**EMERGENCY EVACUATION AREAS**

- 1** Hotel A & B and Bungalows
- 2** Club house, Restaurant, Bar, & Stables
- 3** Trap & Skeet, Archery, & Park Area
- 4** Sales Pavilion
- 5** Sales



**RECREATIONAL FACILITIES**

- Miniature Golf Course
- Driving Range
- Archery Range
- Trap & Skeet shooting Area
- Petting Zoo area
- Tennis, Basketball and Shuffleboard courts
- Children's Playground
- Exercise Room

This property is under Receivership. The Sale must be approved by the Court. Property is sold in it's "AS-IS, WHERE-AS" Condition.

**TERESIA KNIGHT**

951.217.4229

[teresia.knight@kidder.com](mailto:teresia.knight@kidder.com)

LIC N° 01228241

**GREG MYERS**

951.217.4329

LIC N° 01176067

KIDDER.COM

This information supplied herein is from sources we deem reliable. It is provided without any representation, warranty, or guarantee, expressed or implied as to its accuracy. Prospective Buyer or Tenant should conduct an independent investigation and verification of all matters deemed to be material, including, but not limited to, statements of income and expenses. Consult your attorney, accountant, or other professional advisor.



**FOR SALE**

# Silver Saddle Ranch and Club Resort

20751 ARISTOTLE DRIVE, CALIFORNIA CITY, CA 93505



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ATTACHMENT B  
Page 4

**km** Kidder  
Mathews

**FOR SALE**

# Silver Saddle Ranch and Club Resort

20751 ARISTOTLE DRIVE, CALIFORNIA CITY, CA 93505



**KIDDER.COM**

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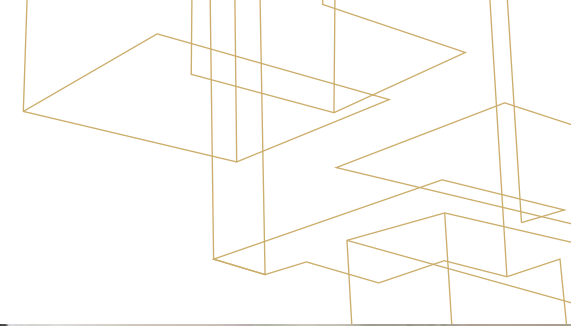
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**km Kidder Mathews**

**FOR SALE**

# Silver Saddle Ranch and Club Resort

20751 ARISTOTLE DRIVE, CALIFORNIA CITY, CA 93505



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ATTACHMENT B  
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**km** Kidder Mathews

**FOR SALE**

# Silver Saddle Ranch and Club Resort

20751 ARISTOTLE DRIVE, CALIFORNIA CITY, CA 93505



**TERESIA KNIGHT**  
951.217.4229  
[teresia.knight@kidder.com](mailto:teresia.knight@kidder.com)  
LIC N° 01228241

**GREG MYERS**  
951.217.4329  
LIC N° 01176067

KIDDER.COM

This information supplied herein is from sources we deem reliable. It is provided without any representation, warranty, or guarantee, and is not to be relied upon as to its accuracy. Prospective Buyer or Tenant should conduct an independent investigation and verification of all matters deemed to be material, including, but not limited to, statements of income and expenses. Consult your attorney, accountant, or other professional advisor.

ATTACHMENT C





STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS
FOR PURCHASE OF REAL ESTATE
(Non-Residential)

Dated: June 30, 2020

1. Buyer.

1.1 Kevin Feterik and/or Assignee, ("Buyer") hereby offers to purchase the real property, hereinafter described, from the owner thereof ("Seller") collectively, the "Parties" or individually, a "Party", through an escrow ("Escrow") to close 30 or 60 days after the waiver or satisfaction of the Buyer's Contingencies, ("Expected Closing Date") to be held by Chicago Title Company - Escrow Officer Pam Fry ("Escrow Holder") whose address is 9090 Milliken Avenue, Suite 100, Rancho Cucamonga, CA 91730, Phone No. 909.244.1718, Facsimile No. --- upon the terms and conditions set forth in this agreement ("Agreement"). Buyer shall have the right to assign Buyer's rights hereunder, but any such assignment shall not relieve Buyer of Buyer's obligations herein unless Seller expressly releases Buyer.

1.2 The term "Date of Agreement" as used herein shall be the date when by execution and delivery (as defined in paragraph 20.2) of this document or a subsequent counteroffer thereto, Buyer and Seller have reached agreement in writing whereby Seller agrees to sell, and Buyer agrees to purchase, the Property upon terms accepted by both Parties.

2. Property.

2.1 The real property ("Property") that is the subject of this offer consists of (insert a brief physical description) an approximately 129.44 acre ranch and club resort + a mobile home on approximately 980 SF is located in the County of Kern, is commonly known as (street address, city, state, zip) 20751 Aristotle Drive, California City, CA 93505 and is legally described as: TBD in Escrow (APN: 457-020-12 / 457-020-27 ).

2.2 If the legal description of the Property is not complete or is inaccurate, this Agreement shall not be invalid and the legal description shall be completed or corrected to meet the requirements of Chicago Title Company ("Title Company"), which shall issue the title policy hereinafter described.

2.3 The Property includes, at no additional cost to Buyer, the permanent improvements thereon, including those items which pursuant to applicable law are a part of the property, as well as the following items, if any, owned by Seller and at present located on the Property: electrical distribution systems (power panel, bus ducting, conduits, disconnects, lighting fixtures); telephone distribution systems (lines, jacks and connections only); space heaters; heating, ventilating, air conditioning equipment ("HVAC"); air lines; fire sprinkler systems; security and fire detection systems; carpets; window coverings; wall coverings; and TBD (collectively, the "Improvements").

2.4 The fire sprinkler monitor: [ ] is owned by Seller and included in the Purchase Price, [ ] is leased by Seller, and Buyer will need to negotiate a new lease with the fire monitoring company, [x] ownership will be determined during Escrow, or [ ] there is no fire sprinkler monitor.

2.5 Except as provided in Paragraph 2.3, the Purchase Price does not include Seller's personal property, furniture and furnishings, and --- all of which shall be removed by Seller prior to Closing. See Addendum.

3. Purchase Price.

3.1 The purchase price ("Purchase Price") to be paid by Buyer to Seller for the Property shall be \$1,774,500.00, payable as follows: (Strike any not applicable)

(a) Cash down payment, including the Deposit as defined in paragraph 4.3 (or if an all cash transaction, the Purchase Price): \$75,000.00

(b) Amount of "New Loan" as defined in paragraph 5.1, if any:

(c) Buyer shall take title to the Property subject to and/or assume the following existing deed(s) of trust ("Existing Deed(s) of Trust") securing the existing promissory note(s) ("Existing Note(s)");

(i) An Existing Note ("First Note") with an unpaid principal balance as of the Closing of approximately:

Said First Note is payable at --- per month, including interest at the rate of --- % per annum until paid (and/or the entire unpaid balance is due on ---);

(ii) An Existing Note ("Second Note") with an unpaid principal balance as of the Closing of approximately:

Said Second Note is payable at --- per month, including interest at the rate of --- % per annum until paid (and/or the entire unpaid balance is due on ---);

(d) Buyer shall give Seller a deed of trust ("Purchase Money Deed of Trust") on the property, to secure the promissory note of Buyer to Seller described in paragraph 6 ("Purchase Money Note") in the amount of:

Total Purchase Price: \$1,774,500.00

DS KE INITIALS

TAM INITIALS

~~3.2 If Buyer is taking title to the Property subject to, or assuming, an Existing Deed of Trust and such deed of trust permits the beneficiary to demand payment of fees including, but not limited to, points, processing fees, and appraisal fees as a condition to the transfer of the Property, Buyer agrees to pay such fees up to a maximum of 1.5% of the unpaid principal balance of the applicable Existing Note.~~

4. Deposits.

4.1  Buyer has delivered to Broker a check in the sum of \_\_\_\_\_, payable to Escrow Holder, to be delivered by Broker to Escrow Holder within 2 or \_\_\_\_\_ business days after both Parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder, or  within 2 or \_\_\_\_\_ business days after both Parties have executed this Agreement and the executed Agreement has been delivered to Escrow Holder Buyer shall deliver to Escrow Holder a check in the sum of \$75,000.00. If said check is not received by Escrow Holder within said time period then Seller may elect to unilaterally terminate this transaction by giving written notice of such election to Escrow Holder whereupon neither Party shall have any further liability to the other under this Agreement. Should Buyer and Seller not enter into an agreement for purchase and sale, Buyer's check or funds shall, upon request by Buyer, be promptly returned to Buyer.

~~4.2 Additional deposits:~~

- ~~(a) Within 5 business days after the Date of Agreement, Buyer shall deposit with Escrow Holder the additional sum of \_\_\_\_\_ to be applied to the Purchase Price at the Closing.~~
- ~~(b) Within 5 business days after the contingencies discussed in paragraph 9.1 (a) through (m) are approved or waived, Buyer shall deposit with Escrow Holder the additional sum of \_\_\_\_\_ to be applied to the Purchase Price at the Closing.~~
- ~~(c) If an Additional Deposit is not received by Escrow Holder within the time period provided then Seller may notify Buyer, Escrow Holder, and Brokers, in writing that, unless the Additional Deposit is received by Escrow Holder within 2 business days following said notice, the Escrow shall be deemed terminated without further notice or instructions.~~

4.3 Escrow Holder shall deposit the funds deposited with it by Buyer pursuant to paragraphs 4.1 and 4.2 (collectively the "Deposit"), in a State or Federally chartered bank in an interest bearing account whose term is appropriate and consistent with the timing requirements of this transaction. The interest therefrom shall accrue to the benefit of Buyer, who hereby acknowledges that there may be penalties or interest forfeitures if the applicable instrument is redeemed prior to its specified maturity. Buyer's Federal Tax Identification Number is TBD. NOTE: Such interest bearing account cannot be opened until Buyer's Federal Tax Identification Number is provided.

4.4 Notwithstanding the foregoing, within 5 days after Escrow Holder receives the monies described in paragraph 4.1 above, Escrow Holder shall release \$100 of said monies to Seller as and for independent consideration for Seller's execution of this Agreement and the granting of the contingency period to Buyer as herein provided. Such independent consideration is non-refundable to Buyer but shall be credited to the Purchase Price in the event that the purchase of the Property is completed.

4.5 Upon waiver of all of Buyer's contingencies the Deposit shall become non-refundable but applicable to the Purchase Price except in the event of a Seller breach, or in the event that the Escrow is terminated pursuant to the provisions of Paragraph 9.1(n) (Destruction, Damage or Loss) or 9.1(o) (Material Change).

~~5. Financing Contingency. (Strike if not applicable)~~

~~5.1 This offer is contingent upon Buyer obtaining from an insurance company, financial institution or other lender, a commitment to lend to Buyer a sum equal to at least \_\_\_\_\_% of the Purchase Price, on terms acceptable to Buyer. Such loan ("New Loan") shall be secured by a first deed of trust or mortgage on the Property. If this Agreement provides for Seller to carry back junior financing, then Seller shall have the right to approve the terms of the New Loan. Seller shall have 7 days from receipt of the commitment setting forth the proposed terms of the New Loan to approve or disapprove of such proposed terms. If Seller fails to notify Escrow Holder, in writing, of the disapproval within said 7 days it shall be conclusively presumed that Seller has approved the terms of the New Loan.~~

~~5.2 If Buyer shall fail to notify its Broker, Escrow Holder and Seller, in writing within \_\_\_\_\_ days following the Date of Agreement, that the New Loan has not been obtained, it shall be conclusively presumed that Buyer has either obtained said New Loan or has waived this New Loan contingency.~~

~~5.3 If Buyer shall notify its Broker, Escrow Holder and Seller, in writing, within the time specified in paragraph 5.2 hereof, that Buyer has not obtained said New Loan, this Agreement shall be terminated, and Buyer shall be entitled to the prompt return of the Deposit, plus any interest earned thereon, less only Escrow Holder and Title Company cancellation fees and costs, which Buyer shall pay.~~

~~6. Seller Financing (Purchase Money Note). (Strike if not applicable)~~

~~6.1 If Seller approves Buyer's financials (see paragraph 6.5) the Purchase Money Note shall provide for interest on unpaid principal at the rate of \_\_\_\_\_% per annum, with principal and interest paid as follows: \_\_\_\_\_. The Purchase Money Note and Purchase Money Deed of Trust shall be on the current forms commonly used by Escrow Holder, and be junior and subordinate only to the Existing Note(s) and/or the New Loan expressly called for by this Agreement.~~

~~6.2 The Purchase Money Note and/or the Purchase Money Deed of Trust shall contain provisions regarding the following (see also paragraph 10.3 (b)):~~

- ~~(a) Prepayment. Principal may be prepaid in whole or in part at any time without penalty, at the option of the Buyer.~~
- ~~(b) Late Charge. A late charge of 6% shall be payable with respect to any payment of principal, interest, or other charges, not made within 10 days after it is due.~~
- ~~(c) Due On Sale. In the event the Buyer sells or transfers title to the Property or any portion thereof, then the Seller may, at Seller's option, require the entire unpaid balance of said Note to be paid in full.~~

~~6.3 If the Purchase Money Deed of Trust is to be subordinate to other financing, Escrow Holder shall, at Buyer's expense prepare and record on Seller's behalf a request for notice of default and/or sale with regard to each mortgage or deed of trust to which it will be subordinate.~~

~~6.4 WARNING: CALIFORNIA LAW DOES NOT ALLOW DEFICIENCY JUDGEMENTS ON SELLER FINANCING. IF BUYER ULTIMATELY DEFAULTS ON THE LOAN, SELLER'S SOLE REMEDY IS TO FORECLOSE ON THE PROPERTY.~~

~~6.5 Seller's obligation to provide financing is contingent upon Seller's reasonable approval of Buyer's financial condition. Buyer to provide a current financial statement and copies of its Federal tax returns for the last 3 years to Seller within 10 days following the Date of Agreement. Seller has 10 days following receipt of such documentation to satisfy itself with regard to Buyer's financial condition and to notify Escrow Holder as to whether or not Buyer's financial condition is acceptable. If Seller fails to notify Escrow Holder, in writing, of the disapproval of this contingency within said time period, it shall be conclusively presumed that Seller has approved Buyer's financial condition. If Seller is not satisfied with Buyer's financial condition or if Buyer fails to deliver the required documentation then Seller may notify Escrow Holder in writing that Seller Financing will not be available, and Buyer shall have the option, within 10 days of the receipt of such notice, to either terminate this transaction or to purchase the Property without Seller financing. If Buyer fails to notify Escrow Holder within said time period of its election to terminate this transaction then Buyer shall be conclusively presumed to have elected to purchase the Property without Seller financing. If Buyer elects to terminate,~~

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~~Buyer's Deposit shall be refunded less Title Company and Escrow Holder cancellation fees and costs, all of which shall be Buyer's obligation.~~

**7. Real Estate Brokers.**

7.1 Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this transaction with the following real estate broker(s) ("Brokers") and/or their agents ("Agent(s)"):

Seller's Brokerage Firm Kidder Mathews of California License No. 01946490 is the broker of (check one):  the Seller; or  both the Buyer and Seller (dual agent).

Seller's Agent Teresia Knight License No. 01228241 is (check one):  the Seller's Agent (salesperson or broker associate); or  both the Seller's Agent and the Buyer's Agent (dual agent).

Buyer's Brokerage Firm Kidder Mathews of California License No. 01946490 is the broker of (check one):  the Buyer; or  both the Buyer and Seller (dual agent).

Buyer's Agent Teresia Knight License No. 01228241 is (check one):  the Buyer's Agent (salesperson or broker associate); or  both the Buyer's Agent and the Seller's Agent (dual agent).

The Parties acknowledge that other than the Brokers and Agents listed above, there are no other brokers or agents representing the Parties or due any fees and/or commissions under this Agreement. Buyer shall use the services of Buyer's Broker exclusively in connection with any and all negotiations and offers with respect to the Property for a period of 1 year from the date inserted for reference purposes at the top of page 1.

7.2 Buyer and Seller each represent and warrant to the other that he/she/it has had no dealings with any person, firm, broker, agent or finder in connection with the negotiation of this Agreement and/or the consummation of the purchase and sale contemplated herein, other than the Brokers and Agents named in paragraph 7.1, and no broker, agent or other person, firm or entity, other than said Brokers and Agents is/are entitled to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of such Party. Buyer and Seller do each hereby agree to indemnify, defend, protect and hold the other harmless from and against any costs, expenses or liability for compensation, commission or charges which may be claimed by any broker, agent, finder or other similar party, other than said named Brokers and Agents by reason of any dealings or act of the indemnifying Party.

**8. Escrow and Closing.**

8.1 Upon acceptance hereof by Seller, this Agreement, including any counteroffers incorporated herein by the Parties, shall constitute not only the agreement of purchase and sale between Buyer and Seller, but also instructions to Escrow Holder for the consummation of the Agreement through the Escrow. Escrow Holder shall not prepare any further escrow instructions restating or amending the Agreement unless specifically so instructed by the Parties or a Broker herein. Subject to the reasonable approval of the Parties, Escrow Holder may, however, include its standard general escrow provisions. In the event that there is any conflict between the provisions of the Agreement and the provisions of any additional escrow instructions the provisions of the Agreement shall prevail as to the Parties and the Escrow Holder.

8.2 As soon as practical after the receipt of this Agreement and any relevant counteroffers, Escrow Holder shall ascertain the Date of Agreement as defined in paragraphs 1.2 and 20.2 and advise the Parties and Brokers, in writing, of the date ascertained.

8.3 Escrow Holder is hereby authorized and instructed to conduct the Escrow in accordance with this Agreement, applicable law and custom and practice of the community in which Escrow Holder is located, including any reporting requirements of the Internal Revenue Code. In the event of a conflict between the law of the state where the Property is located and the law of the state where the Escrow Holder is located, the law of the state where the Property is located shall prevail.

8.4 Subject to satisfaction of the contingencies herein described, Escrow Holder shall close this escrow (the "Closing") by recording a general warranty deed (a grant deed in California) and the other documents required to be recorded, and by disbursing the funds and documents in accordance with this Agreement. See

**Addendum.**

8.5 Buyer and Seller shall each pay one-half of the Escrow Holder's charges and Seller shall pay the usual recording fees and any required documentary transfer taxes. Seller shall pay the premium for a standard coverage owner's or joint protection policy of title insurance. (See also paragraph 11.)

8.6 Escrow Holder shall verify that all of Buyer's contingencies have been satisfied or waived prior to Closing. The matters contained in paragraphs 9.1 subparagraphs (b), (c), (d), (e), (g), (i), (n), and (o), 9.4, 12, 13, 14, 16, 18, 20, 21, 22, and 24 are, however, matters of agreement between the Parties only and are not instructions to Escrow Holder.

8.7 If this transaction is terminated for non-satisfaction and non-waiver of a Buyer's Contingency, as defined in Paragraph 9.2 or disapproval of any other matter subject to Buyer's approval, then neither of the Parties shall thereafter have any liability to the other under this Agreement, except to the extent of a breach of any affirmative covenant or warranty in this Agreement. In the event of such termination, Buyer shall, subject to the provisions of paragraph 8.10, be promptly refunded all funds deposited by Buyer with Escrow Holder, less only the \$100 provided for in paragraph 4.4 and the Title Company and Escrow Holder cancellation fees and costs, all of which shall be Buyer's obligation. If this transaction is terminated as a result of Seller's breach of this Agreement then Seller shall pay the Title Company and Escrow Holder cancellation fees and costs.

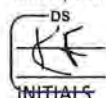
8.8 The Closing shall occur on the Expected Closing Date, or as soon thereafter as the Escrow is in condition for Closing; provided, however, that if the Closing does not occur by the Expected Closing Date and said Date is not extended by mutual instructions of the Parties, a Party not then in default under this Agreement may notify the other Party, Escrow Holder, and Brokers, in writing that, unless the Closing occurs within 5 business days following said notice, the Escrow shall be deemed terminated without further notice or instructions. See Addendum.

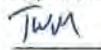
8.9 Except as otherwise provided herein, the termination of Escrow shall not relieve or release either Party from any obligation to pay Escrow Holder's fees and costs or constitute a waiver, release or discharge of any breach or default that has occurred in the performance of the obligations, agreements, covenants or warranties contained therein.

8.10 If this Escrow is terminated for any reason other than Seller's breach or default, then as a condition to the return of Buyer's deposit, Buyer shall within 5 days after written request deliver to Seller, at no charge, copies of all surveys, engineering studies, soil reports, maps, master plans, feasibility studies and other similar items prepared by or for Buyer that pertain to the Property.

**9. Contingencies to Closing.**

9.1 The Closing of this transaction is contingent upon the satisfaction or waiver of the following contingencies. **IF BUYER FAILS TO NOTIFY ESCROW HOLDER, IN WRITING, OF THE DISAPPROVAL OF ANY OF SAID CONTINGENCIES WITHIN THE TIME SPECIFIED THEREIN, IT SHALL BE CONCLUSIVELY PRESUMED THAT BUYER HAS APPROVED SUCH ITEM, MATTER OR DOCUMENT.** Buyer's conditional approval shall constitute disapproval, unless provision is made by the Seller within the time specified therefore by the Buyer in such conditional approval or by this Agreement, whichever is later, for the satisfaction of the condition imposed by the Buyer.

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Escrow Holder shall promptly provide all Parties with copies of any written disapproval or conditional approval which it receives. With regard to subparagraphs (a) through (m) the pre-printed time periods shall control unless a different number of days is inserted in the spaces provided.

(a) *Disclosure.* Seller shall make to Buyer, through Escrow, all of the applicable disclosures required by law (See AIR CRE ("AIR") standard form entitled "Seller's Mandatory Disclosure Statement") and provide Buyer with a completed Property Information Sheet ("Property Information Sheet") concerning the Property, duly executed by or on behalf of Seller in the current form or equivalent to that published by the AIR within 10 or \_\_\_\_\_ days following the **Official Opening of Escrow. Date of Agreement.** Buyer has 10 days from the receipt of said disclosures to approve or disapprove the matters disclosed.

(b) *Physical Inspection.* Buyer has 10 or 30 days following the **Official Opening of Escrow, receipt of the Property Information Sheet or the Date of Agreement, whichever is later,** to satisfy itself with regard to the physical aspects and size of the Property.

(c) *Hazardous Substance Conditions Report.* Buyer has 30 or \_\_\_\_\_ days following the **Official Opening of Escrow, receipt of the Property Information Sheet or the Date of Agreement, whichever is later,** to satisfy itself with regard to the environmental aspects of the Property. Seller recommends that Buyer obtain a Hazardous Substance Conditions Report concerning the Property and relevant adjoining properties. Any such report shall be paid for by Buyer. A "Hazardous Substance" for purposes of this Agreement is defined as any substance whose nature and/or quantity of existence, use, manufacture, disposal or effect, render it subject to Federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare. A "Hazardous Substance Condition" for purposes of this Agreement is defined as the existence on, under or relevantly adjacent to the Property of a Hazardous Substance that would require remediation and/or removal under applicable Federal, state or local law.

(d) *Soil Inspection.* Buyer has 30 or \_\_\_\_\_ days following the **Official Opening of Escrow, receipt of the Property Information Sheet or the Date of Agreement, whichever is later,** to satisfy itself with regard to the condition of the soils on the Property. Seller recommends that Buyer obtain a soil test report. Any such report shall be paid for by Buyer. Seller shall provide Buyer copies of any soils report that Seller may have within 10 days following the Date of Agreement.

(e) *Governmental Approvals.* Buyer has 30 or \_\_\_\_\_ days following the **Official Opening of Escrow-Date of Agreement** to satisfy itself with regard to approvals and permits from governmental agencies or departments which have or may have jurisdiction over the Property and which Buyer deems necessary or desirable in connection with its intended use of the Property, including, but not limited to, permits and approvals required with respect to zoning, planning, building and safety, fire, police, handicapped and Americans with Disabilities Act requirements, transportation and environmental matters.

(f) *Conditions of Title.* Escrow Holder shall cause a current commitment for title insurance ("Title Commitment") concerning the Property issued by the Title Company, as well as legible copies of all documents referred to in the Title Commitment ("Underlying Documents"), and a scaled and dimensioned plot showing the location of any easements to be delivered to Buyer within 10 or \_\_\_\_\_ days following the **Official Opening of Escrow-Date of Agreement.** Buyer has 10 days from the receipt of the Title Commitment, the Underlying Documents and the plot plan to satisfy itself with regard to the condition of title. The disapproval by Buyer of any monetary encumbrance, which by the terms of this Agreement is not to remain against the Property after the Closing, shall not be considered a failure of this contingency, as Seller shall have the obligation, at Seller's expense, to satisfy and remove such disapproved monetary encumbrance at or before the Closing.

(g) *Survey.* Buyer has 30 or \_\_\_\_\_ days following the **Official Opening of Escrow receipt of the Title Commitment and Underlying Documents** to satisfy itself with regard to any ALTA title supplement based upon a survey prepared to American Land Title Association ("ALTA") standards for an owner's policy by a licensed surveyor, showing the legal description and boundary lines of the Property, any easements of record, and any improvements, poles, structures and things located within 10 feet of either side of the Property boundary lines. Any such survey shall be prepared at Buyer's direction and expense. If Buyer has obtained a survey and approved the ALTA title supplement, Buyer may elect within the period allowed for Buyer's approval of a survey to have an ALTA extended coverage owner's form of title policy, in which event Buyer shall pay any additional premium attributable thereto.

(h) *Existing Leases and Tenancy Statements.* Seller shall within 10 or \_\_\_\_\_ days following the **Official Opening of Escrow-Date of Agreement** provide both Buyer and Escrow Holder with legible copies of all leases, subleases or rental arrangements (collectively, "Existing Leases") affecting the Property, and with a tenancy statement ("Estoppel Certificate") in the latest form or equivalent to that published by the AIR, executed by Seller and/or each tenant and subtenant of the Property. Seller shall use its best efforts to have each tenant complete and execute an Estoppel Certificate. If any tenant fails or refuses to provide an Estoppel Certificate then Seller shall complete and execute an Estoppel Certificate for that tenancy. Buyer has 10 days from the receipt of said Existing Leases and Estoppel Certificates to satisfy itself with regard to the Existing Leases and any other tenancy issues.

~~(i) *Owner's Association.* Seller shall within 10 or \_\_\_\_\_ days following the Date of Agreement provide Buyer with a statement and transfer package from any owner's association servicing the Property. Such transfer package shall at a minimum include: copies of the association's bylaws, articles of incorporation, current budget and financial statement. Buyer has 10 days from the receipt of such documents to satisfy itself with regard to the association.~~

(j) *Other Agreements.* Seller shall within 10 or \_\_\_\_\_ days following the **Official Opening of Escrow-Date of Agreement** provide Buyer with legible copies of all other agreements ("Other Agreements") known to Seller that will affect the Property after Closing. Buyer has 10 days from the receipt of said Other Agreements to satisfy itself with regard to such Agreements.

~~(k) *Financing.* If paragraph 5 hereof dealing with a financing contingency has not been stricken, the satisfaction or waiver of such New Loan contingency.~~

~~(l) *Existing Notes.* If paragraph 3.1(c) has not been stricken, Seller shall within 10 or \_\_\_\_\_ days following the Date of Agreement provide Buyer with legible copies of the Existing Notes, Existing Deeds of Trust and related agreements (collectively, "Loan Documents") to which the Property will remain subject after the Closing. Escrow Holder shall promptly request from the holders of the Existing Notes a beneficiary statement ("Beneficiary Statement") confirming: (1) the amount of the unpaid principal balance, the current interest rate, and the date to which interest is paid, and (2) the nature and amount of any impounds held by the beneficiary in connection with such loan. Buyer has 10 or \_\_\_\_\_ days following the receipt of the Loan Documents and Beneficiary Statements to satisfy itself with regard to such financing. Buyer's obligation to close is conditioned upon Buyer being able to purchase the Property without acceleration or change in the terms of any Existing Notes or charges to Buyer except as otherwise provided in this Agreement or approved by Buyer, provided, however, Buyer shall pay the transfer fee referred to in paragraph 3.2 hereof. Likewise if Seller is to carry back a Purchase Money Note then Seller shall within 10 or \_\_\_\_\_ days following the Date of Agreement provide Buyer with a copy of the proposed Purchase Money Note and Purchase Money Deed of Trust. Buyer has 10 or \_\_\_\_\_ days from the receipt of such documents to satisfy itself with regard to the form and content thereof.~~

(m) *Personal Property.* In the event that any personal property is included in the Purchase Price, Buyer has 10 or \_\_\_\_\_ days following the **Official Opening of Escrow Date of Agreement** to satisfy itself with regard to the title condition of such personal property. Seller recommends that Buyer obtain a UCC-1 report. Any such report shall be paid for by Buyer. Seller shall provide Buyer copies of any liens or encumbrances affecting such personal property that it is aware of within 10 or \_\_\_\_\_ days following the **Official Opening of Escrow. Date of Agreement.**

(n) *Destruction, Damage or Loss.* Subsequent to the Date of Agreement and prior to Closing there shall not have occurred a destruction of, or damage or loss to, the Property or any portion thereof, from any cause whatsoever, which would cost more than \$10,000.00 to repair or cure. If the cost of repair or cure is \$10,000.00 or less, Seller shall repair or cure the loss prior to the Closing. Buyer shall have the option, within 10 days after receipt of written notice of a loss costing more than \$10,000.00 to repair or cure, to either terminate this Agreement or to purchase the Property notwithstanding such loss, but without deduction or offset

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against the Purchase Price. If the cost to repair or cure is more than \$10,000.00, and Buyer does not elect to terminate this Agreement, Buyer shall be entitled to any insurance proceeds applicable to such loss. Unless otherwise notified in writing, Escrow Holder shall assume no such destruction, damage or loss has occurred prior to Closing.

(o) **Material Change.** Buyer shall have 10 days following receipt of written notice of a Material Change within which to satisfy itself with regard to such change. "**Material Change**" shall mean a substantial adverse change in the use, occupancy, tenants, title, or condition of the Property that occurs after the date of this offer and prior to the Closing. Unless otherwise notified in writing, Escrow Holder shall assume that no Material Change has occurred prior to the Closing.

(p) **Seller Performance.** The delivery of all documents and the due performance by Seller of each and every undertaking and agreement to be performed by Seller under this Agreement.

(q) **Brokerage Fee.** Payment at the Closing of such brokerage fee as is specified in this Agreement or later written instructions to Escrow Holder executed by Seller and Brokers ("**Brokerage Fee**"). It is agreed by the Parties and Escrow Holder that Brokers are a third party beneficiary of this Agreement insofar as the Brokerage Fee is concerned, and that no change shall be made with respect to the payment of the Brokerage Fee specified in this Agreement, without the written consent of Brokers. **The Commission is un-revocable, earned, due and payable at close of Escrow.**

9.2 All of the contingencies specified in subparagraphs (a) through (m) of paragraph 9.1 are for the benefit of, and may be waived by, Buyer, and may be elsewhere herein referred to as "**Buyer's Contingencies.**"

9.3 If any of Buyer's Contingencies or any other matter subject to Buyer's approval is disapproved as provided for herein in a timely manner ("**Disapproved Item**"), Seller shall have the right within 10 days following the receipt of notice of Buyer's disapproval to elect to cure such Disapproved Item prior to the Expected Closing Date ("**Seller's Election**"). Seller's failure to give to Buyer within such period, written notice of Seller's commitment to cure such Disapproved Item on or before the Expected Closing Date shall be conclusively presumed to be Seller's Election not to cure such Disapproved Item. If Seller elects, either by written notice or failure to give written notice, not to cure a Disapproved Item, Buyer shall have the right, within 10 days after Seller's Election to either accept title to the Property subject to such Disapproved Item, or to terminate this Agreement. Buyer's failure to notify Seller in writing of Buyer's election to accept title to the Property subject to the Disapproved Item without deduction or offset shall constitute Buyer's election to terminate this Agreement. The above time periods only apply once for each Disapproved Item. Unless expressly provided otherwise herein, Seller's right to cure shall not apply to the remediation of Hazardous Substance Conditions or to the Financing Contingency. Unless the Parties mutually instruct otherwise, if the time periods for the satisfaction of contingencies or for Seller's and Buyer's elections would expire on a date after the Expected Closing Date, the Expected Closing Date shall be deemed extended for 3 business days following the expiration of: (a) the applicable contingency period(s), (b) the period within which the Seller may elect to cure the Disapproved Item, or (c) if Seller elects not to cure, the period within which Buyer may elect to proceed with this transaction, whichever is later.

9.4 The Parties acknowledge that extensive local, state and Federal legislation establish broad liability upon owners and/or users of real property for the investigation and remediation of Hazardous Substances. The determination of the existence of a Hazardous Substance Condition and the evaluation of the impact of such a condition are highly technical and beyond the expertise of Brokers. The Parties acknowledge that they have been advised by Brokers to consult their own technical and legal experts with respect to the possible presence of Hazardous Substances on the Property or adjoining properties, and Buyer and Seller are not relying upon any investigation by or statement of Brokers with respect thereto. The Parties hereby assume all responsibility for the impact of such Hazardous Substances upon their respective interests herein.

#### 10. Documents and Other Items Required at or Before Closing.

10.1 Five days prior to the Closing date Escrow Holder shall obtain an updated Title Commitment concerning the Property from the Title Company and provide copies thereof to each of the Parties.

10.2 Seller shall deliver to Escrow Holder in time for delivery to Buyer at the Closing:

(a) Grant or general warranty deed, duly executed and in recordable form, conveying fee title to the Property to Buyer.

(b) If applicable, the Beneficiary Statements concerning Existing Note(s).

(c) If applicable, the Existing Leases and Other Agreements together with duly executed assignments thereof by Seller and Buyer. The assignment of Existing Leases shall be on the most recent Assignment and Assumption of Lessor's Interest in Lease form published by the AIR or its equivalent.

(d) An affidavit executed by Seller to the effect that Seller is not a "foreign person" within the meaning of Internal Revenue Code Section 1445 or successor statutes. If Seller does not provide such affidavit in form reasonably satisfactory to Buyer at least 3 business days prior to the Closing, Escrow Holder shall at the Closing deduct from Seller's proceeds and remit to the Internal Revenue Service such sum as is required by applicable Federal law with respect to purchases from foreign sellers.

(e) If the Property is located in California, an affidavit executed by Seller to the effect that Seller is not a "nonresident" within the meaning of California Revenue and Tax Code Section 18662 or successor statutes. If Seller does not provide such affidavit in form reasonably satisfactory to Buyer at least 3 business days prior to the Closing, Escrow Holder shall at the Closing deduct from Seller's proceeds and remit to the Franchise Tax Board such sum as is required by such statute.

(f) If applicable, a bill of sale, duly executed, conveying title to any included personal property to Buyer.

(g) ~~If the Seller is a corporation, a duly executed corporate resolution authorizing the execution of this Agreement and the sale of the Property.~~

~~10.3 Buyer shall deliver to Seller through Escrow:~~

(a) The cash portion of the Purchase Price and such additional sums as are required of Buyer under this Agreement shall be deposited by Buyer with Escrow Holder, by federal funds wire transfer, or any other method acceptable to Escrow Holder in immediately collectable funds, no later than 2:00 P.M. on the business day prior to the Expected Closing Date provided, however, that Buyer shall not be required to deposit such monies into Escrow if at the time set for the deposit of such monies Seller is in default or has indicated that it will not perform any of its obligations hereunder. Instead, in such circumstances in order to reserve its rights to proceed Buyer need only provide Escrow with evidence establishing that the required monies were available.

(b) If a Purchase Money Note and Purchase Money Deed of Trust are called for by this Agreement, the duly executed originals of those documents, the Purchase Money Deed of Trust being in recordable form, together with evidence of fire insurance on the improvements in the amount of the full replacement cost naming Seller as a mortgage loss payee, and a real estate tax service contract (at Buyer's expense), assuring Seller of notice of the status of payment of real property taxes during the life of the Purchase Money Note.

(c) The Assignment and Assumption of Lessor's Interest in Lease form specified in paragraph 10.2(c) above, duly executed by Buyer.

(d) Assumptions duly executed by Buyer of the obligations of Seller that accrue after Closing under any Other Agreements.

(e) If applicable, a written assumption duly executed by Buyer of the loan documents with respect to Existing Notes.

(f) If the Buyer is a corporation, a duly executed corporate resolution authorizing the execution of this Agreement and the purchase of the Property.

10.4 At Closing, Escrow Holder shall cause to be issued to Buyer a standard coverage (or ALTA extended, if elected pursuant to 9.1(g)) owner's form policy of title insurance effective as of the Closing, issued by the Title Company in the full amount of the Purchase Price, insuring title to the Property vested in Buyer, subject only to the exceptions approved by Buyer. In the event there is a Purchase Money Deed of Trust in this transaction, the policy of title insurance shall be a joint protection policy insuring both Buyer and Seller.

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IMPORTANT: IN A PURCHASE OR EXCHANGE OF REAL PROPERTY, IT MAY BE ADVISABLE TO OBTAIN TITLE INSURANCE IN CONNECTION WITH THE CLOSE OF ESCROW SINCE THERE MAY BE PRIOR RECORDED LIENS AND ENCUMBRANCES WHICH AFFECT YOUR INTEREST IN THE PROPERTY BEING ACQUIRED. A NEW POLICY OF TITLE INSURANCE SHOULD BE OBTAINED IN ORDER TO ENSURE YOUR INTEREST IN THE PROPERTY THAT YOU ARE ACQUIRING.

11. Prorations and Adjustments.

11.1 Taxes. Applicable real property taxes and special assessment bonds shall be prorated through Escrow as of the date of the Closing, based upon the latest tax bill available. The Parties agree to prorate as of the Closing any taxes assessed against the Property by supplemental bill levied by reason of events occurring prior to the Closing. Payment of the prorated amount shall be made promptly in cash upon receipt of a copy of any supplemental bill.

11.2 Insurance. WARNING: Any insurance which Seller may have maintained will terminate on the Closing. Buyer is advised to obtain appropriate insurance to cover the Property.

11.3 Rentals, Interest and Expenses. Scheduled rentals, interest on Existing Notes, utilities, and operating expenses shall be prorated as of the date of Closing. The Parties agree to promptly adjust between themselves outside of Escrow any rents received after the Closing.

11.4 Security Deposit. Security Deposits held by Seller shall be given to Buyer as a credit to the cash required of Buyer at the Closing.

11.5 Post Closing Matters. Any item to be prorated that is not determined or determinable at the Closing shall be promptly adjusted by the Parties by appropriate cash payment outside of the Escrow when the amount due is determined.

11.6 Variations in Existing Note Balances. In the event that Buyer is purchasing the Property subject to an Existing Deed of Trust(s), and in the event that a Beneficiary Statement as to the applicable Existing Note(s) discloses that the unpaid principal balance of such Existing Note(s) at the closing will be more or less than the amount set forth in paragraph 3.1(c) hereof ("Existing Note Variation"), then the Purchase Money Note(s) shall be reduced or increased by an amount equal to such Existing Note Variation. If there is to be no Purchase Money Note, the cash required at the Closing per paragraph 3.1(a) shall be reduced or increased by the amount of such Existing Note Variation.

11.7 Variations in New Loan Balance. In the event Buyer is obtaining a New Loan and the amount ultimately obtained exceeds the amount set forth in paragraph 5.1, then the amount of the Purchase Money Note, if any, shall be reduced by the amount of such excess.

11.8 Owner's Association Fees. Escrow Holder shall: (i) bring Seller's account with the association current and pay any delinquencies or transfer fees from Seller's proceeds, and (ii) pay any up front fees required by the association from Buyer's funds.

12. Representations and Warranties of Seller and Disclaimers.

12.1 Seller's warranties and representations shall survive the Closing and delivery of the deed for a period of 3 years, and any lawsuit or action based upon them must be commenced within such time period. Seller's warranties and representations are true, material and relied upon by Buyer and Brokers in all respects. Seller hereby makes the following warranties and representations to Buyer and Brokers:

(a) Authority of Seller. Seller is the owner of the Property and/or has the full right, power and authority to sell, convey and transfer the Property to Buyer as provided herein, and to perform Seller's obligations hereunder. See Addendum paragraph 28.

(b) Maintenance During Escrow and Equipment Condition At Closing. Except as otherwise provided in paragraph 9.1(n) hereof, Seller shall maintain the Property until the Closing in its present condition, ordinary wear and tear excepted.

(c) Hazardous Substances/Storage Tanks. Seller has no knowledge, except as otherwise disclosed to Buyer in writing, of the existence or prior existence on the Property of any Hazardous Substance, nor of the existence or prior existence of any above or below ground storage tank.

(d) Compliance. Except as otherwise disclosed in writing, Seller has no knowledge of any aspect or condition of the Property which violates applicable laws, rules, regulations, codes or covenants, conditions or restrictions, or of improvements or alterations made to the Property without a permit where one was required, or of any unfulfilled order or directive of any applicable governmental agency or casualty insurance company requiring any investigation, remediation, repair, maintenance or improvement be performed on the Property.

(e) Changes in Agreements. Prior to the Closing, Seller will not violate or modify any Existing Lease or Other Agreement, or create any new leases or other agreements affecting the Property, without Buyer's written approval, which approval will not be unreasonably withheld.

(f) Possessory Rights. Seller has no knowledge that anyone will, at the Closing, have any right to possession of the Property, except as disclosed by this Agreement or otherwise in writing to Buyer.

(g) Mechanics' Liens. There are no unsatisfied mechanics' or materialmen's lien rights concerning the Property.

~~(h) Actions, Suits or Proceedings. Seller has no knowledge of any actions, suits or proceedings pending or threatened before any commission, board, bureau, agency, arbitrator, court or tribunal that would affect the Property or the right to occupy or utilize same.~~

(i) Notice of Changes. Seller will promptly notify Buyer and Brokers in writing of any Material Change (see paragraph 9.1(o)) affecting the Property that becomes known to Seller prior to the Closing.

(j) No Tenant Bankruptcy Proceedings. Seller has no notice or knowledge that any tenant of the Property is the subject of a bankruptcy or insolvency proceeding.

~~(k) No Seller Bankruptcy Proceedings. Seller is not the subject of a bankruptcy, insolvency or probate proceeding.~~

(l) Personal Property. Seller has no knowledge that anyone will, at the Closing, have any right to possession of any personal property included in the Purchase Price nor knowledge of any liens or encumbrances affecting such personal property, except as disclosed by this Agreement or otherwise in writing to Buyer.

12.2 Buyer hereby acknowledges that, except as otherwise stated in this Agreement, Buyer is purchasing the Property in its existing condition and will, by the time called for herein, make or have waived all inspections of the Property Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Property. The Parties acknowledge that, except as otherwise stated in this Agreement, no representations, inducements, promises, agreements, assurances, oral or written, concerning the Property, or any aspect of the occupational safety and health laws, Hazardous Substance laws, or any other act, ordinance or law, have been made by either Party or Brokers, or relied upon by either Party hereto.

12.3 In the event that Buyer learns that a Seller representation or warranty might be untrue prior to the Closing, and Buyer elects to purchase the Property anyway then, and in that event, Buyer waives any right that it may have to bring an action or proceeding against Seller or Brokers regarding said representation or warranty.

12.4 Any environmental reports, soils reports, surveys, and other similar documents which were prepared by third party consultants and provided to Buyer by Seller or Seller's representatives, have been delivered as an accommodation to Buyer and without any representation or warranty as to the sufficiency, accuracy, completeness, and/or validity of said documents, all of which Buyer relies on at its own risk. Seller believes said documents to be accurate, but Buyer is advised to retain appropriate consultants to review said documents and investigate the Property.

13. Possession.

Possession of the Property shall be given to Buyer at the Closing subject to the rights of tenants under Existing Leases.

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**14. Buyer's Entry.**

At any time during the Escrow period, Buyer, and its agents and representatives, shall have the right at reasonable times and subject to rights of tenants, to enter upon the Property for the purpose of making inspections and tests specified in this Agreement. No destructive testing shall be conducted, however, without Seller's prior approval which shall not be unreasonably withheld. Following any such entry or work, unless otherwise directed in writing by Seller, Buyer shall return the Property to the condition it was in prior to such entry or work, including the re-compaction or removal of any disrupted soil or material as Seller may reasonably direct. All such inspections and tests and any other work conducted or materials furnished with respect to the Property by or for Buyer shall be paid for by Buyer as and when due and Buyer shall indemnify, defend, protect and hold harmless Seller and the Property of and from any and all claims, liabilities, losses, expenses (including reasonable attorneys' fees), damages, including those for injury to person or property, arising out of or relating to any such work or materials or the acts or omissions of Buyer, its agents or employees in connection therewith.

**15. Further Documents and Assurances.**

The Parties shall each, diligently and in good faith, undertake all actions and procedures reasonably required to place the Escrow in condition for Closing as and when required by this Agreement. The Parties agree to provide all further information, and to execute and deliver all further documents, reasonably required by Escrow Holder or the Title Company.

**16. Attorneys' Fees.**

If any Party or Broker brings an action or proceeding (including arbitration) involving the Property whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees and costs. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

**17. Prior Agreements/Amendments.**

- 17.1 This Agreement supersedes any and all prior agreements between Seller and Buyer regarding the Property.
- 17.2 Amendments to this Agreement are effective only if made in writing and executed by Buyer and Seller.

**18. Broker's Rights.**

18.1 If this sale is not consummated due to the default of either the Buyer or Seller, the defaulting Party shall be liable to and shall pay to Brokers the Brokerage Fee that Brokers would have received had the sale been consummated. If Buyer is the defaulting party, payment of said Brokerage Fee is in addition to any obligation with respect to liquidated or other damages.

18.2 Upon the Closing, Brokers are authorized to publicize the facts of this transaction.

**19. Notices.**

19.1 Whenever any Party, Escrow Holder or Brokers herein shall desire to give or serve any notice, demand, request, approval, disapproval or other communication, each such communication shall be in writing and shall be delivered personally, by messenger, or by mail, postage prepaid, to the address set forth in this agreement or by facsimile transmission, electronic signature, digital signature, or email.

19.2 Service of any such communication shall be deemed made on the date of actual receipt if personally delivered, or transmitted by facsimile transmission, electronic signature, digital signature, or email. Any such communication sent by regular mail shall be deemed given 48 hours after the same is mailed. Communications sent by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed delivered 24 hours after delivery of the same to the Postal Service or courier. If such communication is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

19.3 Any Party or Broker hereto may from time to time, by notice in writing, designate a different address to which, or a different person or additional persons to whom, all communications are thereafter to be made.


**20. Duration of Offer.**


20.1 If this offer is not accepted by Seller on or before 5:00 P.M. according to the time standard applicable to the city of Rancho Cucamonga, CA on the date of July 7, 2020, it shall be deemed automatically revoked.

20.2 The acceptance of this offer, or of any subsequent counteroffer hereto, that creates an agreement between the Parties as described in paragraph 1.2, shall be deemed made upon delivery to the other Party or either Broker herein of a duly executed writing unconditionally accepting the last outstanding offer or counteroffer.

**21. LIQUIDATED DAMAGES. (This Liquidated Damages paragraph is applicable only if initialed by both Parties).**


THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX, PRIOR TO SIGNING THIS AGREEMENT, THE ACTUAL DAMAGES WHICH WOULD BE SUFFERED BY SELLER IF BUYER FAILS TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. THEREFORE, IF, AFTER THE SATISFACTION OR WAIVER OF ALL CONTINGENCIES PROVIDED FOR THE BUYER'S BENEFIT, BUYER BREACHES THIS AGREEMENT, SELLER SHALL BE ENTITLED TO LIQUIDATED DAMAGES IN THE AMOUNT OF \$75,000.00. UPON PAYMENT OF SAID SUM TO SELLER, BUYER SHALL BE RELEASED FROM ANY FURTHER LIABILITY TO SELLER, AND ANY ESCROW CANCELLATION FEES AND TITLE COMPANY CHARGES SHALL BE PAID BY SELLER.

  
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Buyer's Initials

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

**22. ARBITRATION OF DISPUTES. (This Arbitration of Disputes paragraph is applicable only if initialed by both Parties.)**

22.1 ANY CONTROVERSY AS TO WHETHER SELLER IS ENTITLED TO THE LIQUIDATED DAMAGES AND/OR BUYER IS ENTITLED TO THE RETURN OF DEPOSIT MONEY, SHALL BE DETERMINED BY BINDING ARBITRATION BY, AND UNDER THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("COMMERCIAL RULES"). ARBITRATION HEARINGS SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED. THE NUMBER OF ARBITRATORS SHALL BE AS PROVIDED IN THE COMMERCIAL RULES AND EACH SUCH ARBITRATOR SHALL BE AN IMPARTIAL REAL ESTATE BROKER WITH AT LEAST 5 YEARS OF FULL TIME EXPERIENCE IN BOTH THE AREA WHERE THE PROPERTY IS LOCATED AND THE TYPE OF REAL ESTATE THAT IS THE SUBJECT OF THIS AGREEMENT. THE ARBITRATOR OR ARBITRATORS SHALL BE APPOINTED UNDER THE COMMERCIAL RULES AND SHALL HEAR AND DETERMINE SAID CONTROVERSY IN ACCORDANCE WITH APPLICABLE LAW, THE INTENTION OF

  
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THE PARTIES AS EXPRESSED IN THIS AGREEMENT AND ANY AMENDMENTS THERETO, AND UPON THE EVIDENCE PRODUCED AT AN ARBITRATION HEARING. PRE-ARBITRATION DISCOVERY SHALL BE PERMITTED IN ACCORDANCE WITH THE COMMERCIAL RULES OR STATE LAW APPLICABLE TO ARBITRATION PROCEEDINGS. THE AWARD SHALL BE EXECUTED BY AT LEAST 2 OF THE 3 ARBITRATORS, BE RENDERED WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING, AND MAY INCLUDE ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY PER PARAGRAPH 16 HEREOF. JUDGMENT MAY BE ENTERED ON THE AWARD IN ANY COURT OF COMPETENT JURISDICTION NOTWITHSTANDING THE FAILURE OF A PARTY DULY NOTIFIED OF THE ARBITRATION HEARING TO APPEAR THEREAT.

22.2 BUYER'S RESORT TO OR PARTICIPATION IN SUCH ARBITRATION PROCEEDINGS SHALL NOT BAR SUIT IN A COURT OF COMPETENT JURISDICTION BY THE BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE UNLESS AND UNTIL THE ARBITRATION RESULTS IN AN AWARD TO THE SELLER OF LIQUIDATED DAMAGES, IN WHICH EVENT SUCH AWARD SHALL ACT AS A BAR AGAINST ANY ACTION BY BUYER FOR DAMAGES AND/OR SPECIFIC PERFORMANCE.

22.3 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 SUCH 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

  
Seller's Initials

**23. Miscellaneous.**

23.1 **Binding Effect.** This Agreement shall be binding on the Parties without regard to whether or not paragraphs 21 and 22 are initialed by both of the Parties. Paragraphs 21 and 22 are each incorporated into this Agreement only if initialed by both Parties at the time that the Agreement is executed. Signatures to this Agreement accomplished by means of electronic signature or similar technology shall be legal and binding.

23.2 **Applicable Law.** This Agreement shall be governed by, and paragraph 22.3 is amended to refer to, the laws of the state in which the Property is located. Any litigation or arbitration between the Parties hereto concerning this Agreement shall be initiated in the county in which the Property is located.

23.3 **Time of Essence.** Time is of the essence of this Agreement.

23.4 **Counterparts.** This Agreement may be executed by Buyer and Seller in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Escrow Holder, after verifying that the counterparts are identical except for the signatures, is authorized and instructed to combine the signed signature pages on one of the counterparts, which shall then constitute the Agreement.

23.5 **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

23.6 **Conflict.** Any conflict between the printed provisions of this Agreement and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions. Seller and Buyer must initial any and all handwritten provisions.

23.7 **1031 Exchange.** Both Seller and Buyer agree to cooperate with each other in the event that either or both wish to participate in a 1031 exchange. Any party initiating an exchange shall bear all costs of such exchange. The cooperating Party shall not have any liability (special or otherwise) for damages to the exchanging Party in the event that the sale is delayed and/or that the sale otherwise fails to qualify as a 1031 exchange.

23.8 **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Agreement shall mean and refer to calendar days.

**24. Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

24.1 The Parties and Brokers agree that their relationship(s) shall be governed by the principles set forth in the applicable sections of the California Civil Code, as summarized in paragraph 24.2.


24.2 When entering into a discussion with a real estate agent regarding a real estate transaction, a Buyer or Seller should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Buyer and Seller acknowledge being advised by the Brokers in this transaction, as follows:

(a) **Seller's Agent.** A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or subagent has the following affirmative obligations: (1) *To the Seller:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(b) **Buyer's Agent.** A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations. (1) *To the Buyer:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer. (2) *To the Buyer and the Seller:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(c) **Agent Representing Both Seller and Buyer.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. (1) In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer. b. Other duties to the Seller and the Buyer as stated above in their respective sections (a) or (b) of this paragraph 24.2. (2) In representing both Seller and Buyer, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including Seller's willingness to accept a price less than the listing price or Buyer's willingness to pay a price greater than the price offered. (3) The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect their own interests. Buyer and Seller should carefully read all

  
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agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Buyer has the duty to exercise reasonable care to protect Buyer, including as to those facts about the Property which are known to Buyer or within Buyer's diligent attention and observation. Both Seller and Buyer should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(d) *Further Disclosures.* Throughout this transaction Buyer and Seller may receive more than one disclosure, depending upon the number of agents assisting in the transaction. Buyer and Seller should each read its contents each time it is presented, considering the relationship between them and the real estate agent in this transaction and that disclosure. Buyer and Seller each acknowledge receipt of a disclosure of the possibility of multiple representation by the Broker representing that principal. This disclosure may be part of a listing agreement, buyer representation agreement or separate document. Buyer understands that Broker representing Buyer may also represent other potential buyers, who may consider, make offers on or ultimately acquire the Property. Seller understands that Broker representing Seller may also represent other sellers with competing properties that may be of interest to this Buyer. Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this transaction may be brought against Broker more than one year after the Date of Agreement and that the liability (including court costs and attorneys' fees), of any Broker with respect to any breach of duty, error or omission relating to this Agreement shall not exceed the fee received by such Broker pursuant to this Agreement; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

24.3 *Confidential Information.* Buyer and Seller agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

25. **Construction of Agreement.** In construing this Agreement, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Agreement. Whenever required by the context, the singular shall include the plural and vice versa. This Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

26. **Additional Provisions.**

Additional provisions of this offer, if any, are as follows or are attached hereto by an addendum or addenda consisting of paragraphs 28 through 34. (If there are no additional provisions write "NONE".)

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS AGREEMENT OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:  
1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS AGREEMENT.  
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PROPERTY. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PROPERTY, THE INTEGRITY AND CONDITION OF ANY STRUCTURES AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE.  
WARNING: IF THE PROPERTY IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THIS AGREEMENT MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

NOTE:

- 1. THIS FORM IS NOT FOR USE IN CONNECTION WITH THE SALE OF RESIDENTIAL PROPERTY.
- 2. IF EITHER PARTY IS A CORPORATION, IT IS RECOMMENDED THAT THIS AGREEMENT BE SIGNED BY TWO CORPORATE OFFICERS.

The undersigned Buyer offers and agrees to buy the Property on the terms and conditions stated and acknowledges receipt of a copy hereof.

Date: 7/1/2020

**BROKER**

Kidder Mathews of California  
Attn: Teresia Knight  
Title: Broker  
Address: 3281 E. Guasti Road, Suite 750.  
Ontario, CA 91761  
Phone: 951.217.4229  
Fax: \_\_\_\_\_  
Email: Teresia.knight@kidder.com  
Federal ID No.: \_\_\_\_\_  
Broker DRE License #: 01946490  
Agent DRE License #: 01228241

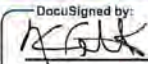




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OFA-20.20, Revised 11-25-2019

**BUYER**

Kevin Feterik and/or Assignee  
By:   
Name: Kevin Feterik  
Title: \_\_\_\_\_  
Phone:   
Fax: \_\_\_\_\_  
Email:   
By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_



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Address: [REDACTED]  
Federal ID No.: TBD

**27. Acceptance.**

27.1 Seller accepts the foregoing offer to purchase the Property and hereby agrees to sell the Property to Buyer on the terms and conditions therein specified.

27.2 In consideration of real estate brokerage service rendered by Brokers, Seller agrees to pay Brokers a real estate Brokerage Fee in a sum equal to 6 % of the Purchase Price to be divided between the Brokers as follows: Seller's Broker 3 % and Buyer's Broker 3 %. This Agreement shall serve as an irrevocable instruction to Escrow Holder to pay such Brokerage Fee to Brokers out of the proceeds accruing to the account of Seller at the Closing.

27.3 Seller acknowledges receipt of a copy hereof and authorizes Brokers to deliver a signed copy to Buyer.

**NOTE: A PROPERTY INFORMATION SHEET IS REQUIRED TO BE DELIVERED TO BUYER BY SELLER UNDER THIS AGREEMENT.**

Date: 7/2/2020

**BROKER**

Kidder Mathews of California  
Attn: Teresia Knight  
Title: Senior Vice President  
Address: 3281 E. Guasti Road, Suite 750.  
Ontario, CA 91761  
Phone: 951.217.4229  
Fax: \_\_\_\_\_  
Email: Teresia.knight@kidder.com  
Federal ID No.: \_\_\_\_\_  
Broker DRE License #: 01946490  
Agent's DRE License #: 01228241

**SELLER**

Thomas W. McNamara, Solely in his capacity  
as Court-Appointed Receiver of Silver  
Saddle Ranch & Club, Inc.  
By: [Signature]  
Name Printed: Thomas W. McNamara  
Title: Receiver  
Phone: 619-269-0400  
Fax: 619-269-0401  
Email: tmcnamara@menamara11p.com  
By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Address: \_\_\_\_\_  
Federal ID No.: \_\_\_\_\_

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[Signature]

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[Signature]  
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### ADDENDUM TO THE STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR PURCHASE OF REAL ESTATE

Date: June 30, 2020

By and Between

Buyer: Kevin Feterik and/or Assignee

Seller: Thomas W. McNamara, Solely in his capacity as Court-Appointed Receiver of Silver Saddle Ranch & Club, Inc.

Property Address: 20751 Aristotle Drive, California City, CA 93505  
(street address, city, state, zip) **APN: 457-020-12 / 457-020-27**

This Addendum is attached and made part of the above-referenced Agreement (said Agreement and the Addendum are hereinafter collectively referred to as the "Agreement"). In the event of any conflict between the provisions of this Addendum and the printed provisions of the Agreement, this Addendum shall control.

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- 28. The Sale of the Property and delivery of clear and free title is subject to approval by the Superior Court of the State of California for the County of San Diego ("Court"). Buyer acknowledges that there is a sixty day appeal period following Court approval which must run before Escrow can be closed. In the event of an appeal, the Parties agree to extend the close of Escrow until the appeal is resolved.
- 29. Buyer shall purchase the contiguous 158.58 parcel (APN 457-020-05) to the east of the Property ("Contiguous Parcel") from Seller under a separate purchase agreement concurrent with the purchase of the Property. Buyer acknowledges the purchase of the Contiguous Parcel is essential to this transaction. Seller will be seeking Court Approval of the sale of the Contiguous Parcel subsequent to the close of Escrow of the Property. It is anticipated the closing on the Contiguous Parcel will occur approximately 90 days following the close of the Property. Buyer acknowledges that approximately 19.7 acres of the ranch and resort improvements are located on the Contiguous Parcel as reflected on the attached **Exhibit A**. Seller will grant Buyer temporary use of the 19.7 acres until close of Escrow of the Contiguous Parcel pursuant to the Temporary License Agreement for Use of Real Property (Temporary License) attached as **Exhibit B**. Buyer shall execute the Temporary License and provide the evidence of insurance required under the Temporary License prior to Close of Escrow. In the event the sale of the Contiguous Parcel is not approved by the Court, and Seller does not transfer title of the Contiguous Parcel to Buyer, the Temporary License to use the 19.7 acres shall terminate and Buyer shall have no further use of this property. Seller reserves the right to install a 6' tall chain link fence on the eastern property line of the Property as a physical barrier to separate the legal ownership of the Property from the 19.7 acres of the ranch and resort improvements located on the Contiguous Parcel.

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APA-1.03, Revised 06-10-2019

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30. The Property and any personal property is being sold in its "AS-IS, WHERE-AS" condition.
31. The Purchase Price includes, but shall not be limited to, Seller's personal property, furniture, furnishings, equipment, tools, tractors, vehicles, surrey bicycles, paddle boats, etc. The Purchase Price does not include the caretaker's personal property which will be removed prior to closing. Seller to provide Buyer with a list of all personal items belonging to the caretaker within 15 business days from the Official Opening of Escrow. The Purchase Price does not include any Recreational Vehicles (RV's) that may be on site. Prior to the Close of Escrow, Seller will remove all Receivership Defendants' business records, most of which are stored in bankers boxes in the Sales Pavilion. In addition, Seller will remove all Receivership Defendants' business records and computers stored in other locations at the Property (e.g. Administration building, lodge, barn, etc.).
32. If Buyer has not provided Seller with Buyer's written notice of disapproval of contingencies as set forth in paragraph 9.1, Buyer's deposit of \$75,000 shall become non-refundable and will be released to Seller on day 31 of the Escrow period.
33. Buyer acknowledges that the sales pavilion, parking and other related improvements are located on a 24 acre parcel, APN: 457-020-11, owned by the City of California City and leased to Seller under a long term ground lease which expires April 17, 2027. Buyer and Seller will work cooperatively during the escrow period to secure the City of California City's consent to an assignment of the ground lease to Buyer.
34. Seller reserves the right to accept purchase offers from other parties as back-up offers until Escrow has officially closed.



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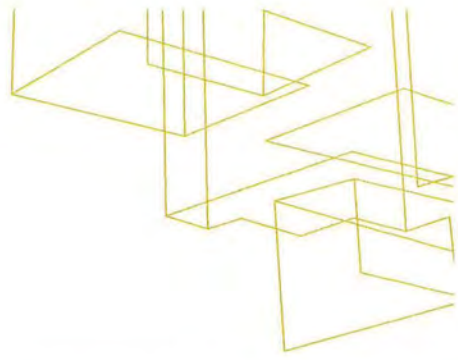
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# EXHIBIT A

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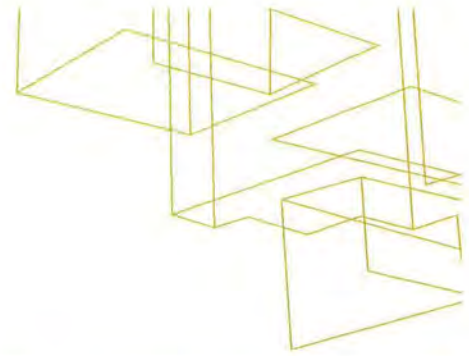


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# EXHIBIT A

to Temporary License Agreement for Entry to Real Property



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## EXHIBIT B

### TEMPORARY LICENSE AGREEMENT FOR ENTRY TO REAL PROPERTY

This License Agreement is entered into as of \_\_\_\_\_, 2020, by and between Thomas W. McNamara, Court Appointed Receiver ("Licensor") and Kevin Feterik ("Licensee").

WHEREAS, Licensor oversees and controls the approximately 158.58-acre unimproved property (APN 457-020-05) delineated on Exhibit A (the "Property").

WHEREAS, Licensee has acquired title on \_\_\_\_\_ to the contiguous 129.44-acre Silver Saddle Ranch and Club (Ranch) property (APN 457-020-12) to the west. Licensee is in escrow to purchase the Property and is scheduled to close escrow on the purchase \_\_\_\_\_ and may have a need to enter the Property during its day-to-day operations of the Ranch.

WHEREAS, Licensor is willing to permit the Licensee to enter the Property subject to the terms and conditions of this Agreement.

NOW THEREFORE, the parties agree as follows:

- 1. License to Enter Property.** Licensee is entitled to enter the Property solely in connection with its operation and management of the Ranch for the term stated herein. In the event of breach of Licensee of any of the covenants hereof, and in any event Licensee's purchase of the Property is not completed, Licensor shall be entitled to immediate possession of the Property and Licensee's right of entry shall be terminated. Notwithstanding the foregoing, this License shall be null and void once Licensee has closed escrow and purchased the Property.
- 2. Use of the Property.** Licensee agrees that its use of the Property shall be in full compliance with applicable laws and regulations. Licensee agrees it will not make any improvement to the Property. Licensee further agrees to maintain the Property during the term of this Agreement. In the event Licensee's purchase of the Property is not completed, Licensee shall return the Property to its prior condition upon termination of this Agreement.
- 3. Condition of the Property.** Licensor makes no warranties regarding the condition of the Property. Licensor shall not be liable for any personal injury or damage to the Property which Licensee or its invitees may incur, regardless of the cause hereof. Licensee hereby releases Licensor from all such liability, it being the intent of the parties that Licensee and its invitees shall maintain adequate insurance to cover any such losses. Licensee hereby agrees to defend, indemnify and hold harmless Licensor, its members and agents from and against any and all claims, damages, losses, suits, judgements, costs and expenses arising from Licensee's use of the Property.
- 4. Insurance.** Licensee agrees at its sole cost and expense, to procure and maintain in full force during the term of this Agreement (i) statutory worker's compensation, (ii) automobile liability insurance, (iii) property damage insurance, with limits of at least \$100,000, and (iv) general liability insurance, with limits of at least \$1,000,000/\$2,000,000. Licensee agrees to



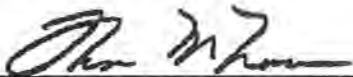
name Licensor as an additional insured on these policies. Licensee shall provide a certificate of proof of such insurance prior to entering the Property.

5. **Termination.** This Agreement shall terminate on \_\_\_\_\_ unless extended by the parties in writing. Licensor reserves the right to terminate this Agreement immediately if Licensee fails to abide by the terms and conditions of this Agreement.

**IN WITNESS WHEREOF**, the parties have duly executed this License Agreement as of the date first above written.

**LICENSOR:**

Thomas W. McNamara, Court Appointed Receiver

  
\_\_\_\_\_

**LICENSEE:**

Kevin Feterik

  
\_\_\_\_\_





**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP**  
(As required by the Civil Code)

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

**SELLER'S AGENT**

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

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

To the Buyer and the Seller:

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

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

**BUYER'S AGENT**

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

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

To the Buyer and the Seller:

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

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

**AGENT REPRESENTING BOTH SELLER AND BUYER**

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

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

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

In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

**SELLER AND BUYER RESPONSIBILITIES**

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role. The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation. Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

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

Thomas W. McNamara, solely in his capacity as Court-appointed receiver of Silver Saddle Ranch & Club, Inc.

Buyer  Seller  Lessor  Lessee


Signature:  Date: 7/2/2020

Buyer  Seller  Lessor  Lessee

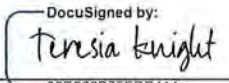
Signature:  Date: 6/21/2020

Kevin Feterik and/or Assignee

  
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Agent: Kidder Mathews of California DRE Lic. #: 01946490  
Real Estate Broker (Firm)

By: **Teresia Knight:**  DRE Lic. #: 01228141 Date: 6/19/2020  
(Salesperson or Broker-Associate) 02B693B75EDB414...

THIS FORM HAS BEEN PREPARED BY AIR CRE. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC TRANSACTION. PLEASE SEEK LEGAL COUNSEL AS TO THE APPROPRIATENESS OF THIS FORM.

  
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**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP  
CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)**

**2079.13.** As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

**(a)** "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. **(b)** "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. **(c)** "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. **(d)** "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. **(e)** "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. **(f)** "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. **(g)** "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. **(h)** "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. **(i)** "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. **(j)** "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. **(k)** "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. **(l)** "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. **(m)** "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. **(n)** "Buyer's agent" means an agent who represents a buyer in a real property transaction.

**2079.14.** A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: **(a)** The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. **(b)** The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

**2079.15.** In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

**2079.16** Reproduced on Page 1 of this AD form.

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

**(C) CONFIRMATION:** The following agency relationships are confirmed for this transaction.

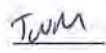
Seller's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number \_\_\_\_\_  
Is the broker of (check one):  the seller; or  both the buyer and seller. (dual agent)  
Seller's Agent DO NOT COMPLETE, SAMPLE ONLY License Number \_\_\_\_\_  
Is (check one):  the Seller's Agent. (salesperson or broker associate); or  both the Buyer's Agent and the Seller's Agent. (dual agent)  
Buyer's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number \_\_\_\_\_  
Is the broker of (check one):  the buyer; or  both the buyer and seller. (dual agent)  
Buyer's Agent DO NOT COMPLETE, SAMPLE ONLY License Number \_\_\_\_\_  
Is (check one):  the Buyer's Agent. (salesperson or broker associate); or  both the Buyer's Agent and the Seller's Agent. (dual agent)

**(d)** The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

**2079.18** (Repealed pursuant to AB-1289, 2017-18 California Legislative session)

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

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

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**2079.21 (a)** A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller. **(b)** A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. **(c)** "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered. **(d)** This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

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**2079.22** Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

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**2079.23 (a)** A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship. **(b)** A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

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

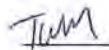
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