

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
SOUTHERN DIVISION

In re SANCTUARY BELIZE LITIGATION

No: 18-cv-3309-PJM

**MOTION FOR ORDER APPROVING AND CONFIRMING SALE OF REAL
PROPERTY COMMONLY KNOWN AS 1833 PORT BARMOUTH PLACE, NEWPORT
BEACH, CALIFORNIA AND APPROVING PUBLICATION AND OVERBID
PROCEDURES [SUPPORTING DECLARATION OF BRICK KANE FILED
CONCURRENTLY HEREWITH]**

The temporary receiver Robb Evans & Associates LLC (“Receiver”), the temporary receiver appointed pursuant to the Ex Parte Temporary Restraining Order With Asset Freeze, Writs *Ne Exeat*, Appointment of a Temporary Receiver and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (Doc. 13) (“TRO”), extended pursuant to the Extension of Temporary Restraining Order and Interim Preliminary Injunction (Doc. 34) (“Interim Preliminary Injunction”), hereby moves the Court for the following relief:

1. An order approving the Receiver’s proposed procedures for the sale of the real property commonly known as 1833 Port Barmouth Place, Newport Beach, California (“Port Barmouth Property”) and authorizing and confirming the sale of the Port Barmouth Property on an “as is” basis as more fully described in the sale contract documents by private sale either to (a) Bryan T. Goodman and Jamie S. Goodman (“Proposed Buyer”), an arm’s length buyer, at a purchase price of \$3,400,000 pursuant to the California Residential Purchase Agreement and Joint Escrow Instructions dated March 13, 2019 and related sale contract documents, Counter Offer No. One dated March 14, 2019, including the Addendum No. 1 to Seller’s Counter Offer 1,

“AS-IS” Purchase addendum, and Additional Terms addendum, Contingency Removal No. 1 and Request for Repair No. 1, attached collectively as Exhibit 1 to the Declaration of Brick Kane in support of this Motion (collectively, the “Proposed Purchase Agreement”); or (b) to such higher qualified overbidder who hereafter submits the highest qualified overbid at a subsequent overbid session to be conducted under the terms and conditions more fully set forth herein and approved by the Court pursuant to this Motion, which sale the Receiver requests be approved and confirmed without further notice, hearing or Court order. The overbid procedures, terms and conditions for which the Receiver seeks approval include the following:

A. The overbid session shall be conducted within 20 days of the date of entry of the order granting this Motion. The overbid session will be conducted at the offices of SRS Real Estate Partners, located at 610 Newport Center Drive, Ste. 1500, Newport Beach, California.

B. The Receiver shall cause to be published a notice of the proposed sale of the Port Barmouth Property to a qualified bidder at the overbid session to be conducted under paragraph 1.A above, which notice shall state the date, time and place of the overbid session, the requirement for pre-qualification by overbidders and the terms and conditions of the overbidding and sale of the property, as described below (“Overbid Notice”). The Receiver shall cause the Overbid Notice to be published in the Orange County Register two times prior to the date of the overbid session, with the first publication to be at least ten days prior to the date of the overbid session. The Orange County Register is a daily newspaper of general circulation in Orange County, California where the Port Barmouth Property is located and one in which legal notices, including sale notices, are commonly published.

C. Any interested party wishing to overbid at the overbid session shall be required to pre-qualify with the Receiver not less than two business days before the overbid session by delivering to the Receiver's office located at 11450 Sheldon Street, Sun Valley, California 91352: (a) notice in writing of the prospective overbidder's intent to overbid; (b) written verification from a financial institution demonstrating to the Receiver's satisfaction, in its sole and absolute opinion and judgment, the prospective overbidder's ability to complete and close a purchase of the Port Barmouth Property through sufficient funds and/or credit facilities within 20 days of the overbid session; and (c) a cashier's check in the sum of \$100,000 payable to Ecological Fox LLC et al. Receivership QSF, which cashier's check shall become nonrefundable upon acceptance of the overbidder's overbid at the conclusion of the overbid session.

D. Overbidders shall be deemed to have completed all inspections of the Port Barmouth Property and shall be deemed to have waived and/or removed all contingencies in favor of the Proposed Buyer under the Proposed Purchase Agreement, including without limitation any contingency pertaining to inspection of title, and will be required to complete a cash purchase of the Port Barmouth Property and close escrow for the purchase of the Port Barmouth Property within 20 days of the date of the overbid session, subject to any waiting period imposed by the title company as a requirement of its issuance of a policy of title insurance. The successful overbidder will be required to execute a purchase agreement for the Port Barmouth Property substantially in the form of the Proposed Purchase Agreement together with a waiver of all buyer contingencies promptly after conclusion of the overbid session and to otherwise generally perform in the manner provided in the Proposed Purchase Agreement,

including without limitation depositing an additional \$580,000 into escrow within five days after the conclusion of the overbid session.

E. The initial overbid shall be in the amount of \$3,519,000, representing an amount that is 3.5% higher than the purchase price under the Proposed Purchase Agreement, and all subsequent overbids shall be in an amount at least \$25,000 higher than the preceding bid.

F. Pursuant to the Proposed Purchase Agreement and the Receiver's Residential Listing Agreement with its broker, a copy of which is attached as Exhibit 2 to the Kane declaration, a sales commission in the amount of 1.25% of the purchase price paid by the Proposed Buyer, or if a higher overbid is received and accepted at the overbid session, by the winning overbidder, shall be paid from the proceeds of the sale at close of escrow, and no other sales commission shall be paid from the proceeds of the sale or shall be paid by or be the responsibility of the Receiver under any circumstances.

G. The sale of the Port Barmouth Property by private sale to the Proposed Buyer under the Proposed Purchase Agreement, or to the highest qualified overbidder at the overbid session pursuant to the procedures set forth herein, shall be deemed confirmed by Order pursuant to this Motion without further notice, hearing or additional order, and without the necessity of any subsequent motion for confirmation of the sale.

2. An order authorizing the Receiver to execute all documents and instruments necessary or appropriate to complete, implement, effectuate and close the sale of the Port Barmouth Property to the Proposed Buyer or to the highest qualified overbidder, including but not limited to the deed conveying title to the Port Barmouth Property as provided herein.¹

¹ The Receiver has established a Qualified Settlement Fund to hold the proceeds from the liquidation of receivership assets designated as the Ecological Fox LLC et al. Receivership QSF.

3. An order authorizing the Receiver to permit and/or cause to be paid from the proceeds of sale all ordinary and customary closing costs, all costs and expenses required to be paid pursuant to the terms of the Proposed Purchase Agreement by the Receiver from the proceeds of sale, the sales commission described above at paragraph 1.F, all real property tax liens and prorated real property taxes due up to the date of closing, and the balance due under the obligation secured by the deed of trust in favor of 5th Street Capital, Inc. and presently serviced by Select Portfolio Servicing, Inc.

4. An order providing that the sale of the Port Barmouth Property shall be free and clear of any claim of Alliance Trust Company, on behalf of and as Independent Trustee of the AAC Family HYCET Trust Dated October 7, 2015 (“Chittenden Trust”), any claim of the Chittenden Trust, and any claim of Angela Chittenden, and that all net proceeds from the sale of the Port Barmouth Property, after payment of the valid liens and encumbrances and costs of sale (“Net Proceeds”), as set forth in the prior paragraph, shall be paid to the Receiver on behalf of the receivership estate. The Receiver shall have the sole and exclusive right to all of the Net Proceeds from the sale, on behalf of the receivership estate, and the net proceeds shall become property of the receivership estate free and clear of all other liens and encumbrances, if any exist.

5. An order for such additional relief as may be necessary or appropriate to allow the Receiver to effectuate the sale of the Port Barmouth Property, including without limitation the entry of an order authorizing such sale in form acceptable to the title company insuring title in connection with the sale of the Port Barmouth Property.

This Motion is made pursuant to 28 U.S.C. § 2001, the Stipulation Authorizing Listing for Sale and Marketing of Real Property Asset by Receiver (Doc. 159) and the Order Approving Stipulation Authorizing Listing for Sale and Marketing of Real Property Asset by Receiver (Doc. 193).

Dated: April 23, 2019

By: /s/ Gary Owen Caris

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UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
SOUTHERN DIVISION

In re SANCTUARY BELIZE LITIGATION

No: 18-cv-3309-PJM

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR
ORDER APPROVING AND CONFIRMING SALE OF REAL PROPERTY
COMMONLY KNOWN AS 1833 PORT BARMOUTH PLACE, NEWPORT BEACH,
CALIFORNIA AND APPROVING PUBLICATION AND OVERBID PROCEDURES**

I. STATEMENT OF FACTS

A. Background Facts

This lawsuit was commenced on October 31, 2018 by the Federal Trade Commission (“FTC”) on October 31, 2018 with its filing of a Complaint for Permanent Injunction and Other Equitable Relief (Doc. 1) (“Complaint”). The lawsuit named 17 entity defendants and seven individual defendants, in addition to five relief defendants. The TRO was issued by the Court on November 5, 2019. Under the TRO, the Receiver became temporary receiver over all entity defendants except for Atlantic International Bank, Ltd. and over the assets of Andris Pukke (“Pukke”) and Peter Baker (“Baker”) valued at \$1,000 or more. The Receiver took possession of the Receivership Entities, as defined in the TRO, on November 6, 2018. The Court extended the duration of the TRO pursuant to the Interim Preliminary Injunction on November 20, 2018. The FTC filed a motion to amend the Complaint and a proposed Amended Complaint for Permanent Injunction and Other Equitable Relief (“Amended Complaint”) on December 28, 2018 (Doc. 87) adding Michael Santos and Newport Land Group, LLC (“NLG”) as defendants.

The Court granted the motion to amend on January 11, 2019 (Doc. 107). On February 13, 2019 the Court entered a the Stipulated Preliminary Injunction as to Defendants Rod Kazazi, Foundation Partners, Brandi Greenfield, BG Marketing LLC, Frank Costanzo, Deborah Connelly, Ecological Fox LLC, Michael Santos, Angela Chittenden, and Beach Bunny Holdings LLC (Doc. 195) (“Stipulated Preliminary Injunction”). Under the Stipulated Preliminary Injunction, the Receiver remained as receiver over the stipulating Receivership Entities BG Marketing, LLC, Ecological Fox, LLC, and Foundation Partners, and NLG was expressly added as a named Receivership Entity.¹ The Receiver continues to serve as temporary receiver as to all other Receivership Entities and continues to serve as temporary receiver over Pukke’s and Baker’s assets.

Pursuant to Section XVI.D of the TRO, the Receiver is directed and authorized to, among other things, conserve receivership assets and perform all acts necessary or advisable to preserve the value of those assets. Based on the Receiver’s forensic accounting analysis, the Receiver determined that the residential real property commonly known as 1833 Port Barmouth Place, Newport Beach, California (“Port Barmouth Property”) is an asset of the receivership estate. This is because, among other things, all of the proceeds which were used in down payment for the purchase of the property in May 2018 indirectly came from assets generated by the Receivership Entities through the sale of lots in the Belize development known as the Reserve. Angela Chittenden (“Chittenden”) acquired title to the Port Barmouth Property at that time for a purchase price of \$3,515,000. Chittenden is the putative spouse of Pukke, having lived with him

¹ The Receiver had already determined that NLG is a non-party Receivership Entity, in addition to previously determining that two other non-party entities, 2729 Bristol LLC and 3905 Marcus, LLC, are Receivership Entities, pursuant to Sections XVI.W and X of the TRO.

for many years, and together they have two children. Chittenden is one of the relief defendants in this action.

Immediately after acquiring record title, Chittenden transferred title to the Port Barmouth Property to James W. Chittenden, as Family Trustee and Alliance Trust Company (“Alliance”), as Independent Trustee of a purported asset protection trust named the AAC Family HYCET Trust Dated October 7, 2015² (“Chittenden Trust”). James W. Chittenden has resigned as Family Trustee of the Chittenden Trust and Alliance is the sole remaining trustee.

Pursuant to Section XVI.D of the TRO, the Receiver is directed and authorized to, among other things, conserve receivership assets and perform all acts necessary or advisable to preserve the value of those assets. The Receiver determined that, in order to conserve the assets of the receivership and minimize expense to the estate, it would be beneficial for the Receiver to sell the Port Barmouth Property as soon as practicable.

B. Stipulation and Order to List for Sale and Market the Property

The Receiver negotiated a Stipulation Authorizing Listing for Sale and Marketing of Real Property Asset By Receiver (Doc. 159) (“Sale Stipulation”) with Alliance, on behalf of the Chittenden Trust, which was filed on February 8, 2019. It provided, among other things, that: (a) the Receiver would engage a real estate broker at not more than 6% commission to list and market for sale the Port Barmouth Property; (b) the Receiver would have sole authority with respect to the marketing and sale of the Port Barmouth Property and be authorized to conditionally accept the highest and best offer received, subject to entry of a Court order approving and confirming such sale after a motion brought on notice to the parties and Alliance pursuant to 28 U.S.C. § 2001; (c) the Port Barmouth Property would be sold free and clear of all

² HYCET is an acronym for “have your cake and eat it too.”

claims that Alliance and the Chittenden Trust have to the Port Barmouth Property; (d) the net proceeds from the sale of the Port Barmouth Property after the payment of all valid liens and encumbrances and costs of sale (“Net Proceeds”) would be held by the Receiver pending further Court order; and (e) Alliance reserved its right to assert a claim to any or all of the Net Proceeds on behalf of the Chittenden Trust. In the event that the Receiver and Alliance were unable to reach an agreement on whether and the extent to which Alliance is entitled to any of the Net Proceeds on behalf of the Chittenden Trust, the dispute would be heard and determined by this Court on noticed motion brought by either party. On February 13, 2019, the Court issued its Order Approving Stipulation Authorizing Listing for Sale and Marketing of Real Property Asset By Receiver (Doc. 193) (“Sale Order”), approving the Sale Stipulation in its entirety.

Now, Chittenden, on her own behalf, has advised the Receiver that she does not assert any interest in the Net Proceeds from the sale of the Port Barmouth Property and she acknowledges and agrees that the Receiver should have the sole and exclusive right to all of the Net Proceeds from the sale, on behalf of the receivership estate. (Chittenden, on her own behalf, continues to reserve her rights to assert an interest in net sale proceeds which may be subsequently generated regarding the property commonly described as 104 Kings Place, Newport Beach, California (“Kings Place Property”).

Alliance, on behalf of the Chittenden Trust, has declined to agree that the Chittenden Trust has no interest in the Net Proceeds from the sale of the Port Barmouth Property. Therefore, pursuant to the Sale Stipulation and Sale Order, the Receiver seeks a determination by this Motion that the Chittenden Trust has no interest in the Net Proceeds from the sale based on the fact that, among other things, the Port Barmouth Property was acquired with assets of the

Receivership Entities, and is beneficially owned by the Receivership Entities or Pukke, and whose assets belong to the Receiver.

C. Facts Demonstrating that the Port Barmouth Property and its Net Sale Proceeds are Property of the Receivership Estate

As set forth in the accompanying declaration of Brick Kane, the Port Barmouth Property was acquired in the name of Chittenden on or about May 1, 2018, just six months before the inception of the receivership estate, and subsequently transferred to the Chittenden Trust. The purchase price was paid for by a \$2,460,500 loan in favor of 5th Street Capital, Inc., together with down payments totaling \$1,125,354.83. Of the \$1,125,354.83 sum, \$476,795.51 was paid in two wire transfers from Remote.com, Inc. (“Remote.com”). Pukke transferred \$1,651,420 from the Receivership Entities into Outsource.com for investment purposes. Outsource.com was the predecessor entity which subsequently merged into Remote.com. Pukke placed the investment in Remote.com in Chittenden’s name.³ The payment of \$476,795.51 by Remote.com, along with the balance of the deposit, enabled Pukke to acquire the Port Barmouth Property in Chittenden’s name.

The balance of the deposit for the Port Barmouth Property, \$648,559.32, came from the proceeds of a second deed of trust on the Kings Place Property. The Kings Place Property is expressly named in the TRO as a receivership asset (TRO, Section XVII.B). That property was also acquired by Pukke in Chittenden’s name in June 2012 and subsequently transferred to the Chittenden Trust. The equity in the Kings Place Property which was used to obtain the second

³ Pukke’s net investment in Remote.com, after netting out transfers including the money used to fund the Port Barmouth Property down payment, was \$874,625. The Receiver has entered into a tentative settlement with Remote.com and Chittenden has agreed to sign the paperwork selling her paper ownership interest in Remote.com back to the company in exchange for a payment to the Receiver from Remote.com, which will be the subject of a separate motion.

deed of trust on that property and pay the balance of the deposit on the Port Barmouth Property was created by the renovation of the Kings Place Property. The renovation of the Kings Place Property occurred directly as a result of funds diverted from the Receivership Entities by Pukke. The Receiver has conclusively determined that the amount diverted by the Receivership Entities for construction costs on the Kings Place Property is in excess of \$3.4 million. However, Chittenden has admitted, through her counsel, that \$4.3 was taken from the Receivership Entities for construction costs on the Kings Place Property and that a total of approximately \$5.1 million was taken from the Receivership Entities in connection with the Kings Place Property, including payment of both construction costs and mortgage payments.

Therefore, all of the money used to acquire the Port Barmouth Property originated from funds diverted from the Receivership Entities by Pukke. All of the equity in the Port Barmouth Property and the prospective net proceeds from the sale of the property sought herein, is attributable to the down payment which was indirectly funded exclusively by the Receivership Entities.

D. Sale Agreement With the Proposed Buyer

In January 2019, prior to entering into the Sale Stipulation and the entry of the Sale Order, Bryan Goodman contacted the Receiver and expressed interest in acquiring the Port Barmouth Property. Mr. Goodman indicated that he lived very close to the property, knew the property owners prior to Chittenden's acquisition, and had been in the house many times. On February 19, 2019, just days after entry of the Sale Order, Mr. Goodman and his wife, Jamie S. Goodman (collectively, the "Proposed Buyer"), made an unsolicited and detailed offer to purchase the Port Barmouth Property directly with no financing or appraisal contingencies and a 35-day closing period.

Before proceeding to negotiate a sale with Proposed Buyer, the Receiver needed to complete an analysis as to the market value of the property in order to determine whether there was any benefit to the receivership estate in retaining a broker and paying a customary 5%-6% brokerage commission in connection with the marketing and sale of the property. Between February 8, 2019 and March 3, 2019, the Receiver obtained two appraisals from certified residential real estate appraisers and two written broker's opinions of value. Based on those appraisals and broker's opinions of value and the fact that the Receiver would not have to incur a 5% or 6% commission to market and list the property for sale, the Receiver proceeded to negotiate and enter into the Proposed Purchase Agreement for \$3,400,000, which also provides for a \$5,000 credit to the Proposed Buyer in lieu of various repairs. The Proposed Purchase Agreement provides for an all-cash purchase of the Port Barmouth Property, with the sale to close within 30 days of entry of an order approving the sale and satisfaction of all requirements which may be imposed by the Court as a condition of the sale, and subject to any waiting period imposed by the title company as a requirement of its issuance of a policy of title insurance. All contingencies have been removed by the Proposed Buyer.

E. Benefits to Proposed Sale

The Receiver determined that it was not beneficial to proceed to list the property with a real estate broker who would charge 5% or 6% to market and sell the property because the \$3,400,000 sale price negotiated with the Proposed Buyer equaled or exceeded the average of the four market valuations obtained from the certified residential real estate appraisers and real estate

brokers.⁴ Besides the fact that the \$3,400,000 price equals or exceeds the average market valuation from the appraisers and brokers, an added benefit to the receivership estate is that the Receiver is only incurring a 1.25% brokers commission to SRS Real Estate Partners, .75% for its assistance throughout the sale negotiation and documentation process and .50% for its assistance with respect to the overbid session to be conducted. If the Proposed Buyer acquires the Port Barmouth Property without an overbid, the gross sales proceeds less this 1.25% commission equals \$3,357,500 ($\$3,400,000 \times .9875 = \$3,357,500$). This equals the gross sales proceeds on a sale for **\$3,534,210** if a 5% broker's commission was paid ($\$3,534,210 \times .95 = \$3,357,500$).

There is one secured claim against the property, a first trust deed loan in favor of 5th Street Capital, Inc. and serviced by Select Portfolio Servicing ("SPS Lien"). The present principal balance owed under the SPS Lien is \$2,460,500 and interest is current through February 28, 2019. All payments have been paid through March 31, 2019, but the interest-only monthly payments (along with property tax and insurance impounds) are substantial, in the amount of \$16,116.37.

The Proposed Buyer is well qualified and has made an all-cash, non-contingent offer to purchase set forth in the Proposed Purchase Agreement, providing for a prompt closing of the sale after completion of the overbid session and subject to Court approval of the sale. The Proposed Buyer is familiar with the Port Barmouth Property based on their residence nearby and the fact that they have been inside the property many times. The Proposed Buyer is financially well-qualified to purchase the property. An all-cash offer which equals or exceeds the market

⁴ So as not to chill bidding at the overbid session or impair the ability of the Receiver to sell the property in the event that the Proposed Buyer fails to close escrow for any reason, the Receiver is not attaching these valuations to the Motion. Should the Court desire to review the valuations, the Receiver will submit them under seal.

value of the Port Barmouth Property, with only a 1.25% real estate commission, along with the ability of the Proposed Buyer to complete the sale quickly, thereby enabling the Receiver to avoid the cash drain of continuing to make payments on the SPS Lien, is a great benefit to the receivership estate.

F. Proposed Sale Approval, Confirmation and Overbid Session Procedures, Terms and Conditions

The Receiver has been contacted by other persons expressing an interest in acquiring the Port Barmouth Property. One individual who also lives close to the property has indicated a potential interest on bidding on the property. Therefore, in order that the Receiver maximize value for the receivership estate, and to avoid unnecessary administrative expense through multiple motions to conclude the sale, the Receiver requests that the Court approve the following notice and overbid procedures, terms and conditions:

A. The overbid session shall be conducted within 20 days of the date of entry of the order granting this Motion. The overbid session will be conducted at the offices of SRS Real Estate Partners, located at 610 Newport Center Drive, Ste. 1500, Newport Beach, California.

B. The Receiver shall cause to be published a notice of the proposed sale of the Port Barmouth Property to a qualified bidder at the overbid session to be conducted under paragraph 1.A above, which notice shall state the date, time and place of the overbid session, the requirement for pre-qualification by overbidders and the terms and conditions of the overbidding and sale of the property, as described below (“Overbid Notice”). The Receiver shall cause the Overbid Notice to be published in the Orange County Register two times prior to the date of the overbid session, with the first publication to be at least ten days prior to the date of the overbid session. The Orange County Register is a daily newspaper of general circulation in Orange

County, California where the Port Barmouth Property is located and one in which legal notices, including sale notices, are commonly published.

C. Any interested party wishing to overbid at the overbid session shall be required to pre-qualify with the Receiver not less than two business days before the overbid session by delivering to the Receiver's office located at 11450 Sheldon Street, Sun Valley, California 91352: (a) notice in writing of the prospective overbidder's intent to overbid; (b) written verification from a financial institution demonstrating to the Receiver's satisfaction, in its sole and absolute opinion and judgment, the prospective overbidder's ability to complete and close a purchase of the Port Barmouth Property through sufficient funds and/or credit facilities within 20 days of the overbid session; and (c) a cashier's check in the sum of \$100,000 payable to Ecological Fox LLC et al. Receivership QSF, which cashier's check shall become nonrefundable upon acceptance of the overbidder's overbid at the conclusion of the overbid session.

D. Overbidders shall be deemed to have completed all inspections of the Port Barmouth Property and shall be deemed to have waived and/or removed all contingencies in favor of the Proposed Buyer under the Proposed Purchase Agreement, including without limitation any contingency pertaining to inspection of title, and will be required to complete a cash purchase of the Port Barmouth Property and close escrow for the purchase of the Port Barmouth Property within 20 days of the date of the overbid session, subject to any waiting period imposed by the title company as a requirement of its issuance of a policy of title insurance. The successful overbidder will be required to execute a purchase agreement for the Port Barmouth Property substantially in the form of the Proposed Purchase Agreement together with a waiver of all buyer contingencies promptly after conclusion of the overbid session and to otherwise generally perform in the manner provided in the Proposed Purchase Agreement,

including without limitation depositing an additional \$580,000 into escrow within five days after the conclusion of the overbid session.

E. The initial overbid shall be in the amount of \$3,519,000, representing an amount that is 3.5% higher than the purchase price under the Proposed Purchase Agreement, and all subsequent overbids shall be in an amount at least \$25,000 higher than the preceding bid.

F. Pursuant to the Proposed Purchase Agreement and the Receiver's Residential Listing Agreement with its broker, a copy of which is attached as Exhibit 2 to the Kane declaration, a sales commission in the amount of 1.25% of the purchase price paid by the Proposed Buyer, or if a higher overbid is received and accepted at the overbid session, by the winning overbidder, shall be paid from the proceeds of the sale at close of escrow, and no other sales commission shall be paid from the proceeds of the sale or shall be paid by or be the responsibility of the Receiver under any circumstances.

G. The sale of the Port Barmouth Property by private sale to the Proposed Buyer under the Proposed Purchase Agreement, or to the highest qualified overbidder at the overbid session pursuant to the procedures set forth herein, shall be deemed confirmed by Order pursuant to this Motion without further notice, hearing or additional order, and without any subsequent motion for confirmation of the sale.

II. THE PORT BARMOUTH PROPERTY AND THE NET PROCEEDS FROM THE SALE OF THE PORT BARMOUTH PROPERTY ARE EXCLUSIVELY PROPERTY OF THE RECEIVERSHIP ESTATE

As set forth in the accompanying Declaration of Brick Kane, the entirety of the down payment on the Port Barmouth Property and all of the equity in the property is directly traceable to funds diverted by Pukke from the Receivership Entities. This is comprised of \$476,795.51

routed through Pukke's investment in Remote.com using Receivership Entities' funds, and \$648,559.32 obtained by accessing the equity in the Kings Lane Property, which equity was created by the Receivership Entities' payment of approximately \$5.1 million in construction costs and mortgage payments.

Based on the broad supervisory powers and discretion of the federal district court in an equity receivership, the Court has the power to determine the scope of the assets subject to the Court's receivership order to include assets ostensibly in the name of a non-receivership party. *In re San Vicente Medical Partners, Ltd.*, 962 F. 2d 1402 (9th Cir. 1992); *Securities and Exchange Commission v. Elmas Trading Corp.*, 620 F. Supp. 231 (D. Nev. 1985), *aff'd* 805 F. 2d 1039 (9th Cir. 1986); *Securities and Exchange Commission v. Private Equity Management Group, Inc.* 2009 WL 1941400 at *1 (C.D. Cal. July 2, 2009) and related decisions at 2009 WL 2488044 at *1 (C.D. Cal. August 10, 2009) and 2009 WL 3074604 at *1 (C.D. Cal. September 21, 2009). The Federal Trade Commission, like the Securities and Exchange Commission involved in the foregoing decisions, brings civil enforcement actions such as this case to protect the interests of the public and consumers who are alleged to have suffered financial injury through their dealings with the defendants, and is entitled to ancillary relief such as the appointment of a receiver to protect the public interest and those of potentially injured consumers. Even if the Chittenden Trust is a non-party, the receivership estate may be extended to assets which were placed in the name of the Chittenden Trust expressly for asset protection purposes by Pukke and Chittenden. See *Federal Trade Commission v. Productive Marketing, Inc.*, 136 F. Supp. 2d, 1096, 1103 (C.D. Cal. 2001) (finding non-party and receivership assets in the possession and control of the non-party are bound by the *in rem* provisions of the preliminary injunction and receivership, and non-party is subject to contempt for failure to turn over such

assets to the receivership), citing *Securities and Exchange Commission v. Wencke*, 622 F. 2d 1363, 1371 (9th Cir. 1980) (“The Supreme Court has repeatedly emphasized the broad equitable powers of the federal courts to shape equitable remedies to the necessities of particular cases, especially where a federal agency seeks enforcement in the public interest”).

The Receivership Entities beneficially own the Port Barmouth Property because its assets funded the acquisition. Even assuming for argument’s sake that the Port Barmouth Property is not deemed to be an asset of the Receivership Entities, there can be no dispute that it was an asset that was acquired in the name of Chittenden, for Pukke’s (and Chittenden’s) benefit. All of Pukke’s assets in excess of \$1,000 in value are property of the receivership estate (TRO, Section XVI.B.) and Chittenden has disclaimed any interest in the Port Barmouth Property. Therefore, to the extent it is not an asset of the Receivership Entities, the Port Barmouth Property is Pukke’s asset and all of the equity in the Port Barmouth Property exclusively belongs to the receivership estate.

Because the real estate was purchased with funds obtained as a result of the alleged fraudulent conduct that is the basis of the FTC’s action it is proper to include it in the receivership estate, even if neither the Receivership Entities nor Pukke has title to the Port Barmouth Property. For instance, in *Securities and Exchange Commission v. Kirkland*, 2006 WL 2639522 * 2–3 (M.D.Fla.2006), Patrick Kirkland was subject to an asset freeze order. He used funds from receivership entities to purchase real property at the Sunset Bay Club. The District Court Judge overseeing the case noted that since the “evidence tends to show that the property was purchased with funds from receivership entities, I respectfully recommend that the receivership be expanded to include the Unit at Sunset Bay.” *Id.*

Similarly, in *Securities and Exchange Commission v. Lauer*, 2009 WL 812719, at *3 (S.D.Fla.2009) dealt with an asset freeze order issued against Michael Lauer. At issue was a New York City condominium purchased by a company owned by Lauer. The company that purchased the condominium was not a named entity in the freeze order. The condominium was fully financed with an interest-only loan, and was purchased prior to any alleged wrongdoing by Lauer. However, evidence showed that Lauer eventually began paying for the condominium's carrying costs using tainted funds. Though there was no equity in the condominium due to the interest-only loan, it did appreciate in value. The Court ruled that this appreciation in value, \$750,000, was properly included in the Receiver's estate.

Likewise, in *In re Fin. Federated Title & Trust, Inc.*, 347 F.3d 880,884 (11th Cir.2003), Ray Levy participated in a fraudulent scheme and used \$977,000 of these ill-gotten funds to purchase a home for \$1,150,000. The Receiver sought the home for the estate. Levy argued that the homestead exemption protected him. *Id.* at 886. The court disagreed and imposed an equitable lien against the home, finding that the homestead exemption was not be used as an instrument of fraud and to prevent the defendants' unjust enrichment at the expense of the defrauded investors. *Id.* at 892.

Finally, in *Commodity Futures Trading Comm'n v. Hudgins*, 620 F.Supp.2d 790, 795 (E.D.Tex.2009), Hudgins ran a Ponzi scheme. He gave his girlfriend \$362,500 of funds from the scheme which she used to pay off the mortgage on her home. There was no allegation that the girlfriend was complicit in or even knew of Hudgins's wrongdoing. With then current market conditions, the home was worth less than the amount Hudgins gave her. The receiver demanded that she turn over her home. She refused. The Court agreed with the receiver, noting "[d]espite her innocence in the fraud, to allow her a homestead exemption would allow her to become

unjustly enriched by the ponzi scheme at the expense of Hudgins's victims. Allowing the Receiver to step into the shoes of her mortgagor and have an equitable lien on the condominium puts [her] in no worse position than had she not received the money at all. ... That she is innocent of the fraud—and another person hurt by Hudgins's acts—does not change this analysis.” *Id.* at 794-95.

III. THE SALE OF THE PORT BARMOUTH PROPERTY SHOULD BE APPROVED UNDER 28 U.S.C. § 2001 AND RECEIVERSHIP LAW

Title 28 U.S.C. § 2001 sets forth the procedures pertaining to the sale of real property. Subsection (a) pertains to procedures for the public sale of real property and provides for the sale of real property by public sale at the courthouse where the Receiver was first appointed, at the courthouse where most of the property is located or at such other premises as the Court directs. 28 U.S.C. § 2001(a). Section § 2001(b) of Title 28 pertains to the sale of real property at private sale. That statute provides in part:

After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest therein by private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be served thereby.

The time, manner, terms of sale and notice thereof are regulated by the court appointing the receiver. Courts are granted discretion in setting the terms and conditions for judicial sales and the Court's discretion will not be disturbed on appeal except where abuse of discretion is shown. *United States v. Branch Coal Corp.*, 390 F. 2d 7 (3rd Cir. 1968), *cert. den.* *Sun Protection Co. v. United States*, 391 U.S. 966, 88 S. Ct. 2034 (1968). The Court has substantial discretion in

receivership matters in setting the overbidding procedures applicable to sales of real property. *See Pewabic Mining Co. v. Mason*, 145 U.S. 349, 356, 36 L.Ed. 732, 12 S.Ct. 887 (1891) (the provisions for notice and other conditions shall be determined by the Court “as will in his judgment best protect the rights of all interested, and make the sale most profitable to all”). *See also Cumberland Lumber Co. v. Tunis Lumber Co.*, 171 F. 352 (4th Cir. 1909); *Bidwell v. Huff*, 176 F. 174 (5th Cir. 1909). The terms and conditions of the judicial sale that the Court may adopt are based on the facts and circumstances of each case. The discretion granted in connection with sales of assets is consistent with the broad discretion accorded to the Court sitting in equity in receivership proceedings to make orders concerning the administration and supervision of the estate that will promote equity, efficiency and cost-effectiveness in the estate’s administration. *See generally Securities and Exchange Commission v. Hardy*, 803 F.2d 1034 (9th Cir. 1986); *Securities and Exchange Commission v. Black*, 163 F.3d 188, 199 (3rd Cir. 1998); *Securities and Exchange Commission v. Elliot*, 953 F.2d 1560 (11th Cir. 1992).

There are four statutory components for the approval of a private sale under § 2001(b). Each of these four components will be addressed below by providing the Court the text of the statute followed by an explanation of how the Receiver’s proposed sale procedures meet the component.

1. Valuation of Port Barmouth Property by Three Appraisers

Section 2001(b) of Title 28 states:

Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities.

The statute does not define what constitutes an “appraisal” for the purpose of § 2001(b). The Receiver has obtained two appraisals by certified residential real estate appraisers and two written brokers opinions of value. The two appraisals, one from Steven Dowd of Dowd Associates Appraisal Services in Newport Beach, California and one from William C. Walsh of B&W Appraisal Services Inc., use the sales comparison approach to value. Dowd also used a cost approach in valuing the property. Both have substantial experience and expertise as residential real estate appraisers. The two brokers opinions of value come from Justine Howard of Coldwell Banker in Newport Beach, California and James J. Kline of Surterre Properties, also in Newport Beach, California. These brokers specialize in the high-end Newport Beach real estate market and based their opinion on the current real estate market listings and comparable sales. These valuations constitute compliance with the provisions of the statute. To the extent there is any minor deviation from the statutory provision as to the appointment of three appraisers, it is warranted under the circumstances for several reasons, including the expense associated with obtaining a third traditional appraisal which is burdensome to the estate under the circumstances and the fact that the valuations by both the local real estate brokers and the appraisers are based on comparable sales data and the experience and knowledge of the sales agents who actually deal in real estate in the local market and thus are reliable indicators of the actual value likely to be realized from the marketing and sale of the property.

As the Ninth Circuit noted in *SEC v. Hardy*, 803 F. 2d 1034, 1037 (9th Cir. 1986): “A district court’s power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad” and subject to review under an abuse of discretion standard.

The valuations obtained by the Receiver and the opportunity for interested buyers to submit overbids at an overbid session provides ample assurance to the Court that the best price for the property is being realized under the circumstances.

2. Private Sale Must Be For A Price At Least Two-Thirds The Amount of the Average of the Appraised Values

Section 2001(b) next provides, “No private sale shall be confirmed at a price less than two-thirds of the appraised value.”

The sale to the Proposed Buyer at \$3,400,000 vastly exceeds the minimum threshold for the price that must be achieved for a private sale given that the purchase price equals or exceeds the average of the four market valuations obtained by the Receiver.

3. Publication of Notice of Proposed Private Sale Once At Least Ten Days Prior to Confirmation

Section 2001(b) then provides:

Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation.

The Receiver’s sale procedures include a provision for publication of a notice of the opportunity for overbids to be made for the Port Barmouth Property which expressly includes a description of the current purchase price and terms, which is cash to the receivership estate and a closing to occur within 20 days after the overbid session concludes. The published notice will also give notice of the terms and conditions for overbids to be made, such as pre-qualification of overbidders. The Receiver proposes to publish the notice two times in the Orange County Register, a large local daily newspaper of general circulation, prior to the overbid session, and

the first published notice will be published more than 10 days prior to overbid session. The ultimate sale of the Port Barmouth Property will only be confirmed at the conclusion of the overbid session, when it is determined if a higher, qualified overbid in excess of the original offer by the Proposed Buyer has been submitted and accepted by the Receiver. Thus, this component of the statute is satisfied.

4. The Private Sale to the Proposed Purchaser Shall Be Confirmed Unless An Overbidder Bids At Least Ten Percent More

The last of the four components of the private sale provisions of § 2001(b) is as follows:

The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

Although the language of this portion of the statute is arcane, the effect of this provision is that the Court is authorized to confirm the private sale so long as the Receiver sells the Port Barmouth Property to the current Proposed Buyer at \$3,400,000 or if overbids are made at the overbid session, to the highest bidder at the overbid session. Therefore, if no overbid is made that is as much as 10% over the current offer of \$3,400,000 (in other words, a bid of \$3,740,000), the statute would permit the Court to confirm the Proposed Purchase Agreement. However, under the Receiver's proposed sale procedures, which are designed to maximize the recovery to the estate, the highest qualified bidder will be able to purchase the property with an overbid of 3.5%, or \$3,519,000. This benefits the estate by maximizing the sale price without requiring an artificially high 10% overbid. Nothing in the statute prohibits the court from confirming an overbid lower than 10% in excess over the price negotiated with the Proposed Buyer. Therefore, this component of the statute is satisfied.

Potential bidders will have an opportunity to submit overbids, and the proposed procedures and published notice of the overbid session will assure that the value of this asset is maximized for the benefit of the estate. The Receiver requests that the Court confirm the sale to the Proposed Buyer, or alternatively to the successful overbidder at the overbid session.

IV. CONCLUSION

Based on this Memorandum of Points and Authorities and the accompanying declaration of Brick Kane and exhibits attached thereto, it is respectfully requested that the Court grant the relief requested in the Motion and enter the proposed Order submitted herewith.

Dated: April 23, 2019

By: /s/ Gary Owen Caris

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& Associates LLC

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

In re SANCTUARY BELIZE LITIGATION

No: 18-cv-3309-PJM

**DECLARATION OF BRICK KANE IN SUPPORT OF MOTION FOR ORDER
APPROVING AND CONFIRMING SALE OF REAL PROPERTY COMMONLY
KNOWN AS 1833 PORT BARMOUTH PLACE, NEWPORT BEACH, CALIFORNIA**

I, Brick Kane, declare:

1. I am the President of Robb Evans & Associates LLC (“Receiver”), the temporary receiver in this action. This lawsuit was commenced on October 31, 2018 by the Federal Trade Commission (“FTC”) on October 31, 2018 with its filing of a Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”). The lawsuit named 17 entity defendants and seven individual defendants, in addition to five relief defendants. The Court issued the Ex Parte Temporary Restraining Order With Asset Freeze, Writs *Ne Exeat*, Appointment of a Temporary Restraining Order and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (“TRO”) on November 5, 2019. Under the TRO, the Receiver became temporary receiver over all entity defendants except for Atlantic International Bank, Ltd. (“AIBL”) and over the assets of Andris Pukke (“Pukke”) and Peter Baker (“Baker”) valued at \$1,000 or more. The Court extended the duration of the TRO pursuant to an Extension of Temporary Restraining Order and Interim Preliminary Injunction on November 20, 2018. The FTC filed a motion to amend the Complaint and a proposed Amended Complaint for Permanent Injunction and Other Equitable Relief (“Amended Complaint”) on December 28, 2018 adding

Michael Santos and Newport Land Group, LLC (“NLG”) as defendants. The Court granted the motion to amend on January 11, 2019. On February 13, 2019 the Court entered a Stipulated Preliminary Injunction as to Defendants Rod Kazazi, Foundation Partners, Brandi Greenfield, BG Marketing LLC, Frank Costanzo, Deborah Connelly, Ecological Fox LLC, Michael Santos, Angela Chittenden, and Beach Bunny Holdings LLC (“Stipulated Preliminary Injunction”). Under the Stipulated Preliminary Injunction, the Receiver remained as receiver over the stipulating Receivership Entities BG Marketing, LLC, Ecological Fox, LLC, and Foundation Partners, and NLG was expressly added as a named Receivership Entity. The Receiver had already determined that NLG is a non-party Receivership Entity, in addition to previously determining that two other non-party entities, 2729 Bristol LLC and 3905 Marcus, LLC, are Receivership Entities, pursuant to Sections XVI.W and X of the TRO. The Receiver remains temporary receiver over the remaining Receivership Entities named in the TRO and over the assets of Pukke and Baker.

2. I have been one of the members of Robb Evans & Associates LLC primarily responsible for the supervision, management and administration of the receivership estate, the Receiver’s taking possession and control of the business and operations of the Receivership Entities, as defined in the TRO, the review and investigation of the business, operations and assets of the Receivership Entities and the individuals whose assets are under receivership, and the Receiver’s exercise of the other powers and duties set forth in the TRO and Stipulated Preliminary Injunction. I have been involved in the Receiver’s ongoing review and detailed analysis of the Receivership Entities’ financial records, banking records, and other business records and files. I was personally involved in the preparation and review of the Receiver’s Report of Activities for the period from November 6, 2018 to February 21, 2019 (“Receiver’s

Report”) filed on February 22, 2019. I have personal knowledge of the matters set forth in this declaration and if I were called upon to testify as to these matters I could and would competently testify thereto based on my personal knowledge.

3. Pursuant to Section XVI.D of the TRO, the Receiver is directed and authorized to, among other things, conserve receivership assets and perform all acts necessary or advisable to preserve the value of those assets. Based on the Receiver’s forensic accounting analysis, the Receiver determined that the residential real property commonly known as 1833 Port Barmouth Place, Newport Beach, California (“Port Barmouth Property”) is an asset of the receivership estate. This is because, among other things, all of the proceeds which were used in down payment for the purchase of the property in May 2018 indirectly came from assets generated by the Receivership Entities through the sale of lots in the Belize development known as the Reserve. Angela Chittenden (“Chittenden”) acquired title to the Port Barmouth Property at that time for a purchase price of \$3,515,000. Chittenden is the putative spouse of Pukke, having lived with him for many years, and together they have two children. Chittenden is one of the relief defendants in this action.

4. Immediately after acquiring record title, Chittenden transferred title to the Port Barmouth Property to James W. Chittenden, as Family Trustee and Alliance Trust Company (“Alliance”), as Independent Trustee of the AAC Family HYCET Trust Dated October 7, 2015 (“Chittenden Trust”). James W. Chittenden has resigned as Family Trustee of the Chittenden Trust and Alliance is the sole remaining trustee. The Chittenden Trust is a purported asset protection trust. HYCET stands for “have your cake and eat it too.”

5. Pursuant to Section XVI.D of the TRO, the Receiver is directed and authorized to, among other things, conserve receivership assets and perform all acts necessary or advisable to

preserve the value of those assets. The Receiver determined that, in order to conserve the assets of the receivership and minimize expense to the estate, it would be beneficial for the Receiver to sell the Port Barmouth Property as soon as practicable. This is particularly true given the limited amount of cash on hand in the receivership estate presently available to fund necessary operating expenses at the development in Belize known as the Reserve. At the present time, the Receiver has determined that it has cash on hand sufficient to fund operations at the Reserve through at least mid-July, not including funds turned over from accounts held by NLG which will be the subject of a separate motion by the Receiver shortly seeking an order determining that the NLG funds are property of the estate and may be used for all receivership purposes.

6. The Receiver negotiated a Stipulation Authorizing Listing for Sale and Marketing of Real Property Asset By Receiver (“Sale Stipulation”) with Alliance, on behalf of the Chittenden Trust, which was filed on February 8, 2019. It provided, among other things, that: (a) the Receiver would engage a real estate broker at not more than 6% commission to list and market for sale the Port Barmouth Property; (b) the Receiver would have sole authority with respect to the marketing and sale of the Port Barmouth Property and be authorized to conditionally accept the highest and best offer received, subject to entry of a Court order approving and confirming such sale after a motion brought on notice to the parties and Alliance pursuant to 28 U.S.C. § 2001; (c) the Port Barmouth Property would be sold free and clear of all claims that Alliance and the Chittenden Trust have to the Port Barmouth Property; (d) the net proceeds from the sale of the Port Barmouth Property after the payment of all valid liens and encumbrances and costs of sale (“Net Proceeds”) would be held by the Receiver pending further Court order; and (e) Alliance reserved its right to assert a claim to any or all of the Net Proceeds on behalf of the Chittenden Trust. In the event that the Receiver and Alliance were unable to

reach an agreement on whether and the extent to which Alliance is entitled to any of the Net Proceeds on behalf of the Chittenden Trust, the dispute would be heard and determined by this Court on noticed motion brought by either party. On February 13, 2019, the Court issued its Order Approving Stipulation Authorizing Listing for Sale and Marketing of Real Property Asset By Receiver (“Sale Order”), approving the Sale Stipulation in its entirety.

7. Chittenden, on her own behalf, has advised the Receiver that she does not assert any interest in the Net Proceeds from the sale of the Port Barmouth Property and she acknowledges and agrees that the Receiver should have the sole and exclusive right to all of the Net Proceeds from the sale, on behalf of the receivership estate. Chittenden continues to reserve her rights to assert an interest in net sale proceeds which may be subsequently generated regarding the property commonly described as 104 Kings Place, Newport Beach, California (“Kings Place Property”), which is a property expressly named in the TRO but which is also held in the name of the Chittenden Trust.

8. The Receiver has done an extensive and detailed analysis of the Receivership Entities’ financial records, including its banking and accounting records. The Receiver also subpoenaed and reviewed pertinent escrow records and other real property records as they relate to the Port Barmouth Property and the Kings Place Property and interviewed third parties as they relate to the issues concerning Remote.com, Inc. (“Remote.com”) discussed herein. Much of this analysis is discussed in detail in the Receiver’s Report. Based on that analysis, we determined that the Port Barmouth Property was acquired by Pukke in the name of Chittenden for \$3,515,000 on or about May 1, 2018, just six months before the inception of the receivership estate and thereafter transferred to the Chittenden Trust. The purchase price was paid for by a \$2,460,500 loan in favor of 5th Street Capital, Inc., together with down payments totaling

\$1,125,354.83. Of the \$1,125,354.83 sum, \$476,795.51 was paid in two wire transfers from Remote.com. Pukke transferred \$1,651,420 from the Receivership Entities into Outsource.com for investment purposes, the predecessor entity which was subsequently merged into Remote.com. Pukke placed the investment in Remote.com in Chittenden's name. Pukke's net investment in Remote.com, after netting out transfers including the money used to fund the Port Barmouth Property down payment, was \$874,625. (The Receiver has entered into a tentative settlement with Remote.com and Chittenden has agreed to sign the paperwork selling her paper ownership interest back to Remote.com in exchange for a payment to the Receiver from Remote.com, which will be the subject of a separate motion.) The payment of \$476,795.51 by Remote.com, along with the balance of the deposit, enabled Pukke to acquire the Port Barmouth Property in Chittenden's name.

9. The balance of the deposit for the Port Barmouth Property, \$648,559.32, came from the proceeds of a second deed of trust on the Kings Place Property. The Kings Place Property is expressly named in the TRO as a receivership asset (TRO, Section XVIII.B). That property was also acquired by Pukke in Chittenden's name in June 2012 and subsequently transferred to the Chittenden Trust. The equity in the Kings Place Property which was used to obtain the second deed of trust on that property and pay the balance of the deposit on the Port Barmouth Property was created by the renovation of the Kings Place Property. The renovation of the Kings Place Property occurred directly as a result of funds diverted from the Receivership Entities by Pukke. The Receiver has conclusively determined that the amount diverted by the Receivership Entities for construction costs on the Kings Place Property is in excess of \$3.4 million. However, Chittenden has admitted, through her counsel, that \$4.3 was taken from the Receivership Entities for construction costs on the Kings Place Property and that a total of

approximately \$5.1 million was taken from the Receivership Entities in connection with the Kings Place Property, including payment of both construction costs and mortgage payments.

10. Therefore, all of the money used to acquire the Port Barmouth Property originated from funds diverted from the Receivership Entities by Pukke. All of the equity in the Port Barmouth Property and the prospective net proceeds from the sale of the property sought pursuant to this Motion, is attributable to the down payment which was indirectly funded exclusively by the Receivership Entities.

11. In January 2019, prior to entering into the Sale Stipulation and the entry of the Sale Order, Bryan Goodman contacted the Receiver and expressed interest in acquiring the Port Barmouth Property. Mr. Goodman indicated that he lived very close to the property, knew the property owners prior to Chittenden's acquisition, and had been in the house many times. On February 19, 2019, just days after entry of the Sale Order, Mr. Goodman and his wife, Jamie S. Goodman (collectively, the "Proposed Buyer"), made an unsolicited and detailed offer to purchase the Port Barmouth Property directly with no financing or appraisal contingencies and a 35-day closing period.

12. Before proceeding to negotiate a sale with Proposed Buyer, the Receiver needed to complete an analysis as to the market value of the property in order to determine whether there was any benefit to the receivership estate in retaining a broker and paying a customary 5%-6% brokerage commission in connection with the marketing and sale of the property. Between February 8, 2019 and March 3, 2019, the Receiver obtained two appraisals from certified residential real estate appraisers and two written broker's opinions of value. Based on those appraisals and broker's opinions of value and the fact that the Receiver would not have to incur a 5% or 6% commission to market and list the property for sale, the Receiver proceeded to

negotiate and enter into the California Residential Purchase Agreement and Joint Escrow Instructions dated March 13, 2019 and related sale contract documents, Counter Offer No. One dated March 14, 2019, including the Addendum No. 1 to Seller's Counter Offer 1, "AS-IS" Purchase addendum, and Additional Terms addendum, Contingency Removal No. 1 and Request for Repair No. 1 (collectively, the "Proposed Purchase Agreement") for \$3,400,000, which also provides for a \$5,000 credit to the Proposed Buyer in lieu of various repairs. The Proposed Purchase Agreement provides for an all-cash purchase of the Port Barmouth Property, with the sale to close within 30 days of entry of an order approving the sale and satisfaction of all requirements which may be imposed by the Court as a condition of the sale, and subject to any waiting period imposed by the title company as a requirement of its issuance of a policy of title insurance. All contingencies have been removed by the Proposed Buyer. A true and correct copy of the Proposed Purchase Agreement is attached hereto as Exhibit 1.

13. The Receiver determined that it was not beneficial to proceed to list the property with a real estate broker who would charge 5% or 6% to market and sell the property because the \$3,400,000 sale price negotiated with the Proposed Buyer equaled or exceeded the average of the four market valuations obtained from the certified residential real estate appraisers and real estate brokers. So as not to chill bidding at the overbid session or impair the ability of the Receiver to sell the property in the event that the Proposed Buyer fails to close escrow for any reason, the Receiver is not attaching these valuations to the Motion. Besides the fact that the \$3,400,000 price equals or exceeds the average market valuation from the appraisers and brokers, an added benefit to the receivership estate is that the Receiver is only incurring a 1.25% brokers commission to SRS Real Estate Partners, .75% for its assistance throughout the sale negotiation and documentation process and .50% for its assistance with respect to the overbid session to be

conducted, pursuant to the Receiver's Residential Listing Agreement with its broker, a true and correct copy of which is attached hereto as Exhibit 2. If the Proposed Buyer acquires the Port Barmouth Property without an overbid, the gross sales proceeds less this 1.25% commission equals \$3,357,500 ($\$3,400,000 \times .9875 = \$3,357,500$). This equals the gross sales proceeds on a sale for \$3,534,210 if a 5% broker's commission was paid ($\$3,534,210 \times .95 = \$3,357,500$).

14. There is one secured claim against the property, a first trust deed loan in favor of 5th Street Capital, Inc. and serviced by Select Portfolio Servicing ("SPS Lien"). The present principal balance owed under the SPS Lien is \$2,460,500 and interest is current through February 28, 2019. All payments have been paid through March 31, 2019, but the interest-only monthly payments (along with property tax and insurance impounds) are substantial, in the amount of \$16,116.37.

15. The Proposed Buyer is well qualified and has made an all-cash, non-contingent offer to purchase set forth in the Proposed Purchase Agreement, providing for a prompt closing of the sale after completion of the overbid session and subject to Court approval of the sale. The Proposed Buyer is familiar with the Port Barmouth Property based on their residence nearby and the fact that they have been inside the property many times. The Proposed Buyer is financially well-qualified to purchase the property. An all-cash offer which equals or exceeds the market value of the Port Barmouth Property, with only a 1.25% real estate commission, along with the ability of the Proposed Buyer to complete the sale quickly, thereby enabling the Receiver to avoid the cash drain of continuing to make payments on the SPS Lien, is a great benefit to the receivership estate.

16. The Receiver seeks approval of the Proposed Purchase Agreement and the sale of the Port Barmouth Property to the Proposed Buyer under the terms and conditions set forth therein. The Receiver seeks approval to solicit overbids for the sale of the Port Barmouth Property, and seeks an order on this Motion that confirms the sale of the Port Barmouth Property to the Proposed Buyer, or such higher qualified overbidder who may make the highest overbid accepted by the Receiver at the overbid session to be conducted under the proposed sale procedures set forth in the Motion. Under the circumstances, including the fact that the sale to the Proposed Buyer is non-contingent for an amount that equals or exceeds the market value of the Port Barmouth Property, avoiding the continued payment of debt service on the property, the terms and conditions of the Proposed Purchase Agreement that provides for a prompt closing and payment of brokerage fees of only 1.25%, the Receiver's desire to avoid unnecessary administrative expense through multiple motions to conclude the sale, and the limited financial cash on hand in the receivership estate, the Receiver requests that the Court approve the notice and overbid procedures, terms and conditions set forth in the Motion and supporting memorandum.

17. I have worked for over 20 years with Robb Evans & Associates LLC and have been directly involved in the supervision, management and administration of over 90 federal equity receivership matters. I have been involved in the sale of over tens of millions of dollars in real estate throughout the United States. Based on my experience, I believe the sale of the Port Barmouth Property at a price of \$3,400,000, with the potential for a successful overbid to this

sale price which would be at least \$3,519,000, is in the best interests of the estate and represents a very favorable sale for the estate.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 22, 2019 at Sun Valley, California.



BRICK KANE

14396384.1

EXHIBIT 1



CALIFORNIA
ASSOCIATION
OF REALTORS

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

Date Prepared: MARCH 13th 2019

1. OFFER:

- A. THIS IS AN OFFER FROM BRYAN T. GOODMAN, JAMIE S. GOODMAN
- B. THE REAL PROPERTY to be acquired is 1835 POST BARNMOUTH situated in NEWPORT BEACH (CA), ORANGE (County), California 92640 (Zip Code), Assessor's Parcel No. 438-191-06 (Property).
- C. THE PURCHASE PRICE offered is THREE MILLION FOUR HUNDRED THOUSAND Dollars \$ 3,400,000.00
- D. CLOSE OF ESCROW shall occur on _____ (date) (or 95 Days After Acceptance).
- E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.

2. AGENCY:

- A. DISCLOSURE: The Parties each acknowledge receipt of a "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
- B. CONFIRMATION: The following agency relationships are confirmed for this transaction:
 Seller's Brokerage Firm SBS REAL ESTATE PARTNERS License Number 01881492
 is the broker of (check one): the seller; or both the buyer and seller. (dual agent)
 Seller's Agent _____ License Number _____
 is (check one): the Seller's Agent. (salesperson or broker associate) both the Buyer's and Seller's Agent. (dual agent)
 Buyer's Brokerage Firm SBS REAL ESTATE PARTNERS License Number 01881492
 is the broker of (check one): the buyer; or both the buyer and seller. (dual agent)
 Buyer's Agent _____ License Number _____
 is (check one): the Buyer's Agent. (salesperson or broker associate) both the Buyer's and Seller's Agent. (dual agent)
- C. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

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

- A. INITIAL DEPOSIT: Deposit shall be in the amount of \$ 100,000.00
 (1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, cashier's check, personal check, other _____ within 3 business days after Acceptance (or _____);
 OR (2) Buyer Deposit with Agent: Buyer has given the deposit by personal check (or _____) to the agent submitting the offer (or to _____), made payable to _____ The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or _____).
 Deposit checks given to agent shall be an original signed check and not a copy.
 (Note: Initial and increased deposits checks received by agent shall be recorded in Broker's trust fund log.)
- B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of \$ _____ within _____ Days After Acceptance (or _____).
 If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder.
- C. ALL CASH OFFER: No loan is needed to purchase the Property. This offer is NOT contingent on Buyer obtaining a loan. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or Buyer shall, within 3 (or _____) Days After Acceptance, Deliver to Seller such verification.
- D. LOAN(S):
 (1) FIRST LOAN: In the amount of \$ _____
 This loan will be conventional financing OR FHA, VA, Seller financing (C.A.R. Form SFA), assumed financing (C.A.R. Form AFA), Other _____. This loan shall be at a fixed rate not to exceed _____% or, an adjustable rate loan with initial rate not to exceed _____%. Regardless of the type of loan, Buyer shall pay points not to exceed _____% of the loan amount.
 (2) SECOND LOAN In the amount of \$ _____
 This loan will be conventional financing OR Seller financing (C.A.R. Form SFA), assumed financing (C.A.R. Form AFA), Other _____. This loan shall be at a fixed rate not to exceed _____% or, an adjustable rate loan with initial rate not to exceed _____%. Regardless of the type of loan, Buyer shall pay points not to exceed _____% of the loan amount.
 (3) FHA/VA: For any FHA or VA loan specified in 3D(1), Buyer has 17 (or _____) Days After Acceptance to Deliver to Seller written notice (C.A.R. Form FVA) of any lender-required repairs or costs that Buyer requests Seller to pay for or otherwise correct. Seller has no obligation to pay or satisfy lender requirements unless agreed in writing. A FHA/VA amendatory clause (C.A.R. Form FVAC) shall be a part of this Agreement.
- E. ADDITIONAL FINANCING TERMS: THE BUYER MAY ELECT TO FINANCE A PORTION OF THE SALE PRICE.
- F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE in the amount of \$ 3,300,000.00
 to be deposited with Escrow Holder pursuant to Escrow Holder instructions.
- G. PURCHASE PRICE (TOTAL): \$ 3,400,000.00

Buyer's Initials [Signature]
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Seller's Initials [Signature]



RPA-CA REVISED 12/18 (PAGE 1 OF 10) Print Date Dec 18

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

Property Address: 1833 PORT BARMOUTH NEWPORT BEACH Date: MARCH 13th 2019

- H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or loan broker pursuant to paragraph 3J(1)) shall, within 3 (or ___) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. Verification attached.)
- I. APPRAISAL CONTINGENCY AND REMOVAL: This Agreement is (or is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 14B(3), in writing, remove the appraisal contingency or cancel this Agreement within 17 (or ___) Days After Acceptance.
- J. LOAN TERMS:
 - (1) LOAN APPLICATIONS: Within 3 (or ___) Days After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate. Letter attached.)
 - (2) LOAN CONTINGENCY: Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above is a contingency of this Agreement unless otherwise agreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs are not contingencies of this Agreement.
 - (3) LOAN CONTINGENCY REMOVAL: Within 21 (or ___) Days After Acceptance, Buyer shall, as specified in paragraph 14, in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
 - (4) NO LOAN CONTINGENCY: Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.
 - (5) LENDER LIMITS ON BUYER CREDITS: Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.
- K. BUYER STATED FINANCING: Seller is relying on Buyer's representation of the type of financing specified (including but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price and to sell to Buyer in reliance on Buyer's covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

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

- 5. ADDENDA AND ADVISORIES:
 - A. ADDENDA:

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

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

6. OTHER TERMS: _____

- 7. ALLOCATION OF COSTS
 - A. INSPECTIONS, REPORTS AND CERTIFICATES: Unless otherwise agreed in writing, this paragraph only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report.
 - (1) Buyer Seller shall pay for a natural hazard zone disclosure report, including tax environmental Other: _____ prepared by BUYER'S CHOICE
 - (2) Buyer Seller shall pay for the following Report _____ prepared by _____
 - (3) Buyer Seller shall pay for the following Report _____ prepared by _____
 - B. GOVERNMENT REQUIREMENTS AND RETROFIT:
 - (1) Buyer Seller shall pay for smoke alarm and carbon monoxide device installation and water heater bracing, if required by Law. Prior to Close Of Escrow ("COE"), Seller shall provide Buyer written statement(s) of compliance in accordance with state and local Law, unless Seller is exempt.

Buyer's Initials: [Signature] Seller's Initials: [Signature]



Property Address: 1899 PORT BARMOUTH NEWPORT BEACH Date: MARCH 13th 2019

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

C. ESCROW AND TITLE:

- (1) (a) Buyer Seller shall pay escrow fee SPLIT 50% / 50%
- (b) Escrow Holder shall be ORANGE COAST TITLE
- (c) The Parties shall, within 5 (or) Days After receipt, sign and return Escrow Holder's general provisions.
- (2) (a) Buyer Seller shall pay for owner's title insurance policy specified in paragraph 13E
- (b) Owner's title policy to be issued by ORANGE COAST TITLE
(Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

D. OTHER COSTS:

- (1) Buyer Seller shall pay County transfer tax or fee
- (2) Buyer Seller shall pay City transfer tax or fee
- (3) Buyer Seller shall pay Homeowners' Association ("HOA") transfer fee
- (4) Seller shall pay HOA fees for preparing documents required to be delivered by Civil Code §4525.
- (5) Buyer Seller shall pay HOA fees for preparing all documents other than those required by Civil Code §4525.
- (6) Buyer to pay for any HOA certification fee.
- (7) Buyer Seller shall pay for any private transfer fee
- (8) Buyer Seller shall pay for
- (9) Buyer Seller shall pay for
- (10) Buyer Seller shall pay for the cost, not to exceed \$ 500.00, of a standard (or upgraded) one-year home warranty plan, issued by BUYER'S CHOICE, with the following optional coverages: Air Conditioner Pool/Spa Other: _____
Buyer is informed that home warranty plans have many optional coverages in addition to those listed above. Buyer is advised to investigate these coverages to determine those that may be suitable for Buyer.

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

8. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:

A. NOTE TO BUYER AND SELLER: Items listed as included or excluded in the MLS, flyers or marketing materials are not included in the purchase price or excluded from the sale unless specified in paragraph 8 B or C.

B. ITEMS INCLUDED IN SALE: Except as otherwise specified or disclosed,

- (1) All EXISTING fixtures and fittings that are attached to the Property;
- (2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water features and fountains, water softeners, water purifiers, security systems/alerts and the following if checked: all stove(s), except _____; all refrigerator(s) except _____; all washer(s) and dryer(s), except _____;
- (3) The following additional items: _____
- (4) Existing integrated phone and home automation systems, including necessary components such as intranet and internet-connected hardware or devices, control units (other than non-dedicated mobile devices, electronics and computers) and applicable software, permissions, passwords, codes and access information, are are NOT included in the sale.
- (5) LEASED OR LIENED ITEMS AND SYSTEMS: Seller shall, within the time specified in paragraph 14A, (i) disclose to Buyer if any item or system specified in paragraph 8B or otherwise included in the sale is leased, or not owned by Seller, or specifically subject to a lien or other encumbrance, and (ii) Deliver to Buyer all written materials (such as lease, warranty, etc.) concerning any such item. Buyer's ability to assume any such lease, or willingness to accept the Property subject to any such lien or encumbrance, is a contingency in favor of Buyer and Seller as specified in paragraph 14B and C.
- (6) Seller represents that all items included in the purchase price, unless otherwise specified, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to 8B(5) and _____, and (ii) are transferred without Seller warranty regardless of value.

C. ITEMS EXCLUDED FROM SALE: Unless otherwise specified, the following items are excluded from sale: (i) audio and video components (such as flat screen TVs, speakers and other items) if any such item is not itself attached to the Property, even if a bracket or other mechanism attached to the component or item is attached to the Property; (ii) furniture and other items secured to the Property for earthquake purposes; and (iii) _____

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

9. CLOSING AND POSSESSION:

- A. Buyer intends (or does not intend) to occupy the Property as Buyer's primary residence.
- B. Seller-occupied or vacant property: Possession shall be delivered to Buyer: (i) at 6 PM or (AM / PM) on the date of Close Of Escrow; (ii) no later than _____ calendar days after Close Of Escrow; or (iii) at _____ AM / PM on _____.

Buyer's Initials: [Signature]

Seller's Initials: [Signature]



Property Address: 1833 PORT BARMOUTH NEWPORT BEACH

Date: MARCH 13th 2019

- C. Seller remaining in possession After Close Of Escrow: If Seller has the right to remain in possession after Close Of Escrow, (i) the Parties are advised to sign a separate occupancy agreement such as C.A.R. Form SiP, for Seller continued occupancy of less than 30 days, C.A.R. Form RLAS for Seller continued occupancy of 30 days or more; and (ii) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; and (iii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan.
 - D. Tenant-occupied property: Property shall be vacant at least 5 (or) Days Prior to Close Of Escrow, unless otherwise agreed in writing. Note to Seller: If you are unable to deliver Property vacant in accordance with rent control and other applicable Law, you may be in breach of this Agreement.
 - OR Tenant to remain in possession (C.A.R. Form TIP).
 - E. At Close Of Escrow, Seller assigns to Buyer any assignable warranty rights for items included in the sale; and Seller shall Deliver to Buyer available Copies of any such warranties. Brokers cannot and will not determine the assignability of any warranties.
 - F. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems and Intranet and Internet-connected devices included in the purchase price, and garage door openers. If the Property is a condominium or located in a common interest subdivision, Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.
- 10. STATUTORY AND OTHER DISCLOSURES (INCLUDING LEAD-BASED PAINT HAZARD DISCLOSURES) AND CANCELLATION RIGHTS:**
- A. (1) Seller shall, within the time specified in paragraph 14A, Deliver to Buyer: (i) if required by Law, a fully completed: Federal Lead-Based Paint Disclosures (C.A.R. Form FLD) and pamphlet ("Lead Disclosures"); and (ii) unless exempt, fully completed disclosures or notices required by sections 1102 et. seq. and 1103 et. seq. of the Civil Code ("Statutory Disclosures"). Statutory Disclosures include, but are not limited to, a Real Estate Transfer Disclosure Statement ("TDS"), Natural Hazard Disclosure Statement ("NHD"), notice of actual knowledge of release of illegal controlled substance, notice of special tax and/or assessments (or, if allowed, substantially equivalent notice regarding the Mello-Roos Community Facilities Act of 1982 and Improvement Bond Act of 1915) and, if Seller has actual knowledge, of industrial use and military ordnance location (C.A.R. Form SPO or ESD).
 - (2) Any Statutory Disclosure required by this paragraph is considered fully completed if Seller has answered all questions and completed and signed the Seller section(s) and the Seller's Agent, if any, has completed and signed the Seller's Brokerage Firm section(s), or, if applicable, an Agent Visual Inspection Disclosure (C.A.R. Form AVID). Nothing stated herein relieves a Buyer's Brokerage Firm, if any, from the obligation to (i) conduct a reasonably competent and diligent visual inspection of the accessible areas of the Property and disclose, on Section IV of the TDS, or an AVID, material facts affecting the value or desirability of the Property that were or should have been revealed by such an inspection or (ii) complete any sections on all disclosures required to be completed by Buyer's Brokerage Firm.
 - (3) Note to Buyer and Seller: Waiver of Statutory and Lead Disclosures is prohibited by Law.
 - (4) Within the time specified in paragraph 14A, (i) Seller, unless exempt from the obligation to provide a TDS, shall, complete and provide Buyer with a Seller Property Questionnaire (C.A.R. Form SPQ); (ii) if Seller is not required to provide a TDS, Seller shall complete and provide Buyer with an Exempt Seller Disclosure (C.A.R. Form ESD).
 - (5) Buyer shall, within the time specified in paragraph 14B(1), return Signed Copies of the Statutory, Lead and other disclosures to Seller.
 - (6) In the event Seller or Seller's Brokerage Firm, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer, Seller shall promptly provide a subsequent or amended disclosure or notice, in writing, covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware, or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.
 - (7) If any disclosure or notice specified in paragraph 10A(1), or subsequent or amended disclosure or notice is Delivered to Buyer after the offer is Signed, Buyer shall have the right to cancel this Agreement within 3 Days After Delivery in person, or 5 Days After Delivery by deposit in the mail, or by an electronic record satisfying the Uniform Electronic Transactions Act (UETA), by giving written notice of cancellation to Seller or Seller's agent.
 - B. NATURAL AND ENVIRONMENTAL HAZARD DISCLOSURES AND OTHER BOOKLETS: Within the time specified in paragraph 14A, Seller shall, if required by Law: (i) Deliver to Buyer earthquake guide(s) (and questionnaire), environmental hazards booklet, and home energy rating pamphlet; (ii) disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; and Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
 - C. WITHHOLDING TAXES: Within the time specified in paragraph 14A, to avoid required withholding, Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIFPTA) and California withholding Law (C.A.R. Form AS or QS).
 - D. MEGAN'S LAW DATABASE DISCLOSURE: Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer's inspection contingency period. Brokers do not have expertise in this area.)
 - E. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES: This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.
 - F. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:
 (1) SELLER HAS: 7 (or) Days After Acceptance to disclose to Buyer if the Property is a condominium, or is located in a planned development or other common interest subdivision (C.A.R. Form SPQ or ESD).

Buyer's Initials ()

Seller's Initials ()

RPA-CA REVISED 12/18 (PAGE 4 OF 10)

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



Property Address: 1833 PORT BARMOUTH NEWPORT BEACH Date: MARCH 13th 2019

(2) If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has 3 (or ___) Days After Acceptance to request from the HOA (C.A.R. Form HOA1): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; (v) the names and contact information of all HOAs governing the Property (collectively, "CI Disclosures"); (vi) private transfer fees; (vii) Pet restrictions; and (viii) smoking restrictions. Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 14B(3). The Party specified in paragraph 7, as directed by escrow, shall deposit funds into escrow or direct to HOA or management company to pay for any of the above.

11. **CONDITION OF PROPERTY:** Unless otherwise agreed in writing: (i) the Property is sold (a) "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's investigation rights; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debts and personal property not included in the sale shall be removed by Close Of Escrow.

- A. Seller shall, within the time specified in paragraph 14A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.
- B. Buyer has the right to conduct Buyer investigations of the Property and, as specified in paragraph 14B, based upon information discovered in those investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.
- C. Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.

12. **BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**

- A. Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 14B. Within the time specified in paragraph 14B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to: (i) a general physical inspection; (ii) an inspection specifically for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2); (iii) inspect for lead-based paint and other lead-based paint hazards; (iv) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA); (v) review the registered sex offender database; (vi) confirm the insurability of Buyer and the Property including the availability and cost of flood and fire insurance; and (vii) review and seek approval of leases that may need to be assumed by Buyer. Without Seller's prior written consent, Buyer shall neither make nor cause to be made; invasive or destructive Buyer investigations, except for minimally invasive testing required to prepare a Pest Control Report; or inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- B. Seller shall make the Property available for all Buyer investigations. Buyer shall (i) as specified in paragraph 14B, complete Buyer investigations and either remove the contingency or cancel this Agreement, and (ii) give Seller, at no cost, complete Copies of all such investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
- C. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's investigations and through the date possession is made available to Buyer.
- D. **Buyer indemnify and seller protection for entry upon property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

13. **TITLE AND VESTING:**

- A. Within the time specified in paragraph 14, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 14B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities. Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information.
- B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record (which Seller is obligated to pay off) unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.
- C. Within the time specified in paragraph 14A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.
- E. Buyer shall receive a CLTA/ALTA "Homeowner's Policy of Title Insurance", if applicable to the type of property and buyer. If not, Escrow Holder shall notify Buyer. A title company can provide information about the availability, coverage, and cost of other title policies and endorsements. If the Homeowner's Policy is not available, Buyer shall choose another policy, instruct Escrow Holder in writing and shall pay any increase in cost.

Buyer's Initials ([Signature])

Seller's Initials ([Signature])

RPA-CA REVISED 12/18 (PAGE 5 OF 16)

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Property Address: J 833 PORT BARMOUTH NEWPORT BEACH Date: MARCH 13th 2019

- 14. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS:** The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).
- A. SELLER HAS: 7 (or ___) Days After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 5, 6, 7, 8B(5), 10A, B, C, and F, 11A and 13A. If, by the time specified, Seller has not Delivered any such item, Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement.**
- B. (1) BUYER HAS: 17 (or 30) Days After Acceptance, unless otherwise agreed in writing, to:**
 (i) complete all Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to paragraph 8B(5), and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and (ii) Deliver to Seller Signed Copies of Statutory and Lead Disclosures and other disclosures Delivered by Seller in accordance with paragraph 10A.
 (2) Within the time specified in paragraph 14B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to (C.A.R. Form RRR) Buyer's requests.
 (3) By the end of the time specified in paragraph 14B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 14A, then Buyer has 5 (or ___) Days After Delivery of any such items, or the time specified in paragraph 14B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.
 (4) Continuation of Contingency: Even after the end of the time specified in paragraph 14B(1) and before Seller cancels, if at all, pursuant to paragraph 14D, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 14D(1).
 (5) Access to Property: Buyer shall have access to the Property to conduct inspections and investigations for 17 (or ___) Days After Acceptance, whether or not any part of the Buyer's Investigation Contingency has been waived or removed.
- C. REMOVAL OF CONTINGENCIES WITH OFFER:** Buyer removes the contingencies specified in the attached Contingency Removal form (C.A.R. Form CR). If Buyer removes any contingency without an adequate understanding of the Property's condition or Buyer's ability to purchase, Buyer is acting against the advice of Broker.
- D. SELLER RIGHT TO CANCEL:**
 (1) Seller right to Cancel; Buyer Contingencies: If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
 (2) Seller right to Cancel; Buyer Contract Obligations: Seller, after first delivering to Buyer a NBP, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3A, or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited; (ii) Deliver a notice of FHA or VA costs or terms as required by paragraph 3D(3) (C.A.R. Form FVA); (iii) Deliver a letter as required by paragraph 3.1(1); (iv) Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by paragraph 3C or 3H; (v) In writing assume or accept leases or liens specified in 8B5; (vi) Return Statutory and Lead Disclosures as required by paragraph 10A(5); or (vii) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 21B; or (viii) Provide evidence of authority to sign in a representative capacity as specified in paragraph 19. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
- E. NOTICE TO BUYER OR SELLER TO PERFORM:** The NBP or NSP shall: (i) be in writing; (ii) be signed by the applicable Buyer or Seller; and (iii) give the other Party at least 2 (or ___) Days After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP or NSP may not be Delivered any earlier than 2 Days Prior to the expiration of the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 14.
- F. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES:** If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in writing, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.
- G. CLOSE OF ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: (i) be signed by the applicable Buyer or Seller; and (ii) give the other Party at least 3 (or ___) Days After Delivery to close escrow. A DCE may not be Delivered any earlier than 3 Days Prior to the scheduled close of escrow.
- H. EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Except as specified below, release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. If either Party fails to execute mutual instructions to cancel escrow, one Party may make a written demand to Escrow Holder for the deposit (C.A.R. Form BDRD or SDRD). Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within 10 Days After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursement of the deposit. Escrow Holder, at its discretion, may nonetheless require mutual cancellation instructions. A Party may be subject to a civil penalty of up to \$1,000 for refusal to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civ. Code §1057.3).

Buyer's Initials [Signature]

Seller's Initials [Signature]

RPA-CA REVISED 12/18 (PAGE 6 OF 10)

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Property Address: 1833 PORT BARMOUTH NEWPORT BEACH Date: MARCH 13th 2019

- C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 18A and paragraph D of the section titled Real Estate Brokers on page 10. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 18A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.
- D. Upon receipt, Escrow Holder shall provide Seller and Seller's Broker verification of Buyer's deposit of funds pursuant to paragraph 3A and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (i) if Buyer's initial or any additional deposit or down payment is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder, or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- E. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 3 Days after mutual execution of the amendment.

21. REMEDIES FOR BUYER'S BREACH OF CONTRACT:

- A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.
- B. **LIQUIDATED DAMAGES:** If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. If the Property is a dwelling with no more than four units, one of which Buyer intends to occupy, then the amount retained shall be no more than 3% of the purchase price. Any excess shall be returned to Buyer. Except as provided in paragraph 14G, release of funds will require mutual, signed release instructions from both Buyer and Seller, judicial decision or arbitration award. **AT THE TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM RID).**

Buyer's Initials [Signature]

Seller's Initials [Signature]

22. DISPUTE RESOLUTION:

- A. **MEDIATION:** The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action through the C.A.R. Real Estate Mediation Center for Consumers (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the Parties involved. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. **THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.** Exclusions from this mediation agreement are specified in paragraph 22C.

B. ARBITRATION OF DISPUTES:

The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 22C.

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

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

Buyer's Initials [Signature]

Seller's Initials [Signature]

C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:

- (1) **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.

Buyer's Initials [Signature]

Seller's Initials [Signature]

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

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

Property Address: 1833 PORT BARMOUTH NEWPORT BEACH Date: MARCH 13th 2019

- (2) **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- (3) **BROKERS:** Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to this Agreement.
- 23. **SELECTION OF SERVICE PROVIDERS:** Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
- 24. **MULTIPLE LISTING SERVICE ("MLS"):** Brokers are authorized to report to the MLS a pending sale and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS.
- 25. **ATTORNEY FEES:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 22A.
- 26. **ASSIGNMENT:** Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee. Such consent shall not be unreasonably withheld. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Seller (C.A.R. Form A0AA).
- 27. **EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
- 28. **TERMS AND CONDITIONS OF OFFER:**

This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initiated by all Parties or if incorporated by mutual agreement in a counter offer or addendum. If at least one but not all Parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. The Parties have read and acknowledge receipt of a Copy of the offer and agree to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.

- 29. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the Laws of the State of California. Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.
- 30. **DEFINITIONS:** As used in this Agreement:

- A. "Acceptance" means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this offer or a final counter offer.
- B. "Agreement" means this document and any counter offers and any incorporated addenda, collectively forming the binding agreement between the Parties. Addenda are incorporated only when Signed by all Parties.
- C. "C.A.R. Form" means the most current version of the specific form referenced or another comparable form agreed to by the parties.
- D. "Close Of Escrow", including "COE", means the date the grant deed, or other evidence of transfer of title, is recorded.
- E. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.
- F. "Days" means calendar days. However, after Acceptance, the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
- G. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
- H. "Days Prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
- I. "Deliver", "Delivered" or "Delivery", unless otherwise specified in writing, means and shall be effective upon: personal receipt by Buyer or Seller or the Individual Real Estate Licensee for that principal as specified in the section titled Real Estate Brokers on page 10, regardless of the method used (i.e., messenger, mail, email, fax, other).
- J. "Electronic Copy" or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
- K. "Law" means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
- L. "Repairs" means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
- M. "Signed" means either a handwritten or electronic signature on an original document, Copy or any counterpart.

- 31. **EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by ROBB EVANS & ASSOCIATES who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by _____ AM/PM, on _____ (date)).

One or more Buyers is signing this Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form R05D-B) for additional terms.

3/13/19 [Signature]
 (Print name) BRYAN J. GOODMAN

3/13/19 [Signature]
 (Print name) JAMIE S. GOODMAN

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

Seller's Initials [Signature]

Property Address: 1833 PORT BARMOUTH NEWPORT BEACH Date: MARCH 13TH 2019

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

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

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

(Print name) Robb Evans ECOLOGICAL FOX LLC ET AL RECEIVERSHIP QSR BY ROBB EVANS & ASSOCIATES LLS REC.
TEMPORARY RECEIVER OF 1833 PORT BARMOUTH PL, NEWPORT BEACH, CA 92660

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

(Initials) (Do not initial if making a counter offer.) CONFIRMATION OF ACCEPTANCE: A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) 3/13/19 at 11:00 AM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.

REAL ESTATE BROKERS:

- A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.
- B. Agency relationships are confirmed as stated in paragraph 2.
- C. If specified in paragraph 3A(2), Agent who submitted the offer for Buyer acknowledges receipt of deposit.
- D. COOPERATING (BUYER'S) BROKER COMPENSATION: Seller's Broker agrees to pay Buyer's Broker and Buyer's Broker agrees to accept, out of Seller's Broker's proceeds in escrow, the amount specified in the MLS, provided Buyer's Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Seller's Broker and Buyer's Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.
- E. PRESENTATION OF OFFER: Pursuant to Standard of Practice 17, if Buyer's Broker makes a written request, Seller's Broker shall confirm in writing that this offer has been presented to Seller.

Buyer's Brokerage Firm _____ DRE Lic. # _____
By _____ DRE Lic. # _____ Date _____
By _____ DRE Lic. # _____ Date _____
Address _____ State _____ Zip _____
Seller's Brokerage Firm SRS REAL ESTATE PARTNERS DRE Lic. # 01881992
By Tawnsaia Cropper DRE Lic. # 01711930 Date 03-13-2019
Address _____ DRE Lic. # _____ Date _____
City _____ State _____ Zip _____
Telephone _____ Fax _____ E-mail _____

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, a deposit in the amount of \$ 100,000 counter offer numbers 1800 Seller's Statement of Information and _____, and agrees to act as Escrow Holder subject to paragraph 20 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

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

Escrow Holder By Scott Fullmer Orange Coast Title Company Escrow # 1997079
Address 1551 N. Tustin Ave., Suite 300 Date 3.13.19
Phone/Fax/E-mail Santa Ana, CA 92705
Escrow Holder has the following license number # 305
 Department of Business Oversight Department of Insurance Department of Real Estate.

PRESENTATION OF OFFER: (RF) Seller's Broker presented this offer to Seller on 3/13/2019 (date).
Broker or Designee Initials

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

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Buyer Acknowledges that page 10 is part of this Agreement (RF) Buyer's Initials

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

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



**CALIFORNIA
ASSOCIATION
OF REALTORS** ®

BUYER'S INSPECTION ADVISORY

(C.A.R. Form BIA, Revised 11/14)

Property Address 1833 PORT BARMOUTH NEWPORT BEACH CA 92660 ("Property")

1. IMPORTANCE OF PROPERTY INVESTIGATION: The physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If the professionals recommend further investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional investigations.

2. BROKER OBLIGATIONS: Brokers do not have expertise in all areas and therefore cannot advise you on many items, such as those listed below. If Broker gives you referrals to professionals, Broker does not guarantee their performance.

3. YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE FOLLOWING. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.

- A. GENERAL CONDITION OF THE PROPERTY, ITS SYSTEMS AND COMPONENTS:** Foundation, roof (condition, age, leaks, useful life), plumbing, heating, air conditioning, electrical, mechanical, security, pool/spa (cracks, leaks, operation), other structural and non-structural systems and components, fixtures, built-in appliances, any personal property included in the sale, and energy efficiency of the Property.
- B. SQUARE FOOTAGE, AGE, BOUNDARIES:** Square footage, room dimensions, lot size, age of improvements and boundaries. Any numerical statements regarding these items are APPROXIMATIONS ONLY and have not been verified by Seller and cannot be verified by Brokers. Fences, hedges, walls, retaining walls and other barriers or markers do not necessarily identify true Property boundaries.
- C. WOOD DESTROYING PESTS:** Presence of, or conditions likely to lead to the presence of wood destroying pests and organisms.
- D. SOIL STABILITY:** Existence of fill or compacted soil, expansive or contracting soil, susceptibility to slippage, settling or movement, and the adequacy of drainage.
- E. WATER AND UTILITIES; WELL SYSTEMS AND COMPONENTS; WASTE DISPOSAL:** Water and utility availability, use restrictions and costs. Water quality, adequacy, condition, and performance of well systems and components. The type, size, adequacy, capacity and condition of sewer and septic systems and components, connection to sewer, and applicable fees.
- F. ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, materials, products, or conditions (including mold (airborne, toxic or otherwise), fungus or similar contaminants).
- G. EARTHQUAKES AND FLOODING:** Susceptibility of the Property to earthquake/seismic hazards and propensity of the Property to flood.
- H. FIRE, HAZARD AND OTHER INSURANCE:** The availability and cost of necessary or desired insurance may vary. The location of the Property in a seismic, flood or fire hazard zone, and other conditions, such as the age of the Property and the claims history of the Property and Buyer, may affect the availability and need for certain types of insurance. Buyer should explore insurance options early as this information may affect other decisions, including the removal of loan and inspection contingencies.
- I. BUILDING PERMITS, ZONING AND GOVERNMENTAL REQUIREMENTS:** Permits, inspections, certificates, zoning, other governmental limitations, restrictions, and requirements affecting the current or future use of the Property, its development or size.
- J. RENTAL PROPERTY RESTRICTIONS:** Some cities and counties impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants, and the right of a landlord to terminate a tenancy. Deadbolt or other locks and security systems for doors and windows, including window bars, should be examined to determine whether they satisfy legal requirements.
- K. SECURITY AND SAFETY:** State and local Law may require the installation of barriers, access alarms, self-latching mechanisms and/or other measures to decrease the risk to children and other persons of existing swimming pools and hot tubs, as well as various fire safety and other measures concerning other features of the Property.
- L. NEIGHBORHOOD, AREA, SUBDIVISION CONDITIONS; PERSONAL FACTORS:** Neighborhood or area conditions, including schools, law enforcement, crime statistics, registered felons or offenders, fire protection, other government services, availability, adequacy and cost of internet connections or other technology services and installations, commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.

By signing below, Buyer acknowledges that they have read, understand, accept and have received a Copy of this Advisory. Buyers are encouraged to read it carefully.

Buyer BRYAN T. GOODMAN Broker JAMIE S. GOODMAN

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BIA REVISED 11/14 (PAGE 1 OF 1) Print Date Dec 18

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BUYER'S INSPECTION ADVISORY (BIA PAGE 1 OF 1)



**DISCLOSURE REGARDING
REAL ESTATE AGENCY RELATIONSHIP**
(As required by the Civil Code)
(C.A.R. Form AD, Revised 12/18)

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

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 salespersons 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).**

Seller/Landlord/Tenant Bryan T. Goodman 3/17/19
 Seller/Landlord/Tenant Jamie S. Goodman 3/13/19
 Agent SRS REAL ESTATE PARTNERS DRE Lic. # 01881492
 By [Signature] DRE Lic. # 01711930 Date 3/13/2019
 (Salesperson or Broker-Associate, if any)



CIVIL CODE SECTIONS 2079.13 - 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 2985) 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 salesperson or broker associates who perform as agents of the agent. When a salesperson or broker associate owns 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 vendor 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 of this property, and includes: (1) single-family residential property, (2) multifamily residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a good 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 2086, 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 so 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.

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 _____
[] (check one) [] the Seller's Agent (salesperson or broker associate) both the Buyer's and 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 _____
[] (check one) [] the Buyer's Agent (salesperson or broker associate) both the Buyer's and Seller's Agent. (dual agent)

(d) The disclosure 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 in a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB 1289)

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

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

2079.21 (a) 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.

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, but does not, of itself, make that agent a dual agent.

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

2079.24 Nothing in this article shall be construed to diminish the duty of disclosure owed by sellers and buyers 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 the duties or for any breach of a fiduciary duty or a duty of disclosure.

1991-2018, California Association of REALTORS®
THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS®. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY ELECTRIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

AD REVISED 12/18 (PAGE 2 OF 2)
DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)





CALIFORNIA ASSOCIATION OF REALTORS®

COUNTER OFFER No. ONE

For use by Seller or Buyer. May be used for Multiple Counter Offer. (C.A.R. Form CO, Revised 10/04)

Date March 14, 2019, at Los Angeles, California

This is a counter offer to the: [X] California Residential Purchase Agreement, [] Counter Offer, or [] Other ("Offer"),

dated March 13, 2019, on property known as 1833 PORT BARMOUTH PL, NEWPORT BEACH, CA 92660 ("Property"),

between BRYAN T. GOODMAN AND JAMIE S. GOODMAN ("Buyer") and

ECOLOGICAL FOX LLC ET AL RECEIVERSHIP QSF BY ROBB EVANS & ASSOCIATES LLS REC, TEMPORARY RECEIVER OF 1833 PORT BARMOUTH PL, NEWPORT BEACH, CA 92660 ("Seller").

- 1. TERMS: The terms and conditions of the above referenced document are accepted subject to the following:
A. Paragraphs in the Offer that require initials by all parties, but are not initialed by all parties, are excluded from the final agreement unless specifically referenced for inclusion in paragraph 1C of this or another Counter Offer.
B. Unless otherwise agreed in writing, down payment and loan amount(s) will be adjusted in the same proportion as in the original Offer.
C.

SEE ATTACHED ADDENDUM NO.1 TO SELLER'S COUNTER OFFER NO.1 DATED MARCH 14, 2019 IN RESPONSE TO CALIFORNIA RESIDENTIAL PURCHASE CONTRACT FROM BRYAN T. GOODMAN AND JAMIE S. GOODMAN DATED MARCH 13, 2019

D. The following attached supplements are incorporated into this Counter Offer: [] Addendum No. 1 [X] AS IS Purchase Addendum [X] Additional Terms Addendum

- 2. RIGHT TO ACCEPT OTHER OFFERS: Seller has the right to continue to offer the Property for sale or for other transaction, and to accept any other offer at any time prior to notification of acceptance, as described in paragraph 3. If this is a Seller Counter Offer, Seller's acceptance of another offer prior to Buyer's acceptance and communication of notification of this Counter Offer, shall revoke this Counter Offer.
3. EXPIRATION: This Counter Offer shall be deemed revoked and the deposits, if any, shall be returned unless this Counter Offer is signed by the Buyer or Seller to whom it is sent and a Copy of the signed Counter Offer is personally received by the person making this Counter Offer or

who is authorized to receive it, by 5:00 PM on the third Day After this Counter Offer is made or, (if checked) by [] (date), at [] AM [] PM. This Counter Offer may be executed in counterparts.

- 4. [] (if checked:) MULTIPLE COUNTER OFFER: Seller is making a Counter Offer(s) to another prospective buyer(s) on terms that may or may not be the same as in this Counter Offer. Acceptance of this Counter Offer by Buyer shall not be binding unless and until it is subsequently re-Signed by Seller in paragraph 7 below and a Copy of the Counter Offer Signed in paragraph 7 is personally received by Buyer or by [] who is authorized to receive it, by 5:00PM on the third Day after this Counter Offer is made or, (if checked) by [] (date), at [] AM [] PM. Prior to the completion of all of these events, Buyer and Seller shall have no duties or obligations for the purchase or sale of the Property.

5. OFFER: [] BUYER OR [X] SELLER MAKES THIS COUNTER OFFER ON THE TERMS ABOVE AND ACKNOWLEDGES RECEIPT OF A COPY. Date 3/14/2019

By: Kenton Johnson, Authorized Deputy to the Receiver

- 6. ACCEPTANCE: I/WE accept the above Counter Offer (if checked [] SUBJECT TO THE ATTACHED COUNTER OFFER) and acknowledge receipt of a Copy. Date 3/18/2019 Time 7 [X] AM [] PM

7. MULTIPLE COUNTER OFFER SIGNATURE LINE: By signing below, Seller accepts this Multiple Counter Offer. NOTE TO SELLER: Do NOT sign in this box until after Buyer signs in paragraph 6. (Paragraph 7 applies only if paragraph 4 is checked.)

- 8. () / () (Initials) Confirmation of Acceptance: A Copy of Signed Acceptance was personally received by the maker of the Counter Offer, or that person's authorized agent as specified in paragraph 3 (or, if this is a Multiple Counter Offer, the Buyer or Buyer's authorized agent as specified in paragraph 4) on (date) [] at [] AM [] PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by the the maker of the Counter Offer, or that person's authorized agent (or, if this is a Multiple Counter Offer, the Buyer or Buyer's authorized agent) whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.

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
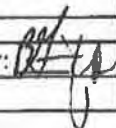
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CO REVISED 10/04 (PAGE 1 OF 1)

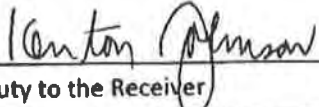

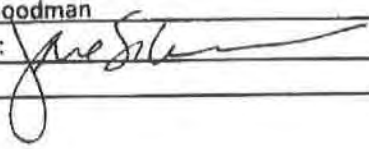
COUNTER OFFER (CO PAGE 1 OF 1)

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Addendum No. 1 to Seller's Counter Offer 1 Dated March 14, 2019 In Response to California Residential Purchase Contract From Bryan T. & Jamie S. Goodman Dated March 13, 2019 Regarding Property Located at 1833 Port Barmouth PL, Newport Beach, CA 92660 Page One of Three Pages	
1a Seller is:	ECOLOGICAL FOX LLC ET AL RECEIVERSHIP QSF BY: ROBB EVANS & ASSOCIATES LLC REC,
"AS-IS" Purchase ADDENDUM	This document is fully incorporated herein by this reference. This document contains terms and conditions that are in addition to and supersede those in the Purchase Agreement. The terms of this document must be accepted by Buyers and the document must be acknowledged by Buyers.
Additional Terms ADDENDUM	See attached document entitled "Additional Terms (Attach to All Counter Offers)". This document is fully incorporated herein by this reference. This document contains terms and conditions that are in addition to and supersede those in the Purchase Agreement. The terms of this document must be accepted by Buyers and the Document must be acknowledged by Buyers.
No Arbitration	Any and all references to Arbitration within the Purchase Agreement are deleted
Hold Harmless	Any and all references in this agreement or any other agreement pertaining to the sale of this property to the Seller's release or holding of any party/parties harmless are hereby deleted.
1C	Purchase Price shall be \$3,400,000.00
1D	Close of escrow is subject to the approval of the Court in the receivership action. Seller will make application to the Court for approval of the sale to the Buyer within 30 days of the date on which both of the following events have occurred: (a) escrow is opened; and (b) all contingencies are removed by Buyer. Seller will seek approval to sell to the Buyer without any requirement for overbidding. Escrow shall close within 30 days of the date on which both of the following events have occurred: (a) entry of an order authorizing the sale of the property to Buyer pursuant to this Agreement; and (b) satisfaction of all requirements which may be imposed by the Court as a condition to the sale, and (c) subject to any waiting period imposed by the Title Company as a requirement of their issuance of a policy of title insurance. Inability on the part of the Receiver to accomplish any of the above described requirements shall not constitute Seller default under this contract and Buyer's receives its earnest money deposit, Buyer and Seller cancel the contract, Buyer has no further claim of any kind to the property or from Seller.
2B	Agent is solely representing the Seller
3A	Upon acceptance of this offer, the Initial Deposit will be deposited with the Escrow Company
3B	Buyer shall deposit additional \$580,000.00 within 5 days after acceptance of the agreement.
3C	Buyer shall deliver verification of current liquid assets to provide a down payment of \$1,050,000 within 3 days.
7A (1)	Natural hazard zone disclosure report will be prepared by Seller's choice
7B	Delete in its entirety. Seller is selling and Buyer is buying pursuant to the attached "AS IS" Addendum
7C(1)(c)	Seller will review Escrow Holder's General Provisions and sign those items that are acceptable.
Initial Seller:	Initial Buyer:
	

Addendum No. 1 to Seller's Counter Offer 1 Dated March 14, 2019
In Response to California Residential Purchase Contract From Bryan T. & Jamle S. Goodman Dated March 13, 2019
Regarding Property Located at 1833 Port Barmouth PL, Newport Beach, CA 92660
Page Two of Three Pages

7C(1)(b)	Escrow holder shall be Orange Coast Title Company Lori Fellman Certified Escrow Officer 1551 N. Tustin, Suite 300, Santa Ana, CA 92705 Office: (714) 245-7727 – Mobile:909-800-9480 / FX 714 864-3095 Email: LorIF@octitle.com
7C(2)(a)	Seller will pay for a CLTA Policy of Title Insurance
7C(2)(b)	Title Policy will be Issued by Orange Coast Title Company John Fernando Senior Title Officer 1551 N. Tustin Avenue, Suite 300 Santa Ana, CA 92705 Phone: 714-558-2836 • Fax: 714-864-3050 Email: JohnF@octitle.com
8B(2)&(3)&(4)&(5)&(6))	Seller does not have any information regarding the ownership of appliances, window coverings, light fixtures, mirrors, etc. If the previous owner and tenant leave the items the Seller waives any interest in them.
9 E & F	Seller has no knowledge of any information in this section. All references in this section as well as any references to seller disclosure are superseded by the 'AS IS' addendum. Seller is selling and Buyer is buying pursuant to the attached "AS IS" Addendum
10A	Seller has no knowledge of any information in this section. Reports available through escrow from third party sources will be provided. Seller is selling and Buyer is buying pursuant to the attached "AS IS" Addendum. Seller strongly encourages Buyer to conduct a full investigations as to these and any other items pertaining to the property.
11(iii)	Delete in its entirety. Seller is selling and Buyer is buying pursuant to the attached "AS IS" Addendum
11A	Delete in its entirety. Seller is selling and Buyer is buying pursuant to the attached "AS IS" Addendum
11B(ii)	Delete in its entirety. Seller is selling and Buyer is buying pursuant to the attached "AS IS" Addendum
13C	Delete in its entirety. Seller is selling and Buyer is buying pursuant to the attached "AS IS" Addendum
13E	Buyer shall receive a CLTA Policy of Title Insurance
16	Delete in its entirety. Seller is selling and Buyer is buying pursuant to the attached "AS IS" Addendum. Seller strongly encourages Buyer to conduct a full investigations as to these and any other items pertaining to the property.
17	Delete: "TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER" and replace with "TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE THE RESPONSIBILITY OF BUYER"
Initial Seller: <i>KJM</i>	Initial Buyer: <i>[Signature]</i>

Addendum No. 1 to Seller's Counter Offer 1 Dated March 14, 2019 In Response to California Residential Purchase Contract From Bryan T. & Jamie S. Goodman Dated March 13, 2019 Regarding Property Located at 1833 Port Barmouth PL, Newport Beach, CA 92660 Page Three of Three Pages	
20A	Delete "Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 7C(1)(c). Replace this with "Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute, <i>if acceptable</i> , such provisions within the time specified in paragraph 7C(1)(c).
20C	Delete from " Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this agreement.
20D	Delete "Once Escrow holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers" Replace with "Once Escrow holder becomes aware of any of the following, Escrow Holder shall immediately notify all Parties"
22	See "No Arbitration" above Any disputes concerning this contract shall be heard by the Receivership Court
22B	Delete in its entirety.
31	Delete "Robb Evans & Associates" and replace it with anyone.
Seller: ECOLOGICAL FOX LLC ET AL RECEIVERSHIP QSF BY: ROBB EVANS & ASSOCIATES LLC REC By: Kenton Johnson  Authorized Deputy to the Receiver	
Buyer: Bryan T. Goodman  Buyer(s):	
Jamie S. Goodman  Buyer(s):	

"AS-IS" Purchase

BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SET FORTH IN THIS AGREEMENT, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY; (B) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (C) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, AFFIRMING THAT BUYER HAS NOT RELIED ON SELLER'S SKILL OR JUDGMENT TO SELECT THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT SELLER MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE, (D) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (E) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY; (F) COMPLIANCE WITH THE PLANS SPECIFICATIONS, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTION, DURABILITY, STRUCTURAL INTEGRITY, OR PHYSICAL CONDITION OF THE PROPERTY OR ANY PORTION THEREOF; (G) ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE LAND OR IMPROVEMENTS; (H) THE POTENTIAL FOR FURTHER DEVELOPMENT

OF THE PROPERTY; (I) THE ENVIRONMENTAL CONDITION OF THE PROPERTY, INCLUDING WHETHER THERE EXISTS ASBESTOS, ASBESTOS CONTAINING MATERIALS OR LEAD-BASED PAINT ON OR WITHIN THE PROPERTY; OR (J) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY. EXCEPT FOR THE REPRESENTATIONS CONTAINED HEREIN, BUYER SHALL RELY SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY, TRUTHFULNESS OR COMPLETENESS OF SUCH INFORMATION. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY PROVIDED FOR HEREIN IS MADE ON AN "AS-IS, WHERE IS" CONDITION AND BASIS AND "WITH ALL FAULTS." IT IS UNDERSTOOD AND AGREED THAT THE PROPERTY IS SOLD BY SELLER AND PURCHASED BY BUYER SUBJECT TO THE FOREGOING.

WITHOUT LIMITING BUYER'S RIGHTS TO INSPECT THE PROPERTY PRIOR TO THE CLOSE OF ESCROW, BUYER ACKNOWLEDGES IT HAS COMPLETED ALL INSPECTIONS OF THE PROPERTY THAT IT DEEMS NECESSARY AND APPROPRIATE. BUYER IS ACCEPTING THIS PROPERTY IN ITS CURRENT CONDITION (AS OF THE DATE OF THIS AGREEMENT), AND THAT, SUBJECT TO BUYER'S RIGHTS TO INSPECT THE PROPERTY

PRIOR TO CLOSE OF ESCROW, THE CLOSING OF THE SALE SHALL CONSTITUTE AN ACKNOWLEDGEMENT BY BUYER THAT THE PROPERTY, PREMISES AND CONSTRUCTED SYSTEMS, APPLIANCES (IF ANY) ETC, WERE ACCEPTABLE AT THE TIME THE SALE CLOSED.

Notwithstanding anything stated above, Seller represents and warrants that Seller has no actual knowledge of any material facts that would adversely affect the Property in any material manner. As used herein, the term "Seller has no actual knowledge" shall mean the actual knowledge of Seller and all those working in Seller's office. Seller discloses, however, that Seller has never resided on the Property. Seller's representation and warranty shall survive the Close of Escrow.

Nothing set forth above shall relieve Seller of its disclosure and other obligations under the Agreement and under law, including but not limited to Seller's obligations to disclose to Buyer all facts and defects actually known by Seller. As used herein, "actually known by Seller" shall mean to the actual knowledge of Seller and all those working in Seller's office.

Broker's Initials: _____

Seller's Initials: _____

Buyer's Initials: _____

ADDITIONAL TERMS: (Attach to All Counter Offers)

Governing Law

This contract shall be governed by and construed and enforced in accordance with the laws of the United States District Court, District of Maryland, Southern Division

Consent to Jurisdiction

This contract shall be deemed to have been made in Los Angeles, California. This contract is entered into by Robb Evans & Associates LLC in its capacity as Temporary Receiver of ECOLOGICAL FOX LLC EL AL, including the property which is the subject matter of this contract, all pursuant to the authority vested in it under an Order of the United States District Court, District of Maryland, Southern Division. The parties hereto agree that any dispute regarding this contract and any litigation pertaining to the enforcement or interpretation hereof properly belongs in and should be heard by the United States District Court, District of Maryland, Southern Division. Purchaser submits and consents to personal jurisdiction in the United States District Court, District of Maryland, Southern Division for the enforcement and interpretation of this contract and waives any and all rights under the laws of any state or the United States of America to object to jurisdiction in the United States District Court, District of Maryland, Southern Division.

Right to Seek and Obtain Overbids

In order for Robb Evans & Associates LLC to faithfully discharge its duties as Temporary Receiver, it is understood and agreed by the parties hereto that Robb Evans & Associates LLC may seek and obtain overbids for the property, even if the executed contract is at or above listing price.

SELLER'S INITIALS (RE)
BUYER'S INITIALS (JSE / RE)
BROKER'S INITIALS ([Signature] / [Signature])



CALIFORNIA ASSOCIATION OF REALTORS®

CONTINGENCY REMOVAL No. 1
(C.A.R. Form CR Revised, 12/15)

In accordance with the terms and conditions of the Residential Purchase Agreement (C.A.R. Form RPA-CA), Request For Repair, Response And Reply To Request For Repair or Other Lowest Offer No. One ("Agreement"), dated 3/14/2019, on property known as 1833 Fort Hollywood Place Newport Beach CA 92660 ("Property"), between Bryan T. Goodman and Janice S. Goodman ("Buyer") and Evolution Esc LLC et al Partnership DBA by Robert Evans + Associates LLC Temporary Successor of 1833 Fort Hollywood ("Seller").

I. BUYER REMOVAL OF BUYER CONTINGENCIES:

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

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

- 1. Loan (Paragraph 3J)
- 2. Appraisal (Paragraph 3I)
- 3. Buyer's Physical Inspection (Paragraph 12)
- 4. All Buyer Investigations other than a physical inspection (Paragraph 12)
- 5. Condominium/Planned Development (HOA or OA) Disclosures (Paragraph 10F)
- 6. Reports/Disclosures (Paragraphs 7 and 10)
- 7. Title Preliminary Report (Paragraph 13)
- 8. Sale of Buyer's Property (Paragraph 4B)
- 9. Review of documentation for leased or liened items (Paragraph 8B(5))
- 10.
- 11.

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

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

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

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

Buyer Bryan T. Goodman Date 3/27/2019
 Buyer Janice S. Goodman Date 3/27/2019

II. SELLER REMOVAL OF SELLER CONTINGENCIES: Seller hereby removes the following Seller contingencies
 Contingency for Seller's purchase of replacement property (C.A.R. Form SPRP); Other _____

Seller _____ Date _____
 Seller _____ Date _____

(Initials) CONFIRMATION OF RECEIPT: A copy of this signed Contingency Removal was personally received by Buyer Seller or authorized agent on 3/27/19 (date), at 5:50 AM PM PDT

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Reviewed by _____ Date _____





CALIFORNIA ASSOCIATION OF REALTORS®

REQUEST FOR REPAIR No. 1
(Or other Corrective Action)
(C.A.R. Form RR, Revised 12/18)

Date Prepared: 3/27/2019

In accordance with the terms and conditions of the Purchase Agreement or Other Counter Offer No One ("Agreement"), dated 3/14/2019, on property known as 1833 Port Barnumth Place

between Buyer: T. Goodman and Janice S. Goodman ("Property"), and Ecological Fox LLC Et Al Receivship D/B/A by Bob Evans & Associates LLC R/S/Tengway Inc ("Buyer"/"Seller")

BUYER REQUEST (Check all that apply): (Note: Seller has no obligation to respond to Buyer request) Buyer's Request
1. (a) Buyer requests that Seller, prior to final verification of condition, repair or take the other specified action for each item listed below or on the attached list dated _____:

- _____
- _____
- _____
- _____
- _____

(b) (i) SECTION 1: Buyer requests Seller pay to have Section 1 work completed as specified in the attached Pest Control Report dated _____ prepared by _____
(ii) SECTION 2: Buyer requests Seller pay to have Section 2 work completed as specified in the attached Pest Control Report dated _____ prepared by _____
(iii) If Buyer requests either Section 1 or Section 2 work above, Seller shall, no later than 5 (or _____) Days Prior to Close of Escrow, Deliver to Buyer a written pest control certification showing the corrective work has been completed.

(c) Buyer requests that Seller credit Buyer \$ 5,000 at Close of Escrow. (Note: Any credit included in this paragraph is separate from and shall not reduce or supersede any other credit in the Agreement unless specifically agreed in writing (Addendum attached)). Credits need to be disclosed to Buyer's lender and total contractual credits may be limited pursuant to the Agreement. Total credit amount may not be enough to remedy all defects or repairs.)

(d) Buyer requests that Seller reduce the purchase price to \$ _____

2. A copy of the following inspection or other report is attached.
 _____ _____
 _____ _____

Buyer T. Goodman Date 3/27/2019
Buyer Janice S. Goodman Date 3/27/2019

SELLER RESPONSE:
 Seller agrees to all of Buyer's Request provided in writing (see below) (i) Buyer removes the physical inspection contingency, (ii) Buyer removes those contingencies identified on the attached Contingency Removal Form (C.A.R. Form CR) which must be signed by Buyer, and (iii) Buyer releases Seller and Brokers from any loss, liability, expense, claim or cause of action regarding the disclosed condition of the Property ("Release").

Seller does NOT agree to any of Buyer's requests
 Seller responds to Buyer's request on the attached form (C.A.R. Form RRRR)
Seller: Bar. Clinton Adams Date 3/28/19 Seller: 10:28 AM PDT Date _____

If Seller agrees to all of Buyer's request, Buyer hereby removes the physical inspection contingencies and those identified on the attached CR form signed by Buyer and agrees to the above Release.
Buyer: T. Goodman Date 3/27/2019 Buyer: Janice S. Goodman Date 3/27/2019

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EXHIBIT 2



CALIFORNIA ASSOCIATION OF REALTORS

RESIDENTIAL LISTING AGREEMENT

(Exclusive Authorization and Right to Sell)

(C.A.R. Form RLA, Revised 12/18)

Date Prepared: MARCH 13th 2019

(SEE PAGE 5, FOR SELLERS FULL NAME)

ECOLOGICAL FOX LLC ET AL RECEIVERSHIP QSF BY ROBB EVANS & ASSOCIATES LLC REC,

1. EXCLUSIVE RIGHT TO SELL: TEMPORARY RECEIVER OF 1833 PORT BARMOUTH PL, NEWPORT BEACH, CA 92660 ("Seller") hereby employs and grants SRS REAL ESTATE PARTNERS ("Broker") beginning (date) 3-14-2019 and ending at 11:59 P.M. on (date) 5-14-2019 ("Listing Period") the exclusive and irrevocable right to sell or exchange the real property described as 1833 PORT BARMOUTH PLACE situated in NEWPORT BEACH (City), ORANGE (County), California, 92660 (Zip Code), Assessor's Parcel No. 458-135-06 ("Property")

- This Property is a manufactured (mobile) home. See addendum for additional terms.
□ This Property is being sold as part of a probate, conservatorship or guardianship. See addendum for additional terms.

2. LISTING PRICE AND TERMS:

A. The listing price shall be: THREE MILLION FOUR HUNDRED THOUSAND Dollars (\$ 3,400,000.00)
B. Listing Terms: Broker And/Or Agent are required to supervise the "Over-Bidding" process if requested by the Seller.

See the attached Additional Terms to Residential Listing Agreement and the "AS-IS"

3. COMPENSATION TO BROKER:

Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between Seller and Broker (real estate commissions include all compensation and fees to Broker).

- A. Seller agrees to pay to Broker as compensation for services irrespective of agency relationship(s), .75 percent of the purchase price. If seller requires broker to conduct an Over Bidding session, Seller will pay Broker additional compensation of .50 Percent of the final purchase price.
(1) If during the Listing Period, or any extension, Broker, cooperating broker, Seller or any other person procures a ready, willing, and able buyer(s) whose offer to purchase the Property on any price and terms is accepted by Seller, provided the Buyer completes the transaction or is prevented from doing so by Seller, (Broker is entitled to compensation whether any escrow resulting from such offer closes during or after the expiration of the Listing Period, or any extension.)
OR (2) If within 30 calendar days (a) after the end of the Listing Period or any extension; or (b) after any cancellation of this Agreement, unless otherwise agreed, Seller enters into a contract to sell, convey, lease or otherwise transfer the Property to anyone ("Prospective Buyer") or that person's related entity: (i) who physically entered and was shown the Property during the Listing Period or any extension by Broker or a cooperating broker; or (ii) for whom Broker or any cooperating broker submitted to Seller a signed, written offer to acquire, lease, exchange or obtain an option on the Property, Seller, however, shall have no obligation to Broker under paragraph 3A(2) unless, not later than the end of the Listing Period or any extension or cancellation, Broker has given Seller a written notice of the names of such Prospective Buyers.
OR (3) If, without Broker's prior written consent, the Property is withdrawn from sale, conveyed, leased, rented, otherwise transferred, or made unmarketable by a voluntary act of Seller during the Listing Period, or any extension.
B. If completion of the sale is prevented by a party to the transaction other than Seller, then compensation which otherwise would have been earned under paragraph 3A shall be payable only if and when Seller collects damages by suit, arbitration, settlement or otherwise, and then in an amount equal to the lesser of one-half of the damages recovered or the above compensation, after first deducting title and escrow expenses and the expenses of collection, if any.
C. In addition, Seller agrees to pay Broker: N/A
D. Seller has been advised of Broker's policy regarding cooperation with, and the amount of compensation offered to, other brokers.
(1) Broker is authorized to cooperate with and compensate brokers participating through the multiple listing service(s) ("MLS") by offering to MLS brokers out of Broker's compensation specified in 3A, either 1 percent of the purchase price, or \$
(2) Broker is authorized to cooperate with and compensate brokers operating outside the MLS as per Broker's policy.
E. Seller hereby irrevocably assigns to Broker the above compensation from Seller's funds and proceeds in escrow. Broker may submit this Agreement, as instructions to compensate Broker pursuant to paragraph 3A, to any escrow regarding the Property involving Seller and a buyer, Prospective Buyer or other transferee.
F. (1) Seller represents that Seller has not previously entered into a listing agreement with another broker regarding the Property unless specified as follows:
(2) Seller warrants that Seller has no obligation to pay compensation to any other broker regarding the Property unless the Property is transferred to any of the following individuals or entities:
(3) If the Property is sold to anyone listed above during the time Seller is obligated to compensate another broker: (i) Broker is not entitled to compensation under this Agreement; and (ii) Broker is not obligated to represent Seller in such transaction.

Seller's Initials (Kev)



Property Address: 1833 PORT BARMOUTH NEWPORT BEACH Date: 3-13-2019

4. A. ITEMS EXCLUDED AND INCLUDED: Unless otherwise specified in a real estate purchase agreement, all fixtures and fittings that are attached to the Property are included, and personal property items are excluded, from the purchase price.

ADDITIONAL ITEMS EXCLUDED:

ADDITIONAL ITEMS INCLUDED:

Seller intends that the above items be excluded or included in offering the Property for sale, but understands that: (i) the purchase agreement supersedes any intention expressed above and will ultimately determine which items are excluded and included in the sale; and (ii) Broker is not responsible for and does not guarantee that the above exclusions and/or inclusions will be in the purchase agreement.

B. (1) Leased Or Not Owned Items: The following items are leased or not owned by Seller:

- Solar power system, Alarm system, Propane tank, Water Softener, Other N/A

(2) Liened Items: The following items have been financed and a lien has been placed on the Property to secure payment

- Solar power system, Windows or doors, Heating/Ventilation/Air conditioning system, Other N/A

Seller will provide to Buyer, as part of the sales agreement, copies of lease documents, or other documents obligating Seller to pay for any such leased or liened item.

5. MULTIPLE LISTING SERVICE:

A.

Broker will not list the property with any Multiple Listing Service unless authorized by Seller.

BENEFITS OF USING THE MLS; IMPACT OF OPTING OUT OF THE MLS; PRESENTING ALL OFFERS

WHAT IS AN MLS? The MLS is a database of properties for sale that is available and disseminated to and accessible by all other real estate agents who are participants or subscribers to the MLS. Property information submitted to the MLS describes the price, terms and conditions under which the Seller's property is offered for sale...

EXPOSURE TO BUYERS THROUGH MLS: Listing property with an MLS exposes a seller's property to all real estate agents and brokers (and their potential buyer clients) who are participants or subscribers to the MLS or a reciprocating MLS.

CLOSED/PRIVATE LISTING CLUBS OR GROUPS: Closed or private listing clubs or groups are not the same as the MLS. The MLS referred to above is accessible to all eligible real estate licensees and provides broad exposure for a listed property. Private or closed listing clubs or groups of licensees may have been formed outside the MLS...

NOT LISTING PROPERTY IN A LOCAL MLS: If the Property is listed in an MLS which does not cover the geographic area where the Property is located then real estate agents and brokers working that territory, and Buyers they represent looking for property in the neighborhood, may not be aware the Property is for sale.

OPTING OUT OF MLS: If Seller elects to exclude the Property from the MLS, Seller understands and acknowledges that: (a) real estate agents and brokers from other real estate offices, and their buyer clients, who have access to that MLS may not be aware that Seller's Property is offered for sale; (b) Information about Seller's Property will not be transmitted from the MLS to various real estate Internet sites...

REDUCTION IN EXPOSURE: Any reduction in exposure of the Property may lower the number of offers and negatively impact the sales price.

PRESENTING ALL OFFERS: Seller understands that Broker must present all offers received for Seller's Property unless Seller gives Broker written instructions to the contrary.

Seller's Initials (FW)

Broker's/Agent's Initials

Seller's Initials () ()



- B. MLS rules generally provide that residential real property and vacant lot listings be submitted to the MLS within 2 days or some other period of time after all necessary signatures have been obtained on the listing agreement. Broker will not have to submit this listing to the MLS if, within that time, Broker submits to the MLS an appropriate form signed by Seller. If Seller elects to exclude the Property from the MLS as provided by C.A.R. Form SELM or the local equivalent form.
- C. MLS rules allow MLS data to be made available by the MLS to additional Internet sites unless Broker gives the MLS instructions to the contrary. Seller acknowledges that for any of the below opt-out instructions to be effective, Seller must make them on a separate instruction to Broker signed by Seller. Specific information that can be excluded from the Internet as permitted by (or in accordance with) the MLS is as follows:
 - (1) **Property Availability On The MLS; Address On the MLS:** Seller can instruct Broker to have the MLS not display the Property or the Property address on the Internet. Seller understands that either of these opt-outs would mean consumers searching for listings on the Internet may not see the Property or Property's address in response to their search.
 - (2) **Feature Opt-Outs:** Seller can instruct Broker to advise the MLS that Seller does not want visitors to MLS Participant or Subscriber Websites or Electronic Displays that display the Property listing to have the features below. Seller understands (i) that these opt-outs apply only to Websites or Electronic Displays of MLS Participants and Subscribers who are real estate broker and agent members of the MLS; (ii) that other Internet sites may or may not have the features set forth herein; and (iii) that neither Broker nor the MLS may have the ability to control or block such features on other Internet sites.
 - (a) **Comments And Reviews:** The ability to write comments or reviews about the Property on those sites; or the ability to link to another site containing such comments or reviews if the link is in immediate conjunction with the Property display.
 - (b) **Automated Estimate Of Value:** The ability to create an automated estimate of value or to link to another site containing such an estimate of value if the link is in immediate conjunction with the Property display. If Seller elects to opt out of certain Internet features as provided by C.A.R. Form SELI or the local equivalent form.

6. **SELLER REPRESENTATIONS:** Seller represents that, unless otherwise specified in writing, Seller is unaware of: (i) any Notice of Default recorded against the Property; (ii) any delinquent amounts due under any loan secured by, or other obligation affecting, the Property; (iii) any bankruptcy, insolvency or similar proceeding affecting the Property; (iv) any litigation, arbitration, administrative action, government investigation or other pending or threatened action that affects or may affect the Property or Seller's ability to transfer it; and (v) any current, pending or proposed special assessments affecting the Property. Seller shall promptly notify Broker in writing if Seller becomes aware of any of these items during the Listing Period or any extension thereof.

7. **BROKER'S AND SELLER'S DUTIES:**

- A. Broker agrees to exercise reasonable effort and due diligence to achieve the purposes of this Agreement. Unless Seller gives Broker written instructions to the contrary, Broker is authorized, but not required, to (i) order reports and disclosures including those specified in 7C as necessary, (ii) advertise and market the Property by any method and in any medium selected by Broker, including MLS and the Internet, and, to the extent permitted by these media, control the dissemination of the information submitted to any medium; and (iii) disclose to any real estate licensee making an inquiry the receipt of any offers on the Property and the offering price of such offers.
- B. Seller agrees to consider offers presented by Broker, and to act in good faith to accomplish the sale of the Property by, among other things, making the Property available for showing at reasonable times and, subject to paragraph 3F, referring to Broker all inquiries of any party interested in the Property. Seller is responsible for determining at what price to list and sell the Property.
- C. Investigations and Reports: Seller agrees, within 5 (or ___) Days of the beginning date of this Agreement, to pay for the following pre-sale reports: Structural Pest Control General Property Inspection Homeowners Association Documents Other _____
- D. ~~Seller further agrees to indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments, attorney fees and costs arising from any incorrect or incomplete information supplied by Seller, or from any material facts that Seller knows but fails to disclose including dangerous or hidden conditions on the Property.~~

8. **DEPOSIT:** Broker is authorized to accept and hold on Seller's behalf any deposits to be applied toward the purchase price.

9. **AGENCY RELATIONSHIPS:**

- A. **Disclosure:** The Seller acknowledges receipt of a "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
- B. **Seller Representation:** Broker shall represent Seller in any resulting transaction, except as specified in paragraph 3F.
- C. **Possible Dual Agency With Buyer:** Depending upon the circumstances, it may be necessary or appropriate for Broker to act as an agent for both Seller and buyer, exchange party, or one or more additional parties ("Buyer"). Broker shall, as soon as practicable, disclose to Seller any election to act as a dual agent representing both Seller and Buyer. If a Buyer is procured directly by Broker or an associate licensee in Broker's firm, Seller hereby consents to Broker acting as a dual agent for Seller and Buyer. In the event of an exchange, Seller hereby consents to Broker collecting compensation from additional parties for services rendered, provided there is disclosure to all parties of such agency and compensation. Seller understands and agrees that 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; and except as set forth above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.

Seller's Initials (*Kjm*) (_____)



Property Address 1833 PORT BARMOUTH NEWPORT BEACH Date: 3-13-2019

- D. **Confirmation:** Broker shall confirm the agency relationship described above, or as modified, in writing, prior to or concurrent with Seller's execution of a purchase agreement.
 - E. **Potentially Competing Sellers and Buyers:** Seller understands that Broker may have or obtain listings on other properties, and that potential buyers may consider, make offers on, or purchase through Broker, property the same as or similar to Seller's Property. Seller consents to Broker's representation of sellers and buyers of other properties before, during and after the end of this Agreement. Seller acknowledges receipt of a "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).
10. **SECURITY, INSURANCE, SHOWINGS, AUDIO AND VIDEO:** Broker is not responsible for loss of or damage to personal or real property, or person, whether attributable to use of a keysafe/lockbox, a showing of the Property, or otherwise. Third parties, including, but not limited to, appraisers, inspectors, brokers and prospective buyers, may have access to, and take videos and photographs of, the interior of the Property. Seller agrees: (i) to take reasonable precautions to safeguard and protect valuables that might be accessible during showings of the Property; (ii) to obtain insurance to protect against these risks. Broker does not maintain insurance to protect Seller. Persons visiting the Property may not be aware that they could be recorded by audio or visual devices installed by Seller (such as "nanny cams" and hidden security cameras). Seller is advised to post notice disclosing the existence of security devices.
11. **PHOTOGRAPHS AND INTERNET ADVERTISING:**
- A. In order to effectively market the Property for sale it is often necessary to provide photographs, virtual tours and other media to buyers. Seller agrees (or if checked, does not agree) that Broker may photograph or otherwise electronically capture images of the exterior and interior of the Property ("Images") for static and/or virtual tours of the Property by buyers and others for use on Broker's website, the MLS, and other marketing materials and sites. Seller acknowledges that once Images are placed on the Internet neither Broker nor Seller has control over who can view such Images and what use viewers may make of the Images, or how long such Images may remain available on the Internet. Seller further assigns any rights in all Images to the Broker and agrees that such Images are the property of Broker and that Broker may use such Images for advertising, including post sale and for Broker's business in the future.
 - B. Seller acknowledges that prospective buyers and/or other persons coming onto the property may take photographs, videos or other images of the property. Seller understands that Broker does not have the ability to control or block the taking and use of Images by any such persons. (If checked) Seller instructs Broker to publish in the MLS that taking of Images is limited to those persons preparing Appraisal or Inspection reports. Seller acknowledges that unauthorized persons may take images who do not have access to or have not read any limiting instruction in the MLS or who take images regardless of any limiting instruction in the MLS. Once Images are taken and/or put into electronic display on the Internet or otherwise, neither Broker nor Seller has control over who views such Images nor what use viewers may make of the Images.
12. **KEYSAFE/LOCKBOX:** A keysafe/lockbox is designed to hold a key to the Property to permit access to the Property by Broker, cooperating brokers, MLS participants, their authorized licensees and representatives, authorized inspectors, and accompanied prospective buyers. Broker, cooperating brokers, MLS and Associations/Boards of REALTORS® are not insurers against injury, theft, loss, vandalism or damage attributed to the use of a keysafe/lockbox. Seller does (or if checked does not) authorize Broker to install a keysafe/lockbox. If Seller does not occupy the Property, Seller shall be responsible for obtaining occupant(s)' written permission for use of a keysafe/lockbox (C.A.R. Form KLA).
13. **SIGN:** Seller does (or if checked does not) authorize Broker to install a FOR SALE/SOLD sign on the Property.
14. **EQUAL HOUSING OPPORTUNITY:** The Property is offered in compliance with federal, state and local anti-discrimination laws.
15. **ATTORNEY FEES:** In any action, proceeding or arbitration between Seller and Broker to enforce the compensation provisions of this Agreement, the prevailing Seller or Broker shall be entitled to reasonable attorney fees and costs from the non-prevailing Seller or Broker, except as provided in paragraph 19A.
16. **ADDITIONAL TERMS:** REO Advisory Listing (C.A.R. Form REOL) Short Sale Information and Advisory (C.A.R. Form SSIA)
- Trust Advisory (C.A.R. Form TA)
- Seller intends to include a contingency to purchase a replacement property as part of any resulting transaction

See the attached Additional Terms to Residential Listing Agreement and the "AS-IS"

17. **MANAGEMENT APPROVAL:** If an associate-licensee in Broker's office (salesperson or broker-associate) enters into this Agreement on Broker's behalf, and Broker or Manager does not approve of its terms, Broker or Manager has the right to cancel this Agreement, in writing, within 5 Days After its execution.
18. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon Seller and Seller's successors and assigns.
19. **DISPUTE RESOLUTION:**
- A. **MEDIATION:** Seller and Broker agree to mediate any dispute or claim arising between them regarding the obligation to pay compensation under this Agreement, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. Exclusions from this mediation agreement are specified in paragraph 49B.



Property Address 1833 PORT BARMOUTH, NEWPORT BEACH Date 3-13-2019

- B. **ADDITIONAL MEDIATION TERMS:** The following matters shall be excluded from mediation: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver or violation of the mediation provisions.
- C. **ADVISORY:** If Seller and Broker desire to resolve disputes arising between them through arbitration rather than court, they can document their agreement by attaching and signing an Arbitration Agreement (C.A.R. Form ARB).

20. **ENTIRE AGREEMENT:** All prior discussions, negotiations and agreements between the parties concerning the subject matter of this Agreement are superseded by this Agreement, which constitutes the entire contract and a complete and exclusive expression of their agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. This Agreement and any supplement, addendum or modification, including any photocopy or facsimile, may be executed in counterparts.

21. **OWNERSHIP, TITLE AND AUTHORITY:** Seller warrants that: (i) Seller is the owner of the Property; (ii) no other persons or entities have title to the Property; and (iii) Seller has the authority to both execute this Agreement and sell the Property. Exceptions to ownership, title and authority are as follows: _____
 _____ Temporary Receiver is authorized by Court to list the property for sale (see Court Order) _____

REPRESENTATIVE CAPACITY: This Listing Agreement is being signed for Seller by an individual acting in a Representative Capacity as specified in the attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-S). Wherever the signature or initials of the representative identified in the RCSD appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. Seller (i) represents that the entity for which the individual is signing already exists and (ii) shall Deliver to Broker, within 3 Days After Execution of this Agreement, evidence of authority to act (such as but not limited to: applicable trust document, or portion thereof, letters testamentary, court order, power of attorney, resolution, or formation documents of the business entity).

By signing below, Seller acknowledges that Seller has read, understands, received a copy of and agrees to the terms of this Agreement.

Seller ECOLOGICAL FOX LLC ET AL RECEIVERSHIP QSF BY ROBB EVANS & ASSOCIATES LLC REC, Date 3/13/19
TEMPORARY RECEIVER OF 1833 PORT BARMOUTH PL, NEWPORT BEACH, CA 92660
 Address _____ City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

Seller By: Kenton Johnson, Authorized Deputy to the Receiver Date 3/13/19
 Address _____ City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

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

Real Estate Broker (Firm) SRS REAL ESTATE PARTNERS DRE Lic.# 01881492
 Address 610 NEWPORT CENTER DR STE 1500 City NEWPORT BEACH State CA Zip 92660
949-698 TOWNSEND.
 By TOWNSEND Cropsey Tel. 1121 E-mail CROPSEY@SRSRE.COM DRE Lic.# 01711930 Date 3-13-19
 By _____ Tel. _____ E-mail _____ DRE Lic.# _____ Date _____

Two Brokers with different companies are co-listing the Property. Co-listing Broker information is on the attached Additional Broker Acknowledgement (C.A.R. Form ABA).

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CALIFORNIA ASSOCIATION OF REALTORS®

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code) (C.A.R. Form AD, Revised 12/18)

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

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.

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.

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.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salespersons 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.

- (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.

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).

ECOLOGICAL FOX LLC ET AL RECEIVERSHIP QSF BY ROBB EVANS & ASSOCIATES LLS REC, TEMPORARY RECEIVER OF 1833 PORT BARMOUTH PL, NEWPORT BEACH, CA 92660

Buyer/Seller/Landlord/Tenant

Date 3/13/2019

Buyer/Seller/Landlord/Tenant

By: Kenton Johnson Authorized Deputy to the Receiver

Agent SRS REAL ESTATE PARTNERS

DRE Lic # 01881492

By [Signature] Real Estate Broker (Firm)

DRE Lic. # 01711930 Date 3/13/2019



ADDITIONAL TERMS: (Attach to Listing Agreement

Governing Law

This contract shall be governed by and construed and enforced in accordance with the laws of the United States District Court, District of Maryland, Southern Division.

Consent to Jurisdiction

This contract shall be deemed to have been made in Los Angeles, California. This contract is entered into by Robb Evans & Associates LLC in its capacity as Temporary Receiver of ECOLOGICAL FOX LLC ET AL., including the property which is the subject matter of this contract, all pursuant to the authority vested in it under an Order of the United States District Court, District of Maryland, Southern Division. The parties hereto agree that any dispute regarding this contract and any litigation pertaining to the enforcement or interpretation hereof properly belongs in and should be heard by the United States District Court, District of Maryland, Southern Division. Purchaser submits and consents to personal jurisdiction in the United States District Court, District of Maryland, Southern Division for the enforcement and interpretation of this contract and waives any and all rights under the laws of any state or the United States of America to object to jurisdiction in the United States District Court, District of Maryland, Southern Division

Right to Seek and Obtain Overbids

In order for Robb Evans & Associates LLC to faithfully discharge his duties as Temporary Receiver, it is understood and agreed by the parties hereto that Robb Evans & Associates LLC may seek and obtain overbids for the property, even if the executed contract is at or above listing price.

In the event the property is sold pursuant to overbid, Broker agrees that any commission to which it is entitled shall be limited to the commission due, if any, on account of the consummated overbid sale.

REAL ESTATE BROKER:

Townsend Cropsy
Vice President
SRS Real Estate Partners
D 949-698-1121 M 760-646-7675
610 Newport Center Drive, Suite 1500
Newport Beach, CA 92660

By: 

Its: V.P.

SRS REAL ESTATE PARTNERS

MARCH 13TH 2019

SELLER:

ECOLOGICAL FOX LLC ET AL
RECEIVERSHIP QSF BY ROBB EVANS &
ASSOCIATES LLC REC, TEMPORARY
RECEIVER OF 1833 PORT BARMOUTH
PLACE, NEWPORT BEACH, CA 92660

By: 

Kenton Johnson
Deputy to the Receiver