

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

IN RE:	X	
	X	
ADVANCED SOLIDS CONTROL, LLC	X	CASE NO. 16-52748-RBK
	X	
DEBTOR	X	CHAPTER 11

**MOTION OF ADVANCED SOLIDS CONTROL, LLC FOR AUTHORIZATION TO  
SELL REAL PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS AND  
ENCUMBRANCES**

**THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO  
YOUR INTERESTS.**

**IF NO TIMELY RESPONSE IS FILED WITHIN TWENTY-ONE (21)  
DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED  
HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.**

**A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE  
HELD.**

TO THE HONORABLE RONALD B. KING, CHIEF JUDGE,  
UNITED STATES BANKRUPTCY COURT:

NOW COMES, Advanced Solids Control, LLC, Debtor-in-Possession in the above styled  
and numbered Chapter 11 bankruptcy case, and files this its Motion For Authorization to Sell Real  
Property Free and Clear of All Liens, Claims and Encumbrances, and in support thereof would  
respectfully show the Court the following:

1. On December 2, 2016, Advanced Solids Control, LLC (hereinafter called "Debtor") filed its voluntary Petition for Relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Western District of Texas, San Antonio Division.

2. The asset proposed to be sold is real property described as 3904 N. Pat Garrett Ct., Carlsbad, NM 88220. This is a single family residence.

3. The Debtor proposes to sell the real property for the cash sales price in the amount of \$260,000.00 to Zachary L. and Karen Berry (not related to the Debtor). The sale is scheduled to close on or before April 17, 2017.

4. The Debtor believes that the proposed sales price approximates the real property's market value in the context of such a sale, and is a reasonable value based upon the asset proposed to be sold and its marketability. The Debtor scheduled the house with a market value in the amount of \$265,000.00. The house has been for sale for an extended period of time.

5. The real property is subject to a mortgage lien to First National Bank of Beeville in the approximate amount of \$665,000.00. The sale of the real property and improvements located at 3906 N. Pat Garrett Ct. (which has previously been approved by this Court) is scheduled to close today, and will net approximately \$235,000.00, all of which is being paid to First National Bank of Beeville in partial satisfaction of its debt. Any outstanding ad valorem taxes, including the Eddy County ad valorem taxes, will be paid in full from the sale.

6. In addition to this real property, First National Bank of Beeville still holds Deed of Trust Liens on real property and improvements located and valued as follows: 4004 N. Pat Garrett Ct. (\$265,000.00) and 4005 N. Pat Garrett Ct. (\$250,000.00).

7. The Debtor is requesting permission to pay all reasonable closing costs, including real estate commissions, directly at closing. The net proceeds from the sale will be paid to First National Bank of Beeville in partial satisfaction of the outstanding balance of its Note.

8. The Debtor is requesting that the sale to Zachary L. and Karen Berry be free and clear of all liens, claims and encumbrances pursuant to §363 of the U.S. Bankruptcy Code. The liens of First National Bank of Beeville and the local ad valorem taxing authorities will automatically attach to the net sales proceeds based upon their pre-petition priority, and paid through closing.

9. Should the sale to Zachary L. and Karen Berry fail to close, the Debtor is requesting permission to sell the real property to any other third party for the minimum cash sales price in the amount of \$260,000.00.


10. A copy of the Contract is attached hereto as Exhibit "A".

11. A copy of the Order uploaded with this Motion is attached hereto.

WHEREFORE, PREMISES CONSIDERED, Debtor requests that the Court authorize it to sell free and clear of all liens, claims and encumbrances pursuant to §363 of the U.S. Bankruptcy Code the real property (3904 N. Pat Garrett Ct., Carlsbad, NM 88220) for the cash sales price in the amount of \$260,000.00 to Zachary L. and Karen Berry pursuant to the terms set forth above, and for such other and further relief to which the Debtor may show itself entitled.

Date: March 17, 2017.


Respectfully submitted,

  
WILLIAM R. DAVIS, JR.  
State Bar No. 05565500  
LANGLEY & BANACK, INC.  
745 E. Mulberry, Suite 900  
San Antonio, TX 78212  
(210) 736-6600

Attorneys for Debtor

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2017, a true and correct copy of the above and foregoing instrument was mailed, first class, postage prepaid to the attached notice list.

  
WILLIAM R. DAVIS, JR.

Advanced Solids Control, LLC  
c/o Mr. Lynn Frazier  
5655 Bear Lane, Suite 100  
Corpus Christi, TX 78405

U.S. Trustee  
P.O. Box 1539  
San Antonio, TX 78295-1539

Darin Jerle Harding  
P.O. Box 743  
Grande Prairie Alberta T8V3R5

Sentrimax Centrifuges, Inc.  
108 Sentry Drive  
Mansfield, TX 76063

Gary Sweetman  
226 Augusta Drive  
Portland, TX 78374

Magnum Oil Tools Int'l, Ltd.  
5655 Bear Lane, Suite 100  
Corpus Christi, TX 78405

Crain, Caton & James  
17<sup>th</sup> Fl., 1401 McKinney St.  
Houston, TX 77010-4035

Stang Automation, Inc.  
100 Pointe Marcelle Beaumont  
Alberta T4X 0G2 Canada

Ber Mar Rewind, Ltd.  
9609 109 Street  
Grand Prairie AB T8V 4E3 Canada

Kirby-Smith Machinery, Inc.  
P.O. Box 270360  
Oklahoma City, OK 73137

Williams Scotsman, Inc.  
P.O. Box 91975  
Chicago, IL 60693-1975

Tucker Albin & Assoc., Inc.  
1702 N. Collins Blvd., Suite 100  
Richardson, TX 75080

Harvey Fuels, Inc.  
P.O. Box 8026  
Ruidoso, NM 88355

Forrest Tire, Inc.  
P.O. Box 1778  
Carlsbad, NM 88221-1778

A.G. Investments, Ltd.  
740 Walt Whitman Rd.  
Melville, NY 11747-9090

Pactec, Inc.  
P.O. Box 8069  
Clinton, LA 70722

ASK Environmental Equipment  
20504 Enfield Ave. N  
Forest Lake, MN 55025

Harvey Rodriguez  
215 E. Elm St.  
Loving, NM 88256

United Healthcare  
Dept. CH 1051  
Palatine, IL 60055-0151

DNOW, LP  
P.O. Box 40985  
Houston, TX 77240-0985

JB Electric, LLC  
P.O. Box 171  
Carlsbad, NM 88221

Big Dog - Rig Movers  
7500 W. Hwy. 80  
Midland, TX 79706

Robert L. Barrows  
Warren, Drugan & Barrows, PC  
800 Broadway  
San Antonio, TX 78215

Diane W. Sanders  
Linebarger Goggan Blair & Sampson  
PO Box 17428  
Austin, TX 78760

Ronald A. Simank  
Schauer & Simank, PC  
615 N. Upper Broadway, Suite 700  
Corpus Christi, TX 78401

Lee Gordon  
McCreary, Veselka, Bragg & Allen  
P.O. Box 1269  
Round Rock, TX 78680

**REALTORS® ASSOCIATION OF NEW MEXICO**  
**PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2017**  
**PART II – BROKER DUTIES**

**BROKERAGE RELATIONSHIPS DISCLOSURE:** The following brokerage relationships are available in New Mexico: Transaction Broker, Exclusive Agency, and Dual Agency. See RANM Form 1401, Page 2 for an explanation of these relationships. Disclosure of *written* brokerage relationships the broker has with other parties to the transaction:

1. Jessie Berry ("Buyer's Broker") is working with the Buyer in this transaction as a:
- ☒ Transaction Broker without a written agreement.
  - ☐ Transaction Broker with a written agreement (RANM Form 1206, Buyer Broker Agreement).
  - ☐ Agent with a written agreement (RANM Form 1206, Buyer Broker Agreement with Agency Addendum).
2. **IN-HOUSE TRANSACTION:**
- ☐ A. Buyer's Broker is licensed under the same Qualifying Broker in the same Brokerage as Seller's Broker. Seller's Broker has a written listing agreement with the Seller as ☐ Transaction Broker ☐ Agent.
  - ☐ B. Buyer's Broker is also Seller's Broker for the property in this Transaction. Seller's Broker has a written listing agreement with Seller as ☐ Transaction Broker ☐ Agent.
3. ☐ **DUAL REPRESENTATION DISCLOSURE AND CONSENT:** Brokerage is representing both Buyer and Seller by means of written agreements with each of them, without creating Dual Agency. If there are two written agreements, Buyer and Seller hereby consent to this dual representation.
4. ☐ **DUAL AGENCY DISCLOSURE:** Brokerage is representing both Buyer and Seller by means of written agency agreements with each of them and Designated Brokerage has not been chosen by the Qualifying Broker, thus creating Dual Agency. Prior to writing or presenting this offer, Broker must obtain written consent from the Buyer Client and Seller Client (RANM Form 1301, Agency Agreement – Dual).
5. Buyer's Broker ☒ does ☐ does not have a material interest or relationship of a business, personal or family nature in the transaction, including compensation from more than one party: Buyer- Zachary L. Berry is Broker-Jessie Berry, husbands brother.

*If the Brokerage or Qualifying Broker has a material interest or relationship of a business, personal, or family nature in the transaction, that interest or relationship must also be disclosed separately.*

6. ☐ Buyer ☐ Seller is a licensed Real Estate Broker.

By their signatures below, the parties acknowledge the receipt of **BROKER DUTIES** and the **BROKERAGE RELATIONSHIP DISCLOSURE:**

Authentisign		BUYER	
<u>Zachary L. Berry</u>	03/15/2017	7:22 PM	
Buyer Signature	Date	Time	
<u>Karen Berry</u>	03/15/2017	6:54 PM	
Buyer Signature	Date	Time	

Authentisign		SELLER	
<u>Advanced Solids Control</u>	03/16/2017	12:58 PM	
Seller Signature	Date	Time	
<u>Advanced Solids Control LLC</u>	03/16/2017	12:58:54 PM MDT	
Seller Signature	Date	Time	

**BUYER'S BROKER**  
BHHS Enchanted Lands, REALTORS®

Broker ☒ is ☐ is not a REALTOR®

<u>Jessie Berry</u>	03/15/2017	6:53 PM
Broker Signature	Date	Time

**SELLER'S BROKER**

Means Real Estate LLC

Broker ☒ is ☐ is not a REALTOR®

<u>Carlynn Cage</u>	03/16/2017	12:34 PM
Broker Signature	Date	Time

RANM Form 2104 (2017 Jan) Cover Page II

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Instanet FORMS



REALTORS® ASSOCIATION OF NEW MEXICO  
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2017



OFFER DATE: March 15 2017

1. PARTIES AND AGREEMENT.

Zachary L. Berry Karen Berry (“Buyer”)  
agrees to buy from Seller and Advanced Solids Control LLC (“Seller”)  
agrees to sell and convey to Buyer, in accordance with terms of this Purchase Agreement (“Agreement”), the Property  
described in Paragraph 4 with a Settlement/Signing Date on April 17 2017  
(as further described in Paragraph 8A below).

2. PURCHASE PRICE.

\$ 255,000.00

A. APPROXIMATE CASH DOWN PAYMENT

\$ TBD

B. AMOUNT OF THE LOAN(S) (described in Paragraph 5 below)

\$ TBD

3. EARNEST MONEY. Buyer shall deliver \$ 1,000.00 Earnest Money in the form of  
☒ Check ☐ Cash ☐ Note ☐ Wire Transfer of Funds ☐ Other \_\_\_\_\_, no  
later than 5 days from Date of Acceptance of this Agreement to Currier Abstract  
\_\_\_\_\_, in accordance with New Mexico law. Earnest Money shall be applied  
to Purchase Price, down payment, and/or closing costs upon Funding Date. If Earnest Money is deposited with a  
Brokerage Firm, the further disbursement of Earnest Money to the escrow or Title Company shall be handled by separate  
agreement. Buyer’s failure to timely deliver Earnest Money shall be considered a default of this Agreement.

4. PROPERTY.

A. DESCRIPTION.

3904 N Pat Garrett Ct. Carlsbad NM 88220  
Address City State/Zip  
FARMVIEW PHASE 2 Lot: 18 LOT 18 MAP# 267-FP2-18 CAB# 5 655-1 LOC  
Legal Description  
3904 N PAT GARRETT COURT LOT SIZE 218' X 100'  
or see metes and bounds or other legal description attached as Exhibit \_\_\_\_\_, Eddy  
County(ies), New Mexico.

Gross Receipts Tax (GRT) Location Code: 03106 (To be completed by Broker).

If the legal description of the Property is incomplete or inaccurate, this Agreement shall not be invalid; the legal  
description shall be completed or corrected to meet the requirements of the Title Company issuing the title policy.

B. TYPE: ☒ Site built ☐ Manufactured housing ☐ Modular ☐ Off-site built ☐ Other:  
\_\_\_\_\_. (See RANM Form 2305 – Information Sheet-Manufactured Housing)

C. OTHER RIGHTS. Unless otherwise provided herein, Seller shall convey to Buyer all existing wind, solar, water  
and mineral rights (“Other Rights”) appurtenant to the Property. **Seller makes no warranties as to the existence  
of any of the foregoing Other Rights. NOTE TO SELLER: If Seller is retaining any or all of the foregoing  
Other Rights, Seller should NOT sign this offer; a counteroffer would be necessary. NOTE TO  
BUYER: Buyer should be aware that some or all of the foregoing Other Rights may have been previously  
severed from the Property and may be owned by third persons; those severed rights would not convey to  
Buyer by way of this Agreement. Buyer SHOULD seek legal and expert assistance to determine what rights,  
IF ANY, Buyer is acquiring with the Property, to understand how the non-conveyance of any rights or  
portions thereof may affect Buyer; and to ensure that all rights that will convey with the Property are  
properly transferred at closing.**

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**REALTORS® ASSOCIATION OF NEW MEXICO  
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2017**

**D. FIXTURES, APPLIANCES AND PERSONAL PROPERTY.**

i. **FIXTURES.** The Property shall include all Fixtures, free of all liens, including, but not limited to, the following Fixtures if such Fixture exists on the Property, unless otherwise excluded as stated in Paragraph 4E:

- |  |  |   |
|--|--|---|
| • Attached fireplace grate(s) & screen(s)            | • Dishwasher(s)  | • Security System(s) (if owned by Seller)   |
| • Attached floor covering(s)                         | • Fire Alarm(s) (if owned by Seller)                                   | • Smoke Alarm(s) (if owned by Seller)   |
| • Attached mirror(s)                                 | • Garbage disposal(s)  | • Solar system(s)   |
| • Attached outdoor lighting & fountain(s)            | • Garage door opener(s)  | • Sprinkler(s)/irrigation equipment   |
| • Attached pot rack(s)                               | • Heating system(s)  | • Storm window(s) & door(s)   |
| • Attached window covering(s) & rod(s)               | • Landscaping  | • TV antenna(s) & satellite dish(es)  |
| • Awning(s)  | • Light fixture(s)   | • Ventilating & air conditioning system(s)  |
| • Built in/attached speaker(s) & subwoofer(s)        | • Mailbox(es)  | • Water conditioning/filtration /water softener/purification system(s) (if owned by Seller) |
| • Built-in Murphy bed(s)                             | • Outdoor plant(s) & tree(s) (other than those in moveable containers) |   |
| • Ceiling fan(s)                                     | • Oven(s)  |   |
| • Central vacuum, to include all hoses & attachments | • Pellet, wood-burning or gas stove(s)                                 |   |
|  | • Range(s)   |   |
|  | • Window/door screen(s)  |   |

ii. **PERSONAL PROPERTY.** The following existing personal property, if checked, shall remain with the Property:

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> All window covering(s)                   | <input type="checkbox"/> Microwave(s)   | <input type="checkbox"/> Storage Shed(s)                            |
| <input type="checkbox"/> Audio component(s)                       | <input type="checkbox"/> Pool & spa equipment   | <input type="checkbox"/> TV(s)                                      |
| <input type="checkbox"/> Decorative mirror(s) above bath vanities | <input type="checkbox"/> including any mechanical or other cleaning system(s)                             | <input type="checkbox"/> Unattached fireplace grate(s) & screen(s)  |
| <input type="checkbox"/> Dryer(s)                                 | <input checked="" type="checkbox"/> Refrigerator(s)   | <input type="checkbox"/> Unattached outdoor fountain(s) & equipment |
| <input type="checkbox"/> Washer(s)                                | <input type="checkbox"/> Satellite receiver(s) with access cards (if owned by Seller and if transferable) | <input type="checkbox"/> Unattached outdoor lighting                |
| <input type="checkbox"/> Garage door remote(s)                    |   | <input type="checkbox"/> Hot Tub(s)                                 |
| <input type="checkbox"/> Freezer(s)                               |   |   |

**Other:** Dishwasher, Garbage disposal, microwave, range hood, range- free standing, water heater- electric.

Personal Property remaining with the Property as stated in Paragraph 4D, shall be the actual personal property that is present as of the date the Buyer submits this offer, shall not be considered part of the premises and shall be transferred with no monetary value, free and clear of all liens and encumbrances.

**E. EXCLUSIONS.** The following items are excluded from the sale: \_\_\_\_\_

**5. FINANCED OR CASH PURCHASE**

A. ☒ **LOANS.** This Agreement is contingent upon Buyer's ability to obtain a loan in the amount stated above in Paragraph 2(B) of the following type:

☐ Conventional ☒ FHA ☐ VA ☐ Other: \_\_\_\_\_

i. Buyer ☒ has made written application for a loan, or ☐ shall make written application for a loan no later than \_\_\_\_\_ days after the Date of Acceptance.

ii. Buyer shall provide Seller with a Pre-Qualification Letter from a lender no later than 1 days after the Date of Acceptance. Pre-Qualification Letter must stipulate that:



**REALTORS® ASSOCIATION OF NEW MEXICO  
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2017**

- a) A written loan application has been made;
- b) A credit report has been obtained and reviewed by a lender;
- c) A preliminary loan commitment has been secured from the same lender;
- d) Financing equal to the loan amount provided in Paragraph 2(B) of this Agreement is available to complete the transaction by the Settlement/Signing Date subject to contingencies provided for in this Agreement and underwriting approval.

If Buyer does not obtain a Pre-Qualification Letter within the timeframe stipulated above, this Agreement shall terminate and the Earnest Money shall be refunded to Buyer.

- iii. If Buyer changes lender after delivery of the Pre-Qualification Letter referenced in Paragraph 5(A)(ii), Buyer shall have the obligation to notify Seller in writing and provide a new Pre-Qualification Letter to Seller within two (2) days of changing lender. This new Pre-Qualification Letter must include the same stipulations as the original Pre-Qualification Letter as set forth in Paragraph 5(A)(ii). If Buyer does not obtain and deliver a new Pre-Qualification Letter within two (2) days of changing lender, the Seller has the option to terminate this Agreement. If Seller elects to terminate this Agreement, the Earnest Money shall be refunded to Buyer.
- iv. Buyer shall cooperate and act in good faith in obtaining final approval for the loan as outlined in the Pre-Qualification Letter referenced in Paragraph 5(A)(ii). If after issuing the Pre-Qualification letter, lender makes changes to the loan conditions and/or the loan program that adversely affect Buyer's ability to obtain the loan, increase Seller's costs or delay closing, Buyer shall have the obligation to notify Seller in writing within two (2) days of such occurrence and to include a copy of the lender requirement(s) with the notification. In that event, within three (3) days of receipt of Buyer's notification, Seller shall notify Buyer in writing: (a) of Seller's approval of such changes; or (b) of Seller's decision to terminate the Agreement. If Seller terminates the Agreement per this Subparagraph 5(A)(iv), Earnest Money shall be refunded to Buyer. If Seller fails to notify Buyer of Seller's position within three (3) days of receipt of Buyer's notification, Seller is deemed to have **rejected** such change in lender requirement(s). In this event, the Agreement shall terminate and the Earnest Money shall be refunded to Buyer.
- v. In the event the lender determines Buyer does not qualify for the loan, Buyer shall provide to Seller and Seller must receive a written rejection letter from the Buyer's lender prior to 11:59 p.m. ☒ on the day before; or ☐ \_\_\_\_\_ days before Settlement/Signing Date. In the event Seller does not receive such rejection letter within the timeframe set forth in this Subparagraph 5(A)(v), Buyer shall forfeit his Earnest Money to Seller.

Days are calculated as calendar days; however, for purposes of this subsection only (Paragraph 5(A)(v)), there shall be NO extension of time when the deadline for Seller to receive the lender's written rejection letter falls on a weekend day or a legal holiday. The definition of "days" for all other provisions of this Agreement is as set forth in Paragraph 27.

- B. ☐ **SELLER FINANCING.** The approximate balance of \$ \_\_\_\_\_ shall be financed by Seller and shall be secured by: ☐ Real Estate Contract ☐ Mortgage ☐ Deed of Trust ☐ Other: \_\_\_\_\_. Terms and conditions of the applicable instrument shall be attached as an addendum. For a Real Estate Contract, attach RANM Form 2402 - Real Estate Contract Addendum to Purchase Agreement. For a Mortgage or Deed of Trust, Attach RANM Form 2507 – Addendum to Purchase Agreement – Seller Financing, Mortgage or Deed of Trust.
- C. ☐ **CASH PURCHASE:** Buyer shall purchase the subject Property for Cash. No later than \_\_\_\_\_ days after the Date of Acceptance, Buyer shall provide Seller with verification of funds and proof satisfactory to Seller that Buyer has in Buyer's possession or control, the funds necessary to complete the transaction. This Agreement shall terminate in the event Buyer fails to provide timely proof of funds and Earnest Money ☐ shall ☐ shall not be refunded to Buyer.

- 6. ☐ **BUYER'S SALE, CLOSING AND FUNDING CONTINGENCY:** This Agreement is contingent upon the Closing and Funding of Buyer's property located at \_\_\_\_\_ on or before \_\_\_\_\_, subject to any applicable Buyer's Contingency Addendum if attached as indicated below:

**REALTORS® ASSOCIATION OF NEW MEXICO  
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2017**

- A. ☐ Buyer represents that Buyer's property is currently under contract for sale. ☐ Check if RANM Form 2503A - Buyer's Closing and Funding Addendum is attached; OR
- B. ☐ Buyer represents that Buyer's property is NOT yet under contract for sale. ☐ Check if RANM Form 2503, Buyer's Sale Contingency Addendum is attached.

**7. APPRAISAL.**

**A. IF CASH OR SELLER FINANCED TRANSACTION.**

- i. Buyer ☐ does ☐ does not require an appraisal. **INITIALS: Buyer** \_\_\_\_\_.
- ii. If Buyer is requiring an appraisal, Buyer shall select the appraiser unless otherwise agreed to in writing.  
☐ Buyer ☐ Seller shall pay for the appraiser.

**B. APPRAISAL CONTINGENCY.** It is expressly agreed that notwithstanding any other provisions of this Agreement, the Buyer shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of Earnest Money deposits or otherwise if the Purchase Price is greater than the Appraisal. This Appraisal Contingency applies to the following:

- i. All conventional and other non-FHA/VA loans requiring an appraisal;
- ii. Cash and seller-financed purchases if the Buyer requires an appraisal as indicated in Paragraph 7(A); and,
- iii. FHA/VA loans unless the Buyer has been given in accordance with HUD/FHA requirements, a written statement by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement Lender setting forth the approved value of the Property of not less than the Purchase Price as set forth in Paragraph 2 of this Agreement. **NOTE:** The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development (HUD) will insure. HUD does not warrant the value or the condition of the Property. The Buyer should satisfy himself that the price and condition of the Property are acceptable.

**C. OPTIONS AVAILABLE IN THE EVENT PURCHASE PRICE IS GREATER THAN APPRAISAL.**

- i. Buyer shall have the privilege and option of proceeding with consummation of the Agreement without regard to the amount of the appraised valuation provided Buyer delivers written notice to Seller of such election within three (3) days of receipt of said appraised valuation ("3-day Period"). If Buyer fails to notify Seller of his intent to proceed within the 3-day Period, this Agreement shall automatically terminate. In this event, Earnest Money shall be refunded to Buyer; OR
- ii. The parties may negotiate a new Purchase Price. If the parties cannot agree to a new Purchase Price within five (5) days of Seller's receipt of Buyer's notification of the Appraisal, this Agreement shall automatically terminate. In this event, Earnest Money shall be refunded to Buyer; OR
- iii. Buyer may terminate this Agreement. In this event, Earnest Money shall be refunded to Buyer.

**8. CLOSING.** "Closing" is defined as a series of events by which Buyer and Seller satisfy all of their obligations in the Agreement. Closing is not completed until all parties have completed all requirements as stated below, as well as all other obligations under this Agreement. Any amendment of the following dates **MUST BE** in writing and unless otherwise provided for in this Agreement, signed by both parties. The parties further acknowledge that Seller shall not receive the proceeds of sale until all the events stated under "Funding Date" have been completed.

**A. SETTLEMENT/SIGNING DATE:** On April 17 2017 (as set forth in Paragraph 1).

- i. Buyer and Seller shall sign and deliver to the responsible closing officer all documents required to complete the transaction and to perform all other closing obligations of this Agreement on or before the Settlement/Signing Date.
- ii. Buyer and Seller shall provide for the delivery of all required funds, exclusive of lender funds, if any, using wired, certified or other "ready" funds acceptable to the closing officer, on or before the Settlement/Signing Date.

**B. FUNDING DATE (Completion of Closing):** on or before April 18 2017. The Funding Date is the date that the closing officer has funds available to disburse to all parties after recording all documents required to complete the transaction. Seller shall provide all existing keys, security system/alarm codes, gate openers and garage door openers to Buyer on the Funding Date.

## REALTORS® ASSOCIATION OF NEW MEXICO PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2017

If the Buyer is obtaining a loan for the purchase of the Property, it is the Buyer’s responsibility to ensure that Buyer’s lender makes available to the closing officer, wired, certified or other “ready” funds with written instructions to disburse funds, on or before the Funding Date. The failure of Buyer’s lender to make funds available on or before the Funding Date, shall be deemed a default of this Agreement by the Buyer.

**9. POSSESSION DATE.**

- A. Seller shall deliver possession of the Property to Buyer on the Possession Date as set forth below:  
☒ Funding Date at 5:00 p.m.; or \_\_\_\_\_  
☐ Other: \_\_\_\_\_
- B. Unless otherwise agreed to in writing, upon Possession Date, Seller shall have all his personal belongings removed from the Property. In the event Seller fails to do so, Buyer shall not be responsible for storage of Seller’s personal property, may dispose of Sellers personal property in any manner Buyer deems appropriate, in Buyer’s sole discretion, and shall not be liable to Seller for the value of Seller’s personal property.
- C. If Possession Date is other than Funding Date, then Buyer and Seller shall execute a separate written agreement outlining the terms agreed to by the parties. (See RANM Form 2201- Occupancy Agreement – Buyer or RANM Form 2202 – Occupancy Agreement - Seller)

**10. COSTS TO BE PAID.** Buyer or Seller , as applicable, shall pay the following marked items:

LOAN RELATED COSTS AND FEES				Buyer	Seller	Not Required	TITLE COMPANY CLOSING COSTS				Buyer	Seller	Not Required
Appraisal Fee					x		Closing Fee				x	x	
Appraisal Re-inspection Fee					x		Pro-Rata Data Search						x
Credit Report				x			Legal Document Preparation						x
Loan Assumption /Transfer						x	Special Assessment Search						x
Origination Charge: up to □\$ □%				x			Buyer Recording Fees				x		
Points – Buydown						x	Seller Recording Fees					x	
Points - Discount						x	Other:						
Tax Service Fee				x									
Flood Zone Certification				x									
Other:						Other:							
Other:													
						POLICY PREMIUMS							
PREPAIDS REQUIRED BY LENDER						Title Commitment					x		
						Standard Owner’s Policy					x		
						Mortgagee’s Policy				x			
						Mortgagee’s Policy Endorsements				x			
Flood Insurance				x			Other:						
Hazard Insurance				x									
Interest				x			Other:						
PMI or MIP				x									
Taxes				x									
MANUFACTURED HOME COSTS						MISCELLANEOUS							
Foundation Inspection						x	Survey (Paragraph 18)				x		
Foundation Repairs						x	Impact Fees						x
Re-Inspection Fees						x	Transfer Fees (e.g. HOA, etc)						x
DMV Title Transfer						x	Certificate Fee (e.g. HOA)						x
Deactivation Fees						x	Other:						
Other:													
Other:						Other:							
Other:						Other:							

Buyer shall pay all other allowed direct loan costs.

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11. ☐ **IRS 1031 TAX-DEFERRED EXCHANGE.** ☐ Buyer ☐ Seller intends to use this Property to accomplish a 1031 Tax-Deferred Exchange. The parties shall cooperate with one another in signing and completing any documents required. The non-exchanging party shall bear no additional expense.
12. **PRORATIONS.** Seller shall be responsible for disclosing all applicable property specific fees, or lease agreements, private memberships and/or association fees or dues, taxes and contract service agreements, all of which are to be prorated through Settlement/Signing Date. Any equipment rental or contract service agreement (e.g. alarm system, satellite system, propane tank, private refuse collection, road maintenance, etc) shall be handled directly between the Buyer and Seller; the title or escrow company shall not be responsible for proration thereof.
13. **ASSESSMENTS.** For all bonds, impact fees and assessments other than PID assessments (collectively “assessments”), Buyer shall have \_\_\_\_\_ days after receipt of the title commitment to object in writing to the amounts of such assessments and to terminate this Agreement (“Objection Date”). In the event Buyer submits written objections by the Objection Date, the Earnest Money shall be refunded to the Buyer. If Buyer fails to notify Seller of Buyer’s objections by the Objection Date, Buyer shall be deemed to have accepted the amounts of any assessment and shall have waived his right to terminate this Agreement based thereon. In the event Buyer does not object, Buyer shall assume all assessments that are part of or paid with the property tax bill. If other assessments are a lien upon the Property, the current installment shall be prorated through Settlement/Signing Date. Buyer shall assume future installments. Buyer shall pay all future assessments for improvements. **NOTE:** If Property is located in a Public Improvement District (PID), Seller must provide a Public Improvement District Disclosure to Buyer PRIOR to entering into this Agreement. See Paragraph 17(B).
14. **EXAMINATION OF TITLE; LIENS; DEED.**
- A. ☐ BUYER ☒ SELLER shall order a title commitment from \_\_\_\_\_  
Currier Abstract \_\_\_\_\_ (Title Company)  
within 5 days after the Date of Acceptance. After receipt of the title commitment and all documents referred to therein, Buyer shall have 5 days (“Review Period”) to review and object to title exceptions. Exceptions to the title, including the Standard Exceptions, shall be deemed approved unless Buyer delivers written objections to the Seller within the Review Period. If Seller is unwilling or unable to remove such exception(s) before the Settlement/Signing Date, Seller shall provide written notice to Buyer within 5 days after receipt of Buyer’s objection and Buyer may choose to close subject to exceptions, remove the exceptions at Buyer’s expense or terminate this Agreement. If Buyer terminates this Agreement, Earnest Money shall be refunded to Buyer.
- B. Seller shall satisfy any judgments and liens, including but not limited to, all mechanics’ and materialmen’s liens of record on or before Funding Date and shall indemnify and hold Buyer harmless from any liens filed of record after Settlement/Signing Date and which arise out of any claim related to the providing of materials or services to improve the Property as authorized by Seller or Seller’s agents, unless otherwise agreed to in writing.
- C. Seller shall convey the Property by ☒ General Warranty Deed ☐ Special Warranty Deed ☐ Other Deed (describe) \_\_\_\_\_ subject only to any matters identified in the title commitment and not objected to by Buyer as provided in Paragraph 14A. The legal description contained in the deed shall be the same legal description contained in the title commitment and any survey required under Paragraph 18.
15. **FIRPTA.** The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) requires buyers who purchase real property from foreign sellers to withhold a portion of the amount realized from the sale of the real property for remittance to the Internal Revenue Service (IRS). In the event the seller(s) is **NOT** a foreign person, FIRPTA requires the buyer to obtain proof of the seller’s non-foreign status in order to avoid withholding requirements. Exceptions may apply. For more information, refer to RANM Form 2304 – Information Sheet – FIRPTA & Taxation of Foreign Persons Receiving Rental Income from U.S. Property.

FIRPTA Exception (most common): The sales price of the property is not more than \$300,000 **AND** buyer warrants that buyer shall be using the property as buyer’s primary residence (“Exception”).

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**NOTE: BOTH MUST APPLY TO QUALIFY AS AN EXCEPTION.**

**Exception** ☐ does ☒ does not apply   ZLB     KB   Buyer(s) Initials.

In the event the above Exception to FIRPTA does not apply, then prior to or at closing, Seller(s) shall provide to Buyer or to a Qualified Substitute (generally, the Title Company) either a Non-Foreign Seller Affidavit(s) **OR** a letter from the IRS indicating Seller(s) is exempt from withholding. In the event Seller(s) fails to do so, Buyer shall have the right to withhold ten percent (10%) of the amount realized from the sale of the Property for remittance to the IRS.

**16. INSURANCE CONTINGENCY/ APPLICATION.**

**A. APPLICATION.** Buyer shall make application for insurance within   15   days after Date of Acceptance of this Agreement. If Buyer fails to make application to the insurance company within the agreed time, this insurance contingency shall be deemed waived.

**B. CONTINGENCY.** Provided the Contingency Deadline as set forth below in Paragraph 16(C) is met, this Agreement is conditioned on the following:

- i) Buyer's ability to obtain a homeowner's or property insurance quote on the Property at normal and customary premium rates; AND,
- ii) Seller's claim history having no impact on the Buyer's insurance in the future.

**Buyer understands that an insurance company may cancel or change the terms of a homeowner's insurance policy/quote for any reason prior to close of escrow or within sixty days after issuance of the homeowner's policy/quote (which generally occurs at close of escrow).**

**C. CONTINGENCY DEADLINE.** The Insurance Contingency set forth in Paragraph 16(B) above shall be deemed satisfied, unless within   20   days after Date of Acceptance of this Agreement, Buyer delivers written notice to Seller that one or more of the above insurance contingencies cannot be satisfied along with documentation from the insurance provider stating the same. ("Contingency Deadline"). In the event Buyer delivers such notice and documentation to Seller by the Contingency Deadline, the Purchase Agreement shall terminate and the Earnest Money shall be refunded to Buyer.

**17. DISCLOSURES AND DOCUMENTS.**

**A. LEAD BASED PAINT.** Is any part of this Property a residence built before 1978? ☐ Yes ☒ No If the answer is "Yes", attach RANM Form 5112 Lead Based Paint Addendum to Purchase Agreement. Property is subject to the Lead Based Paint Renovation Repair and Painting Program. See RANM Form 2315 – Information Sheet Lead Based Paint (LBP) Renovation Repair & Painting Program.

**B. PUBLIC IMPROVEMENT DISTRICT ("PID").** Is this Property located in a PID? ☐ Yes ☒ No If the answer is "Yes", SELLER MAY NOT ACCEPT AN OFFER FROM BUYER UNTIL SPECIFIC DISCLOSURES REGARDING THE PID HAVE BEEN MADE TO THE BUYER.

           **Buyer(s) Initials.** Buyer(s) hereby acknowledge receipt of the PID Disclosure on the Property. See RANM Form 4550 - Public Improvement District Disclosure Form and RANM Form 4500 – Information Sheet Public Improvement District.

**C. HOMEOWNERS' OR CONDOMINIUM (UNIT) OWNERS' ASSOCIATION.** Is the Property located in a Homeowners' Association (HOA) or Condominium (Unit) Owners' Association (COA)? ☐ Yes ☒ No If the answer is Yes", Seller shall provide Buyer with specific documents pertaining to the Property and HOA and/or COA, as applicable. For HOAs, see RANM Form 4600 – Information Sheet HOA, RANM Form 4650 – Seller's Disclosure of HOA Documents and RANM Form 4700 - HOA Request for Disclosure Certificate. For COAs, see RANM Form 2302A – Re-Sale Certificate for COAs.

**D. PROPERTY TAX DISCLOSURE.** See RANM Form 3275 - Information Sheet Estimated Property Tax Levy

Disclosure:

  ZLB     KB   **Buyer(s) Initials.** Buyer(s) hereby acknowledges receipt of the Estimated Property Tax Levy on the Property, attached as Exhibit   A   and understands that said Estimated Property Tax Levy is based on the LISTING price of the Property; OR

           **Buyer(s) Initials.** Buyer(s) hereby acknowledges that the Estimated Property Tax Levy on the Property is not readily available and does hereby waive the right to receive the Estimated Property Tax Levy.   LJ

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- E. SEPTIC SYSTEM.** Does the Property include an on-site liquid waste system? ☐ Yes ☒ No If the answer is “Yes”, the transfer of the Property is subject to regulations of the New Mexico Environment Department governing on-site liquid waste systems which includes the requirement that Seller have an inspection conducted by a licensed septic system inspector prior to transfer. Attach RANM Form 5120A - Septic System Contingency Addendum. See RANM Form 2308 – Information Sheet Septic Systems.
- F. WELLS.** Does the Property include a well? ☐ Yes ☒ No If the answer is “Yes”, is the well ☐ Private Domestic Well ☐ Shared Domestic Well ☐ Other \_\_\_\_\_  
 Transfer of Property with a well is subject to the regulations of the New Mexico Office of the State Engineer, which includes the requirement that the State Engineer’s Office be notified when a well changes ownership. See RANM Form 2307 – Information Sheet Water Rights & Wells.
- G. MANUFACTURED HOUSING.** Does the Property include a manufactured house? ☐ Yes ☒ No If the answer is “Yes”, attach RANM Form 2700 - Seller’s Disclosure of Manufactured Housing.
- H. DOCUMENTS.** As used in this Subparagraph 17(H), the Delivery Deadline is the date by which Seller shall provide and Buyer must receive any documents, reports or surveys specified.

DOCUMENTS	DELIVERY DEADLINE	OBJECTION DEADLINE	RESOLUTION DEADLINE
Property Disclosure Statement	<b>3 days</b>	<b>2 days</b>	<b>2 days</b>
Road Documents			
Water Rights Documents			
Well Documents: See RANM Form 2307 Information Sheet – Water Rights & Wells. (Including but not limited to: well permit, well log, shared well agreement and Change of Ownership Information notification.)			
Lease Agreements			
Permits			
Homeowner’s Association (HOA) Documents			
Homeowner’s Association (HOA) Disclosure Certificate OR Condominium Re-Sale Certificate Must be delivered to Buyer no less than seven (7) days before the Settlement/Signing Date.		Date _____ Buyer has no less than seven (7) days from receipt of the HOA Disclosure Certificate to object	
CCR’s – Restrictive covenants			
Other:			
Other:			
<b>MANUFACTURED HOUSING</b>			
Manufactured Housing Documents – See RANM Form 2700 Seller’s Disclosure of Manufactured Housing			
Structural Engineer Inspection			
FHA Inspection			
Foundation Installation			
Manufactured Housing Division Permanent Foundation Permit			

- 18. SURVEYS OR IMPROVEMENT LOCATION REPORT (ILR).** Buyer has the right to have performed the survey or ILR selected below or the right to accept an existing one. Unless otherwise agreed in writing, the party paying for the survey or ILR as indicated in Paragraph 10 shall select the surveyor and order the survey or ILR. **The party who agrees to pay for the survey or ILR is responsible for doing so, even if the transaction does not close.**
- ☒ Improvement Location Report ☐ Metes & Bounds Description ☐ Staked Boundary Survey ☐ American Land Title Association Survey (ALTA) ☐ Flood Plain Designation ☐ Other: \_\_\_\_\_

**A. DELIVERY DEADLINE:** Survey or ILR shall be delivered to Buyer(s) no later than:

3 days prior to close, \_\_\_\_\_ or \_\_\_\_\_ days from Date of Acceptance.

**B. OBJECTION DEADLINE:** Objections to be delivered to Seller(s) no later than: \_\_\_\_\_,

or \_\_\_\_\_ days from Date of Acceptance.

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**C. RESOLUTION DEADLINE:** All objections to be resolved no later than: \_\_\_\_\_,  
or \_\_\_\_\_ days from Date of Acceptance.

**D. OBJECTION/RESOLUTION:** Paragraph 20 (H) and (I) shall further govern Buyer's right to object to the Survey or ILR performed and resolution of Buyer's objections.

**19. BUYER'S REPRESENTATIONS.** Buyer warrants that prior to entering into this Agreement, he has thoroughly investigated the neighborhood and the areas surrounding the property, to include, but not be limited to investigation of the following: the existence of registered sex offenders or other persons convicted of crimes that may reside in the area; and the presence of any structures located, businesses operating or activities conducted in the area that, in Buyer's opinion, affects the value and/or desirability of the property. By entering into this Agreement, Buyer represents he is satisfied with the neighborhood and surrounding areas.

**20. INSPECTIONS. THE PARTIES ARE ENCOURAGED TO EMPLOY COMPETENT AND, WHERE APPROPRIATE, LICENSED PROFESSIONALS TO PERFORM ALL AGREED UPON INSPECTIONS OF THE PROPERTY.**

**A. BUYER DUTIES AND RIGHTS.**

**i. BUYER'S DILIGENCE, ATTENTION AND OBSERVATION.** The Buyer has the following affirmative duties:

- a) To conduct all due diligence necessary to confirm all material facts relevant to Buyer's purchase of the Property;
- b) To assure himself that the Property Buyer is purchasing is exactly what Buyer is intending to purchase;
- c) To make himself aware of the physical condition of the Property through his own diligent attention and observation;
- d) To investigate the legal, practical and technical implications of all disclosed, known or discovered facts regarding the Property and;
- e) To thoroughly review all written reports provided by professionals and discuss the results of such reports and inspections with the professionals who created the report and/or conducted the inspection.

ii. **RIGHT TO CONDUCT INSPECTIONS.** The Buyer is advised to exercise all his rights under and in accordance with this Agreement to investigate the Property. Unless otherwise waived, Buyer(s) may complete any and all inspections of the Property that he deems necessary. These inspections may include, but are not limited to the following: home, electrical, heating/air conditioning, plumbing, roof, structural, lead-based paint (including risk assessment, paint inspection or both), well equipment (pumps, pressure tanks, lines), well potability tests, well water yield tests, pool/spa/hot tub equipment, wood destroying insects, dry rot, radon, mold, square foot measurement, sewer line inspections, septic inspections, ductwork, phase one environmental and soil tests. The Buyer's rights to object to inspections and terminate the Agreement based on inspections are set forth in Paragraph 20(H). Buyer is advised to thoroughly review those rights.

iii. **SQUARE FOOTAGE.** BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE PREMISES, BOTH THE REAL PROPERTY (LAND) AND IMPROVEMENTS THEREON, IS APPROXIMATE. IF SQUARE FOOTAGE IS A MATERIAL MATTER TO THE BUYER, THE BUYER SHALL INVESTIGATE THE SQUARE FOOTAGE DURING THE INSPECTION PERIOD.

ZLB	KB	Buyer Initials.
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**B. SELLER'S DUTY TO DISCLOSE.** Seller is required to disclose to Buyer any adverse material defects known to him about the Property. However, Seller does not have an obligation to inspect the Property for the Buyer's benefit or to repair, correct or otherwise cure known defects that are disclosed to Buyer or previously unknown defects that are discovered by Buyer or Buyer's inspectors. Seller shall make the Property available to Buyer for inspections.

### C. AVAILABILITY OF UTILITIES FOR INSPECTIONS.

☐ Buyer ☒ Seller shall be responsible for paying any charges required by the utility companies to have utilities turned on for inspection purposes. In no event shall Buyer be responsible for bringing the Property up to code or for paying unpaid utility bills.

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**D. INSPECTOR SELECTION.** NOTWITHSTANDING PARAGRAPH 18, UNLESS OTHERWISE AGREED TO IN WRITING, BUYER SHALL HAVE THE RIGHT TO SELECT ALL INSPECTORS AND ORDER ALL INSPECTIONS EVEN IF SELLER HAS AGREED TO PAY FOR THE INSPECTION(S).

**E. PAYMENT OF INSPECTIONS.** BUYER SHALL PAY FOR ALL INSPECTIONS EXCEPT THE FOLLOWING, WHICH SHALL BE PAID BY SELLER. termite inspection

**NOTE: THE PARTY WHO AGREES TO PAY FOR THE INSPECTION IS RESPONSIBLE FOR DOING SO, EVEN IF THE TRANSACTION DOES NOT CLOSE.**

**F. INSPECTION DEADLINES.** Unless otherwise provided for in this Agreement, the following applies:

- i. **Delivery Deadline:** Inspections to be completed and reports delivered to Buyer(s) no later than: \_\_\_\_\_, \_\_\_\_\_ or 17 days from Date of Acceptance.
- ii. **Objection Deadline:** Objections to be delivered to Seller(s) no later than: \_\_\_\_\_, \_\_\_\_\_ or 19 days from Date of Acceptance.
- iii. **Resolution Deadline:** Written agreement for resolution of all objections to be agreed upon no later than: \_\_\_\_\_, \_\_\_\_\_ or 21 days from Date of Acceptance.

**G. WAIVER OF INSPECTIONS.** Buyer to initial if applicable.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Buyer waives ALL inspections unless required by law or Buyer's lender.  
\_\_\_\_\_  
\_\_\_\_\_ Buyer waives ALL inspections.  
\_\_\_\_\_  
\_\_\_\_\_ Buyer waives the following inspections: \_\_\_\_\_

**H. BUYER'S OBJECTIONS.**

- i. If Buyer has reasonable objections to any report or unsatisfactory condition disclosed by any document (Paragraphs 17), survey or ILR (Paragraph 18) and/or inspection (Paragraph 20), **then no later than the applicable Objection Deadline**, Buyer may request that Seller cure Buyer's objections (RANM Form 5109 – Objection, Resolution, and Waiver Amendment to Purchase Agreement) or Buyer may terminate this Agreement (RANM Form 5105 – Termination Agreement). Buyer's objections or termination must be in writing and include a copy of the document, survey and/or inspection report on which Buyer's objection or termination is based. If Buyer timely elects to terminate, Earnest Money shall be refunded to Buyer. Buyer's failure to deliver to Seller his objection or termination by the Objection Deadline shall be deemed a waiver of both Buyer's right to object and the applicable inspection contingency.
- ii. If Seller is responsible for ordering a report or document, and Buyer does not receive that report or document by the Delivery Deadline, Buyer and Seller may agree to extend the Objection and Resolution Deadlines or Buyer may terminate the Agreement. If Buyer elects to terminate, Earnest Money shall be refunded to Buyer.
- iii. If Buyer is responsible for ordering a report or document, and fails to do so in a timely manner, so that Buyer does not have the report or document by the Objection Deadline, Buyer may not use the failure to receive the report or document as the rationale for terminating the Agreement.

**I. RESOLUTION.** If Buyer requests a cure of his objections, Seller may agree to Buyer's requested cure, provide an alternative cure, or refuse to correct/address Buyer's objections. If Buyer and Seller are unable to reach a Resolution to Buyer's objections by the Resolution Deadline, then **THIS AGREEMENT SHALL TERMINATE** and Earnest Money shall be refunded to Buyer.

**J. OBJECTIONS COMPLETION.** In the event Seller agrees to complete or pay for any repairs prior to closing, Seller shall complete the repairs no later than 5 days prior to Settlement/Signing Date.

**K. REASONABLE ACCESS; DAMAGES.** Seller shall provide reasonable access to Buyer and any inspectors. The party selecting the inspector shall be liable for any damages that occur to the Property as a result of such inspection.

**21. HOME WARRANTY CONTRACT.** Buyer is advised to investigate the various home warranty plans available for purchase. The parties acknowledge that different home warranty plans have different coverage options, exclusions, limitations and service fees and most plans exclude pre-existing conditions. Neither the Seller, nor the Broker, is



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responsible for home warranty coverage or lack thereof. The parties acknowledge that a Home Warranty Service Contract provider may conduct an inspection of the Property, but does not always do so.

☒ A Home Warranty Plan shall be ordered by ☒ Buyer ☐ Seller to be issued by HSA  
at a cost not to exceed \$ 500.00, to be paid for by ☐ Buyer ☒ Seller. ☐  
Buyer declines the purchase of a Home Warranty Plan.

- 22. DISCLAIMER.** The Property is sold in its current condition including, but not limited to, the nature, location, amount, sufficiency or suitability of the following: current or future value; future income to be derived therefrom; current or future production; condition; size; location of utility lines; location of sewer and water lines; availability of utility services or the possibility of extending improvements (paving, sewer, water, utilities, access) to the Property; easements with which the Property is burdened or benefited; lot boundaries; adjacent property zoning; physical and legal access; soil conditions; permits, zoning, or code compliance; lot size or acreage; improvements or square footage of improvements; and water rights. **Broker has not investigated and is not responsible for the forgoing aspects of the Property, among which lot size, acreage, and square footage may have been approximated, but are not warranted as accurate.** Buyer shall have had full and fair opportunity to inspect and judge all aspects of the Property with professional assistance of Buyer's choosing prior to settlement and is purchasing Property based solely upon Buyer's inspection and judgment and not by reason of any representation made to Buyer by Seller or Broker unless expressly set forth in this Agreement or Disclosure Statements. Buyer and Seller acknowledge that Brokers' only role in this transaction is to provide real estate advice to Broker's respective client and/or customer and real estate information to the parties. For all other advice or information that may affect this transaction, including but not limited to financial and legal advice, the parties shall rely on other professionals.
- ZLB KB Buyer(s) Initials. LF Seller(s) Initials.

- 23. MAINTENANCE.** Until the Possession Date, Seller shall maintain the Property and all aspects thereof including, but not limited to the following: heating; air conditioning; electrical; roofs; solar; septic systems; well and well equipment; gutters and downspouts; sprinklers; plumbing systems, including the water heater; pool and spa systems; appliances; and other mechanical apparatuses. Seller shall deliver the Property, all of the foregoing, and all other aspects thereof to Buyer in the same condition as of the Date of Acceptance, reasonable wear and tear excepted. The following items are specifically excluded from the above:
- \_\_\_\_\_
- \_\_\_\_\_

- 24. PRE-CLOSING WALK-THROUGH.** Within 2 days prior to Settlement/Signing Date, Seller shall allow reasonable access to conduct a walk-through of the Property for the purpose of satisfying Buyer that any corrections or repairs agreed to by the Seller have been completed, warranted items are in working condition and the Property is in the same condition as on the Date of Acceptance, reasonable wear and tear excepted. See RANM Form 5110 - Walk-Through Statement.

- 25. CONSENT TO THE ELECTRONIC TRANSMISSION OF DOCUMENTS AND TO THE USE OF ELECTRONIC SIGNATURES.** The parties ☒ do ☐ do not consent to conduct any business related to and/or required under this Agreement by electronic means, including, but not limited to the receipt of electronic records and the use of electronic signatures. Subject to applicable law, electronic signatures shall have the same legal validity and effect as original hand-written signatures. Nothing herein prohibits the parties from conducting business by non-electronic means. If a party has consented to receive records electronically and/or to the use of electronic signatures, that party may withdraw consent at any point in the transaction by delivering written notice to the other party.

- 26. ASSIGNMENT.** Buyer ☐ may ☐ may not sell, assign or transfer the Buyer's rights or obligations under this Agreement, or any interest herein.

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**27. DEFINITIONS.** The following terms as used herein shall have the following meanings:

- A. APPRAISAL** means a current estimated market value of the Property as established by a licensed real estate appraiser. In the event the Buyer is obtaining a loan, the term refers to an appraisal conducted by a real estate appraiser approved by the lender.
- B. BROKER** includes the Buyer's and Seller's brokers.
- C.** If a specific **DATE** is stated as a deadline in this Agreement, then that date **IS** the **FINAL** day for performance; and if that date falls on a Saturday, Sunday or a legal Holiday, the date **does not** extend to the next business day.
- D. DATE OF ACCEPTANCE** is the date this Agreement is fully executed and delivered.
- E. DAY(S)** shall be determined on a "calendar day" basis and if the **FINAL** day for performance falls on a Saturday, Sunday or legal Holiday, the time therefore shall be extended to the next business day. Legal Holidays are described as New Year's Day, Martin Luther King Jr.'s Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas.
- F. DELIVERED** means personally delivered or by any method where there is evidence of receipt. In the event the parties have agreed to electronic transmission of documents, a facsimile or e-mail transmission of a copy of this or any related document shall constitute delivery of that document. When an item is delivered to the real estate Broker who is working with or who represents the Buyer or Seller, it is considered delivered to the Buyer or Seller respectively, except if the same Broker works for or represents both Buyer and Seller, in which case, the item must be delivered to the Buyer or Seller, as applicable.
- G. DEADLINES.** Any "deadline(s)" can be expressed either as a calendar date (See Paragraph 27(C)) or as a number of days (See Paragraph 27(E)).
- H. ELECTRONIC** means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities and includes, but is not limited to, facsimile and e-mail.
- I. ELECTRONIC RECORD** means a record created, generated, sent, communicated, received or stored by electronic means.
- J. ELECTRONIC SIGNATURE** means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- K. FIXTURE** means an article which was once personal property, but which has now become a part of the Property because the article has been fastened or affixed to the Property.
- L. MASCULINE** includes the feminine.
- M. PERSONAL PROPERTY** means a moveable article that is NOT affixed or attached to the Property.
- N. RESOLUTION** means the Buyer and Seller have a written agreement regarding how all Buyers' objections shall be resolved.
- O. SINGULAR** includes the plural.
- P. STANDARD EXCEPTIONS** means those common risks as set forth in the title commitment for which the title insurance policy does NOT provide coverage. These printed exceptions are matters outside the Title Company's search of the public records, and therefore special requirements must be met in order to delete them and provide the insured with the additional/extended coverage.

**28. RISK OF LOSS.** Prior to Funding Date, Seller shall bear the risk of fire or other casualty, and in the event of loss, Buyer shall have the option (to be exercised by written notice to Seller within **5 days** after receipt of notice of loss) of terminating this Agreement and receiving a refund of the Earnest Money or closing and receiving assignment of Seller's portion of the insurance proceeds, if any, at Funding Date. If Buyer fails to timely notify Seller of Buyer's election, Buyer shall be deemed to have elected to proceed to Closing.

**29. FLOOD HAZARD ZONE.** If the Property is located in an area, which is designated as a special flood hazard area, Buyer may be required to purchase flood insurance in order to obtain a loan secured by the Property from any federally regulated financial institution or a loan insured or guaranteed by an agency of the U.S. Government.

**30. MEDIATION.** If a dispute arises between the parties relating to this Agreement, the parties shall submit the dispute to mediation, jointly appoint a mediator and share equally the costs of the mediation. If a mediator cannot be agreed

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upon or mediation is unsuccessful, the parties may enforce their rights and obligations under this Agreement in any manner provided by New Mexico law. For more information, see RANM Form 5118 - Information Sheet - Mediation Information for Clients and Customers.

- 31. EARNEST MONEY DISPUTE.** Generally, title or escrow companies will not release Earnest Money without first receiving an Earnest Money Distribution Agreement signed by all parties to this Agreement (RANM Form 5105B). If the parties cannot come to an agreement on the how Earnest Money shall be distributed, Paragraph 30 shall apply. If the parties cannot reach a resolution through mediation and proceed to litigation, at the conclusion of the litigation the court shall issue a judgment setting forth how Earnest Money shall be apportioned. Either party may present this judgment to the title or escrow company for distribution of the Earnest Money in accordance with the judgment. Parties to all Earnest Money disputes are urged to review RANM Form 2310 – Earnest Money Dispute Information Sheet, and to consult an attorney to fully understand all their rights and remedies.
- 32. DEFAULT.** Any default under this Agreement shall be treated as a material default, regardless of whether the party's action or inaction is specifically classified as a default herein. Additionally, time is of the essence and failure of a party to timely make payment, perform or satisfy any other condition of this Agreement in accordance with this Agreement shall be considered a material default. Generally, a material default relieves the non-defaulting party from further performance under this Agreement; however, the non-defaulting party may elect *not* to terminate this Agreement. If the non-defaulting party elects to terminate this Agreement, he may also elect to retain the Earnest Money and pursue any additional remedies allowable by law, including specific performance. In the event, however, the non-defaulting party elects to treat this Agreement as being in full force and effect, the non-defaulting party remains responsible for all obligations and retains all rights and remedies available under this Agreement.
- 33. ATTORNEY FEES AND COSTS.** Should any aspect of this Agreement result in arbitration or litigation, the prevailing party of such action, including all Brokers involved in the transaction, shall be entitled to an award of reasonable attorneys' fees and court costs.
- 34. FAIR HOUSING.** Buyer and Seller understand that the Fair Housing Act and the New Mexico Human Rights Act prohibit discrimination in the sale or financing of housing on the basis of race, age (this covers protection for people with children under age 18 and pregnant women), color, religion, sex, sexual orientation, gender identity, familial status, spousal affiliation, physical or mental handicap, national origin or ancestry.
- 35. COUNTERPARTS.** This agreement may be executed in one or more counterparts, each of which is deemed to be an original, and all of which shall together constitute one and the same instrument.
- 36. GOVERNING LAW AND VENUE.** This Agreement is to be construed in accordance with and governed by the internal laws of the State of New Mexico without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New Mexico to the rights and duties of the parties. Each party hereby irrevocably consents to the jurisdiction and venue of the state and federal courts located in the county in which the Property or any portion of the Property is located in connection with any claim, action, suit, or proceeding relating to this Agreement and agrees that all suits or proceedings relating to this Agreement shall be brought only in such courts.
- 37. SEVERABILITY.** If any portion of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.
- 38. MULTIPLE BUYERS.** Each Buyer to this Agreement is jointly and severally liable for all obligations under this Agreement. In the event any buyer should be unable to perform under this Agreement (due to death or incapacity) the remaining Buyer(s) shall continue to be obligated under this Agreement.
- 39. AUTHORITY OF SIGNORS.** If Buyer or Seller is a corporation, partnership, estate, trust, limited liability company or other entity, the person signing this Agreement on its behalf warrants his authority to do so and to bind the Buyer or Seller for which he is signing.

**REALTORS® ASSOCIATION OF NEW MEXICO  
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2017**

- 40. BUYER AND SELLER AUTHORIZATIONS.** Unless otherwise instructed in writing, Seller and Buyer hereby authorize the Title Company, Lender, Escrow Agent and their representatives to provide a copy of any and all loan estimates, closing disclosures, other settlement statements and title documents with respect to the real estate transaction that is the subject of this Agreement to the Seller's and Buyer's respective Brokers. This does not authorize the delivery of any Buyer documents to Seller's broker or vice-versa. Each party further authorizes his respective Broker to be present for the Closing
- 41. SURVIVAL OF OBLIGATION.** The following paragraphs will survive Closing of the Property: 4(D) and (E), 9-13, 19-22, 27, 30-31, 33, 36-37 and 41.
- 42. ENTIRE AGREEMENT AND AMENDMENTS IN WRITING.** The parties understand that this offer, if accepted in writing by Seller and delivered to Buyer, constitutes a legally binding contract. This Agreement, together with the following addenda and any exhibits referred to in this Agreement, contains the entire Agreement of the parties and supersedes all prior agreements or representations with respect to the Property, which are not expressly set forth herein. **THIS AGREEMENT MAY BE MODIFIED ONLY BY WRITTEN AGREEMENT OF THE PARTIES.**
- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Addendum No. <u>1</u> (RANM Form 5101)                        | <input type="checkbox"/> Occupancy Agreement – Buyer/Seller (RANM Form 2201/2201)                |
| <input type="checkbox"/> Buyer's Sale Contingency Addendum (RANM Form 2503)                       | <input type="checkbox"/> Real Estate Contract Addendum (RANM Form 2402)                          |
| <input type="checkbox"/> Buyer's Closing & Funding Sale Contingency (RANM Form 2503A)             | <input type="checkbox"/> Residential Resale Condominium Addendum (RANM Form 2302)                |
| <input checked="" type="checkbox"/> Estimated Property Tax Levy Exhibit <u>A</u>                  | <input type="checkbox"/> Septic System Contingency Addendum (RANM Form 5120A)                    |
| <input type="checkbox"/> Lead-Based Paint Addendum (RANM Form 5112)                               | <input type="checkbox"/> Seller's Financing, Mortgage or Deed of Trust Addendum (RANM Form 2507) |
| <input type="checkbox"/> Public Improvement District Disclosure (RANM Form 4650) (RANM Form 4550) | <input type="checkbox"/> Other _____   |
| <input type="checkbox"/> Other _____  | <input type="checkbox"/> Other _____   |
- 43. EXPIRATION OF OFFER.** This offer shall expire unless acceptance is delivered in writing to Buyer or Buyer's Broker on or before March 16 2017, at 5:00 ☐ a.m. ☒ p.m. Mountain Time. NOTE: UNTIL SELLER ACCEPTS THIS OFFER AND DELIVERS THE AGREEMENT TO BUYER, BUYER MAY WITHDRAW THIS OFFER AT ANY TIME.

**OFFER BY BUYER**

**Buyer acknowledges that Buyer has read the entire Purchase Agreement and understands the provisions thereof.**

<b>Authentication</b>			
<u>Zachary L. Berry</u>		03/15/2017	7:22 PM
Buyer Signature		Offer Date	Time
<u>Karen Berry</u>		03/15/2017	6:54 PM
Buyer Signature		Offer Date	Time
<u>Zachary L. Berry</u>			
Buyer Name (Print)		Email Address	
<u>Karen Berry</u>			
Buyer Name (Print)		Email Address	
Buyer Address	City	State	Zip Code
Buyer Home Phone	Buyer Cell Phone	Buyer Business Phone	Buyer Fax

**REALTORS® ASSOCIATION OF NEW MEXICO  
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2017**

Seller acknowledges that Seller has read the entire Purchase Agreement and understands the provisions thereof.  
Seller (*select one*):

☐ **SELLER ACCEPTS** this Offer and agrees to sell the Property for the price and on the terms and conditions specified in this Agreement.

**SELLER**

Seller Signature \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

Seller Signature \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

**Advanced Solids Control LLC**

Seller Name (Print) \_\_\_\_\_ Email Address \_\_\_\_\_

Seller Name (Print) \_\_\_\_\_ Email Address \_\_\_\_\_

Seller Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Seller Home Phone \_\_\_\_\_ Seller Cell Phone \_\_\_\_\_ Seller Business Phone \_\_\_\_\_ Seller Fax \_\_\_\_\_

☒ **REJECTS & SUBMITS** a Counteroffer (RANM Form 5102).

☐ **REJECTS & SUBMITS** an Invitation to Offer (RANM Form 5103).

**IF SELLER IS REJECTING THIS OFFER AND SUBMITTING EITHER A COUNTER OFFER, OR AN INVITATION TO OFFER, SELLER SHOULD NOT SIGN THIS AGREEMENT, BUT SHOULD INITIAL ALL PAGES.**

INITIALS: SELLER LF \_\_\_\_\_

☐ **REJECTS** this offer.

**IF SELLER IS REJECTING THIS OFFER, SELLER SHOULD NOT SIGN THIS AGREEMENT AND DOES NOT NEED TO INITIAL ANY/ALL PAGES, BUT SHOULD INITIAL BELOW.**

INITIAL HERE: SELLER \_\_\_\_\_

**REALTORS® ASSOCIATION OF NEW MEXICO  
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2017**

**THE FOLLOWING IS PROVIDED FOR INFORMATION PURPOSES ONLY.  
BROKERS ARE NOT PARTIES TO THIS AGREEMENT.**

**BUYER'S BROKER**

<u>Jessie Berry</u>	<u>49968</u>		
Buyer's Broker Name		Buyer's Broker's NMREC License No.	
<u>Bill Davis</u>	<u>17408</u>		
If different, Buyer's Broker's Qualifying Broker's Name		Buyer's Broker's Qualifying Broker's NMREC License No.	
<u>BHHS Enchanted Lands, REALTORS®</u>	<u>575-622-0975</u>		
Buyer's Brokerage Firm	Office Phone	Fax	
<u>501 N Main St</u>	<u>Roswell</u>	<u>NM</u>	<u>88201</u>
Buyer's Brokerage Address	City	State	Zip Code
<u>Jessie@EnchantedLandsHomes.com</u>			
Email Address	Broker <input checked="" type="checkbox"/> is <input type="checkbox"/> is not a REALTOR®		

**SELLER'S BROKER**

<u>Carolyn Cage</u>	<u>48176</u>		
Seller's Broker Name		Seller's Broker's NMREC License No.	
<u>Denise Griffith</u>	<u>15241</u>		
If different, Seller's Broker's Qualifying Broker's Name		Seller's Broker's Qualifying Broker's NMREC License No.	
<u>Means Real Estate LLC</u>	<u>575-887-9137</u>		
Seller's Brokerage Firm	Office Phone	Fax	
<u>110 W Shaw</u>	<u>Carlsbad</u>	<u>NM</u>	<u>88220</u>
Seller's Brokerage Address	City	State	Zip Code
<u>carolyn@meansrealtors.com</u>			
Email Address	Broker <input checked="" type="checkbox"/> is <input type="checkbox"/> is not a REALTOR®		



REALTORS® ASSOCIATION OF NEW MEXICO  
ADDENDUM TO PURCHASE AGREEMENT - 2017  
ADDENDUM NO. 1

This Addendum is part of the ☒ Residential ☐ Commercial ☐ Vacant Land ☐ Farm and Ranch Purchase Agreement dated March 15 2017 between Zachary L. Berry  
Karen Berry ("Buyer") and Advanced Solids Control LLC  
Advanced Solids Control LLC ("Seller") and relating to the following Property:  
3904 N Pat Garrett Ct. Carlsbad 88220  
Address City Zip Code  
Legal Description FARMVIEW PHASE 2 Lot: 18 LOT 18 MAP# 267-FP2-18 CAB# 5 655-1 LOC  
or see metes & bounds description attached as Exhibit Eddy County, New Mexico.

Buyer and Seller agree as follows:

Seller to clean house, once cleaning has been completed, if the walls still have black the Buyers would like a \$50 painting allowance and to know the original paint color of the walls, buyers would like Seller to replace or fix the guest bedroom door that is broken/dented, and Buyers would also like for the walls in the Master Bedroom to be fixed where previous tenants put decals on walls and it has peeled away the texture.

The Purchase Agreement referred to above is incorporated by reference into this Addendum.

Authentisign		
<u>Zachary L. Berry</u>	<u>03/15/2017</u>	
Buyer Signature <u>Zachary L. Berry</u>	Date	Time
<u>Karen Berry</u>	<u>03/15/2017</u>	
Buyer Signature <u>Karen Berry</u>	Date	Time
Seller Signature <u>Advanced Solids Control LLC</u>	Date	Time
Seller Signature	Date	Time

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e-mail: [ecao@co.eddy.nm.us](mailto:ecao@co.eddy.nm.us)

03/15/2017





**REALTORS® ASSOCIATION OF NEW MEXICO**  
**COUNTEROFFER NO. 1 - 2017**

This Counteroffer is made a part of the ☒ Residential ☐ Commercial ☐ Vacant Land ☐ Farm and Ranch Purchase Agreement dated March 15 2017 between Zachary L. Berry Karen Berry ("Buyer") and Advanced Solids Control ("Seller") and relating to the purchase of the following Property:

3904 N Pat Garrett Ct Carlsbad 88220  
 Address City Zip Code

Lot 18, Phase 2, Farmview Subdivision  
 Legal Description

or see metes and bounds description attached as Exhibit       , Eddy County, New Mexico.

Counteroffers that are not expressly listed here are not incorporated into the Purchase Agreement.

Counteroffers        are incorporated by reference into the Purchase Agreement of the parties, except as expressly modified by this Counteroffer.

Buyer and Seller accept the Purchase Agreement, subject to the following changes:

**Purchase price to be \$260,000**

**Buyer to pay for appraisal and seller will reimburse buyers appraisal fees at closing not to exceed \$600**

**Seller to clean house prior to closing and will provide a credit to buyer at closing of \$300 for a repair and painting allowance. Seller's agent will provide paint name.**

**Seller will not provide a Property Disclosure since seller has never occupied property.**

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Authentisign ID: 751DC3D7-3CC4-4701-A843-AF970CB60996

## REALTORS® ASSOCIATION OF NEW MEXICO

COUNTEROFFER NO. 1 - 2017

Left intentionally blank.

All other terms and conditions of the Purchase Agreement remain the same.

This offer will expire unless acceptance is delivered in writing to ☐ Buyer or Buyer's Broker or ☒ Seller or Seller's Broker on or before March 17 2017 at 5 ☐ am ☒ pm Mountain Time.

If not accepted, this offer can be withdrawn at any time before the expiration date.

It is recommended that the receiving party not sign this Counteroffer if making a subsequent Counteroffer. However, it is recommended the pages be initialed.

BUYER

Buyer Signature Zachary Berry03-16-17 1915  
Date TimeBuyer Signature Karen B3-16-17 7:15  
Date Time

SELLER

Authentication

03/16/20171:20 PM

Advanced Solids Control

Seller Signature Advanced Solids Control

Date

Time

Seller Signature

Date

Time