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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

In re	)	Case No. 17-30138 HLB 11
)	
JOEL ERNEST ELLIOTT	)	Chapter 11
)	
)	
Debtor(s).)	
)	
	)	Date: November 9, 2017
	)	Time: 10:00 a.m.
SSN XXX-XX-1521	)	Place: 450 Golden Gate Avenue, 16th Floor,
	)	Courtroom 19,
	)	San Francisco, CA 94102
	)	Judge: Hon. Hannah L. Blumenstiel
)	
)	

MOTION FOR ORDER APPROVING SALE OF REAL PROPERTY AND SALE FREE
AND CLEAR OF CERTAIN CLAIMS OF LIEN AND OTHER INTERESTS;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Case No. 17-30138 HLB 11; *In re Elliott*
Motion for Order Approving § 363 Sale; MPA in Support

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1 **TO: ALL CREDITORS; ALL PARTIES WHO HAVE REQUESTED NOTICE;**
2 **THE OFFICE OF THE UNITED STATES TRUSTEE; ALL ADDITIONAL PARTIES IN**
3 **INTEREST; AND THE CITY AND COUNTY OF SAN FRANCISCO / PEOPLE OF THE**
4 **STATE OF CALIFORNIA (THE “INVOLUNTARY LIENHOLDER”)**

5
6 **City and County of San Francisco and**
7 **the People of the State of California**
8 **c/o Edward Tredennick**
9 **Greene Radovsky Maloney Share &**
10 **Hennigh LLP**
11 **Four Embarcadero Center, Suite 4000**
12 **San Francisco, CA 94111**

13 **(the “INVOLUNTARY LIENHOLDER”)**

14 **PLEASE TAKE NOTICE**, hereby given, that on **November 9, 2017 at 10:00 a.m.**, or as
15 soon thereafter as the matter may be heard, before the Honorable Hannah L. Blumenstiel United
16 States Bankruptcy Judge, United States Bankruptcy Court, 450 Golden Gate Avenue, 16th Floor,
17 Courtroom 19, San Francisco, CA 94102, JOEL ERNEST ELLIOT, the Debtor and Debtor in
18 Possession (the “DIP” and/or “Debtor”), will move, and hereby does move the Court for an order
19 authorizing the DIP to sell the Debtor’s REAL PROPERTY commonly known as 517-519
20 Sanchez St, San Francisco, CA 94114-2621, Lot 065 Block 3585 (the “Subject Property”) for a
21 proposed purchase price of \$2,625,000.00 (the “Purchase Price”) to Brian Grabenstein (the
22 “Nominee” and/or “Buyer”) and sell said assets Free and Clear of Certain Claims of Lien and
23 Other Interests of the aforementioned INVOLUNTARY LIENHOLDER, “as-is”, with no
24 contingencies (outside inspections), via a deposit figure already held in escrow of \$78,750.00,
25 non-contingent financing of \$1,575,000.00, and a cash balance deposited into escrow of
26 \$971,250.00.

27 The DIP will deposit all collective proceeds from the sale into an appropriate escrow
28 account and administer pursuant to the following two (2) provisions:

- 1 a. That the judgments, liens, claims and interests of the parties herein, attach to any
2 proceeds from the sale of these assets, to the same priority and extent that they
3 attach to the subject assets.
- 4 b. That the proceeds from the sale of the assets described above be held in an interest
5 bearing account until further order of this Court to determine the validity, priority
6 and extent of the judgments, liens, claims and interests of the parties herein.

7 Subject to subsequent Bankruptcy court approval, the DIP reasonably anticipates paying
8 the secured lien of JPMORGAN CHASE BANK, N.A. ("CHASE") in full, reasonably estimated
9 at approximately \$921,495.03,¹ as well as ordinary and reasonable title and escrow charges and
10 broker commissions, all outlined on the proposed seller's statement, attached hereto as Exhibit A.
11 The DIP proposes NOT TO PAY any sums to the aforementioned INVOLUNTARY
12 LIENHOLDER the full amount of its secured lien; rather, the DIP proposes to pay the
13 INVOLUNTARY LIENHOLDER directly from the close of escrow the exact amount of one-
14 million dollars (\$1,000,000.00), which amount is the result of compromise of controversy
15 negotiated by and between the DIP and the INVOLUTNARY LIENHOLDER. The DIP also
16 proposes to pay other liens on the Subject Property, as indicated in the Estimated Seller's
17 Statement, attached hereto as Exhibit A. The DIP further proposes to keep any and all remaining
18 proceeds in an escrow account or trust account, as determined by the Court, pending further order.

19 The Buyer is purchasing the SUBJECT PROPERTY "as-is" with no condition or
20 warranties except that DIP does not have any actual knowledge of any liens, security interests, or
21 claims against the SUBJECT PROPERTY, other than as represented in the in the title report
22 attached to the motion as well as the liens and claims of lien disclosed in the motion.

23 The sale is subject to overbid as described hereinbelow.

24 Although Bankruptcy Rule 6004(h) provides for a 14-day stay of a sale order unless the
25 Bankruptcy Court orders otherwise, the DIP requests that the Bankruptcy Court waive the stay

26 _____
27 ¹ \$921,495.03 represents the prospective, anticipated balance of the CHASE senior lien as of the anticipated 11/30/2017 closing
28 date.

1 provisions of Bankruptcy Rule 6004(h) so that the sale may close as expeditiously as possible. The
2 DIP believes that the Buyer is buying the SUBJECT PROPERTY in good faith and for fair and
3 adequate consideration and thus the DIP also requests that the Court make a good-faith finding.

4 **OPPORTUNITY TO OVERBID:**

5 **PLEASE TAKE FURTHER NOTICE** that the sale is subject to overbid. The DIP's sale
6 of the SUBJECT PROPERTY identified hereinabove is subject to overbid. Anyone interested in
7 purchasing either or both of the SUBJECT PROPERTY must submit a written overbid (an offer)
8 in the form of a signed Asset Purchase Agreement ("APA") for either or both of the SUBJECT
9 PROPERTY, similar to the Buyer's agreements with the DIP, except for the identity of the buyer,
10 the buyer's broker (if applicable), and the purchase price, and the proposed financing arrangement
11 and ability to close by or before November 30, 2017, and provide verified financial information
12 evidencing their ability to perform on the sale contract, including the source of funding for the
13 purchase price, as well as the amount of any cash or third-party financing that will close and result
14 in a cash payable transaction payable to the DIP's estate at the close of escrow.

15 As part of the underlying motion, the DIP is also requesting that Court authorize a **break-**
16 **up/termination fee, in the amount not to exceed \$25,000.00**, subject to proof, payable by the
17 close of escrow, representative of the approximate amount payable by the Nominee to conduct
18 necessary, time-sensitive due diligence in order to close said transaction – subject to Court
19 approval.

20 The DIP reserves the right to reject any overbid. The DIP reserves the right to determine
21 which overbid, if any, is in the best interests of the estate and its creditors.

22 Any overbids must be transmitted, with the written overbid and financial information to
23 the DIP's counsel, Matthew D. Metzger, Esq., Belvedere Legal, PC, 1777 Borel Place, Suite 314,
24 San Mateo, CA 94402 Tel. 415.513.5980/ Fax 415.513.5985 **by November 2, 2017 at 5:00 p.m.**
25 **Pacific Standard Time**. Overbids must be in the minimum amount of \$2,756,750.00, which
26 equals a minimum overbid increase of five percent (5%) of the purchase price, plus \$500.00, with
27 a deposit of at least \$78,750.00 (the same deposit amount as the Nominee). If any overbids are

1 received, the DIP will conduct an overbid procedure at the court hearing on November 9, 2017 at
2 10:00 a.m. at the above-captioned Court. As for the bid procedure, bidding for the sale of the
3 SUBJECT PROPERTY will begin with the amount of the highest, written, timely submitted
4 overbid. The bidding procedure will be conducted in minimum increments of at least one percent
5 (1%) of the immediately prior bid.

6 Anyone interested in overbidding should obtain a copy of: 1) the Nominee's APAs; and 2)
7 proof of ability to close by or before November 30, 2017. If any prospective overbidder desires to
8 obtain a copy of the motion, accompanying memorandum of points and authorities, and all
9 supporting declarations, the prospective overbidder may contact Debtor's counsel directly at
10 counsel's contact information on the top left page of the caption and/or download copies from the
11 PACER.

12 If any prospective overbidder desires to inspect the SUBJECT PROPERTY prior to
13 submission of an overbid, such overbidder should contact the DIP's counsel directly, telephone
14 number (415) 513-5980.

15 **NOTICE OF MOTION FOR SALE FREE AND CLEAR OF CERTAIN CLAIMS**
16 **OF LIEN AND OTHER INTERESTS**

17 1. **The Sale Should Be Free and Clear of the Pre-Petition Claim of Lien of the**
18 **City and County of San Francisco and the People of the State of California**

19 **PLEASE TAKE FURTHER NOTICE** that this motion is brought pursuant to BLR 6004-
20 1, BLR 9014-1, Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure, and 11
21 U.S.C. §§ 363(b)(1), and (f)(2) to sell the SUBJECT PROPERTY free and clear of any all claims
22 of lien of the aforementioned INVOLUNTARY LIENHOLDER, with consent, in that a
23 compromise of controversy has been reached with said INVOLUNTARY LIENHOLDER.

24 Subject to Bankruptcy Court approval – and the final signature end memorialization by the
25 Debtor and the City and County of San Francisco and the People of the State of California (the
26 "CITY"), the DIP has negotiated a compromise of the controversy. As a result of said compromise,
27

1 the DIP proposes to sell free and clear of said lien, with the understanding that the CITY will be paid
2 the exact sum of one-million dollars (\$1,000,000.00), directly from the close of escrow. 11 U.S.C. §§
3 363 (f)(2)

4 5 **I. JURISDICTION AND VENUE**

6 This Court has jurisdiction to hear and determine this Motion pursuant to 28 U.S.C. §§ 1334
7 and 157. The Court's consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b).
8 Venue of this proceeding is proper in this district under 28 U.S.C. §§ 1408 and 1409. The
9 statutory authority for the Motion is Section 363 of the Bankruptcy Code.

10 **II. STATEMENT OF FACTS**²

11 **A. Status of Operations**

12 1. The Debtor is a retired management consultant with 20 years of experience in the
13 utilities industry.

14 2. Additionally, and especially since retirement, the Debtor ran a short-term rental
15 business on the same real property where the Debtor lives, a two (2) unit, residential property
16 commonly known as 517-519 Sanchez St., San Francisco, CA (the "Subject Property").

17 3. The Debtor fell into insolvency, pre-petition, when the City and County of San
18 Francisco and People of the State of California filed a civil action against the Debtor for injunctive
19 and related relief related to code violations related to Notices of Violation and Orders of
20 Abatement against the Subject Property. *See e.g., City and County of San Francisco et al. v. Joel*
21 *Elliott*, San Francisco Superior Court Case No. CGC-15-549063 (the "state court" case).

22 4. When the Debtor lost tenant revenue due to the state court case and related inability
23 to continue to generate rental income, the Debtor fell into approximately 12 months of pre-petition
24 mortgage arrears, which arrears caused senior lienholder JP Morgan Chase Bank, N.A. ("Chase")
25 to record a Notice of Default and related Notice of Trustee's Sale.

26
27 ² The Statement of Facts and Motion in its entirety incorporate herein via reference the Declaration of Tim Brown, the
28 Declaration of Joel Ernest Elliott, the Declaration of Geoff Gibson, and the Declaration of Brian Grabenstein – all
filed contemporaneously herewith.

1 5. When the Debtor suffered a Default Judgment and lacked the funds to retain an
2 attorney within six (6) months after Clerk Entry of Default, the state court denied the Debtor's
3 later effort in state court to set aside the Clerk Entry of Default and subsequent Default Judgment.

4 6. As the scheduled foreclosure sale was set for February 14, 2017, the Debtor had no
5 viable objection but to commence an emergency chapter 11 bankruptcy filing to obtain an
6 equitable forum within which to save the Real Property from foreclosure by working out a
7 negotiated compromise of controversy with the judgment lienholders from the state court case and
8 a modification or repayment arrearage plan with Chase, in addition to repaying the very small
9 amount of (other) general unsecured creditors of the estate.

10
11 **B. Marketing Efforts**

12 7. On May 26, 2017, the Court entered an Order approving Tim Brown as the estate's
13 broker. Doc No. 31.

14 8. Marketing of the property used the typical channels utilized by Brown & Co Real
15 Estate Group in sales of properties

16 9. The property was placed on the Multiple Listing Service on 6/23/17.

17 10. Email marketing was sent to a database of over 1000 real estate agents based in the
18 San Francisco area.

19 11. Since the property is tenant-occupied, the first open house was scheduled for a
20 Tuesday Broker Tour 6/27/17 and the broker community was informed that showings were to be
21 arranged by appointment with the listing agent. No weekend open houses were held, typical for
22 tenant-occupied homes.

23 12. There was a second Broker Tour on 7/10/17.

24 13. The First Broker Tour was fairly well attended by around 25-30 brokers. Some had
25 seen the property when it was listed for sale in 2013.

26 14. Easily viewing the whole property was not possible due to the personal belongings in
27 all of the rooms and due to the tenants occupying the lower unit with their dog and numerous friends.

1 The property is not in the best of condition and would be considered a “fixer” property by most
2 parties.

3 15. Approximately five brokers requested showings for their clients. These showings
4 were arranged as private showings.

5 16. After the first week of showings, there were a total of five brokers that requested
6 disclosure packages, one of which had at least three interested parties.

7 17. The Broker for the estate feels that the level of interest shown in the property was
8 very good, given the difficulties that Buyers would face: a property with deferred maintenance and
9 several outstanding Notices of Violation, tenants that are living in the property without paying rent
10 and a Seller that had listed the property three years previously, only to withdraw the home from sale
11 after offers were received. The sale subject to bankruptcy proceedings is something most brokers are
12 not familiar with and that fact, along this previously described set of circumstances, would lead to a
13 lower level of interest than if the property had been vacant with no Court confirmation required.

14 18. Nevertheless, it was clear that some of the groups expressing interest were willing to
15 present offers and an offer date was set to encourage brokers to present their client’s best offers
16 before interest waned.

17 19. Three offers were received and counter offers made to each of these groups. After the
18 counter offers were made all of the prospective Buyers responded with better terms than their original
19 offers. There was a further counter offer made to the two highest offers and both buyers responded
20 with increased offers. The better of these responses was chosen as the winning offer.

21 20. The sale price had been increased from the level of one of the initial offers of \$2.1M
22 to a final sale price of \$2.675M. Brown & Co Real Estate Group feels this is a fair market price for
23 the property after a competitive bidding process.

24 **C. The Proposed Transaction**

25 21. The proposed transaction is represented by the real property purchase agreement
26 and related addendum are attached as Exhibits A to Mr. Grabenstein’s declaration. In sum, the
27 Debtor proposes to sell the REAL PROPERTY of the estate commonly known as 517-519

1 Sanchez St, San Francisco, CA 94114-2621, Lot 065 Block 3585 (the “Subject Property”) for a
2 proposed purchase price of \$2,625,000.00 (the “Purchase Price”) to Brian Grabenstein (the
3 “Nominee” and/or “Buyer”) and sell said assets Free and Clear of Certain Claims of Lien and
4 Other Interests of the aforementioned INVOLUNTARY LIENHOLDER, “as-is”, with no
5 contingencies (outside inspections), via a deposit figure already held in escrow of \$78,750.00,
6 non-contingent financing of \$1,575,000.00, and a cash balance deposited into escrow of
7 \$971,250.00.

8
9 **D. The Present Fair Market Value is \$2,625,000.00**

10 22. The Declaration of Tim Brown makes clear that the Broker’s Price Opinion of the
11 Subject Property matches the proposed purchase price.

12 23. Additionally, the numerous showings on the property provide further evidence that
13 the proposed purchase price was the highest and best offer that the Debtor and Brokers obtained.

14 **E. Potential for Overbids and Request for a Breakup Fee**

15 24. Any and all parties are encouraged to overbid, pursuant to the schedule outlined in
16 the accompany Notice and Opportunity for Overbid.

17 25. To ensure that the Nominee will be able to close the proposed transaction by or before
18 November 30, 2017, the Nominee reasonably expects to incur certain due diligence costs, not to
19 exceed \$25,000.00, subject to proof. Said costs relate to contractor fees, inspection fees, and
20 architectural fees.

21 26. In brief, the Nominee’s financing is “non-contingent,” insofar as the proposed lender
22 will agree to lend with the open violations listed in Mr. Gibson’s declaration. However, said lender
23 has agreed to do so only on the condition that the Nominee clear the violations within a certain, set
24 period, which period I am presently negotiating. Thus, to ensure that the Nominee timely clear the
25 (inherited) violations and close the loan, the Nominee will need to start work earlier. The Nominee
26 understand and accept that the Court will make a final decision on the reasonability of any break-up
27 fee. In the event of an successful overbidder, the Nominee will submit a supplemental declaration

1 documenting any and all due diligence costs the Nominee will have incurred, reasonably estimated at
2 not to exceed \$25,000.00.

3
4 **F. Arms' Length Negotiations with the Nominee**

5 27. As verified by the supporting declarations of Messrs Elliott, Brown, Grabenstein,
6 and Gibson, the Nominee has no past or present connections with the Debtor, outside the
7 transactions proposed in the instant motion.

8 28. The Nominee and Debtor have no further plans with one another.

9 29. The negotiations have been at arms' length.

10 30. The Nominee first learned of the Subject Property via the broker.

11 31. Both Buyer and Seller are represented by separate brokers; there is no dual agency.

12 32. There is no collusion on behalf of the Nominee, one one hand, and any other entity
13 or party, on the other.

14 33. The only connection between the Nominee's side and the Debtor's side concerns
15 the architect that the Buyer retained to understand and remedy the outstanding violations. As
16 detailed in the declaration of said architect, Mr. Geoff Gibson, counsel for the Debtor, Mr.
17 Matthew Metzger, retained Mr. Gibson's architectural firm in 2015 on a separate construction
18 project. When Mr. Gibson agreed to serve as architect for the Nominee, Mr. Gibson was unaware
19 that Mr. Metzger represented the Debtor. As soon as Mr. Metzger learned of the disclosure, Mr.
20 Metzger reviewed the matter with Mr. Gibson. At the present, the all parties – including the
21 Debtor – see no material conflict of interest, as the parties executed a sale agreement prior to the
22 Nominee retaining Mr. Gibson. However, in the event that a conflict of interest materializes, Mr.
23 Gibson has agreed to recuse himself from the matter.

24 **G. The Net Gain to the Estate**

25 34. The purchase price, all cash, is \$2,625,000.00 (the "Purchase Price").

26 35. Subject to subsequent Bankruptcy court approval, the DIP reasonably anticipates
27 paying the secured lien of JPMORGAN CHASE BANK, N.A. ("CHASE") in full, reasonably

1 estimated at approximately \$921,495.03,³ as well as ordinary and reasonable title and escrow
2 charges and broker commissions, all outlined on the proposed seller's statement, attached hereto
3 as Exhibit A. The DIP proposes NOT TO PAY any sums to the aforementioned
4 INVOLUNTARY LIENHOLDER the full amount of its secured lien; rather, the DIP proposes to
5 pay the INVOLUNTARY LIENHOLDER directly from the close of escrow the exact amount of
6 one-million dollars (\$1,000,000.00), which amount is the result of compromise of controversy
7 negotiated by and between the DIP and the INVOLUNTARY LIENHOLDER. The DIP also
8 proposes to pay other liens on the Subject Property, as indicated in the Estimated Seller's
9 Statement, attached hereto as Exhibit A. Additionally, the DIP proposes to pay the amounts
10 agreed to in the tenant relocation agreement for both tenants (2 x \$25,000.00, or \$50,000.00). The
11 DIP further proposes to keep any and all remaining proceeds in an escrow account or trust
12 account, as determined by the Court, pending further order. Per the Estimated Seller's Statement,
13 and after payment of the \$50,000.00 in tenant relocation costs, the net proceeds to the estate will
14 be approximately \$536,500.59. Said proceeds will ensure a 100% dividend to all creditors of the
15 estate, in that the sum total of all scheduled claims, proofs of claim, and administrative claims, are
16 approximately only \$85,000.00

17 36. From the proceeds of the sale, the DIP to keep all sale proceeds in an escrow
18 account or trust account – as the discretion of the Court.

19 **III. RELIEF REQUESTED**

20 By this Motion, the DIP seeks an order authorizing the sale of the Subject Property to the
21 Nominee (or overbidder) for the all purchase price of \$2,625,000.00
22 \$5,000,000.00 free and clear of the claims of lien of the INVOLUNTARY LIENHOLDER due to
23 consent. 11 U.S.C. § 363(f)(2).
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27 ³ \$921,495.03 represents the prospective, anticipated balance of the CHASE senior lien as of the anticipated 11/30/2017 closing
28 date.

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IV. DISCUSSION

A. Bankruptcy Code Section 363 and Relevant Case Law Provide Authority for the Court to Approve the Proposed Sale.

After notice and a hearing, the DIP may sell property of the estate outside the ordinary course of business. 11 U.S.C. § 363(b). Bankruptcy Code section 363 provides, in pertinent part:

(b)(1) The trustee, after notice and a hearing, may . . . sell . . . other than in the ordinary course of business, property of the estate.

11 U.S.C. § 363(b). Under applicable legal standards, approval of a sale is appropriate if the court finds that the transaction represents a reasonable business judgment by the trustee.

Myers v. Martin (In re Martin), 91 F.3d 389 (3d Cir. 1996); *In re Abbots Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Wild Horse Enter., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991).

In the Ninth Circuit, "cause" exists for authorizing a sale of estate assets if it is in the best interest of the estate, and a business justification exists for authorizing the sale. *In re Huntington, Ltd.*, 654 F.2d 578 (9th Cir. 1981); *In re Walter*, 83 B.R. 14, 19-20 (9th Cir. BAP 1988). In determining whether a sale satisfies the business judgment standard, courts have held: (1) that there be a sound business reason for the sale; (2) that accurate and reasonable notice of the sale be given to interested persons; (3) that the sale yield an adequate price (i.e., one that is fair and reasonable); and (4) that the parties to the sale have acted in good faith. *Titusville Country Club v. Pennbank* (In re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); see also, *In re Walter*, 83 B.R. at 19-20.

The DIP'S REAL PROPERTY is property of the estate under § 541 of the Bankruptcy Code, and the sale by the DIP is outside the ordinary course of business. The liquidation price will yield a net gain to the estate in excess of \$500,000.00.

The DIP is currently noticing the sale of the Real Property pursuant to Bankruptcy Rule 2002. Also, the sale is subject to overbid and in the Notice, the DIP has set forth an overbid procedure. If the DIP receives an overbid, the DIP will conduct a bidding procedure among the

1 Buyer and all overbidders. Thereafter, the DIP will request that the Court approve the sale to the
2 Buyer or any overbidder submitting the highest and best offer. Given the marketing of the
3 property, the DIP believes the sale to the Buyer is fair and reasonable, and the liquidation of the
4 DIP'S REAL PROPERTY will benefit the affected secured creditors. "The purpose of procedural
5 bidding orders is to facilitate an open and fair public sale designed to maximize value for the
6 estate. To accomplish that goal, bankruptcy courts are necessarily given discretion and latitude in
7 conducting the sale." *In re Edwards*, 228 B.R. 552, 561 (Bankr.E.D.Pa., 1998). Here, the DIP
8 respectfully submits that it is in the best interests of the estate to consummate the sale of the
9 DIP'S REAL PROPERTY as two (2) separate parcels to encourage overbids to either or both
10 parcels. The proposed bidding strategy is the best strategy to maximize the return to the Estate
11 with a possible overbid while ensuring the DIP'S REAL PROPERTY can liquidate in timely
12 fashion for benefit of all the estate's creditors.

13 Bankruptcy Rule 6004(h) provides for a 14-day stay of a sale order, unless the Court
14 orders otherwise. The DIP does not believe that there is any reason for the sale of the DIP'S TWO
15 SALE PARCELS to be stayed, and the DIP desires to close the sale as soon as possible after Court
16 approval. Thereafter, the DIP requests that the Court waive the stay provisions of Bankruptcy rule
17 6004(h).

18
19 **B. The Court Should Authorize a Break-up/Termination Fee**

20 "The fact . . . that there are risks and costs related to the . . . transaction does not set
21 this transaction apart from any other business transaction in bankruptcy proceedings. *In re*
22 *Fruit of the Loom, Inc.*, 274 B.R. 631, 633 (D. Del. 2002). "Compromises are a normal part
23 of the process of reorganization, oftentimes desirable and wise methods of bringing to a close
24 proceedings otherwise lengthy, complicated and costly." *Id.*(citing *In re Cajun Electric*
25 *Power Cooperative, Inc.*, 119 F.3d 349 (5th Cir.1997)). Starting from the presumption that
26 the Nominee is entitled to the same or equivalent consideration as a "stalking horse" bidder
27 as it would enjoy in a regular § 363(b) transaction, the applicable question is whether the

1 Debtor and the Nominee reached a reasonable accommodation between the amount of the
2 break-up/termination fee – \$20,430 – and the interests of the creditors.

3 On July 5, 2017, the Debtor filed a Stipulation re Treatment of Claim under Debtor's
4 Proposed Chapter 11 Plan of Reorganization (the "Chase Stipulation"), which Chase
5 Stipulation gave the Debtor six months, or until approximately November 2017, to liquidate
6 the Subject Property, subject to Court Approval. Doc No. 42.

7 Here, given the exigencies, it is critical to find a buyer willing to purchase the Subject
8 Property in its "as-is/ where-is" condition. The Nominee E has demonstrated a willingness
9 and capability to move forward on said terms. The sales also must close by or before
10 November 30, 2017. Thus, the Nominee needed to start incurring immediately due
11 diligence costs. Accordingly, in the event of a bona fide overbid, the break-up fee of up to
12 \$25,000, subject to proof and a review and accounting of costs actually expended by the
13 Nominee as part of due diligence.

14 **C. The Sale Should be Free and Clear of the Claims of Lien**

15 To enable the proposed sale, the DIP seeks authorization to sell free and clear of the
16 disputed lien. Pursuant to Bankruptcy Code section 363(f), a DIP may sell property under
17 section 363 "free and clear of any interest in such property of an entity other than the estate" only
18 if one of the following conditions is satisfied:

- 19 (1) applicable non-bankruptcy law permits sale of such property
20 free and clear of such interest;
- 21 (2) such entity consents;
- 22 (3) such interest is a lien and the price at which such property is
23 to be sold is greater than the aggregate value of all liens on such property;
- 24 (4) such interest is in bona fide dispute; or
- 25 (5) such entity could be compelled, in a legal or equitable proceeding, to accept a
26 money satisfaction of such interest.

27 11 U.S.C. § 363(f); *In re General Bearing Corp.*, 136 B.R. 361, 363-64 (Bankr. S.D.N.Y. 1992)
28 (listing requirements). Here, as articulated herein below and as clarified in the Motion to Approve
the Settlement Agreement Between the Debtor and CCSF filed contemporaneously herewith, the
Debtor has negotiated a consensual discount CCSF's judgment lien such that CCSF will consent

1 to the sale provided CCSF receive directly from escrow a sum total of one-million dollars
2 (\$1,000,000.00).

3 **1. The Sale Should Be Free and Clear of the Pre-Petition Claim of Lien of the**
4 **City and County of San Francisco and the People of the State of California**

5 **PLEASE TAKE FURTHER NOTICE** that this motion is brought pursuant to BLR 6004-
6 1, BLR 9014-1, Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure, and 11
7 U.S.C. §§ 363(b)(1), and (f)(2) to sell the SUBJECT PROPERTY free and clear of any all claims
8 of lien of the aforementioned INVOLUNTARY LIENHOLDER, with consent, in that a
9 compromise of controversy has been reached with said INVOLUNTARY LIENHOLDER.

10 Subject to Bankruptcy Court approval – and the final signature end memorialization by the
11 Debtor and the City and County of San Francisco and the People of the State of California (the
12 “CITY”), the DIP has negotiated a compromise of the controversy. As a result of said compromise,
13 the DIP proposes to sell free and clear of said lien, with the understanding that the CITY will be paid
14 the exact sum of one-million dollars (\$1,000,000.00), directly from the close of escrow. 11 U.S.C. §§
15 363 (f)(2) .

16 **D. The Buyer Should be Afforded the Protections of Bankruptcy Code Section**
17 **363(m).**

18 Although Bankruptcy Code section 363(b) does not explicitly require good faith,
19 courts have also required that a sale be made in good faith. *In re Ewell*, 958 F.2d 276 (9th
20 Cir. 1992); *In re Abbotts Dairies of Pennsylvania*, 788 F.2d 143 (3d Cir. 1986); *In re*
21 *Titusville Country Club*, 128 B.R. 396 (Bankr. W.D. Pa. 1991). Courts have followed
22 equitable principles of a good faith purchaser being one who purchases in good faith and for
23 fair value. *Ewell*, 958 F.2d at 281. Good faith may be shown by an absence of fraud or
24 collusion between the seller and purchaser or the absence of any attempt to take grossly
25 unfair advantage of other bidders. *Id.* The DIP knows of no reason why the Buyer should not
26 be afforded the protection of section 363(m). Pursuant to the record established via the filed
27 declarations, the DIP believes that the Buyer is purchasing the Subject Property in good
28 faith and for fair and adequate consideration and therefore the DIP also requests that the

1 Court make a good-faith finding. 11 U.S.C. § 363(m). Additionally, the Nominee has
2 demonstrated via declaration that the Nominee has no no connections, past, present, or future,
3 with the Debtor, other than the proposed transactions.

4 **V. NOTICE**

5 Notice of Hearing on this Motion with opportunity for overbid (the "Notice") has been
6 served on the United States Trustee, all parties requesting special notice, and the creditor matrix.
7 The Notice of Hearing document also invites interested parties to obtain copies of the sale
8 agreements from the DIP's counsel or from the documents on file with the Court. The Notice,
9 together with the motion and all supporting declarations were also all served on the affected
10 lienholders and all other interest holders pursuant to Bankruptcy Rule 7004(b).

11 **VI. CONCLUSION**

12 WHEREFORE, the DIP respectfully requests that the Court enter an order as follows:

- 13 1. Approving the sale of the DIP'S REAL PROPERTY to the Nominee for the sum of
14 \$2,625,000.00, or to a qualified overbidder, in the event of an overbid, pursuant to the terms of the
15 Purchase Agreement, or, in the alternative, to such qualified overbidder submitting a higher and
16 better overbid pursuant to the overbid procedures being noticed by the DIP;
- 17 2. Authorizing the break-up fee not to exceed \$25,000, subject to proof, in the event
18 of a qualified overbid, payable to the Nominee;
- 19 3. Finding the Nominee to be purchasing the DIP'S REAL PROPERTY in good faith
20 per 11 U.S.C. § 363(m);
- 21 4. Waiving the stay of the sale order provided by Bankruptcy Rule 6004(h);
- 22 5. Approving the sale of the DIP'S REAL PROPERTY free and clear of the claims of
23 lien of all INVOLUNTARY LIENHOLDER of CCSDF due to a consent, 11 U.S.C. § 363(f)(2),
24 with the understanding
25
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27

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1777 Borel Place, Suite 314
San Mateo, CA 94402
Telephone: (415) 513-5980
Facsimile: (415) 513-5985

Attorneys for Debtor

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)**

In re	)	Case No. 17-30138 HLB 11
)	
JOEL ERNEST ELLIOTT	)	Chapter 11
)	
)	
Debtor(s).)	
)	
	)	Date: November 9, 2017
	)	Time: 10:00 a.m.
SSN XXX-XX-1521	)	Place: 450 Golden Gate Avenue, 16th Floor,
	)	Courtroom 19,
	)	San Francisco, CA 94102
	)	Judge: Hon. Hannah L. Blumenstiel
)	
)	

DECLARATION OF BRIAN GRABENSTEIN
IN SUPPORT OF
MOTION FOR ORDER APPROVING SALE OF REAL PROPERTY AND SALE FREE AND
CLEAR OF CERTAIN CLAIMS OF LIEN AND OTHER INTERESTS

I, Brian Grabenstein, declare as follows:

1. I am the proposed purchaser of the real-property commonly known as 517-519 Sanchez St, San Francisco, CA 94114-2621, Lot 065 Block 3585 (the "Subject Property"). I make this

1 declaration in support of Motion for Order Approving Sale of Real Property and Sale Free and Clear
2 of Certain claims of Lien and Other Interests (the "Motion"). I have personal knowledge of the
3 matters stated herein and if called as a witness, I could and would competently testify to the
4 following.

5 2. I first learned of the Subject Property through the real estate brokerage firm that
6 represents me, Zephyr Real Estate.

7 3. A true and correct copy of the mutually executed real estate purchase agreement with all
8 addendums for the Subject Property is attached hereto as Exhibit A.

9 4. Said real estate purchase agreement is still subject to contingencies that have not yet been
10 removed.

11 5. I have no previous connection with the Debtor or his agents.

12 6. I have no future plans with the Debtor or his agents.

13 7. The proposed agreement is a bona-fide arms' length transaction.

14 8. My negotiations with the Debtor have been at arms' length.

15 9. Outside the proposed transaction, I have no connection with the Debtor, any of the
16 Debtor's creditors, any other parties in interest, their respective attorneys or accountants, the United
17 States Trustee, or any person employed in the Office of the United States Trustee, outside of what has
18 been disclosed in this declaration.

19 10. There has been no collusion in the proposed sale between myself, on one hand, and any
20 other party, on the other hand.

21 11. To ensure that I will be able to close the proposed transaction by or before November 30,
22 2017, I reasonably expect that I will incur certain due diligence costs, not to exceed \$25,000.00, subject
23 to proof. Said costs relate to contractor fees, inspection fees, and architectural fees.

24 12. In brief, my financing is "non-contingent," insofar as the proposed lender will agree to
25 lend with the open violations listed in Mr. Gibson's declaration. However, said lender has agreed to do
26 so only on the condition that I clear the violations within a certain, set period, which period I am
27
28

1 presently negotiating. Thus, to ensure that I timely clear the (inherited) violations and close the loan, I
2 will need to start work earlier.

3 13. I understand and accept that the Court will make a final decision on the reasonability of
4 any break-up fee. In the event of an successful overbidder, I will submit a supplemental declaration
5 documenting any and all due diligence costs I will have incurred, reasonably estimated at not to exceed
6 \$25,000.00.

7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct, and that this declaration was executed on October 12, 2017 at San
9 Francisco, California.

10 /s/ Brian Grabenstein

11 Brian Grabenstein
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EXHIBIT A



CALIFORNIA
ASSOCIATION
OF REALTORS®

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(Selling Firm to Seller)
(As required by the Civil Code)
(C.A.R. Form AD, Revised 12/14)

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

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 associate licensees, 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, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

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.

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).

☐ Buyer ☒ Seller ☐ Landlord ☐ Tenant Joel Elliott Date 8/7/17

☐ Buyer ☐ Seller ☐ Landlord ☐ Tenant _____ Date _____

Agent Zephyr Real Estate BRE Lic. # 00707370

By Kira Mead Real Estate Broker (Firm) Date 8/1/2017

By 044686 (Salesperson or Broker-Associate) Kira Mead/Daniel Fernandez Acebo BRE Lic. # 01905944 Date _____

Agency Disclosure Compliance (Civil Code §2079.14):

- When the listing brokerage company also represents Buyer/Tenant: The Listing Agent shall have one AD form signed by Seller/Landlord and a different AD form signed by Buyer/Tenant.
- When Seller/Landlord and Buyer/Tenant are represented by different brokerage companies: (i) the Listing Agent shall have one AD form signed by Seller/Landlord and (ii) the Buyer's/Tenant's Agent shall have one AD form signed by Buyer/Tenant and either that same or a different AD form presented to Seller/Landlord for signature prior to presentation of the offer. If the same form is used, Seller may sign here:

(SELLER/LANDLORD: DO NOT SIGN HERE)

(SELLER/LANDLORD: DO NOT SIGN HERE)

Seller/Landlord _____ Date _____ Seller/Landlord _____ Date _____

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AD REVISED 12/14 (PAGE 1 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)

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Phone: 415-660-2404

Fax:

519 Sanchez

Kira Mead

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Reviewed by _____ Date _____



CIVIL CODE SECTIONS 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings: (a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (f) "Listing agreement" means a contract between an owner 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. (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (h) "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 listing agent. (i) "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. (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. (k) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (m) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (n) "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. (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a property for a buyer for which no listing exists and presents an offer to purchase to the seller. (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

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

2079.16 Reproduced on Page 1 of this AD form.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller'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 selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively 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 listing agent prior to or coincident with the execution of that contract by the seller.

(c) The confirmation required by subdivisions (a) and (b) shall be in the following form.

(DO NOT COMPLETE. SAMPLE ONLY) is the agent of (check one): ☐ the seller exclusively; or ☐ both the buyer and seller.

(Name of Listing Agent)

(DO NOT COMPLETE. SAMPLE ONLY) is the agent of (check one): ☐ the buyer exclusively; or ☐ the seller exclusively; or

(Name of Selling Agent if not the same as the Listing Agent)

☐ both the buyer and seller.

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

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 dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. 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 listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

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

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

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REAL ESTATE BUSINESS SERVICES, INC.
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525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by _____ Date _____



AD REVISED 12/14 (PAGE 2 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)

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519 Sanchez



CALIFORNIA
ASSOCIATION
OF REALTORS®

**DISCLOSURE REGARDING
REAL ESTATE AGENCY RELATIONSHIP**

(Selling Firm to Buyer)
(As required by the Civil Code)
(C.A.R. Form AD, Revised 12/14)

☐ (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(k) and (m).

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.

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

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.

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

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In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

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PRINTED ON THE BACK (OR A SEPARATE PAGE).

☒ Buyer ☐ Seller ☐ Landlord ☐ Tenant Brian Grabinstein Date 8/1/2017

☐ Buyer ☐ Seller ☐ Landlord ☐ Tenant _____ Date _____

Agent DocuSigned by: Zephyr Real Estate BRE Lic. # 00707370

By Kira Mead Real Estate Broker (Firm) Date 8/1/2017
BRE Lic. # 01905944

0445F887092545A
(Salesperson or Broker-Associate) *Kira Mead/Daniel Fernandez Acebo*

Agency Disclosure Compliance (Civil Code §2079.14):

- When the listing brokerage company also represents Buyer/Tenant: The Listing Agent shall have one AD form signed by Seller/Landlord and a different AD form signed by Buyer/Tenant.
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Seller/Landlord _____ Date _____
Joel Elliott

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AD REVISED 12/14 (PAGE 1 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)

Market Street, 2282 Market Street San Francisco, CA 94114

Phone: 415-660-2404

Fax:

519 Sanchez

Kira Mead

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CIVIL CODE SECTIONS 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings: (a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (f) "Listing agreement" means a contract between an owner 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. (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (h) "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 listing agent. (i) "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. (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. (k) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (m) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (n) "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. (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained from the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

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

2079.16 Reproduced on Page 1 of this AD form.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller'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 selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively 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 listing agent prior to or coincident with the execution of that contract by the seller.

(c) The confirmation required by subdivisions (a) and (b) shall be in the following form.

(DO NOT COMPLETE. SAMPLE ONLY) _____ is the agent of (check one): ☐ the seller exclusively; or ☐ both the buyer and seller.

(Name of Listing Agent)

(DO NOT COMPLETE. SAMPLE ONLY) _____ is the agent of (check one): ☐ the buyer exclusively; or ☐ the seller exclusively; or

(Name of Selling Agent if not the same as the Listing Agent) ☐ both the buyer and seller.

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

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 dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. 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 listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

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

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

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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)

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519 Sanchez

Reviewed by _____ Date _____





**SAN FRANCISCO
ASSOCIATION OF REALTORS®**

SAN FRANCISCO PURCHASE AGREEMENT

SAN FRANCISCO ASSOCIATION OF REALTORS® STANDARD FORM
This is intended to be a legally binding contract for the purchase of real property in San Francisco

August 1, 2017 (Date Prepared)

Brian Grabenstein ("Buyer")

offers to purchase the real property known as 519 Sanchez St, San Francisco, CA 94114-2621
or ☐ (if checked) this is a purchase of a _____ % undivided interest in the entire Tenants-in-Common (TIC) property above pursuant to the attached TIC Purchase Addendum (the "Property") for the Purchase Price of Two Million, Six Hundred Twenty-Five Thousand Dollars (\$2,625,000.00) and upon the following TERMS and CONDITIONS.

1. FINANCIAL TERMS:

- A. \$ 78,750.00 **INITIAL DEPOSIT** by electronic funds transfer or ☐ check payable to Escrow Holder or to ☐ ("Payee"), which Buyer or ☐ Buyer's Broker/Agent shall deposit with Payee within 2 or _____ business days of Acceptance of this Contract.
- B. \$ _____ **ADDITIONAL DEPOSIT** to be deposited with Escrow Holder ☐ within _____ days after Acceptance or ☐ on or before _____.
- C. \$ _____ **NEW FIRST LOAN:** This Contract is contingent upon Buyer obtaining a new conventional or ☐ FHA ☐ VA ☐ other _____ first loan for a term of 30 or _____ years at an initial annual rate of interest not to exceed _____ % for a loan which is fixed for the entire term or ☐ fixed for an initial period of ☐ year(s) or ☐ month(s) and thereafter adjustable according to the lender's predetermined schedule, secured by a first deed of trust on the Property, with a loan fee of zero or not more than _____ points and on other terms and conditions satisfactory to Buyer. For an FHA/VA loan, an Amendatory Clause Addendum is attached.
- D. \$ _____ **OTHER FINANCING:** This Contract is contingent upon Buyer obtaining a new second loan or other additional financing on the following terms: _____.
- E. \$ 1,575,000.00 **NON-CONTINGENT FINANCING:** Buyer intends to obtain new financing in the amount specified. Buyer acknowledges that the full amount may not be obtainable and that the terms and availability of loans are subject to change. Buyer acknowledges that obtaining financing is not a contingency of this Contract.
- F. \$ 971,250.00 **CASH BALANCE** which shall be deposited by Buyer with Escrow Holder prior to Close of Escrow ("COE").
- G. \$ 2,625,000.00 **PURCHASE PRICE, EXCLUDING CLOSING COSTS** (Total of A through F).
2. **ESCROW:** Escrow shall close on ☐ (date) or ☒ (if checked) 45 days after Acceptance. If COE falls on a weekend or legal holiday, it shall be extended to the next business day. This Contract, including any addenda and counter offers, shall constitute escrow instructions of Buyer and Seller (the "Parties"). The Parties shall execute additional instructions consistent with this Contract and deliver them to Nick Shanta/ORTC ("Escrow Holder").
3. **FINANCING PROVISIONS:** Buyer affirms that only the loan(s) specified in Paragraph 1 are needed to complete this purchase and shall act diligently and in good faith to obtain them. If Buyer does not remove this financing contingency within 21 or _____ days after Acceptance, either Party may terminate this Contract. Brokers/Agents urge Buyer to personally confirm loan(s) will fund before removing the financing contingency. Buyer further represents that the funds required for the Deposits, Cash Balance and Closing Costs are available at Buyer's disposal, and that obtaining these funds is not a contingency of this Contract. Any credits to Buyer from any source shall be disclosed to Buyer's lenders. If the total credits exceed the lenders' limits then they shall be reduced accordingly with no adjustment in Purchase Price to make up the difference. Seller agrees to provide prompt access to the Property for appraisal purposes, but has no obligation to cooperate with Buyer's efforts to obtain any financing other than as specified herein.
4. **APPRAISAL:** This Contract is ☐ (if checked) subject to written appraisal at no less than the Purchase Price or \$ _____. If Buyer does not remove this contingency within 15 or _____ days after Acceptance, either Party may terminate this Contract.
5. **AGENCY RELATIONSHIPS CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction:
Listing Agent (Brown & Co./Keller Williams) Selling Agent (Zephyr Real Estate)
is the agent of (check one) (if not the same as Listing Agent) is the agent of (check one)
☒ the Seller exclusively; or ☒ the Buyer exclusively; or
☐ both the Buyer and Seller. ☐ the Seller exclusively; or
☐ both the Buyer and Seller.
- DUAL AGENCY:** The Parties understand that if the same Brokerage company is designated as the Listing Agent and the Selling Agent, then that Brokerage is representing both Parties as a Dual Agent, to which the Parties consent.
6. **PHYSICAL POSSESSION:** Physical possession of the Property shall be delivered to Buyer upon recordation of the deed or ☐ (if checked) by 10 a.m. or _____ (time) on _____ (date). ☐ (If checked) An Addendum setting forth terms upon which Seller may continue to use the Property after COE is attached to and made a part of this Contract.
7. **OCCUPANCY:** Buyer intends (or ☐ does not intend) to occupy the Property as Buyer's residence.

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Kira Mead

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Seller's Initials

1
Fax:



519 Sanchez

Property: 519 Sanchez St, San Francisco Date: August 1, 2017

8. **TITLE REVIEW:** Within 3 days after Acceptance, Buyer, at Buyer's expense, shall order a Preliminary Report ("Prelim") from Escrow Holder. A Prelim is only an offer to issue a policy of title insurance and may not contain every item affecting title. Buyer shall take title to the Property subject to all encumbrances, easements, rights, covenants, conditions, restrictions and other matters, whether of record or not, as of the day of Acceptance except: (1) monetary liens which, unless otherwise agreed in writing, Seller will pay off from Seller's proceeds at COE; and (2) any matters which Seller has agreed in writing to remove prior to COE. Within 3 days after Acceptance, Seller shall disclose to Buyer all matters known to Seller affecting title, whether those matters are of record or not. Buyer's review and approval of the Prelim, and of all matters affecting title, is a contingency of this Contract. If Buyer does not remove this contingency within 5 or ____ days after receipt of the Prelim, either Party may terminate this Contract. At COE Buyer shall receive a grant deed conveying title including any associated rights owned by Seller. (If the Property is a cooperative apartment Buyer shall receive a pledge or assignment of the stock and an assignment of the leasehold interest.) Title shall vest as specified by Buyer. **The manner of taking title may have significant legal and tax consequences. Buyer should consult with their legal and tax advisors.** Buyer should direct all questions regarding title insurance coverage, its cost, and the availability of enhanced coverages, such as those offered by an ALTA policy, to the Escrow Holder or Title Company.
9. **ITEMS INCLUDED IN THE SALE:** To the extent owned by Seller, unless excluded in Paragraph 10 below, all existing fixtures and fittings attached to the Property and major appliances for which custom openings or encasements have been made are included, free of liens, in the Purchase Price, including electrical, lighting, plumbing and heating fixtures, hardware, solar systems, screens, awnings, shutters, window coverings, attached floor coverings, television antennas/satellite dishes and related equipment, water softening systems, air coolers or conditioners, pool and spa equipment, mailbox, garage door openers and transmitters, trees, shrubs and outdoor plants planted in the ground, private telephone systems, security systems and home automation systems, together with any dedicated hardware and/or applicable software and passwords needed to operate them.
- A. PERSONAL PROPERTY ITEMS INCLUDED:** Items listed in the MLS, disclosures or marketing materials, are not included in the sale unless specified in this Contract. The personal property checked below, on the Property at Acceptance, is included in the sale, free of liens, but with no warranty of condition:
- | | | | |
|---|--|------------------------------------|---|
| <input checked="" type="checkbox"/> All refrigerators | <input checked="" type="checkbox"/> Washers and dryers | <input type="checkbox"/> Microwave | |
| <input checked="" type="checkbox"/> All ranges/stoves | <input type="checkbox"/> Wine cooler | <input type="checkbox"/> Freezer | <input type="checkbox"/> See Additional Terms |
- B. LEASED OR LIENED ITEMS:** If any included items are leased or liened, Seller shall identify them within 3 days of Acceptance and deliver to Buyer all leases, contracts, terms of use, and warranties, which shall be subject to Buyer's reasonable approval. If Buyer does not remove this contingency within 12 or ____ days after receipt of documents, either Party may terminate this Contract.
10. **ITEMS EXCLUDED FROM THE SALE:** All items owned by the staging company, which may include window coverings and mirrors; furniture attached only for earthquake safety; externally mounted audio-visual equipment (e.g. flat panel screens) and brackets (when removed, holes shall be repaired but not painted); and these additional exclusions: _____
11. **PRORATIONS AND EXPENSES:** The following shall be paid current and then prorated between Buyer and Seller as of COE: real property taxes (based upon the latest information available regarding the assessed value of the Property and the applicable tax rate); bonds and assessments; Homeowners' Association ("HOA") dues and assessments; interest on any loan(s) secured by the Property assumed by Buyer; premiums for any insurance on the Property assumed by Buyer; rents; and operating expenses. Buyer shall pay the escrow fee, title insurance premiums, any community enhancement fee, and any HOA transfer, certification and move-in fees. Seller shall pay the City and County transfer tax, any HOA move-out fee, and any prepayment penalty or other fees or charges imposed by lenders for loans being paid off through escrow. Unless specified in this Contract, all other prorations and expenses shall be paid by either Buyer or Seller in accordance with local custom. Buyer and Seller understand that the Property will be reassessed upon change of ownership. Supplemental tax bills will be sent to Buyer which will reflect a change in property taxes based on the Purchase Price becoming the new assessed value. Any tax bills issued after COE, for periods of time before COE, shall be paid by Seller.
12. **BUYER'S DUE DILIGENCE:** Brokers/Agents strongly recommend that Buyer obtain the inspection reports provided by Paragraph A and any further inspections recommended in those reports.
- A. PROPERTY INSPECTIONS:** Buyer's obligations under this Contract are contingent upon Buyer's written approval, at Buyer's sole discretion, of the physical condition of the Property, including parking and storage availability, neighborhood issues, and any other matter reasonably affecting the Property. Within the time specified below, Buyer shall have the right to conduct inspections of the Property by contractors, engineers, architects, and/or other experts retained by Buyer, which inspections may include, but are not limited to, a general property inspection, a structural pest control inspection, the foundation, framing, roof, plumbing, sewer lines, heating, air conditioning, electrical and mechanical systems, built-in appliances, retaining walls, geologic conditions, pool/spa and related equipment, environmental hazards (such as asbestos, mold, electromagnetic fields, radon gas, lead-based paint or lead hazards, fuel or chemical storage tanks, and other materials or products), noise transmission, water/utility use restrictions, and location of property lines. **Brokers/Agents do not certify or verify lot size, boundary lines or interior square footage, information contained in inspection reports, advertising, or representations of others.** Seller shall permit the inspections upon receiving reasonable advance notice from Buyer. Buyer shall provide Seller with copies of all written reports received. During the due diligence period, Buyer may request that Seller make repairs or credit Buyer for the estimated costs of identified repair work, but Seller shall not be obligated to agree to any such request. **If Buyer does not remove this contingency within 15 or 10 days after Acceptance, either Party may terminate this Contract.**

Buyer's Initials
BLC

Seller's Initials

[Signature]

(Contract)

519 Sanchez

Property: 519 Sanchez St, San Francisco Date: August 1, 2017

B. WAIVER OF PROPERTY INSPECTIONS: If initialed below, Buyer waives the contingency established in Paragraph 12A above. Buyer is aware that all real property and improvements contain defects and conditions which are not readily apparent and which may affect the value and/or desirability of the Property. Buyer and Seller acknowledge that Broker/Agents do not guarantee and in no way assume responsibility for the condition of the Property. Buyer also is aware of Buyer's own affirmative duty to exercise due diligence in observing the condition of and inspecting the Property to protect Buyer's interests. Buyer understands, acknowledges and agrees that any reports Buyer may have received from any source do not constitute representations or warranties by either Seller or Brokers/Agents as to the past, present or future condition, use or development potential of the Property. Brokers/Agents strongly recommend that Buyer retain Buyer's own contractors and other appropriate experts to investigate the condition and suitability of all aspects of the Property including, but not limited to, all matters affecting its use, value and desirability for the purposes intended by Buyer. If Buyer waives any or all rights to perform the inspections as specified in Paragraph 12A above, then Buyer is proceeding against the advice of Brokers/Agents, and Buyer agrees to release Seller and Brokers/Agents from all claims, demands, and liabilities which in any way relate to or arise from any issue which might have been disclosed, detected and/or evaluated by such inspections.

Buyer's Initials / Buyer hereby waives the inspection contingency established by Paragraph 12A above.

13. **CONDOMINIUM / COOPERATIVE APARTMENT DISCLOSURE:** If the Property is a condominium or cooperative apartment, this Contract is contingent upon Buyer's review of the documents described below. Within 10 or days after Acceptance, Seller, at Seller's expense, shall furnish Buyer with copies of the Property's legal description (including parking and storage spaces, if any), covenants, conditions and restrictions, articles of incorporation, bylaws, rules and regulations currently in force, the most recent financial statements of the HOA, a current operating budget, 1 year's minutes of HOA meetings, a Condominium Financial Disclosure Statement prepared by the HOA or its management company, and any other documents required by law. Seller shall also advise Buyer within this time of any delinquent or special but uncollected assessments, any anticipated extraordinary maintenance or repair expenses and any pending or anticipated litigation affecting the Property. Seller shall promptly notify Buyer of any new or revised HOA documents received by Seller prior to COE. If Buyer does not remove this contingency within 5 or days after receipt of the documents, either Party may terminate this Contract. Buyer is hereby advised that any structural pest control or other inspections of common areas maybe subject to the approval of, and limited in scope by, the HOA. If the Property is new construction or newly converted to condominiums, and this is the first sale of this unit, Buyer shall pay a pro-rata share of any new insurance policy placed on the entire building; otherwise Seller will not receive any credit for insurance, other than through a proration of the established periodic HOA fee for this unit as of COE.

☐ (If checked) The attached Cooperative Apartment Purchase Addendum is made a part of this Contract and the time frames specified in this Paragraph shall apply to that Addendum.

14. **RENTAL PROPERTY:** Buyer purchases the Property subject to existing leases and the rights of parties in possession. If it is intended that one or more tenant-occupied units be delivered vacant, the Parties should consult with a qualified San Francisco landlord-tenant attorney. Prior to COE, Seller agrees that no new (or changes to those existing) leases or rental agreements shall be entered into without Buyer's prior written consent, which consent shall not be unreasonably withheld. Within 3 days after Acceptance, Seller shall deliver all tenants written Rental Information Questionnaires, requesting from each tenant acknowledgment of the terms and conditions of the tenant's rental. Protected Tenant Status Information forms shall also be delivered by Seller to all eligible tenants. Within 7 or days after Acceptance, Seller shall deliver to Buyer copies of all leases, rental agreements, applications and §6.14 notices as well as copies of all outstanding notices sent to tenants and Seller shall complete a Rental Property Statement which shall include: (1) any and all oral agreements with tenants; (2) uncured defaults by Seller or tenants; (3) claims made by Seller against tenants or by tenants against Seller in any court of law or to the San Francisco Rent Board or other government agencies, whether pending, threatened or resolved; (4) all tenants' deposits held by Seller, including any claimed offsets against those deposits; (5) any pass-throughs which constitute part of the existing rent, including the nature of the pass-through, the amount, and the period of time for which it is in effect; (6) which units include parking or storage spaces as part of the rent, whether any parking or storage spaces are rented to non-tenants, the amount received for each space, and the terms of any rental agreement or lease for the space; (7) each unit's rental status, with a disclosure and information on any buyouts if vacant or, from the start of the current tenant's occupancy, notices of rent increases, reductions, and/or changes to the terms of the tenancy; (8) any Default or Termination Notices served on tenants and, if the notices have been filed with the San Francisco Rent Board, proof of such filing; and (9) any requests from tenants for repairs, defective conditions, concessions or rent reductions, new services, or substitution of roommates. No later than 10 or days after Acceptance, Seller shall deliver to Buyer all completed Rental Information Questionnaires and Protected Tenant Status Information forms returned by tenants to Seller. If any forms are returned after that day, Seller agrees to provide them to Buyer within 2 days of Seller's receipt. This contract is contingent upon Buyer's approval of the above documents, at Buyer's sole discretion. If Buyer does not remove this contingency within 7 or days after receipt of the documents, either Party may terminate this Contract. Seller shall deliver to Escrow Holder prior to COE: (1) all tenant deposits, including security deposits, last month's rents, cleaning, key or other deposits, and any required interest accrued thereon through COE, which deposits and interest shall be disbursed to Buyer at COE; and (2) copies of any notice(s) of the transfer of deposits given by Seller to tenants.

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Buyer's Initials

BLG

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Seller's Initials

[Signature]

(Contract)

- Property: 519 Sanchez St, San Francisco Date: August 1, 2017
15. **INCOME AND EXPENSE STATEMENT:** ☐ (If checked) Within 7 or ____ days after Acceptance, Seller shall deliver to Buyer a true and complete statement of the income and expenses of the Property for the current year and calendar years _____. This contract is contingent upon Buyer's approval of the statement(s), at Buyer's sole discretion. If Buyer does not remove this contingency within 7 or ____ days after receipt of the statement(s), either Party may terminate this Contract.
16. **RENTAL PERSONAL PROPERTY:** ☐ (If checked) All personal property on the Property at Acceptance owned by Seller and used in operation of the Property is included. Seller shall provide, within 7 or ____ days after Acceptance, an inventory of the personal property.
17. **INTENT TO EXCHANGE PROPERTY:** ☐ Buyer and/or ☐ Seller intends to include this Property in an IRC §1031 exchange, subject to the terms of the attached Addendum. Any exchange is not a contingency of this Contract unless specified as such in the Addendum or elsewhere. The other Party consents to an exchange on the condition that they incur no additional expense or liability.
18. **SALE OF BUYER'S PROPERTY:** ☐ This Contract is contingent upon the sale of another property owned by Buyer, as stated in the attached Addendum.
19. **SELLER'S MANDATED AND CONTRACTUAL DISCLOSURES:** The following disclosures shall be delivered to Buyer within 3 days of Acceptance. This Contract is contingent upon Buyer's review and approval of these disclosures. If Buyer does not deliver approval to Seller of these disclosures, or any amendment, within 5 or ____ days after Buyer's receipt, either Party may terminate this Contract. Buyer shall return to Seller signed copies of all documents within 7 or ____ days of receipt. If prior to COE, Seller becomes aware of any inaccurate or undisclosed material facts, Seller shall amend Seller's disclosure accordingly. No amendment is required for any conditions of which Buyer is or becomes otherwise aware, or which are contained in reports given to or ordered by Buyer.
- A. **REAL ESTATE TRANSFER DISCLOSURE STATEMENT ("TDS"):** (Applies to properties with 1 to 4 residential units.) Unless exempt, Seller shall complete and deliver to Buyer a statutory TDS (Civil Code §1102), which shall be deemed complete when Seller has answered all questions and signed Section II and the listing Broker/Agent has completed and signed Section III. If the TDS is provided to Buyer prior to Acceptance, there are no termination rights based on items disclosed.
- B. **SAN FRANCISCO SELLER DISCLOSURE:** (Applies to all properties.) Even if exempt from delivery of a TDS, Seller shall complete and deliver to Buyer the San Francisco Seller Disclosure, which shall be deemed complete when Seller has answered all applicable questions and initialed/signed each page.
- C. **NATURAL HAZARDS DISCLOSURE ("NHD"):** (Applies to all properties.) Seller shall provide an NHD report disclosing if the Property is located in a flood, fire, seismic hazard or other zone for which disclosure is required by law. If a TDS is required, the NHD report shall also disclose if the Property is in a special tax district or area.
- D. **EARTHQUAKE HAZARDS DISCLOSURE:** (Applies only to properties with 1 to 4 residential units built prior to 1960.) Seller shall deliver to Buyer the "Homeowner's Guide to Earthquake Safety" and complete a disclosure in compliance with Gov. Code §8897.
- E. **LEAD-BASED PAINT HAZARDS DISCLOSURE:** (Applies to all properties with residential units built prior to 1978.) Seller shall complete and deliver to Buyer a Lead-Based Paint Hazards Disclosure and Addendum in compliance with 42 U.S.C. 4852d.
- F. **BUILDING PERMIT HISTORY:** (Applies to all properties with residential units, except new construction.) Seller shall provide to Buyer a current Report of Residential Building Record ("3R"). Brokers/Agents do not investigate or verify the accuracy of the information contained in a 3R. Buyer is advised to investigate to Buyer's own satisfaction the status of zoning, permits or code compliance with the local planning department and not rely on the 3R to determine if the Property meets Buyer's intended uses.
- G. **OTHER DISCLOSURES:** Seller shall provide Buyer with all documents in Seller's possession needed to complete Seller's disclosure obligation.
20. **COMPLIANCE WITH OTHER LOCAL, STATE AND FEDERAL LAWS:** Buyer is advised to consult with the appropriate authorities to determine the extent to which other local, State and federal laws may affect the ownership and use of the Property.
- A. **SMOKE AND CARBON MONOXIDE DETECTORS:** Unless an exemption applies, State and local law requires that every residential property be properly equipped with approved and functioning smoke (or heat) and carbon monoxide detectors. If such detectors are not installed on the Property in accordance with applicable law, Seller shall install and pay for the detectors prior to COE.
- B. **WATER HEATERS:** California law requires water heaters to be strapped, braced or anchored to resist falling or displacement. The State Uniform Plumbing Code also requires that new or replacement water heaters located in a garage area be installed such that their ignition point is at least 18 inches above the floor. Different local authorities may have more stringent requirements. Seller shall bring water heaters into compliance prior to COE.
- C. **UNDERGROUND STORAGE TANKS ("USTs"):** The Parties acknowledge that Article 21 of the San Francisco Health Code requires owners of real property in San Francisco with USTs located on or immediately adjacent to the Property to file a plan for their closure within 30 days of discovery. If Seller has not provided Buyer with a written report by a licensed contractor specializing in USTs stating that no such tanks can be located, then Buyer is advised to conduct Buyer's own professional inspection, which Seller shall permit. If the inspection reveals the existence of USTs, then Seller shall, at Seller's expense, remove them and complete any necessary remedial work to the Property prior to COE. Buyer may be responsible for USTs found after COE.
- D. **ENERGY AND WATER CONSERVATION:** Unless exempt, Seller shall order an energy and/or water conservation inspection. Seller shall pay for all requisite energy/water remediation work, not to exceed the maximum amount set by local law. Seller shall complete the work by COE and comply with all filing, recordation and other requirements.

Buyer's Initials

BLG

Seller's Initials

JS

Property: 519 Sanchez St, San Francisco Date: August 1, 2017

21. **ILLEGAL UNITS OR ROOMS:** Buyer understands that units, rooms, or additions to the Property may not have been legally permitted. They may violate zoning ordinances, may have been built without building permits, and a certificate of final completion and occupancy may not have been issued. Buyer may be required to bring them into compliance or to remove kitchens or other facilities at Buyer's expense. A substantial fine may be imposed and Buyer may be prevented from renting any illegal units. Buyer is advised to obtain legal advice from a qualified San Francisco real estate attorney with respect to potential claims tenants renting illegal units may have.
22. **RESIDENTIAL RENT CONTROL ORDINANCE:** If the Property is located in San Francisco, Buyer is advised that there is in effect a Residential Rent Stabilization and Arbitration Ordinance, amended from time to time, which may severely affect Buyer's rights of ownership and right to move into the Property. Buyer is advised to research documents filed with the San Francisco Rent Board pertaining to the Property and to obtain legal advice from a qualified San Francisco landlord-tenant attorney.
23. **MEGAN'S LAW:** 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 website maintained by the Department of Justice at <http://www.meganslaw.ca.gov>. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.
24. **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 website 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 website.
25. **RISK OF LOSS:** (Civil Code §1662) If the Property is materially destroyed prior to the transfer of title or delivery of possession to Buyer, Seller cannot enforce this Contract and Buyer is entitled to recover deposits already made.
26. **CONDITION OF PROPERTY:** Seller shall maintain this Property in the same general condition as when this Contract was signed by both Parties until possession is delivered to Buyer. Seller shall deliver the Property free of debris and in broom-clean condition and provide Buyer, at possession, with keys to all locks, mail boxes, alarms and garage doors; garage door remote controls and any codes or passwords. Buyer and Seller agree that Broker/Agents shall not be responsible for Seller's performance under this Paragraph.
27. **WALK-THROUGH:** Buyer shall have the right to make a final inspection of the Property within 5 or ____ days prior to COE, not as a condition of the sale but solely to confirm that: (a) the Property is in substantially the same condition as on the Date of Acceptance, unless otherwise agreed to in writing; and (b) Seller has complied with all additional written obligations regarding the condition of the Property.
28. **HOME WARRANTY PLANS:** Buyer and Seller acknowledge they are aware of the availability of home warranty plans which provide limited coverage against system and appliance failures, but have not relied upon any representation by Brokers/Agents regarding the extent of coverage of any such plan. ☐ (If checked) A 1-year home warranty plan shall be purchased at a cost not to exceed \$ _____, to be paid by _____, with the cost of any additional coverage borne by Buyer. Or ☐ A home warranty plan is declined by Buyer.
29. **BROKERS/AGENTS:** No Brokers or Agents are parties to this Contract between Buyer and Seller. The term "Brokers/Agents" as used in this Contract shall mean the licensees who have served as real estate brokers or agents for either the Buyer or the Seller in the preparation, negotiation and review of this Contract.
30. **TAX WITHHOLDING:** The California Revenue and Taxation Code §18662 requires Buyer to withhold from Seller's proceeds 3 1/3% of the gross sale price, unless Seller signs an affidavit stating that the Property has been Seller's principal residence as defined in IRC §121, or another exemption applies. Further, if Seller is a foreign person or corporation, as defined in the Foreign Investment in Real Property Tax Act (FIRPTA), Buyer must, unless an exemption applies, withhold from Seller's proceeds up to 10% of the gross sale price of the Property. At least 7 or ____ days prior to COE, the Parties shall deliver to Escrow Holder, acting as a Qualified Substitute under IRC §1445 and a State REEP, all documentation necessary to carry out the provisions of these laws. The Parties instruct Escrow Holder to deduct from Seller's proceeds any amounts required. If Escrow Holder receives a Non-Foreign affidavit from Seller, they shall give Buyer a Qualified Substitute Statement attesting to that, under penalty of perjury, prior to COE.
31. **NON-CONFIDENTIALITY OF OFFERS:** Buyer is advised that Seller or Seller's representatives may not treat the existence, terms or conditions of offers as confidential unless such is required by law, regulation or a pre-existing agreement between the Parties.
32. **TIME:** Time is of the essence. All references to "days" shall mean calendar days, expiring at 11:59 p.m., unless otherwise specified.
33. **DELIVERY OF DOCUMENTS:** All documents to be delivered by a Party under this Contract, including but not limited to the Acceptance, contingency removals, and/or any termination notice issued by Buyer or Seller, shall be in writing and effective only upon personal receipt by the other Party or that Party's Broker/Agent. Delivery by any method (e.g. personal, mail, fax, e-mail, etc.) is effective.
34. **MULTIPLE LISTING SERVICE:** The Parties hereby grant to the San Francisco Association of REALTORS® Multiple Listing Service ("MLS") the right to publish and disseminate the sales price, terms of this Contract and other information about the Property and authorize their respective Brokers/Agents to submit such information under the applicable MLS rules.

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Buyer's Initials

BLC

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Seller's Initials

JS

(Contract)

519 Sanchez

Property:

519 Sanchez St, San Francisco

Date: August 1, 2017

35. **MEDIATION OF DISPUTES:** If a dispute arises regarding this Contract, Buyer and Seller agree to first attempt in good faith to settle the dispute by non-binding mediation before resorting to court action or binding arbitration. In mediation, a mutually acceptable resolution is sought rather than a settlement being imposed on the Parties. Mediation fees shall be paid equally by Buyer and Seller. The C.A.R. Real Estate Mediation Center for Consumers (www.consumermediation.org) shall be used, unless another mediation provider is mutually agreed to by the Parties. This Paragraph shall not apply to any disputes within the jurisdictional limits of Small Claims Court. Any Party who fails or refuses to mediate as required by this Paragraph, shall not be entitled to any attorney's fees award under this Contract. A court action filed to obtain a provisional remedy, including a notice of pending action or to stop the expiration of a statute of limitations, shall not be a violation of this Paragraph provided the Party commencing the action agrees, pending mediation, to a stay of the court action. This Paragraph shall apply regardless of whether the Parties also agree to arbitration.

36. **ARBITRATION OF DISPUTES:** Any dispute or claim in law or equity arising out of this Contract or any resulting transaction shall be decided by neutral binding arbitration in accordance with the rules of JAMS and not by court action, except as provided by California law for judicial review of arbitration proceedings. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. Arbitrators can award compensatory damages, punitive damages, and/or order specific performance, injunctive relief and declaratory relief. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The following matters are excluded from arbitration hereunder: (a) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or real property sales contract as defined in Civil Code §2985; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court or a Small Claims Court; or (e) an action for bodily injury or wrongful death. The filing of a judicial 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 of the right to arbitrate under this provision.

"NOTICE: BY INITIALLING 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 INITIALLING 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

Seller's Initials

37. **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. Release of funds will require mutual, signed release instructions from both Buyer and Seller, judicial decision or arbitration award. BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES AGREEMENT FOR ANY INCREASED DEPOSIT.

Buyer's Initials

Seller's Initials

38. **LEGAL ADVICE ON ARBITRATION AND LIQUIDATED DAMAGES:** Buyer and Seller acknowledge that they have not received or relied upon any representation by Brokers/Agents regarding Arbitration and Liquidated Damages and that they have been advised by Brokers/Agents to seek legal advice from a qualified real estate attorney. In the event only one Party initials either clause (Arbitration or Liquidated Damages), that clause shall not be part of this Contract as formed.

39. **ATTORNEYS' FEES:** In any action, proceeding or arbitration between Buyer and Seller arising out of this Contract, the prevailing Party shall be entitled to reasonable attorney fees and costs from the non-prevailing Party.

40. **ACCEPTANCE:** Under this Contract, Acceptance occurs only when Seller signs Buyer's original offer and Addenda without any changes and a signed copy is delivered to Buyer or Buyer's Broker/Agent, OR when the last of any counter offers has been signed by the receiving Party without any changes and a signed copy of that counter offer is delivered to the issuing Party. Signed means by application of a written signature or, to the fullest extent allowed by California law, an electronic signature on an original document, counterpart, photocopy or electronic copy. The Parties agree that electronic means will not be used by either of them to alter the content or integrity of the Contract.

41. **REMOVAL OF CONTINGENCIES:** Buyer's removal of contingencies established in this Agreement requires a written Contingency Removal, ☐ attached if checked.

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Buyer's Initials

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Seller's Initials

(Contract)

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519 Sanchez

Property: 519 Sanchez St, San Francisco Date: August 1, 2017

42. **TERMINATION:** The following provisions apply except for a good faith exercise by either Party of a contractual contingency or a statutory right to terminate which can be done unilaterally by notice by a Party. Termination of this Contract by Seller shall be effected only after delivery of a Notice to Perform to Buyer which provides at least 2 days to perform contractual terms or remove contingencies. In the event that Buyer does not perform as noticed, Seller may terminate this Contract. Termination of this contract due to Seller's failure to perform contractual terms or remove contingencies, including Seller's failure to provide documents or reports mandated by this Contract or otherwise required by law, or Seller's failure to remove a Seller contingency, shall be effected only after delivery of a Notice to Perform to Seller which provides at least 2 days to perform as noticed. In the event that Seller does not perform as noticed, Buyer may terminate this Contract. Either Party may issue a Notice to Perform no sooner than 2 days prior to the contractual deadline. The obligation to close escrow as provided in paragraph 2 above is a contractual term requiring a Notice to Perform. Release of funds from escrow will require mutually consistent signed instructions from both Buyer and Seller, or the rendering of a judicial decision or arbitration award authorizing the release.
43. **BROKERS' COMPENSATION:** The Parties irrevocably instruct Escrow Holder to disburse to Brokers at COE compensation from funds in escrow in accordance with the terms set forth in the listing agreement for the Property or other compensation agreement. Compensation instructions can be amended or revoked only with the written consent of Listing and Selling Brokers.
44. **GENERAL PROVISIONS:** This Contract contains the entire agreement of the Parties. Any purported or prior agreement or representation respecting the Property or the duties of Buyer and Seller in relation thereto which is not expressly set forth herein is null and void. No amendment to or modification of this Contract shall be valid or enforceable unless in writing and signed by Buyer and Seller. This Contract shall be binding upon, and inure to the benefit of, the Parties' respective heirs, successors and assigns.
45. **REPRESENTATIVE CAPACITY:** The Parties acknowledge and accept that ☐ a Buyer and/or ☐ a Seller is signing this Agreement and the related transaction disclosures and documents as a representative, not as an individual, and agrees to provide a Representative Capacity Signature Disclosure form, with evidence of the authority to so act, to the other Party within 3 days of Acceptance.
46. **WIRE FRAUD:** The Parties acknowledge the risk of wire fraud and agree they are solely responsible for their own funds.
47. **ACKNOWLEDGMENT OF RECEIPT:** The Parties hereby acknowledge receipt of a copy of this Contract and represent that they have read, and that they understand, its provisions.
48. **ADDITIONAL TERMS AND CONDITIONS** including all attached Addenda signed by Buyer and Seller shall be deemed a part of this Contract. See addendum 1

49. **EXPIRATION:** This offer shall be deemed revoked unless a copy of this Contract with Seller's signature accepting it is delivered to Buyer or Buyer's Broker/Agent within 24 or _____ hours of presentation to Seller, or ☐ (if checked) not later than _____ (time) on _____ (date).

NO REPRESENTATION IS MADE AS TO THE LEGAL SUFFICIENCY OR VALIDITY OF ANY PROVISION OF THIS CONTRACT FOR ANY SPECIFIC TRANSACTION. BROKERS/AGENTS CAN ADVISE ON REAL ESTATE TRANSACTIONS ONLY. FOR LEGAL OR TAX ADVICE, CONSULT A QUALIFIED ATTORNEY OR CPA.

Buyer Brian Grabenstein Date 8/1/2017 Buyer _____ Date _____
 Brian Grabenstein C1952509AC1949E...

ACCEPTANCE

The undersigned Seller hereby accepts the foregoing offer and agrees to sell the Property on the terms and conditions set forth herein, OR ☒ (if checked) accepts on the above terms and conditions as amended by Seller's Counter Offer and ☐ Back-Up Offer Addendum.

Seller Joel Elliott Date 8/7/17 Seller _____ Date _____
 Joel Elliott

BROKER/AGENT COMPENSATION AGREEMENT AND ACKNOWLEDGMENT OF AGENCY RELATIONSHIPS

Listing Broker agrees to assign and pay to Selling Broker from the commission as set forth in a separate written listing agreement between Seller and Listing Broker, the amount specified in the MLS, or ☐ (if checked) in a separate written agreement between the Brokers. Any percentages shown shall be based upon the Purchase Price, unless otherwise specified. Broker(s) hereby agree to the terms and conditions for compensation stated above and acknowledge the agency relationships confirmed in this Contract.

Selling Broker Zephyr Real Estate DocuSigned by: _____ CalBRE License # 00707370

By (Broker/Agent for Buyer) Kira Mead Date 8/1/2017 CalBRE License # 01905944
 Kira Mead Daniel Fernandez Acebo

Listing Broker Brown & Co./Keller Williams DocuSigned by: _____ CalBRE License # _____

By (Broker/Agent for Seller) Tim Brown Date 8/7/2017 CalBRE License # 00580970
 Tim Brown Mark Brown

Reviewed by Managing Broker _____ Date _____



CALIFORNIA
ASSOCIATION
OF REALTORS®

ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. 1

The following terms and conditions are hereby incorporated in and made a part of the: ☒ Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), ☐ Other _____

dated August 1, 2017, on property known as 519 Sanchez St
San Francisco, CA 94114-2621

in which Brian Grabenstein is referred to as ("Buyer/Tenant")
and Joel Elliott is referred to as ("Seller/Landlord").

1. Seller to have 15 day period after acceptance of offer to negotiate a reduction of fines and fees with the city of San Francisco, subject to the seller's approval.

2. Offer is subject to approval by the bankruptcy court and notification of confirmation.

3. All contingencies to begin after court approval.

4. Property to be delivered entirely vacant at close of escrow.

5. Property to be delivered with a clean title free of all debts, loans, and city penalties.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date 8/1/2017
DocuSigned by: _____

Buyer/Tenant Brian Grabenstein

Buyer/Tenant _____

Date 8/2/17

Seller/Landlord Joel Elliott

Seller/Landlord _____

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Reviewed by _____ Date _____



ADM REVISED 12/15 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)

Market Street, 2282 Market Street San Francisco, CA 94114
Kira Mead

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

Phone: 415-660-2404

Fax:

519 Sanchez



**SAN FRANCISCO
ASSOCIATION of REALTORS®**

"AS-IS" ADDENDUM
SAN FRANCISCO ASSOCIATION OF REALTORS® STANDARD FORM
This form is intended for use in San Francisco

The following terms and conditions are hereby incorporated in and made a part of the San Francisco Purchase Agreement, or ☐ Counter Offer No. _____, or ☐ other _____ dated 08/01/2017 for the Property known as 519 Sanchez St, San Francisco, CA 94114-2621 between Brian Grabenstein ("Buyer") and Joel Elliott ("Seller").

1. Buyer is buying the Property in its present "AS-IS" condition, unless otherwise agreed in writing:
 - A. This Addendum supersedes any provision in the Contract requiring Seller to repair or make operable any appliance, component or system.
 - B. Seller is not relieved from compliance with any statutory obligations related to the sale of the Property, including without limitation, those regarding the Transfer Disclosure Statement (TDS).
 - C. Seller will not investigate public records for the Property (e.g., zoning, permits or code compliance).
 - D. Buyer has not relied and will not rely on any oral representations or warranties from Seller or Brokers/Agents with respect to the condition of the Property. Buyer is relying upon Buyer's independent investigation of the Property.
 - E. Seller will not agree to any requests for credits or reductions in the Purchase Price regarding any matter that may be revealed by Buyer's independent investigation of the Property, or otherwise.
2. Buyer acknowledges Civil Code §2079.5, which provides that: "Nothing in this article relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself or herself, including those facts which are known to or within the diligent attention and observation of the buyer or prospective buyer."
3. California law requires a seller to disclose all material facts he or she actually knows relating to the value or desirability of the Property. However, what may be perceived as "material" may vary from person to person. Therefore, in executing this Addendum, Buyer acknowledges that:
 - A. The Property and its components, appliances, fixtures, systems and materials have varying remaining useful lives.
 - B. Not all components, improvements or fixtures on the Property may comply with current code, zoning or setback requirements.
 - C. Square footage and lot dimensions, if given, are approximate only and should not be relied upon.
 - D. Lot lines cannot be reliably determined by existing fences, landscaping, retaining walls, or the like.
 - E. Neighborhood nuisance issues (including noise) can be subjective, depending on varying personal sensitivities.
 - F. Future or ongoing construction at surrounding properties can obstruct view corridors.
4. If any of the above items, or other factors affecting the Property, are important to Buyer, then Buyer is urged to conduct inspections utilizing appropriate professionals other than Brokers/Agents. No independent investigation of the above items will be conducted by Seller.
5. If provided for in the Agreement, Buyer may have all inspections that Buyer desires with respect to the Property. In removing the inspection conditions in this Addendum, it will be conclusively presumed that Buyer is fully satisfied with respect to the items which are the subject of that condition (e.g., physical condition of the Property). If Buyer does not have a particular inspection of the Property, or any portion of it, it will be conclusively presumed that Buyer has waived that inspection and waived any claims with respect to items that would have been disclosed by such an inspection, to the fullest extent allowed by law.

Buyer Brian Grabenstein Date 8/1/2017 Buyer _____ Date _____
 Seller Joel Elliott Date 8/7/17 Seller _____ Date _____

BROKERS/AGENTS CAN ADVISE ON REAL ESTATE TRANSACTIONS ONLY. FOR LEGAL OR TAX ADVICE, CONSULT A QUALIFIED ATTORNEY OR CPA.

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(Rev. 12/15)

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Market Street, 2282 Market Street San Francisco, CA 94114
Kira Mead

Phone: 415-660-2404 Fax: _____
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519 Sanchez



CALIFORNIA
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SELLER MULTIPLE COUNTER OFFER No. 1
(C.A.R. Form SMCO, Revised 12/15)

Date 08/03/2017

This is a counter offer to the: ☐ Purchase Agreement, ☒ Other San Francisco Purchase Agreement ("Offer"),
dated 08/01/2017, on property known as 517-519 Sanchez Street, San Francisco, CA 94114 ("Property"),
between Brian Grabenstein ("Buyer")
and Joel Elliot ("Seller").

1. **TERMS:** The terms and conditions of the above referenced document are accepted subject to the following:
- 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.
 - Unless otherwise agreed in writing, down payment and loan amount(s) will be adjusted in the same proportion as in the original Offer.
 - OTHER TERMS: 1. Purchaser to respond to this counter offer with their last and best price.

2. Buyer to assume responsibility for section 20, Items A-D, of the San Francisco Purchase Agreement (Compliance with Other Local, State and Federal Laws).

3. Contract is contingent upon Seller's successful negotiation of lien by the City of San Francisco. Seller to remove this contingency within 15 days.

4. Seller to have 15 days after ratification to negotiate acceptable buyout terms with tenants to vacate the property. Acceptance of such terms is at sole discretion of the Seller.

5. All other terms remain the same.

- D. The following attached addenda are incorporated into this Multiple Counter Offer: ☐ Addendum No. _____

2. **BINDING EFFECT:** Seller is making Multiple Counter Offers to other prospective Buyers on terms that may or may not be the same as in this Multiple Counter Offer. This Multiple Counter Offer does not bind Seller and Buyer unless all of the following occur in the times specified below: Seller signs in paragraph 5, Buyer signs in paragraph 7, Seller signs in paragraph 8, and Buyer receives a copy of the Multiple Counter Offer with all of the signatures. (Note: Prior to the completion of all of the foregoing, Buyer and Seller shall have no duties or obligations for the purchase or sale of the Property.)

3. **EXPIRATION OF SELLER MULTIPLE COUNTER OFFER:** This Multiple Counter Offer shall be deemed revoked and the deposits, if any, shall be returned to Buyer unless by 5:00PM on the third Day After the date Seller signs in paragraph 5 (if more than one Seller, then the last date) (or by 5:00 ☐ AM ☒ PM on 8/8/17 (Date)), (i) it is signed in paragraph 7 by Buyer, and (ii) a copy of the Multiple Counter Offer signed by Buyer is personally received by Seller or KWSF, who is authorized to receive it;

4. **MARKETING TO OTHER BUYERS:** Seller has the right to continue to offer the Property for sale. Seller has the right to accept any other offer received, prior to Seller selection of this Multiple Counter Offer.

5. **SELLER MAKES THIS MULTIPLE COUNTER OFFER ON THE TERMS ABOVE AND ACKNOWLEDGES RECEIPT OF A COPY.**

Joel Elliot Date 8/7/17

6. **ACCEPTANCE OF SELLER MULTIPLE COUNTER OFFER:** Buyer's acceptance of this Seller Multiple Counter Offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless by 5:00PM on the fourth Day After the date Seller signs in paragraph 5 (if more than one Seller, then the last date) (or by ☐ AM ☐ PM on _____ (Date) (i) it is signed in paragraph 8 by Seller, and (ii) a copy of this Seller Multiple Counter Offer signed by Seller in paragraph 8 is personally received by Buyer or _____ who is authorized to receive it.

7. **ACCEPTANCE:** Buyer accepts the signed Multiple Counter Offer (If checked ☒ SUBJECT TO THE ATTACHED COUNTER OFFER

_____) and acknowledges receipt of a Copy. 8/9/2017
Brian Grabenstein Brian Grabenstein Date _____ Time _____ ☐ AM ☐ PM
C763E509AC1949E Date _____ Time _____ ☐ AM ☐ PM

8. **SELECTION OF ACCEPTED MULTIPLE COUNTER OFFER:** By signing below, Seller accepts this Multiple Counter Offer. NOTE TO SELLER: Do NOT sign in this box until after Buyer signs in paragraph 7.

Joel Elliot Date 8/10/17 Time 2:20 ☐ AM ☒ PM
Date _____ Time _____ ☐ AM ☐ PM

(_____ / _____) (Initials) Confirmation of Acceptance: A Copy of the Signed Seller Selection was personally received by Buyer or Buyer's authorized agent on (date) _____ at _____ ☐ AM ☐ PM. A binding Agreement is created when a Copy of the Signed Seller Selection is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document.

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portion thereof, by photocopy machine or any other means, including facsimile or computerized formats.

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SMCO REVISED 12/15 (PAGE 1 OF 1)

SELLER MULTIPLE COUNTER OFFER (SMCO PAGE 1 OF 1)

Brown & Co. Group at KWSF 775 Monterey Blvd. San Francisco, CA 94127
Robert Laub

Phone: (415)355-4725

Fax:

517-519 Sanchez

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

ZEPHYR
REAL ESTATE

This is a counter offer to the: ☐ Seller Counter Offer No. _____, ☒ Seller Multiple Counter Offer No. _____, ☐ or Other _____ ("Offer"), dated August 3, 2017, on property known as 517 - 519 Sanchez St, San Francisco, Ca 94114 ("Property"), between Brian Grabenstein ("Buyer") and Joel Elliot ("Seller").

1. **TERMS:** The terms and conditions of the above referenced document are accepted subject to the following:

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

C. **OTHER TERMS:** 1) Item # 4 of seller multiple counter offer to read as follows: Seller to have 15 days after ratification to negotiate acceptable buyout terms with tenants to vacate the property. Acceptance of such terms is at sole discretion of the seller. Property to be delivered vacant prior to COE at no cost or liability to the buyer. Any buyout negotiated between Seller and tenants must conform with relevant state and local regulations, including filing and registration with the San Francisco Rent Board and provision to tenants of notice of tenants' rights. Any statutory periods during which tenants can rescind buyout to have expired prior to closing. Buyout agreement to be provided to Purchaser.
2) All other terms and conditions remain the same. 3) Purchase price is \$2,675,000

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

2. **EXPIRATION:** This Buyer Counter Offer shall be deemed revoked and the deposits, if any, shall be returned:

- A. Unless by 5:00pm on the third Day After the date it is signed in paragraph 3 (if more than one signature then, the last signature date)(or by 12:00 ☐ AM ☒ PM on 08/14/2017 (date)) (i) it is signed in paragraph 4 by Seller and (ii) a copy of the signed Buyer Counter Offer is personally received by Buyer or _____, who is authorized to receive it.

OR B. If Buyer withdraws it in writing (CAR Form WOO) anytime prior to Acceptance.

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

Buyer _____ Brian Grabenstein Date 08/09/2017
Buyer _____ Date _____

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

Seller _____ Joel Elliot Date 8/11/17 Time 2:20 ☐ AM/ ☒ PM
Seller _____ Date _____ Time _____ ☐ AM/ ☐ PM

CONFIRMATION OF ACCEPTANCE:

(_____ / _____) (Initials) **Confirmation of Acceptance:** A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent as specified in paragraph 2A on (date) _____ at _____ ☐ AM/ ☐ PM. **A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document.**

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BCO 11/14 (PAGE 1 OF 1)

BUYER COUNTER OFFER (BCO PAGE 1 OF 1)

Market Street, 2282 Market Street San Francisco, CA 94114
Daniel Fernandez

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519 Sanchez



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COURT CONFIRMATION ADDENDUM
(C.A.R. Form CCA, 11/12)

This is an addendum to the ☐ California Residential Purchase Agreement, ☐ Counter Offer No. _____, ☒ Other
SFAR Purchase Agreement ("Agreement"), dated August 1, 2017, on
property known as 519 Sanchez St, San Francisco, CA 94114-2621 ("Property"),
between Brian Grabenstein ("Buyer"),
and Joel Elliott ("Seller").

The Agreement is contingent upon court confirmation on or before August 31, 2017 (date). If court confirmation is not obtained by that date, Buyer may cancel the Agreement in writing. Court confirmation may be required in probate, conservatorship, guardianship, receivership, bankruptcy, divorce or other proceedings. The court may allow open, competitive bidding, resulting in the Property being sold to the highest bidder. Broker recommends that Buyer appear at the court confirmation hearing. Buyer understands that (i) Broker and others may continue to market the Property; and (ii) Broker may represent other competitive bidders prior to and at the court confirmation.

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

Date 08/01/2017

Date 8/17/17

DocuSigned by:
Brian Grabenstein
Brian Grabenstein

Seller Joel Elliott

Buyer _____

Seller _____

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CCA 11/12 (PAGE 1 OF 1)

COURT CONFIRMATION ADDENDUM (CCA PAGE 1 OF 1)

Market Street, 2282 Market Street San Francisco, CA 94114
Kira Mead

Phone: 415-660-2404 Fax: _____
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519 Sanchez



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ADDITIONAL AGENT ACKNOWLEDGEMENT

(C.A.R. Form AAA, Revised 12/15)

This is an addendum to the Purchase Agreement, or ☐ Residential Listing Agreement, or ☐ Buyer Representation Agreement, or ☒ Other SFAR Purchase Agreement ("Agreement"), dated _____, on property known as 519 Sanchez St between Brian Grabenstein ("Buyer/Tenant/Broker") and Joel Elliott ("Seller/Landlord/Broker").

1. Check **ONE** box **ONLY**. If more than one applies, use separate forms for each.

A. ☐ Multiple Associate-Licensees working with Seller/Landlord;

OR B. ☐ Multiple Associate-Licensees working with Buyer/Tenant;

2. A. The real estate licensees named below are all conducting real estate licensed activity under the same Broker:

Real Estate Broker name: Zephyr Real Estate

If applicable, Team Name: Real SF Properties

B. The licensees below have entered into a separate written agreement to share responsibility and compensation for certain real estate licensed activity and have informed Broker of, or given Broker a copy of, that separate written agreement.

C. Agent Kira Mead CalBRE Lic # 01905944
Agent Daniel Fernandez Acebo CalBRE Lic # 01412912
Agent Harry Clark CalBRE Lic # 01140473
Agent _____ CalBRE Lic # _____
Agent _____ CalBRE Lic # _____

3. By signing below, all parties understand, acknowledge and agree that, wherever the name of any licensee above is indicated in the Agreement or related document, as a representative for the Buyer or Seller specified in 1A or B above, the other licensees shall also be deemed to be named. Listing Broker and Seller signatures are not necessary if this form is only used to modify a Buyer Representation Agreement. Selling Broker and Buyer signatures are not necessary if this form is only used to modify a Listing Agreement.

Buyer/Tenant Brian Grabenstein Brian Grabenstein Date 8/1/2017
C783E509AC1949E...

Buyer/Tenant _____ Date _____

Seller/Landlord Joel Elliott Joel Elliott Date 8/1/2017

Seller/Landlord _____ Date _____

Real Estate Broker (Listing) Brown & Co./Keller Williams CalBRE Lic. # _____

By Tim Brown Tim Brown/Mark Brown CalBRE Lic. # 00580970 Date 8/7/2017
54B33914BD0C421...

Real Estate Broker (Selling) Zephyr Real Estate CalBRE Lic. # 00707370

By Kira Mead Kira Mead/Daniel Fernandez Acebo CalBRE Lic. # 01905944 Date 8/1/2017
044F5B7D9D54DA

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AAA REVISED 12/15 (PAGE 1 OF 1)

ADDITIONAL AGENT ACKNOWLEDGEMENT (AAA PAGE 1 OF 1)

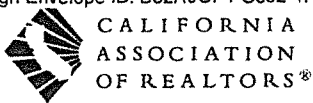
Market Street, 2282 Market Street San Francisco, CA 94114
Kira Mead

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Phone: 415-660-2404

Fax:

519 Sanchez

**BUYER'S INSPECTION ADVISORY**

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



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 nonstructural 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, ~~Buyers~~ **Buyers acknowledge** that they have read, understand, accept and have received a Copy of this Advisory. Buyers are **encouraged to read it carefully.**

Buyer Brian Grabenstein C763E509AC1949E...

Buyer _____

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



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Kira Mead

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519 Sanchez



MARKET CONDITIONS ADVISORY (C.A.R. Form MCA, Revised 11/11)

1. MARKET CONDITIONS: Real estate markets are cyclical and can change over time. It is impossible to predict future market conditions with accuracy. In a competitive or "hot" real estate market, there are generally more Buyers than Sellers. This will often lead to multiple buyers competing for the same property. As a result, in order to make their offers more attractive, some Buyers may offer more than originally planned or eliminate certain contingencies in their offers. In a less competitive or "cool" market there are generally more Sellers than Buyers, often causing real estate prices to level off or drop, sometimes precipitously. The sales price of homes being sold as foreclosures and short sales is difficult to anticipate and can affect the value of other homes in the area. Brokers, appraisers, Sellers and Buyers take these "distressed" property sales and listings into consideration when valuing property. In light of the real estate market's cyclical nature it is important that Buyers understand the potential for little or no appreciation in value, or an actual loss in value, of the property they purchase. This Advisory discusses some of the potential risks inherent in changing market conditions.

2. BUYER CONSIDERATIONS:

A. OFFERING PRICE: AS A BUYER, YOU ARE RESPONSIBLE FOR DETERMINING THE PRICE YOU WANT TO OFFER FOR A PROPERTY. Although Brokers may provide you with comparable sales data, generally from information published in the local multiple listing service, you should know that the reporting of this data is often delayed and prices may change, up or down, faster than reported sales indicate. All buyers should be sure they are comfortable with the price they are offering or the price they are accepting in a counter offer. You should be aware of and think about the following: (i) If your offer is accepted, the property's value may not increase and may even decrease. (ii) If your offer is accepted, you may have "Buyer's remorse" that you paid too much. (iii) If your offer is rejected there can be no guarantee that you will find a similar property at the same price. (iv) If your offer is rejected, you may not be satisfied that the amount you offered was right for you. Only you can determine that your offer was reasonable and prudent in light of the property and your circumstances.

B. NON-CONTINGENT OFFERS: Most residential purchase agreements contain contingencies allowing a Buyer within a specified period of time to cancel a purchase if: (i) the Buyer cannot obtain a loan; (ii) is dissatisfied with the property's condition after an inspection; or (iii) if the property does not appraise at a certain value. To make their offers more attractive, Buyers will sometimes write offers with few or no contingencies or offer to remove contingencies within a short period of time. In a "hot" market, sellers will sometimes insist that Buyers write offers with no contingencies. Broker recommends that Buyers do not write non-contingent offers and if you do so, you are acting against Broker's advice. However, if you do write a non-contingent offer these are some of the contractual rights you may be giving up:

(1) **LOAN CONTINGENCY:** If you give up your loan contingency, and you cannot obtain a loan, whether through your fault or the fault of your lender, and as a result, you do not or cannot purchase the property, you may legally be in default under the contract and required to pay damages or forfeit your deposit to the seller.

(2) **APPRAISAL CONTINGENCY:** If your lender's (or your own) appraiser does not believe the property is worth what you have agreed to pay for it, your lender may not loan the full amount needed for the purchase or may not loan any amount at all because of a low appraisal. As a result, if you do not purchase the property, and you have removed your appraisal contingency, you may legally be in default under the contract and could be required to pay damages to, or forfeit your deposit to, the Seller. ~~The Seller~~ Seller is not obligated to reduce the purchase price to match the appraised value.

Buyer's Initials () ()

Seller's Initials () ()

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MARKET CONDITIONS ADVISORY (MCA PAGE 1 OF 2)

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Kira Mend

Phone: 415-660-2404 Fax: 415-660-2404
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519 Sanchez

Property Address: 519 Sanchez St, San Francisco, CA 94114-2621Date: August 1, 2017

3. **INSPECTION CONTINGENCY:** If you disapprove of the condition of the property and as a result, you do not purchase the property, you may legally be in default under the contract and required to pay damages to, or forfeit your deposit to, the Seller if you have removed your inspection contingency. However, even if you make an offer without an inspection contingency or you remove that contingency, the Seller may still be obligated to disclose to you material facts about the property. In some cases, once you receive that information the law gives you an independent right to cancel for a limited period of time.

There is inherent risk in writing a non-contingent offer. Only you, after careful consultation and deliberation with your attorney, accountant, or financial advisor can decide how much risk you are willing to take. IT IS YOUR DECISION ALONE AND CANNOT BE MADE BY YOUR BROKER OR REAL ESTATE AGENT.

C. BROKER RECOMMENDATIONS. Broker recommends that you do not write a non-contingent offer, even if you are planning on paying all cash for the property. If you intend to write a non-contingent offer, Broker recommends that, prior to writing the offer, you: (i) review all available Seller reports, disclosures, information and documents; (ii) have an appropriate professional inspect the property (even if it is being sold "as is" in its present condition); and (iii) carefully assess your financial position and risk with your attorney, accountant or financial advisor.

D. MULTIPLE OFFERS: At times Buyers may write offers on more than one property even though the Buyer intends to purchase only one. This may occur in a short sale when the approval process can take a considerable amount of time. While it is not illegal to make offers on multiple properties with intent to purchase only one, the Buyer can be obligated to many Sellers if more than one accepts the Buyer's offers. If the Buyer has not disclosed that the Buyer is writing multiple offers with the intent to purchase only one and the Buyer subsequently cancels without using a contingency, the Seller may claim the Buyer is in breach of contract because the Buyer fraudulently induced the Seller to enter into a contract.

3. SELLER CONSIDERATIONS:

As a Seller, you are responsible for determining the asking price for your property. Although Brokers may provide you with comparable sales data, generally from information published in the local multiple listing service, you should know that the reporting of this data is often delayed and prices may change, up or down, faster than reported sales indicate. All Sellers should be sure they are comfortable with the asking price they are setting and the price they are accepting. There is not, and cannot be, any guarantee that the price you decide to ask for your property, or the price at which you agree to sell your property is the highest available price obtainable for the property. It is solely your decision as to how much to ask for your property and at which price to sell your property.

Buyer/Seller acknowledges each has read, understands and has received a copy of this Market Conditions Advisory.

Buyer	<u>Brian Grabenstein</u>	Date	<u>8/1/2017</u>
Buyer	<u>Brian Grabenstein</u>	Date	_____
Seller	<u>Joel Elliott</u>	Date	<u>8/7/17</u>
Seller	_____	Date	_____

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