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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MERCED

11  
12 **INSURANCE COMMISSIONER OF THE  
STATE OF CALIFORNIA,**

13 Applicant,

14 v.

15  
16 **MERCED PROPERTY & CASUALTY  
COMPANY, a California Corporation,**

17 Respondent.  
18  
19

Case No. 18CV-04739

**NOTICE OF APPLICATION AND  
APPLICATION FOR ORDER**

**1) APPROVING LIQUIDATOR'S  
SALE OF MERCED REAL PROPERTY  
TO HOMEN PROPERTIES, LLC,  
2) RELEASING HOMEN FROM  
LIABILITY AND ENJOINING THIRD-  
PARTY CLAIMS, AND 3) RETAINING  
THE COURT'S JURISDICTION TO  
RESOLVE RELATED DISPUTES;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

**[FILED CONCURRENTLY WITH  
DECLARATION OF SCOTT PEARCE]**

Date: May 13, 2022  
Time: 8:15 a.m.  
Dept: 8  
Judge: Hon. Brian McCabe  
Action Filed: November 30, 2018

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25 **TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD,**

26 **PLEASE TAKEN NOTICE** that on May 13, 2022, at 8:15 a.m., or as soon thereafter as  
27 the matter may be heard in Department 8 of the Superior Court of the State of California, Merced  
28 County, 627 W. 21st Street, Merced, California, 95340, applicant Insurance Commissioner of the

1 State of California (Commissioner) in his capacity as Liquidator of the Merced Property &  
2 Casualty Company (Merced) will and hereby does apply to the court for an order:

3 1. Approving the Commissioner's sale of Merced real property, which consist of 1) a  
4 home office building located at 971 E. Broadway Ave., Atwater, California, 95301 (APN:004-  
5 010-015-000), and 2) an adjacent and contiguous parcel of vacant land (APN:004-010-014-000)  
6 located at 3349 Station Ave., Atwater, California, 95301 (collectively referred to as "the Merced  
7 Real Property"), to Homen Properties LLC (Homen) "as-is" for \$1,665,000 cash;

8 2. Releasing Homen from any and all claims, demands, actions or causes of action of  
9 any policyholder, contract holder, creditor, claimant (including holders of contingent claims), or  
10 stockholders of Merced, arising out of or relating in any manner whatsoever to Homen's purchase  
11 of the Merced Real Property;

12 3. Permanently enjoining any policyholder, contract holder, creditor, claimant  
13 (including holders of contingent claims), or stockholders of Merced from asserting any and all  
14 claims, demands, actions or causes of action against the Merced Real Property and/or Homen  
15 arising out of or relating in any manner whatsoever to Homen's purchase of the property; and

16 4. Retaining the court's exclusive jurisdiction to resolve any and all claims, demands,  
17 actions or causes of action against Homen that arise out of or relate to Homen's purchase of the  
18 Merced Real Property and/or to any pre-closing liability, claim, or lien against the property.

19 This application is made under Insurance Code section 1037 on the ground that the  
20 Commissioner is authorized to sell the estate's real property as necessary to successfully liquidate  
21 the estate. It is further made under section 1020 on the ground that a court may issue an injunction  
22 or any other order necessary to prevent interference with the Commissioner's authority as  
23 Liquidator or his successful liquidation of the proceeding. Lastly, the court having assumed  
24 jurisdiction of the Merced estate has authority under section 1058 to hear and determine any  
25 action, demand, or cause of action arising from or relating to the sale of the Merced Real  
26 Property.

27 This application is based on this notice, the accompanying memorandum of points and  
28 authorities in support thereof, the declaration of Scott Pearce filed concurrently with this

1 application, and such additional evidence and argument as may be offered at the time of the  
2 hearing on the application.

3 Pursuant to Local Rule 3.1 (F), the Court may issue a tentative ruling before the scheduled  
4 hearing date. Tentative rulings will be made available by telephone at 209-725-4240 and by  
5 posting on the Court's website at [www.mercedcourt.org](http://www.mercedcourt.org) no later than 3:00 p.m. on the Court day  
6 preceding the scheduled hearing. If the Court has not directed argument in the tentative ruling,  
7 oral argument is permitted only if a party intending to appear notifies all other parties by  
8 telephone or in person by 4:00 p.m. on the Court day before the hearing of the party's intention to  
9 appear. A party also must notify the Court by telephone of the party's intention to appear by  
10 calling 209-725-4240 by 4:00 p.m. on the Court day before the hearing. The tentative ruling will  
11 become the ruling of the Court if the Court has not directed oral argument by its tentative ruling  
12 and notice of intent to appear has not been given.

13 Dated: April 21, 2022

Respectfully submitted,

14 ROB BONTA  
15 Attorney General of California  
16 MOLLY K. MOSLEY  
Supervising Deputy Attorney General

17 */s/ Debbie J. Vorous*

18 DEBBIE J. VOROUS  
19 Deputy Attorney General  
20 *Attorneys for Applicant Insurance*  
21 *Commissioner of the State of California*

1                                   **APPLICATION FOR ORDERS AND INJUNCTION**

2                                   **INTRODUCTION**

3           In November 2018, Merced Property & Casualty Company (Merced) was rendered  
4 insolvent due to the Camp Fire in Butte County, California. On December 3, 2018, the court  
5 issued an order under Insurance Code section 1016 appointing the Insurance Commissioner of the  
6 State of California (Commissioner) as Liquidator of the Merced estate (Liquidation Order).

7           The Commissioner has submitted two applications to approve his payment of the Merced  
8 estate's fees and expenses, and an application to make an interim disbursement of Merced assets  
9 to the California Insurance Guarantee Association (CIGA) and to Merced policyholders for  
10 claims that exceeded the statutory limit of \$500,000 paid by CIGA. The court approved the  
11 Commissioner's applications.

12          This application seeks an order approving the Commissioner's sale of Merced real property  
13 located in Atwater, California, to Homen Properties LLC (Homen). The Commissioner seeks to  
14 sell the property to Homen "as-is" for \$1,665,000 cash. Under Insurance Code section 1037, the  
15 Commissioner is authorized to sell the Merced estate's real property as necessary to successfully  
16 liquidate the estate, and the sale is in the best interest of policyholders and creditors.

17          The Commissioner also seeks an order releasing Homen from claims, demands, or actions  
18 brought by Merced claimants associated with Homen's purchase of the Merced real property  
19 assets and for an injunction permanently enjoining those claimants from making such claims,  
20 demands, or actions against Homen and/or the property. Insurance Code section 1020 authorizes  
21 the court to issue such order and injunction as necessary to prevent interference with the  
22 Commissioner's authority to wind up and successfully liquidate the Merced estate.

23          Lastly, to enforce its orders and further the public interest in liquidating the Merced estate,  
24 the court should retain exclusive jurisdiction under Insurance Code section 1058 to hear and  
25 determine any matter that may arise out of or relate to Homen's purchase of the Merced real  
26 property assets and/or to any pre-closing liability, claim or lien against the property.

27          The application should be approved.

28        ///



1                   **SALE OF MERCED REAL PROPERTY TO HOMEN PROPERTIES LLC**

2       **I.     PLACEMENT OF MERCED’S HOME OFFICE AND ADJACENT LAND FOR SALE**

3           The Merced estate owns the following real property: 1) a home office building located at  
4   971 E. Broadway Ave., Atwater, California, 95301 (APN:004-010-015-000); and 2) an adjacent  
5   and contiguous parcel of vacant land (APN:004-010-014-000) located at 3349 Station Ave.,  
6   Atwater, California, 95301 (hereafter, collectively referred to as “the Merced Real Property”).  
7   (Decl. of Scott Pearce in Supp. of Application for Order Approving Sale of Merced Real Property  
8   & Related Orders (Pearce Decl.), ¶ 7.) Both parcels combined approximate 2.6 acres. (*Ibid.*) The  
9   estate owns no other real property. (*Ibid.*) Outside of liquid assets in the form of cash balances,  
10   cash equivalent assets and subrogated receivables, this property is the last tangible asset the estate  
11   holds. (*Ibid.*)

12          The Commissioner started the process of placing the Merced Real Property on the open  
13   market for sale at a reasonable value in the fall of 2019. (Pearce Decl., ¶ 8.) The property was  
14   placed for sale through a listing with a brokerage firm located in Merced and the multiple listing  
15   service. (*Ibid.*) The Merced Real Property was initially listed at \$2,065,000 (\$1,600,000 in list  
16   price was attributable to the building) in October 2019. (*Ibid.*) After the real estate contract was  
17   renewed in 2020, the list price was maintained at \$2,065,000 but the Commissioner has recently  
18   considered and verbally communicated more favorable pricing terms to a number of prospective  
19   buyers in the Merced area. (*Ibid.*) Except as to the pending sale to Homen discussed below, the  
20   property has remained on the market since October 2019. (*Ibid.*)

21          After placing the Merced Real Property for sale on the open market, the estate had multiple  
22   showings and received two highly conditional offers from local municipal interests that were both  
23   deemed unacceptable. (Pearce Decl., ¶ 9.) The initial offer received was materially underpriced  
24   and required post-closing conditions the estate could not honor. (*Ibid.*) As recently as September  
25   2021, the estate was working with the second potential buyer from the Merced area who had  
26   conducted preliminary environmental inspections, but that buyer also submitted a highly  
27   conditional offer which significantly underpriced the property and the buyer sought to place  
28   similar offers on multiple competing properties at the same time. (*Ibid.*) The Commissioner did

1 not accept this second offer due to pricing and terms, and the potential buyer committed to one of  
2 the competing properties. (*Ibid.*)

3 To reduce the expenses associated with maintaining the Merced Real Property following  
4 the court's issuance of the Liquidation Order in December 2018, and to expedite the claims  
5 handling functions for the estate, the Commissioner leased the Merced home office property to  
6 CIGA on a month-to-month basis, which allowed CIGA to use the home office as a cost-effective  
7 office space for it to handle the Merced liquidation. (Pearce Decl., ¶ 10.) That leased ended in  
8 October 2020. (*Ibid.*) Thereafter, the Commissioner considered potential lease transactions with  
9 two local entities to stimulate investment interest as well as seek potential rental income while  
10 continuing to market the property, but those leases did not materialize. (*Ibid.*)

## 11 **II. PENDING SALE OF THE MERCED REAL PROPERTY TO HOMEN**

12 On February 18, 2022, the Commissioner received an "as-is" all cash offer of \$1,665,000  
13 from Homen to purchase the Merced Real Property. (Pearce Decl., ¶ 11, Ex. A [Commercial  
14 Purchase Agreement and Joint Escrow Instructions].) On February 22, 2022, Joseph Holloway in  
15 his capacity as Deputy Liquidator of Merced submitted a Seller Counter Offer to Homen that  
16 required, among other things, the Commissioner obtained an order from this court approving sale  
17 of the property and that Homen make an initial deposit of \$49,995 within five days of acceptance.  
18 (*Id.* ¶ 12, Ex. B [Seller Counter Offer No. 1].)<sup>1</sup> Homen accepted the Commissioner's Seller's  
19 Counter Offer on February 22, 2022, and deposited the \$49,995 with TransCounty Title Company  
20 on February 25, 2022. (*Id.*, Exs. A, B & C [Receipt].)<sup>2</sup> The \$49,995 deposit is non-refundable,  
21 and Homen has removed all contingencies from the purchase agreement. (*Id.*, ¶¶ 12, 14.) The  
22 Commissioner intends to sell the Merced Real Property according to the terms set forth in the  
23 purchase agreement and counter offer. (*Id.*, ¶ 14.)

24 \_\_\_\_\_  
25 <sup>1</sup> Where a transaction involving real property exceeds \$20,000, the Insurance Code  
26 requires the Commissioner to obtain permission of the court before finalizing the transaction.  
(Ins. Code, § 1037, subd. (d).)

27 <sup>2</sup> The Liquidation Order appoints David E. Wilson as the Deputy Liquidator of the Merced  
28 estate. (Liquidation Order, p. 3.) Mr. Wilson retired, and the Commissioner appointed Joseph  
Holloway in his stead as act as the Deputy Liquidator. Concurrent with filing this application, the  
Commissioner has filed a motion to amend the Liquidation Order to name Mr. Holloway as the  
Deputy Liquidator.

1 As explained above, the \$1,665,000 all-cash offer is the best offer the Commissioner has  
2 received since placing the Merced Real Property for sale over two years ago. The property is  
3 being sold “as-is,” which will eliminate any potential request by Homen to offset the price for any  
4 reason. For these reasons as well as those explained further below, the sale of the property to  
5 Homen is necessary to successfully wind-up the Merced liquidation proceeding, and is in the best  
6 interest of the Merced policyholders and creditors. The court should issue an order releasing  
7 Homen from liability associated with its purchase of the property and enjoin third-party claims as  
8 necessary to prevent interference with the Commissioner’s sale of the property and to protect the  
9 public interest. Also, the court should retain exclusive jurisdiction over all matters arising out of  
10 or relating to Homen’s purchase of the property and/or pre-closing claims against the property.

11 WHEREFORE, the Commissioner respectfully requests the court enter an order as follows:

12 1. Approving the Commissioner’s sale of the Merced Real Property consisting of 1) a  
13 home office building located at 971 E. Broadway Ave., Atwater, California, 95301 (APN:004-  
14 010-015-000), and 2) an adjacent and contiguous parcel of vacant land (APN:004-010-014-000)  
15 located at 3349 Station Ave., Atwater, California, 95301, to Homen Properties, LLC (Homen)  
16 “as-is” for \$1,665,000 cash;

17 2. Releasing Homen from any and all claims, demands, actions or causes of action of  
18 any policyholder, contract holder, creditor, claimant (including holders of contingent claims), or  
19 stockholders of Merced arising out of or relating in any manner whatsoever to Homen’s purchase  
20 of the Merced Real Property;

21 3. Permanently enjoining any policyholder, contract holder, creditor, claimant  
22 (including holders of contingent claims), or stockholders of Merced from asserting any and all  
23 claims, demands, actions or causes of action against the Merced Real Property and/or Homen  
24 arising out of or relating in any manner whatsoever to Homen’s purchase of the property; and

25 4. Retaining the court’s exclusive jurisdiction to resolve any and all claims, demands,  
26 actions or causes of action against Homen that arise out of or relate to Homen’s purchase of the  
27 Merced Real Property and/or to any pre-closing liability, claim or liens against the property.

28 ///

1 Dated: April 21, 2022

Respectfully submitted,

2 ROB BONTA  
3 Attorney General of California  
4 MOLLY K. MOSLEY  
5 Supervising Deputy Attorney General

6 */s/ Debbie J. Vorous*

7 DEBBIE J. VOROUS  
8 Deputy Attorney General  
9 *Attorneys for Applicant Insurance*  
10 *Commissioner of the State of California*

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I.     LEGAL AUTHORITY OF THE COMMISSIONER AND ROLE OF THE COURT**

3           Article 14 of the Insurance Code, sections 1010 to 1062, govern proceedings in cases of  
4   insolvency and liquidation. Section 1016 authorizes the Commissioner to apply to a court, and the  
5   court to grant, an order appointing the Commissioner as Liquidator to operate, liquidate, and wind  
6   up the business of an insurer (“Section 1016 Order”). This power is designed to ensure the  
7   “orderly and equitable distribution of the assets of an insolvent insurer” to those entitled to share  
8   in those assets. (*In re Title USA Ins. Corp.* (1995) 36 Cal.App.4th 363, 372.)

9           The Commissioner acts as a “trustee for the benefit of all creditors and other persons  
10   interested in the estate of the person against whom the proceedings are pending.” (Ins. Code,  
11   §1057.) As trustee, the Commissioner is vested with “broad powers” to conduct the liquidation  
12   process in the manner that he determines to be in the best interest of policyholders and creditors.  
13   (*Commercial Nat. Bank v. Superior Court* (1993) 14 Cal.App.4th 383, 402, opn. mod. 1993  
14   Cal.App. LEXIS 399.) “The only restriction on the exercise of [the Commissioner’s] power is that  
15   the state’s action shall be reasonably related to the public interest and shall not be arbitrary or  
16   improperly discriminatory.” (*Carpenter v. Pacific Mutual Life Ins. Co.* (1937) 10 Cal.2d 307,  
17   329.) When challenged, the court must affirm the actions of the Commissioner unless they  
18   constitute an abuse of discretion. (*Garamendi v. Golden Eagle Ins. Co.* (2005) 128 Cal.App.4th  
19   452, 466-467.)

20           With respect to the Commissioner’s sale of the Merced Real Property at issue here, the  
21   Commissioner has broad powers to sell estate property and take action as necessary and  
22   appropriate to the sale. Insurance Code section 1037, which governs the authority of the  
23   commissioner as liquidator or conservator, provides in relevant part that upon taking possession  
24   of the property and business of any person in any proceeding, the commissioner, as liquidator,  
25   shall have the authority to sell any real property of that person on the basis of reasonable market  
26   value. (Ins. Code, § 1037, subd. (d); accord § 1037, subd. (f) [commissioner may deliver any deed  
27   necessary and proper to effectuate sale of real property in connection with liquidation of estate].)

28   ///

1 A trial court also has an obligation to protect the public interest in insurer liquidations. (*In*  
2 *re Executive Life Ins. Co.* (1995) 32 Cal.App.4th 344, 403.) Under Insurance Code section 1020,  
3 a court, upon the issuance of a Section 1016 Order, “or at any time thereafter, . . . shall issue such  
4 other injunctions or orders as may be deemed necessary to prevent any or all of the following  
5 occurrences: (a) Interference with the commissioner or the proceeding.”

6 The court in which the proceeding is pending has jurisdiction to hear and determine all  
7 actions or proceedings then pending or thereafter instituted by or against the person affected by  
8 the proceeding. (Ins. Code, § 1058 & § 7 [defining “person” to mean “any person, association,  
9 organization, partnership, business trust, limited liability company, or corporation”].) “A court of  
10 equity, having assumed jurisdiction of the subject matter, may retain that jurisdiction and require  
11 all matters relating thereto to be litigated in the same action.” (*Garris v. Mitchell* (1935) 7  
12 Cal.App.2d 430, 433.) “This has been the usual practice in the state of California . . . .” (*Ibid.*)

## 13 **II. THE SALE OF THE MERCED REAL PROPERTY ASSETS SHOULD BE APPROVED**

14 As explained, the Commissioner actively marketed the Merced Real Property for over two  
15 years, including considering potential lease transactions to stimulate purchase interest. (Pearce  
16 Decl., ¶¶ 7-13.) The sales price of \$1,665,000 is the reasonable market value of the property and  
17 is the highest and best pricing and terms received on the property since the inception of it’s listing  
18 on the market. (*Ibid.*)

19 The Commissioner has compared the Merced Real Property with other similarly situated  
20 commercial properties in the Merced area of similar age, size, and footage. (Pearce Decl., ¶ 13.)  
21 Most of the comparable properties considered were located in the decommissioned Castle Air  
22 Force base development on the south edge of Atwater, as well as properties located in Livingston  
23 and Merced proper. (*Ibid.*) All properties reviewed were listed below the Merced building on a  
24 per square foot basis and offered advantageous financing terms the Commissioner could not offer.  
25 (*Ibid.*) After considering these properties and the general office market in the California Central  
26 valley, the Commissioner determined the \$1,665,000 sales price of the Merced Real Property is  
27 the commercially reasonable value of the property. (*Id.*, ¶ 13) And by selling the property “as-is,”

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1 Homen cannot request to offset the price for any reason which, if that were to occur, could  
2 arguably reduce the reasonable value of the property. (*Ibid.*)

3 Additionally, the sale of the Merced Real Property to Homen is in the best interest of the  
4 policyholders and creditors for several reasons. First, the property was listed on the open market  
5 for over two years, and the property is being sold to the purchaser with the highest offer. (Pearce  
6 Decl., ¶¶ 7-9, 11 & 15.) As explained, the Commissioner considered potential lease transactions  
7 with two local entities to stimulate investment interest, but those did not materialize. (*Id.*, ¶ 10.)

8 Second, the sale eliminates the ongoing monthly expense to maintain and secure the  
9 Merced Real Property following the end of CIGA's lease of the property in October 2020.  
10 (Pearce Decl., ¶ 10.) Since that time, the property has not generated any income, only expenses.  
11 (*Ibid.*) Homen has removed all contingencies from the purchase agreement and, upon the court's  
12 approval of the sale, the Commissioner is ready to sell the property according to the terms of the  
13 purchase agreement and counter offer. (*Id.*, ¶ 14.)

14 Third, the contemplated sale will advance the orderly wind-up of the Merced liquidation  
15 proceeding. Because the offer is for \$1,665,000 "cash," the contemplated sale will immediately  
16 monetize one of the last tangible assets the estate holds, which will bring an infusion of funds into  
17 the estate allowing the Commissioner to potentially pay the remaining policyholder "over-cap"  
18 claims and compensate additional estate creditors. (Pearce Decl., ¶¶ 15, 16.) Consistent with the  
19 court's approval in October 2021, the Commissioner made an interim distribution of Merced  
20 assets to CIGA and Merced policyholders. (*Id.*, ¶ 16.) The policyholders received partial payment  
21 of their claims that exceeded the statutory limit of \$500,000 paid by CIGA. (*Ibid.*) Following this  
22 disbursement, the Commissioner submitted evidence of the policyholder payments to the PGE  
23 Wildfire Subrogation Trust for reimbursement. (*Ibid.*) The Commissioner anticipates recovering  
24 approximately 72 percent of the paid losses from those claims, which remain pending and are  
25 under formal review by the subrogation trustee. (*Ibid.*) In addition, the Commissioner continues  
26 to preliminary review and evaluate the 116 Proofs of Claim that fall in the general creditor and  
27 equity creditor classes of claim priority, which will be determined if there are sufficient funds to  
28 pay them. (*Ibid.*)

1           Consequently, upon sale of the Merced Real Property and receipt of the closing proceeds  
2 along with the anticipated recovery from the PGE Wildfire Subrogation Trust, the estate will be  
3 in a position to determine whether sufficient funds exist to pay any unsatisfied policyholder  
4 claims, and determine and pay the remaining 116 Proofs of Claim, and thereafter wind up the  
5 Merced liquidation proceeding. (Pearce Decl., ¶ 17.)

6           The Commissioner's sale of the Merced Real Property is an appropriate exercise of  
7 discretion and should be approved.

8       **III. THE COURT SHOULD ISSUE AN ORDER RELEASING HOMEN FROM LIABILITY AND**  
9       **AN INJUNCTION ENJOINING CLAIMS AGAINST HOMEN AND/OR THE PROPERTY**

10          When the Commissioner as Liquidator of an insolvent estate sells real property, he makes  
11 no representations or warranties regarding the property other than that the estate has free and clear  
12 title and, subject to this court's approval, full authority to market, negotiate and sell the property.  
13 (Pearce Decl., ¶ 14.) Nonetheless, the Commissioner understands the practical requirement to  
14 provide certain assurances that the real property is being sold free and clear of any known or  
15 unknown liabilities that could subject any buyer of assets from a liquidation estate (including  
16 Homen here) to potential litigation risk, or that could expose the Commissioner to indemnity  
17 claims and/or claims that would require him to appear in other related proceedings that would  
18 unnecessarily cause the Commissioner to expend estate assets. (*Ibid.*)

19          Absent such assurances, the Commissioner believes that potential buyers (including Homen  
20 here) will hesitate to buy the property from liquidation proceedings or demand a significant  
21 discount if the buyer is subject to unknown and undisclosed risk from adverse claims brought  
22 against the buyer by stakeholders of the insolvent estate as related to the buyer's purchase of  
23 estate real property. (Pearce Decl., ¶ 14.) For instance, an unhappy creditor that did not receive  
24 100 percent on its claim could file an action claiming that the Commissioner did not sell the  
25 property for, and that the purchaser did not pay, reasonable market value for the estate property.  
26 Purchasers of an insolvent estate's real property should not be subject to such types of claims by  
27 stakeholders, among others.

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1 For these reasons, the court should issue an order releasing Homen from liability and an  
2 injunction permanently enjoining claims against Homen and/or the Merced Real Property as  
3 necessary to accomplish the Commissioner's sale of the Merced Real Property and to prevent  
4 interference with the Commissioner's orderly wind-up of the Merced liquidation proceeding.  
5 Additionally, an injunction will provide Homen with a court-sanctioned document that it can  
6 present to any third-party that, for instance, asserts a claim against Homen claiming Homen did  
7 not pay reasonable market value for the property. Having this essential protection will further the  
8 public's interest in the orderly wind up of the Merced liquidation proceeding and discourage post-  
9 liquidation claims against the property by estate stakeholders. This court will have approved the  
10 Commissioner's sale of the Merced Real Property to Homen as within the Commissioner's  
11 authority and discretion, and the order and injunction sought will prevent interference with the  
12 sale and further the public interest.

#### 13 **IV. THE COURT SHOULD RETAIN JURISDICTION**

14 The court should retain jurisdiction to resolve any and all claims, demands, or actions  
15 against Homen that arise out of or relate to its purchase of the Merced Real Property and/or to any  
16 pre-closing liability, claim, or lien against the property.

17 In this application, the Commissioner is asking the court to approve the sale of the Merced  
18 Real Property to Homen, and to issue an order and injunction associated with Homen's purchase  
19 of the property. Should any third-party challenge the court's approval of the sale and/or the  
20 issuance of the order and injunction, it would be within the court's jurisdiction to hear and  
21 determine such challenges to its own orders. (Ins. Code, § 1058.) Likewise, the court has  
22 jurisdiction to, and should, resolve any pre-closing liability, claim, or lien against the property.  
23 (*Ibid.*) The court already having assumed jurisdiction over all estate matters, should retain that  
24 jurisdiction and require that all matters relating thereto be resolved in this same proceeding.  
25 (*Garris v. Mitchell, supra*, 7 Cal.App.2d at p. 433 [stating this is the usual practice in California].)  
26 Additionally, retaining jurisdiction over these estate matters will conserve judicial resources and  
27 discourage forum shopping.

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**CONCLUSION**

The Commissioner respectfully requests that the court approve the sale of the Merced Real Property to Homen on the terms stated, issue the order and injunction sought herein, and retain jurisdiction to resolve any dispute that may arise out of or relate to Homen’s purchase of the property and/or to any pre-closing liability, claim, or lien against the property.

Dated: April 21, 2022

Respectfully submitted,  
  
ROB BONTA  
Attorney General of California  
MOLLY K. MOSLEY  
Supervising Deputy Attorney General

*/s/ Debbie J. Vorous*

DEBBIE J. VOROUS  
Deputy Attorney General  
*Attorneys for Applicant Insurance  
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MERCED

11  
12 **INSURANCE COMMISSIONER OF THE**  
**STATE OF CALIFORNIA,**

13 Applicant,

14 v.

15  
16 **MERCED PROPERTY & CASUALTY**  
**COMPANY, a California corporation,**

17 Respondent.  
18

Case No. 18CV-04739

**DECLARATION OF SCOTT PEARCE IN  
SUPPORT OF APPLICATION FOR ORDER  
1) APPROVING LIQUIDATOR'S SALE OF  
MERCED REAL PROPERTY TO HOMEN  
PROPERTIES, LLC, 2) RELEASING  
HOMEN FROM LIABILITY AND  
ENJOINING THIRD-PARTY CLAIMS,  
AND 3) RETAINING THE COURT'S  
JURISDICTION TO RESOLVE RELATED  
DISPUTES**

Date: May 13, 2022  
Time: 8:15 a.m.  
Dept: 8  
Judge: Hon. Brian McCabe  
Action Filed: November 30, 2018

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22  
23 I, Scott Pearce, declare as follows:

24 1. I am the Senior Estate Trust Officer of the California Insurance Commissioner's  
25 Conservation and Liquidation Office (CLO). The CLO's office is located in San Francisco,  
26 California.

27 2. I make this declaration in support of the California Insurance Commissioner's  
28 (Commissioner) application for order 1) approving the Liquidator's sale of the real property of

1 Merced Property & Casualty Company (Merced) to Homen Properties, LLC (Homen), 2)  
2 releasing Homen from liability and enjoining third-party claims, and 3) retaining the court's  
3 jurisdiction to resolve related disputes. The following information is true and correct and based on  
4 my personal knowledge and, if called to do so, I could and would testify competently to it.

5 3. The Commissioner, in his statutory role as Liquidator, has the responsibility for the  
6 management and administration of the liquidation of numerous California insurers, including  
7 Merced. On December 3, 2018, the court issued its Liquidation Order in this proceeding.

8 4. The Liquidation Order appointed David E. Wilson as Deputy Liquidator of the  
9 Merced estate. Mr. Wilson has retired, and the Commissioner appointed Joseph Holloway to act  
10 in the place and stead of Mr. Wilson. The Liquidation Order also appointed me as the Liquidation  
11 Manager of the Merced estate, and empowered me to carry out any and all duties and exercise the  
12 authority of the Liquidator and Deputy Liquidator as may be delegated by the Liquidator and  
13 Deputy Liquidator.

14 5. As the Liquidation Manager, I am responsible for managing the affairs of Merced. I  
15 have primary responsibility for the overall administration of the Merced liquidation estate,  
16 including, but not limited to, matters pertaining to the sale of an estate's real property assets. To  
17 that end, I have been actively involved in the marketing and pending sale of Merced's real  
18 property assets to Homen Properties, LLC, which is discussed further below.

19 6. Upon learning that the November 2018 Camp Fire in Butte County, California  
20 rendered Merced insolvent, the Commissioner immediately took the steps necessary to protect the  
21 public interest against the insolvency, including gaining immediate access to Merced's real  
22 property.

23 **PLACEMENT OF MERCED'S HOME OFFICE AND ADJACENT LAND FOR SALE**

24 7. The Merced estate owns the following real property: 1) a home office building  
25 located at 971 E. Broadway Ave., Atwater, California, 95301 (APN:004-010-015-000); and 2) an  
26 adjacent and contiguous parcel of vacant land (APN:004-010-014-000) located at 3349 Station  
27 Ave., Atwater, California, 95301 (hereafter, collectively referred to as "the Merced Real

28 ///

Property ”).<sup>1</sup> The two parcels combined approximate 2.6 acres. The estate owns no other real property. Outside of liquid assets in the form of cash balances, cash equivalent assets and subrogated receivables, this property is the last tangible asset the estate holds.

8. Following transition of the Merced operations to the CLO’s office in San Francisco in the fall of 2019, the Commissioner started the process of placing the Merced Real Property on the open market for sale. The property was placed for sale through a listing with a brokerage firm located in Merced and through the multiple listing service. The property was initially listed at \$2,065,000 (\$1,600,000 in list price was attributable to the home office building) in October 2019. After the real estate contract was renewed in 2020, the list price was maintained at \$2,065,000 but the Commissioner has recently considered and verbally communicated more favorable pricing terms to a number of prospective buyers in the Merced area. Except as to the pending sale to Homen discussed below, the property has remained on the market since October 2019.

9. After placing the Merced Real Property for sale on the open market, the estate had multiple showings and received two highly conditional offers from local municipal interests that were both deemed unacceptable. The initial offer received was materially underpriced and required post-closing conditions the estate could not honor. As recently as September 2021, the estate was working with the second potential buyer from the Merced area who had recently conducted preliminary environmental inspections, but that buyer also submitted a highly conditional offer which significantly underpriced the property and the buyer sought to place similar offers on multiple competing properties simultaneously. The second offer was not accepted due to pricing and terms, and the potential buyer committed to one of the competing properties.

10. The Commissioner leased the Merced home office to the California Insurance and Guarantee Association (CIGA) on a month-to-month basis, which allowed CIGA to use the home office as a cost-effective office space for it to handle the Merced liquidation’s payment of covered

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<sup>1</sup> In my second status report to the court, I state that Merced has two adjacent vacant lots for sale on the open market. That was an error; the estate has only one lot, not two.

1 claims. This was done to expedite the claims handling function for the estate and to reduce the  
2 expenses associated with maintaining the Merced Real Property following the court's issuance of  
3 the Liquidation Order in December 2018. That lease ended in October 2020. Since that time, the  
4 property has not generated any income, only expenses. Thereafter, the Commissioner considered  
5 potential lease transactions with two local entities to stimulate investment interest as well as seek  
6 potential rental income while continuing to market the property, but those leases did not  
7 materialize.

8 **PENDING SALE OF THE MERCED REAL PROPERTY TO HOMEN**

9 11. On February 18, 2022, the Commissioner received an "as-is" all cash offer of  
10 \$1,665,000 from Homen for purchase of the Merced Real Property. Attached as Exhibit A hereto  
11 is a true and correct copy of the Commercial Purchase Agreement and Joint Escrow Instructions  
12 signed by Joe Homen, Manager of Homen Properties LLC. This is the best offer the  
13 Commissioner has received since placing the property for sale over two years ago.

14 12. On February 22, 2022, Joseph Holloway in the capacity as Deputy Liquidator of the  
15 Merced estate submitted a Seller Counter Offer to Homen that required, among other things, the  
16 Commissioner obtained an order of this court approving sale of the Merced Real Property and  
17 that Homen make an initial deposit of \$49,995 within five days of acceptance. Attached as  
18 Exhibit B is a true and correct copy of the Seller Counter Offer No. 1 signed by Mr. Holloway.  
19 Homen accepted the Seller's Counter Offer on February 22, 2022, and deposited \$49,995 with  
20 TransCounty Title Company on February 25, 2022. Attached as Exhibit C is a true and correct  
21 copy of Receipt No. 25148 reflecting receipt of the deposit by TransCounty Title Company. The  
22 \$49,995 deposit is non-refundable.

23 13. Before accepting Homen's offer, I compared the offer received for the Merced Real  
24 Property with other similarly situated commercial properties in the Merced area of similar age,  
25 size, and usage. Most of the comparable properties considered were located in the  
26 decommissioned Castle Air Force base office development on the south edge of Atwater, as well  
27 as properties in Livingston and Merced proper. All the properties I reviewed were listed below  
28 the Merced building on a per square foot basis and offered advantageous financing alternatives

1 the Commissioner could not offer. After considering these properties and the overall general  
2 office market in the California central valley, I concluded the Merced Real Property sales price of  
3 \$1,665,000 to be the commercially reasonable value of the property. In addition, by selling the  
4 property "as-is," Homen cannot request an offset of the price for any reason which, if that were to  
5 occur, could arguably reduce the value of the property.

6 14. When the Commissioner as Liquidator of an insolvent estate sells real property, he  
7 makes no representations or warranties regarding the property other than that the estate has free  
8 and clear title and, subject to this court's approval, full authority to market, negotiate and sell the  
9 property. However, the Commissioner understands the practical requirement to provide certain  
10 assurances that the real property is being sold free and clear of any known or unknown liabilities  
11 that could subject any buyer of assets from a liquidation estate (including Homen here) to  
12 potential litigation risk, or that could expose the Commissioner to indemnity claims and/or claims  
13 that would require him to appear in other related proceedings that would unnecessarily require the  
14 Commissioner to expend estate assets. Absent such assurances, the Commissioner believes that  
15 potential buyers (including Homen here) will hesitate to buy the property from liquidation  
16 proceedings or demand a significant discount if the buyer is subject to unknown and undisclosed  
17 risk from adverse claims brought against the buyer by stakeholders of the insolvent estate as  
18 related to the buyer's purchase of estate real property. In the sales transaction at issue in the  
19 instant application, Homen has now removed all contingencies from the purchase agreement, and  
20 the Commissioner is ready to sell the Merced Real Property according to the terms set forth in the  
21 purchase agreement and seller counter offer.

22 **SALE OF THE MERCED REAL PROPERTY TO HOMEN WILL BENEFIT**  
23 **POLICYHOLDERS AND CREDITORS, AND ADVANCE THE ORDERLY WIND UP**  
24 **AND LIQUIDATION OF THE MERCED LIQUIDATION PROCEEDING**

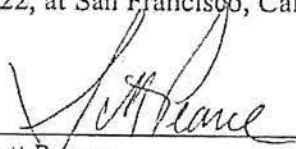
25 15. For the reasons explained in paragraphs 7 to 14 above, the sale of the Merced Real  
26 Property will benefit policyholders and creditors. Specifically, after being on the open market for  
27 two years, the property is being sold to the purchaser with the highest offer, and the sale will  
28 eliminate the ongoing monthly expenses to maintain the property.



1           16. Additionally, because the sales price is \$1,665,000 "cash," the contemplated sale will  
2 immediately bring an infusion of funds into the estate allowing the Commissioner to potentially  
3 pay the remaining policyholder "over-cap" claims and compensate additional estate creditors.  
4 Following the court's October 26, 2021 approval of the Commissioner's interim distribution of  
5 Merced assets to CIGA and Merced policyholders, the policyholders recovered a portion of their  
6 policy claims that exceeded the statutory limit of \$500,000 paid by CIGA. Thereafter, the  
7 Commissioner submitted evidence of the policy-holder disbursement payments to the PGE  
8 Wildfire Subrogation Trust for reimbursement. The Commissioner anticipates recovering  
9 approximately 72 percent of the paid losses from those claims, which remain pending and are  
10 currently under formal review by the subrogation trustee. In addition, the Commissioner  
11 continues the preliminary review and evaluation of the 116 Proofs of Claim that fall in the general  
12 creditor and equity creditor classes of claim priority. These claims will be determined if there are  
13 sufficient funds to pay them.

14           17. Upon the sale of the Merced Real Property and receipt of the closing proceeds along  
15 with the anticipated recovery from the PGE Wildfire Subrogation Trust, the Commissioner will  
16 be in a position to determine whether there are sufficient funds to pay unsatisfied policyholder  
17 claims that exceeded the \$500,000 payment made by CIGA and whether there are sufficient  
18 assets remaining to pay lower priority and creditor claims that would justify the review and  
19 determination to approve or reject the remaining Proofs of Claim. Thereafter, the Commissioner  
20 will be in a position to take the remaining necessary actions to wind up and liquidate the Merced  
21 estate.

22           I declare under penalty of perjury of the laws of the State of California that the foregoing is  
23 true and correct. Executed this <sup>21</sup>21 day of April, 2022, at San Francisco, California.

24  
25   
26 Scott Pearce

27 SA2018303475  
28 36025082.docx



# EXHIBIT A



CALIFORNIA  
ASSOCIATION  
OF REALTORS®

# COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(C.A.R. FORM CPA, Revised 12/21)

Date Prepared: February 18, 2022

## 1. OFFER:

- A. THIS IS AN OFFER FROM Homen Properties LLC ("Buyer").  
☐ Individual(s), ☐ A Corporation, ☐ A Partnership, ☒ An LLC, ☐ An LLP, or ☐ Other
- B. THE PROPERTY to be acquired is 971 Broadway Ave, situated in Atwater (City), Merced (County), California, 95301 (Zip Code), Assessor's Parcel No(s) 004-010-015; 004-010-014 ("Property").  
 (Postal/Mailing address may be different from city jurisdiction. Buyer is advised to investigate.)
- C. THE TERMS OF THE PURCHASE ARE SPECIFIED BELOW AND ON THE FOLLOWING PAGES.
- D. Buyer and Seller are referred to herein as the "Parties." Brokers and Agents are not Parties to this Agreement.

## 2. AGENCY:

- A. DISCLOSURE: The Parties each acknowledge receipt of a "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD) if represented by a real estate licensee. Buyer's Agent is not legally required to give to Seller's Agent the AD form Signed by Buyer. Seller's Agent is not legally obligated to give to Buyer's Agent the AD form Signed by Seller.
- B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction.
- Seller's Brokerage Firm CB Commercial, Gonella License Number 01103054  
 Is the broker of (check one): ☒ the Seller; or ☐ both the Buyer and Seller (Dual Agent).
- Seller's Agent Dan Gallagher License Number 01819755  
 Is (check one): ☒ the Seller's Agent (Salesperson or broker associate); or ☐ both the Buyer's and Seller's Agent (Dual Agent).
- Buyer's Brokerage Firm Berkshire Hathaway Drysdale Properties License Number 0149908  
 Is the broker of (check one): ☒ the Buyer; or ☐ both the Buyer and Seller (Dual Agent).
- Buyer's Agent OCTAVIO VALENZUELA License Number 01371325  
 Is (check one): ☒ the Buyer's Agent (Salesperson or broker associate); or ☐ both the Buyer's and Seller's Agent (Dual Agent).
- C. ☐ More than one Brokerage represents ☐ Seller, ☐ Buyer. See, Additional Broker Acknowledgement (C.A.R. Form ABA).
- D. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a ☒ "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

## 3. TERMS OF PURCHASE AND ALLOCATION OF COSTS: The Items in this paragraph are contractual terms of the Agreement. Referenced paragraphs provide further explanation. This form is 17 pages. The Parties are advised to read all 17 pages.

Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
A	5, 5B	Purchase Price	\$ <u>1,665,000.00</u> <input checked="" type="checkbox"/> All Cash
B		Close of Escrow (COE)	<input checked="" type="checkbox"/> 14 Days after Acceptance (date) OR on <u>    </u> (mm/dd/yyyy)
C	39A	Expiration of Offer	3 calendar days after all Buyer Signature(s) or <u>    </u> (date) at 5PM or <u>    </u> AM/PM
D(1)	5A(1)	Initial Deposit Amount	\$ <u>    </u> (% of purchase price) (% number above is for calculation purposes and is not a contractual term) within 3 (or <u>    </u> ) business days after Acceptance by wire transfer OR <input type="checkbox"/>
D(2)	5A(2)	<input type="checkbox"/> Increased Deposit (Money placed into escrow after the initial deposit. Use form DID at time increased deposit is made.)	\$ <u>    </u> (% of purchase price) (% number above is for calculation purposes and is not a contractual term) Upon removal of all contingencies OR <input type="checkbox"/> (date) OR <input type="checkbox"/>
E(1)	5C(1)	Loan Amount(s): First Interest Rate Points	\$ <u>    </u> (% of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate, not to exceed <u>    </u> % Buyer to pay zero points or up to <u>    </u> % of the loan amount 17 (or <u>    </u> ) Days after Acceptance Conventional or, if checked, <input type="checkbox"/> FHA <input type="checkbox"/> VA (CAR Forms FVAC, H1D attached) <input type="checkbox"/> Seller Financing <input type="checkbox"/> Assumed Financing <input type="checkbox"/> Subject To Financing <input type="checkbox"/> Other: <u>    </u>
E(2)	5C(2)	Additional Financed Amount Interest Rate Points	\$ <u>    </u> (% of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate, not to exceed <u>    </u> % Buyer to pay zero points or up to <u>    </u> % of the loan amount Conventional or, if checked, <input type="checkbox"/> Seller Financing <input type="checkbox"/> Assumed Financing <input type="checkbox"/> Subject To Financing <input type="checkbox"/> Other: <u>    </u>
E(3)	7A	Occupancy Type	Investment
F	5D	Balance of Down Payment	\$ <u>1,665,000.00</u>
		PURCHASE PRICE TOTAL	\$ <u>1,665,000.00</u>

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Buyer's Initials DFH

Seller's Initials GBH

## COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 1 OF 17)

COLDWELL BANKER CONELLA REALTY, 2581 FIRST ST ATWATER CA 95301  
 OCTAVIO VALENZUELA

Phone: 209.552.2504 Fax: 209.552.2356  
 Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwll.com

571 Broadway

Property Address: 971 Broadway Ave, Atwater, CA 95301

Date: February 18, 2022

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
G(1)	5E	Seller Credit, if any, to Buyer	<input type="checkbox"/> \$ _____ (% number above is for calculation purposes and is not a contractual term)	Seller credit to be applied to closing costs OR <input type="checkbox"/> Other: _____
G(2)	ADDITIONAL FINANCE TERMS: <u>Buyer is doing a 10-31 Exchange: From Sale Of 268 Front St, Grover Beach CA 93433</u>			
H(1)	5B	Verification of All Cash (sufficient funds)	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(2)	6A	Verification of Down Payment and Closing Costs	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(3)	6B	Verification of Loan Application	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
I	Intentionally Left Blank			
J	1B	Final Verification of Condition	5 (or _____) Days prior to COE	
K	2B	Assignment Request	17 (or _____) Days after Acceptance	
L	3	CONTINGENCIES	TIME TO REMOVE CONTINGENCIES	CONTINGENCY REMOVED:
L(1)	8A	Loan(s)	17 (or _____) Days after Acceptance	<input type="checkbox"/> No loan contingency
L(2)	8B	Appraisal: Appraisal contingency based upon appraised value at a minimum of purchase price or <input type="checkbox"/> \$ _____	17 (or _____) Days after Acceptance	<input type="checkbox"/> No appraisal contingency Removal of appraisal contingency does not eliminate appraisal cancellation rights in FVAC.
L(3)	8C, 15	Investigation of Property Informational Access to Property Buyer's right to access the Property for informational purposes only is NOT a contingency, does NOT create cancellation rights, and applies even if contingencies are removed.	17 (or _____) Days after Acceptance 17 (or _____) Days after Acceptance	REMOVAL OR WAIVER OF CONTINGENCY: Any contingency in L(1)-L(7) may be removed or waived by checking the applicable box above or attaching a Contingency Removal (C.A.R. Form CR) and checking the applicable box therein. Removal or Waiver at time of offer is against Agent advice. See paragraph 8H. <input type="checkbox"/> CR attached
L(4)	8D, 17A	Review of Seller Documents	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(5)	8E, 16A	Preliminary ("Title") Report	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(6)	8F, 11C	Common Interest Disclosures required by Civil Code § 4525 or this Agreement	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(7)	8G, 8B(6)	Review of leased or liened items (Such as for solar panels or propane tanks or PACE or HERO liens)	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(8)	8J	Sale of Buyer's Property Sale of Buyer's property is not a contingency, UNLESS checked here: <input type="checkbox"/> C.A.R. Form COP attached		
M		Possession	Time for Performance	Additional Terms:
M(1)		Vacant Units; Tenant Occupied Units being delivered subject to tenant rights	Upon notice of recordation On COE date	<input type="checkbox"/> Tenant Occupied Unit(s) to be delivered vacant (#s _____)
M(2)	7C	Seller Occupied	Upon notice of recordation, OR <input type="checkbox"/> 6 PM or <input type="checkbox"/> AM/ <input type="checkbox"/> PM COE date or, if checked below, <input type="checkbox"/> _____ days after COE (29 or fewer days) <input type="checkbox"/> _____ days after COE (30 or more days)	C.A.R. Form SIP attached if 29 or fewer days. C.A.R. Form CL attached if 30 or more days.
N		Documents/Fees/Compliance	Time for Performance	
N(1)	16A	Seller Delivery of Documents	7 (or _____) Days after Acceptance	
N(2)	22B	Sign and return Escrow Holder General Provisions, Supplemental Instructions	5 (or _____) Days after receipt	
N(3)	11C(2)	Time to pay fees for ordering OA Documents	3 (or _____) Days after Acceptance	
N(4)	10B(1)	Install smoke alarm(s), CO detector(s), water heater bracing	7 (or _____) Days after Acceptance	
N(5)	35	Evidence of representative authority	3 Days after Acceptance	
O	Intentionally Left Blank			

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Buyer's Initials JEHSeller's Initials JEH

COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 2 OF 17)

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571 Broadway



Property Address: 971 Broadway Ave, Atwater, CA 95301

Date: February 18, 2022

P Items Included and Excluded				
P(1)	9	Items Included - All items specified in Paragraph 9B are included and the following, if checked: <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____		
P(2)	9	Excluded Items: <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____		
Q Allocation of Costs				
	Paragraph #	Item Description	Who Pays (If Both is checked, cost to be split equally unless Otherwise Agreed)	Additional Terms
Q(1)	10A, 11D	Natural Hazard Zone Disclosure Report, including tax information	<input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Both _____ <input type="checkbox"/> Provided by: Seller's Choice	<input checked="" type="checkbox"/> Environmental <input type="checkbox"/> Other _____
Q(2)	15B(1)(D)	Environmental Survey	<input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(3)		_____ Report	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(4)	10B(1)	Smoke alarms, CO detectors, water heater bracing	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(5)	10A, 10B(2)	Government Required Point of Sale Inspections, reports	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(6)	10B(2)(A)	Government Required Point of Sale corrective/remedial actions	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(7)	22B	Escrow Fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input checked="" type="checkbox"/> Both 1/2 Each <input type="checkbox"/> Each to pay their own fees	
Q(8)	16	Owner's title insurance policy	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input checked="" type="checkbox"/> Both 1/2 Each	Title Company (If different from Escrow Holder): Title Co
Q(9)		Buyer's Lender title insurance policy	Buyer	Unless Otherwise Agreed, Buyer shall purchase any title insurance policy insuring Buyer's lender.
Q(10)		County transfer tax, fees	<input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(11)		City transfer tax, fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(12)	11C(2)	OA fee for preparing disclosures	Seller	
Q(13)		OA certification fee	Buyer	
Q(14)		OA transfer fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	Unless Otherwise Agreed, Seller shall pay for separate OA move-out fee and Buyer shall pay for separate OA move-in fee. Applies if separately billed or itemized with cost in transfer fee.
Q(15)		Private transfer fees	Seller, or if checked, <input type="checkbox"/> Buyer <input type="checkbox"/> Both _____	
Q(16)		_____ fees or costs	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(17)		_____ fees or costs	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
R	Additional Tenancy Documents <input type="checkbox"/> Income and Expense Statements <input type="checkbox"/> Tenant Estoppel Certificate			
S	OTHER TERMS: _____ _____ _____			

## 4. PROPERTY ADDENDA AND ADVISORIES: (check all that apply)

## A. PROPERTY TYPE ADDENDA: This Agreement is subject to the terms contained in the Addenda checked below:

- ☐ Probate Agreement Purchase Addendum (C.A.R. Form PA-PA)  
☐ Other \_\_\_\_\_

## B. OTHER ADDENDA: This Agreement is subject to the terms contained in the Addenda checked below:

- ☐ Addendum # \_\_\_\_\_ (C.A.R. Form ADM) ☐ Assumed Financing Addendum (C.A.R. Form AFA)  
☐ Short Sale Addendum (C.A.R. Form SSA)  
☐ Back Up Offer Addendum (C.A.R. Form BUO) ☐ Court Confirmation Addendum (C.A.R. Form CCA)  
☐ Septic, Well, Property Monument and Propane Addendum (C.A.R. Form SWPI)  
☐ Buyer Intent to Exchange Addendum (C.A.R. Form BXA) ☐ Seller Intent to Exchange Addendum (C.A.R. Form SXA)  
☐ Other \_\_\_\_\_ ☐ Other \_\_\_\_\_

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Buyer's Initials

J.H.

Seller's Initials

J.H.



COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 3 OF 17)

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971 Broadway



Property Address: 971 Broadway Ave, Alwater, CA 95301

Date: February 18, 2022

C. **BUYER AND SELLER ADVISORIES:** (Note: All Advisories below are provided for reference purposes only and are not intended to be incorporated into this Agreement.)

☒ Buyer's Investigation Advisory (C.A.R. Form BIA)  
☒ Wire Fraud Advisory (C.A.R. Form WFA)

☒ Fair Housing and Discrimination Advisory (C.A.R. Form FHDA)  
☒ Cal. Consumer Privacy Act Advisory (C.A.R. Form CCPA)

(Parties may also receive a privacy disclosure from their own Agent.)

☐ Wildfire Disaster Advisory (C.A.R. Form WFDA)  
☐ Trust Advisory (C.A.R. Form TA)  
☐ REO Advisory (C.A.R. Form REO)

☐ Statewide Buyer and Seller Advisory (C.A.R. Form SBBA)  
☐ Short Sale Information and Advisory (C.A.R. Form SSIA)  
☐ Probate Advisory (C.A.R. Form PA)

Other: \_\_\_\_\_

Other: \_\_\_\_\_

5. **ADDITIONAL TERMS AFFECTING PURCHASE PRICE:** Buyer represents that funds will be good when deposited with Escrow Holder.

A. **DEPOSIT:**

- (1) **INITIAL DEPOSIT:** Buyer shall deliver deposit directly to Escrow Holder. If a method other than wire transfer is specified in paragraph 3D(1) and such method is unacceptable to Escrow Holder, then upon notice from Escrow Holder, delivery shall be by wire transfer.
- (2) **INCREASED DEPOSIT:** Increased deposit specified in paragraph 3D(2) is to be delivered to Escrow Holder in the same manner as the Initial Deposit. If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount by signing a new liquidated damages clause (C.A.R. Form DID) at the time the increased deposit is delivered to Escrow Holder.
- (3) **RETENTION OF DEPOSIT:** Paragraph 36, if initiated by all Parties or otherwise incorporated into this Agreement, specifies a remedy for Buyer's default. Buyer and Seller are advised to consult with a qualified California real estate attorney before adding any other clause specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase. Any such clause shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.

B. **ALL CASH OFFER:** If an all cash offer is specified in paragraph 3A, no loan is needed to purchase the Property. This Agreement is NOT contingent on Buyer obtaining a loan. Buyer shall, within the time specified in paragraph 3H(1), Deliver written verification of funds sufficient for the purchase price and closing costs.

C. **LOAN(S):**

- (1) **FIRST LOAN:** This loan will provide for conventional financing UNLESS FHA, VA, Seller Financing (C.A.R. Form SFA), Subject To Financing, Assumed Financing, or Other is checked in paragraph 3E(1).
- (2) **ADDITIONAL FINANCED AMOUNT:** If an additional financed amount is specified in paragraph 3E(2), that amount will provide for conventional financing UNLESS Seller Financing (C.A.R. Form SFA), or Other is checked in paragraph 3E(2).
- (3) **BUYER'S LOAN STATUS:** Buyer authorizes Seller and Seller's Authorized Agent to contact Buyer's lender(s) to determine the status of any Buyer's loan specified in paragraph 3E, or any alternate loan Buyer pursues, whether or not a contingency of this Agreement. If the contact information for Buyer's lender(s) is different from that provided under the terms of paragraph 6B, Buyer shall Deliver the updated contact information within 1 Day of Seller's request.
- (4) **ASSUMED OR SUBJECT TO FINANCING:** Seller represents that Seller is not delinquent on any payments due on any loans. If the Property is acquired subject to an existing loan, Buyer and Seller are advised to consult with legal counsel regarding the ability of an existing lender to call the loan due, and the consequences thereof.
- (5) Buyer shall, within the time specified in paragraph 3E(1), Deliver to Seller written notice (C.A.R. Form RR or AEA) (i) of any lender requirements that Buyer requests Seller to pay for or otherwise correct or (ii) that there are no lender requirements. Notwithstanding Seller's agreement that Buyer may obtain FHA or VA financing, Seller has no obligation to pay or satisfy any or all lender requirements unless agreed in writing.

D. **BALANCE OF PURCHASE PRICE (DOWN PAYMENT)** (Including all-cash funds) to be deposited with Escrow Holder pursuant to Escrow Holder instructions.

E. **LIMITS ON CREDITS TO BUYER:** Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender, if any, and made at Close Of Escrow. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit from Seller shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

6. **ADDITIONAL FINANCING TERMS:**

A. **VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Written verification of Buyer's down payment and closing costs may be made by Buyer or Buyer's lender or loan broker pursuant to paragraph 6B.

B. **VERIFICATION OF LOAN APPLICATIONS:** Buyer shall Deliver to Seller, within the time specified in paragraph 3H(3) a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3E. If any loan specified in paragraph 3E is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate.

C. **BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including, but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price, and to sell to Buyer in reliance on Buyer's specified financing. Buyer shall pursue the financing specified in this Agreement, even if Buyer also elects to pursue an alternative form of financing. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in this Agreement but shall not interfere with closing at the purchase price on the COE date (paragraph 3B) even if based upon alternate financing. Buyer's inability to obtain alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

7. **CLOSING AND POSSESSION:**

A. **OCCUPANCY:** Buyer intends to occupy the Property as indicated in paragraph 3E(3). Occupancy may impact available financing.

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Buyer's Initials JEL

Seller's Initials GBA



**COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 4 OF 17)**

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971 Broadway

**B. CONDITION OF PROPERTY ON CLOSING:**

- (1) Unless Otherwise Agreed: (i) the Property shall be delivered "As-Is" in its PRESENT physical condition as of the date of Acceptance; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow or at the time possession is delivered to Buyer, if not on the same date. If items are not removed when possession is delivered to Buyer, all items shall be deemed abandoned. Buyer, after first Delivering to Seller written notice to remove the items within 3 Days, may pay to have such items removed or disposed of and may bring legal action, as per this Agreement, to receive reasonable costs from Seller.
  - (2) Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller and Agents may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had all required permits issued and/or finalized.
- C. SELLER REMAINING IN POSSESSION AFTER CLOSE OF ESCROW:** If Seller has the right to remain in possession after Close Of Escrow pursuant to paragraph 3M(2) or as Otherwise Agreed, (i) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; (ii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan; and (iii) consult with a qualified California real estate attorney where the Property is located to determine the ongoing rights and responsibilities of both Buyer and Seller with regard to each other, including possible tenant rights, and what type of written agreement to use to document the relationship between the Parties.
- D. At Close Of Escrow:** (i) Seller assigns to Buyer any assignable warranty rights for items included in the sale; and (ii) Seller shall Deliver to Buyer available Copies of any such warranties. Agents cannot and will not determine the assignability of any warranties.
- E. Seller shall, on Close Of Escrow unless Otherwise Agreed and even if Seller remains in possession, provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems, intranet and Internet-connected devices included in the purchase price, garage door openers, and all items included in either paragraph 3P or paragraph 9. If the Property is a condominium or located in a common interest development, Seller shall be responsible for securing or providing any such items for Association amenities, facilities, and access. Buyer may be required to pay a deposit to the Owners' Association ("OA") to obtain keys to accessible OA facilities.**

**8. CONTINGENCIES AND REMOVAL OF CONTINGENCIES:****A. LOAN(S):**

- (1) This Agreement is, unless otherwise specified in paragraph 3L(1) or an attached CR form, contingent upon Buyer obtaining the loan(s) specified. If contingent, Buyer shall act diligently and in good faith to obtain the designated loan(s). If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan and Buyer is able to satisfy lender's non-appraisal conditions for closing the loan.
- (2) Buyer is advised to investigate the insurability of the Property as early as possible, as this may be a requirement for lending. Buyer's ability to obtain insurance for the Property, including fire insurance, is part of Buyer's investigation of Property contingency. Failure of Buyer to obtain insurance may justify cancellation based on the investigation contingency but not the loan contingency.
- (3) Buyer's contractual obligations regarding deposit, balance of down payment and closing costs are not contingencies of this Agreement, unless Otherwise Agreed.
- (4) If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
- (5) **NO LOAN CONTINGENCY:** If "No loan contingency" is checked in paragraph 3L(1), obtaining any loan specified is NOT a contingency of this Agreement. If Buyer does not obtain the loan specified, and as a result is unable to purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

**B. APPRAISAL:**

- (1) This Agreement is, unless otherwise specified in paragraph 3L(2) or an attached CR form, contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the amount specified in paragraph 3L(2), without requiring repairs or improvements to the Property. Appraisals are often a reliable source to verify square footage of the subject Property. However, the ability to cancel based on the measurements provided in an appraisal falls within the investigation of Property contingency. The appraisal contingency is solely limited to the value determined by the appraisal. For any cancellation based upon this appraisal contingency, Buyer shall Deliver a Copy of the written appraisal to Seller, upon request by Seller.
- (2) **NO APPRAISAL CONTINGENCY:** If "No appraisal contingency" is checked in paragraph 3L(2), then Buyer may not use the loan contingency specified in paragraph 3L(1) to cancel this Agreement if the sole reason for not obtaining the loan is that the appraisal relied upon by Buyer's lender values the property at an amount less than that specified in paragraph 3L(2). If Buyer is unable to obtain the loan specified solely for this reason, Seller may be entitled to Buyer's deposit or other legal remedies.

**C. INVESTIGATION OF PROPERTY:** This Agreement is, as specified in paragraph 3L(3), contingent upon Buyer's acceptance of the condition of, and any other matter affecting, the Property.**D. REVIEW OF SELLER DOCUMENTS:** This Agreement is, as specified in paragraph 3L(4), contingent upon Buyer's review of Seller's documents required in paragraph 16A.**E. TITLE:**

- (1) This Agreement is, as specified in paragraph 3L(5), contingent upon Buyer's ability to obtain the title policy provided for in paragraph 16G and on Buyer's review of a current Preliminary Report and items that are disclosed or observable even if not on record or not specified in the Preliminary Report, and satisfying Buyer regarding the current status of title. Buyer is advised to review all underlying documents and other matters affecting title, including, but not limited to, any documents or deeds referenced in the Preliminary Report and any plotted easements.
- (2) Buyer has 5 Days after receipt to review a revised Preliminary Report, if any, furnished by the Title Company and cancel the transaction if the revised Preliminary Report reveals material or substantial deviations from a previously provided Preliminary Report.

**F. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES (IF APPLICABLE):** This Agreement is, as specified in paragraph 3L(6), contingent upon Buyer's review of Common Interest Disclosures required by Civil Code § 4525 and under paragraph 11C ("CI Disclosures").

JSH

GPH



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- G. **BUYER REVIEW OF LEASED OR LIENED ITEMS CONTINGENCY:** Buyer's review of and ability and willingness to assume any lease, maintenance agreement or other ongoing financial obligation, or to accept the Property subject to any lien, disclosed pursuant to paragraph 9B(6), is, as specified in paragraph 3L(7), a contingency of this Agreement. Any assumption of the lease shall not require any financial obligation or contribution by Seller. Seller, after first Delivering a Notice to Buyer to Perform, may cancel this Agreement if Buyer, by the time specified in paragraph 3L(7), refuses to enter into any necessary written agreements to accept responsibility for all obligations of Seller disclosed leased or lienied items.
- H. **REMOVAL OR WAIVER OF CONTINGENCIES WITH OFFER:** Buyer shall have no obligation to remove a contractual contingency unless Seller has provided all required documents, reports, disclosures, and information pertaining to that contingency. If Buyer does remove a contingency without first receiving all required information from Seller, Buyer is relinquishing any contractual rights that apply to that contingency. If Buyer removes or waives any contingencies without an adequate understanding of the Property's condition or Buyer's ability to purchase, Buyer is acting against the advice of Agent.
- I. **REMOVAL OF CONTINGENCY OR CANCELLATION:**
- (1) For any contingency specified in paragraph 3L or 8, Buyer shall, within the applicable period specified, remove the contingency or cancel this Agreement.
  - (2) For the contingencies for review of Seller Documents, Preliminary Report, and Condominium/Planned Development Disclosures, Buyer shall, within the time specified in paragraph 3L or 5 Days after receipt of the applicable Seller Documents, Preliminary Report, or CI Disclosures, whichever occurs later, remove the applicable contingency in writing or cancel this Agreement.
  - (3) If Buyer does not remove a contingency within the time specified, Seller, after first giving Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), shall have the right to cancel this Agreement.
- J. **SALE OF BUYER'S PROPERTY:** This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer unless the Sale of Buyer's Property (C.A.R. Form COP) is checked as a contingency of this Agreement in paragraph 3L(8).
9. **ITEMS INCLUDED IN AND EXCLUDED FROM SALE:**
- A. **NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the Multiple Listing Service (MLS), flyers, marketing materials, or disclosures are NOT included in the purchase price or excluded from the sale unless specified in this paragraph or paragraph 3P or as Otherwise Agreed. Any items included herein are components of the Property and are not intended to affect the price. All items are transferred without Seller warranty.
- B. **ITEMS INCLUDED IN SALE:**
- (1) All EXISTING fixtures and fittings that are attached to the Property;
  - (2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances and appliances for which special openings or encasements have been made (whether or not included in paragraph 3P), window and door screens, awnings, shutters, window coverings (which includes blinds, curtains, drapery, shutters or any other materials that cover any portion of the window), attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment (including, but not limited to, any cleaning equipment such as motorized/automatic pool cleaners, pool nets, pool covers), garage door openers/remote controls, mailbox, in-ground landscaping, water features and fountains, water softeners, water purifiers, light bulbs (including smart bulbs) and all items specified as included in paragraph 3P, if currently existing and owned by Seller at the time of Acceptance.  
Note: If Seller does not intend to include any item specified as being included above because it is not owned by Seller, whether placed on the Property by Agent, stager, tenant, or other third party, the item should be listed as being excluded in paragraph 3P(2) or excluded by Seller in a counter offer.
  - (3) Security System includes any devices, hardware, software, or control units used to monitor and secure the Property, including but not limited to, any motion detectors, door or window alarms, and any other equipment utilized for such purpose. If checked in paragraph 3P, all such items are included in the sale, whether hard wired or not. Buyer is advised to use paragraph 3P(1) or an addendum to address more directly specific items to be included. Seller is advised to use a counter offer to address more directly any items to be excluded.
  - (4) Home Automation (Smart Home Features) includes any electronic devices and features including, but not limited to, thermostat controls, kitchen appliances not otherwise excluded, and lighting systems, that are connected (hard wired or wirelessly) to a control unit, computer, tablet, phone, or other "smart" device. Any Smart Home devices and features that are physically affixed to the real property, and also existing light bulbs, are included in the sale. Buyer is advised to use paragraph 3P(1) or an addendum to address more directly specific items to be included. Seller is advised to use a counter offer to address more directly any items to be excluded.
  - (5) Non-Dedicated Devices: All smart home and security system control devices are included in the sale, except for any non-dedicated personal computer, tablet, or phone used to control such features. Buyer acknowledges that a separate device and access to wifi or Internet may be required to operate some smart home features and Buyer may have to obtain such device after Close Of Escrow. Buyer is advised to change all passwords and ensure the security of any smart home features.
  - (6) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller, within the time specified in paragraph 3N(1), shall (i) disclose to Buyer if any item or system specified in paragraph 3P or 9B or otherwise included in the sale is leased, or not owned by Seller, or is subject to any maintenance or other ongoing financial obligation, or specifically subject to a lien or other encumbrance or loan, and (ii) Deliver to Buyer all written materials (such as lease, warranty, financing, etc.) concerning any such item.
  - (7) Seller represents that all items included in the purchase price, unless Otherwise Agreed, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to paragraph 9B(6), and (ii) are transferred without Seller warranty regardless of value. Seller shall cooperate with the identification of any software or applications and Buyer's efforts to transfer any services needed to operate any Smart Home Features or other items included in this Agreement, including, but not limited to, utilities or security systems.
  - (8) A complete inventory of all personal property of Seller currently used in the operation of the Property and included in the purchase price shall be delivered to Buyer within the time specified in paragraph 3N(1).
  - (9) Seller shall deliver title to the personal property by Bill of Sale, free of all liens and encumbrances, and without warranty of condition.
  - (10) As additional security for any note in favor of Seller for any part of the purchase price, Buyer shall execute a UCC-1 Financing Statement to be filed with the Secretary of State, covering the personal property included in the purchase, replacement thereof, and insurance proceeds.

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Buyer's Initials

*[Signature]*

Seller's Initials

*[Signature]*



COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 6 OF 17)

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- C. **ITEMS EXCLUDED FROM SALE:** Unless Otherwise Agreed, the following items are excluded from sale: (i) All items specified in paragraph 3P(2); (ii) audio and video components (such as flat screen TVs, speakers and other items) if any such item is not itself attached to the Property, even if a bracket or other mechanism attached to the component or item is attached to the Property; (iii) furniture and other items secured to the Property for earthquake or safety purposes. Unless otherwise specified in paragraph 3P(1), brackets attached to walls, floors or ceilings for any such component, furniture or item will be removed and holes or other damage shall be repaired, but not painted.
10. **ALLOCATION OF COSTS:**
- A. **INSPECTIONS, REPORTS AND CERTIFICATES:** Paragraphs 3Q(1-3), and (5) only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report. Agreements for payment of required work should be specified elsewhere in paragraph 3Q, or 3S, or in a separate agreement (such as C.A.R. Forms RR, RRRR, ADM or AEA).
- B. **GOVERNMENT REQUIREMENTS AND CORRECTIVE OR REMEDIAL ACTIONS:**
- (1) **LEGALLY REQUIRED INSTALLATIONS AND PROPERTY IMPROVEMENTS:** Any required installation of smoke alarm or carbon monoxide device(s) or securing of water heater shall be completed within the time specified in paragraph 3N(4). If Buyer is to pay for these items, Buyer, as instructed by Escrow Holder, shall deposit funds into escrow or directly to the vendor completing the repair or installation. Prior to Close Of Escrow, Seller shall Deliver to Buyer written statement(s) of compliance in accordance with any Law, unless Seller is exempt. If Seller is to pay for these items and does not fulfill Seller's obligation in the time specified, and Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for Buyer's costs.
- (2) **POINT OF SALE REQUIREMENTS:**
- (A) Point of sale inspections, reports and repairs refer to any such actions required to be completed before or after Close Of Escrow that are required in order to close under any Law. Unless Parties Otherwise Agree to another time period, any such repair, shall be completed prior to final verification of Property. If Buyer agrees to pay for any portion of such repair, Buyer, shall (i) directly pay to the vendor completing the repair or (ii) provide an invoice to Escrow Holder, deposit funds into escrow sufficient to pay for Buyer's portion of such repair and request Escrow Holder pay the vendor completing the repair.
- (B) Buyer shall be provided, within the time specified in paragraph 3N(1), unless Parties Otherwise Agree to another time period, a Copy of any required government-conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of this sale of the Property.
- (3) **REINSPECTION FEES:** If any repair in paragraph 10B(1) is not completed within the time specified and the lender requires an additional inspection to be made, Seller shall be responsible for any corresponding reinspection fee. If Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for those costs.
- (4) **INFORMATION AND ADVICE ON FEATURES:**
- (A) The following installations shall be completed prior to final verification of condition unless Otherwise Agreed: (i) approved fire extinguisher(s), sprinkler(s), and hose(s), if required by law; and (ii) drain cover and anti-entrapment device or system meeting the minimum requirements permitted by the U.S. Consumer Products and Safety Commission for any pool or spa.
- (B) If Buyer is to pay for these installations, Buyer, as instructed by Escrow Holder, shall deposit funds into escrow or directly to the vendor completing the repair or installation.
- (5) **INFORMATION AND ADVICE ON REQUIREMENTS:** Buyer and Seller are advised to seek information from a knowledgeable source regarding local and State mandates and whether they are point of sale requirements or requirements of ownership. Agents do not have expertise in this area and cannot ascertain all of the requirements or costs of compliance.
11. **SELLER DISCLOSURES**
- A. **WITHHOLDING TAXES:** Buyer and Seller hereby instruct Escrow Holder to withhold the applicable required amounts to comply with federal and California withholding Laws and forward such amounts to the Internal Revenue Service and Franchise Tax Board, respectively. However, no federal withholding is required if, prior to Close Of Escrow, Seller Delivers (i) to Buyer and Escrow Holder a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law (FIRPTA); OR (ii) to a qualified substitute (usually a title company or an independent escrow company) a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law AND the qualified substitute Delivers to Buyer and Escrow Holder an affidavit signed under penalty of perjury (C.A.R. Form QS) that the qualified substitute has received the fully completed Seller's affidavit and the Seller states that no federal withholding is required; OR (iii) to Buyer other documentation satisfying the requirements under Internal Revenue Code § 1445 (FIRPTA). No withholding is required under California Law if, prior to Close Of Escrow, Escrow Holder has received sufficient documentation from Seller that no withholding is required, and Buyer has been informed by Escrow Holder.
- B. **NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Website. (Neither Seller nor Agent are required to check this website. If Buyer wants further information, Agent recommends that Buyer obtain information from this website during Buyer's investigation contingency period. Agents do not have expertise in this area.)
- C. **CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**
- (1) Seller shall, within the time specified in paragraph 3N(1), disclose to Buyer whether the Property is a condominium or is located in a planned development, other common interest development, or otherwise subject to covenants, conditions, and restrictions (C.A.R. Form SPQ or ESD).
- (2) If the Property is a condominium or is located in a planned development or other common interest development with a OA, Seller shall, within the time specified in paragraph 3N(3), order from, and pay any required fee for the following items to the OA (C.A.R. Form HOA-IR): (i) Copies of any documents required by Law (C.A.R. Form HOA-RS); (ii) disclosure of any pending or anticipated claim or litigation by or against the OA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of OA minutes for regular and special meetings; (v) the names and contact information of all OAs governing the Property; (vi) pet restrictions; and (vii) smoking restrictions ("CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the OA and any CI Disclosures in Seller's possession. Seller shall, as directed by Escrow Holder, deposit funds into escrow or direct to OA or management company to pay for any of the above.

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Buyer's Initials

Seller's Initials

COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 7 OF 17)

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- D. **NATURAL AND ENVIRONMENTAL HAZARDS:** Seller shall, within the time specified in paragraph 3N(1), if required by Law: (i) Deliver to Buyer the earthquake guide and environmental hazards booklet, and for all residential property with 1-4 units and any manufactured or mobile home built before January 1, 1960, fully complete and Deliver the Residential Earthquake Risk Disclosure Statement; and (ii) even if exempt from the obligation to provide a NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
- E. **WATER CONSERVING PLUMBING DEVICES:** Civil Code § 1101.5 requires all multi-family residential and commercial real property be equipped with water-conserving plumbing devices. Seller shall, within the time specified in paragraph 3N(1), disclose in writing whether the property includes any noncompliant plumbing fixtures. Seller may use C.A.R. Form SPQ or ESD. See C.A.R. Form WCMD for more information.
- F. **SURVEY, PLANS, AND ENGINEERING DOCUMENTS:** Seller, within the time specified in paragraph 3N(1), shall provide to Buyer, Copies of surveys, plans, specifications, and engineering documents, if any, prepared on Seller's behalf on in Seller's possession.
- G. **PERMITS:** Seller, within the time specified in paragraph 3N(1), shall provide to Buyer, if in Seller's possession, copies of all permits and approvals, certificates of occupancy, conditional use permits, development plans, and licenses and permits pertaining to the operation of the Property.
- H. **STRUCTURAL MODIFICATIONS:** Seller, within the time specified in paragraph 3N(1), shall in writing disclose to Buyer, known structural additions or alterations to, or the installation, alteration, repair or replacement of, significant components of the structure(s) upon the Property.
- I. **GOVERNMENTAL COMPLIANCE:** Within the time specified in paragraph 3N(1),  
(1) Seller shall disclose to Buyer any improvements, additions, alterations, or repairs to the Property made by Seller, or known to Seller to have been made, without required governmental permits, final inspections, and approvals  
(2) Seller shall disclose to Buyer if Seller has actual knowledge of any notice of violations of Law filed or issued against the Property.
- J. **VIOLATION NOTICES:** Within the time specified in paragraph 3N(1), Seller shall disclose any notice of violations of any Law filed or issued against the Property and actually known to Seller
- K. **KNOWN MATERIAL FACTS:** Seller shall, within the time specified in paragraph 3N(1), DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including, but not limited to, known insurance claims within the past five years, or provide Buyer with permission to contact lender to get such information (C.A.R. Form ARC), and make any and all other disclosures required by Law.
- L. **SUBSEQUENT DISCLOSURES:** In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information, or representations previously provided to Buyer, Seller shall promptly Deliver a subsequent or amended disclosure or notice, in writing, covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.
12. **TENANCY RELATED DISCLOSURES:** Within the time specified in paragraph 3N(1), and subject to Buyer's right of review, Seller shall disclose, make available or Deliver, as applicable, to Buyer, the following information:  
A. **RENTAL/SERVICE AGREEMENTS:** (i) All current leases, rental agreements, service contracts, and other agreements pertaining to the operation of the Property; (ii) A rental statement including names of tenants, rental rates, period or rental, date of last rent increase, security deposits, rental concessions, rebates or other benefits, if any, and a list of delinquent rents and their duration. Seller represents that no tenant is entitled to any rebate, concession, or other benefit, except as set forth in these documents. Seller represents that the documents to be furnished are those maintained in the ordinary and normal course of business.  
B. **INCOME AND EXPENSE STATEMENTS:** If checked in paragraph 3R, the books and records for the Property, if any, including a statement of income and expense for the 12 months preceding Acceptance, Seller represents that the books and records are those maintained in the ordinary and normal course of business and used by Seller in the computation of federal and state income tax returns.  
C. **TENANT ESTOPPEL CERTIFICATES:** If checked in paragraph 3R, Tenant Estoppel Certificates (C.A.R. Form TEC). Tenant Estoppel Certificates shall be completed by Seller or Seller's agent and delivered to tenant(s) for tenant(s) to sign and acknowledge: (i) that tenant(s)' rental or lease agreements are unmodified and in full force and effect, (or if modified, stating all such modifications); (ii) that no lessor defaults exist; and (iii) stating the amount of any prepaid rent or security deposit. Seller shall exercise good faith to obtain tenant(s)' signature(s), but Seller cannot guarantee tenant(s)' cooperation. In the event Seller cannot obtain signed Tenant Estoppel Certificates within the time specified above, Seller shall notify Buyer and provide the unsigned one that was provided to tenant(s). If, after the time specified for Seller to Deliver the TEC to Buyer, any tenant(s) sign and return a TEC to Seller, Seller shall Deliver that TEC to Buyer.  
D. **SELLER REPRESENTATIONS:** Unless otherwise disclosed under paragraph 11, paragraph 12, or under any disclosure Delivered to Buyer:  
(1) Seller represents that Seller has no actual knowledge that any tenant(s): (i) has any current pending lawsuit(s), investigation(s), inquiry(ies), action(s), or other proceeding(s) affecting the Property of the right to use and occupy it; (ii) has any unsatisfied mechanics or materialman lien(s) affecting the Property; and (iii) is the subject of a bankruptcy. If Seller receives any such notice, prior to Close Of Escrow, Seller shall immediately notify Buyer.  
(2) Seller represents that no tenant is entitled to any rebate, concessions, or other benefit, except as set forth in the rental service agreements.  
(3) Seller represents that the documents to be furnished are those maintained in the ordinary and normal course of business and the income and expense statements are and used by Seller in the computation of federal and state income tax returns.
13. **CHANGES DURING ESCROW:**  
A. Prior to Close Of Escrow, Seller may engage in the following acts ("Proposed Changes"), subject to Buyer's rights in paragraph 13B: (i) rent or lease any vacant unit or other part of the premises; (ii) alter, modify, or extend any existing rental or lease agreement; (iii) enter into, alter, modify, or extend any service contract(s); or (iv) change the status of the condition of the Property.  
B. (1) At least 7 Days prior to any Proposed Changes, Seller shall Deliver written notice to Buyer of such Proposed Change  
(2) Within 5 Days after receipt of such notice, Buyer, in writing, may give Seller notice of Buyer's objection to the Proposed Changes in which case Seller shall not make the Proposed Changes.
14. **SECURITY DEPOSITS:** Security deposits, if any, to the extent they have not been applied by Seller in accordance with any rental agreement and current Law, shall be transferred to Buyer on Close Of Escrow. Seller shall notify each tenant, in compliance with the California Civil Code.

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Buyer's Initials

Seller's Initials



COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 8 OF 17)

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Property Address: 971 Broadway Ave, Atwater, CA 95301

Date: February 18, 2022

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

- A. Buyer shall, within the time specified in paragraph 3L(3), have the right, at Buyer's expense unless Otherwise Agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations").
- B. Buyer Investigations include, but are not limited to:
- (1) Inspections regarding any physical attributes of the Property or items connected to the Property, such as:
    - (A) A general inspection.
    - (B) An inspection for lead-based paint and other lead-based paint hazards.
    - (C) An inspection specifically for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2).
    - (D) A phase one environmental survey, paid for and obtained by the party indicated in paragraph 3Q(2). If Buyer is responsible for obtaining and paying for the survey, Buyer shall act diligently and in good faith to obtain such survey within the time specified in paragraph 3L(3). Buyer has 5 Days after receiving the survey to remove this portion of the Buyer's Investigation contingency.
  - (2) All other Buyer Investigations, such as insurance, not specified above. See, Buyer's Investigation Advisory (C.A.R. Form BIA) for more.
  - (3) A review of reports, disclosures or Information prepared by or for Seller and Delivered to Buyer pursuant to paragraphs 3, 10, 11, 12, and 16A.
- C. Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations, except for minimally invasive testing required to prepare a Pest Control Report, which shall not include any holes or drilling through stucco or similar material; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- D. Seller shall make the Property available for all Buyer Investigations. Seller is not obligated to move any existing personal property. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is delivered to Buyer. Buyer shall, (i) by the time specified in paragraph 3L(3), complete Buyer Investigations and satisfy themselves as to the condition of the Property, and either remove the contingency or cancel this Agreement, and (ii) by the time specified in paragraph 3L(3) or 3 Days after receipt of any Investigation report, whichever is later, give Seller at no cost, complete Copies of all such reports obtained by Buyer, which obligation shall survive the termination of this Agreement. This Delivery of Investigation reports shall not include any appraisal, except an appraisal received in connection with an FHA or VA loan.
- E. Buyer indemnify and Seller protection for entry upon the Property: Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

**16. TITLE AND VESTING:**

- A. Buyer shall, within the time specified in paragraph 3N(1), be provided a current Preliminary Report by the person responsible for paying for the title report in paragraph 3Q(8). If Buyer is responsible for paying, Buyer shall act diligently and in good faith to obtain such Preliminary Report within the time specified. The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities.
- B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing. For any lien or matter not being transferred upon sale, Seller will take necessary action to deliver title free and clear of such lien or matter.
- C. Seller shall within 7 Days after request, give Escrow Holder necessary information to clear title.
- D. Seller shall, within the time specified in paragraph 3N(1), disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- E. If Buyer is a legal entity and the Property purchase price is at least \$300,000 and the purchase price is made without a bank loan or similar form of external financing, a Geographic Targeting Order (GTO) issued by the Financial Crimes Enforcement Network, U.S. Department of the Treasury, requires title companies to collect and report certain information about the Buyer, depending on where the Property is located. Buyer agrees to cooperate with the title company's effort to comply with the GTO.
- F. Buyer shall, after Close Of Escrow, receive a recorded grant deed or any other conveyance document required to convey title (For example, for stock cooperative or tenancy in common, respectively, an assignment of stock certificate or assignment of seller's interest in the real property), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's vesting instructions. The recording document shall contain Buyer's post-closing mailing address to enable Buyer's receipt of the recorded conveyance document from the County Recorder. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.
- G. Buyer shall receive a Standard Coverage Owner's CLTA policy of title insurance. An ALTA policy or the addition of endorsements may provide greater coverage for Buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and shall pay any increase in cost.

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Buyer's Initials

*SH*

Seller's Initials

*SH*



**COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 9 OF 17)**

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971 Broadway

Property Address: 971 Broadway Ave, Atwater, CA 95301

Date: February 18, 2022

**17. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS:** The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).

**A. SELLER DELIVERY OF DOCUMENTS:** Seller shall, within the time specified in paragraph 3N(1), Deliver to Buyer all reports, disclosures and information ("Reports") for which Seller is responsible as specified in paragraphs 9B(6), 9B(8), 10, 11A, 11C, 11D, 11F-J, 11K, 12, 18A, and 16D.

**B. BUYER REVIEW OF DOCUMENTS; REPAIR REQUEST; CONTINGENCY REMOVAL OR CANCELLATION**

(1) Buyer has the time specified in paragraph 3 to perform Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to paragraph 9B(6), and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property.

(2) Buyer may, within the time specified in paragraph 3L(3), request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to Buyer's requests (C.A.R. Form RR or RRRR). If Seller does not agree or does not respond, Buyer is not contractually entitled to have the repairs or other requests made and may only cancel based on contingencies in this Agreement.

(3) Buyer shall, by the end of the times specified in paragraph 3L (or as Otherwise Agreed), Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement (C.A.R. Form CR or CC). However, if any report, disclosure, or information for which Seller is responsible is not Delivered within the time specified in paragraph 3N(1), then Buyer has 5 Days after Delivery of any such items, or the times specified in paragraph 3L, whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement. If Delivery of any Report occurs after a contractual contingency pertaining to that Report has already been waived or removed, the Delivery of the Report does not revive the contingency but there may be a right to terminate for a subsequent or amended disclosure under paragraph 11L.

(4) Continuation of Contingency: Even after the end of the time specified in paragraph 3L and before Seller cancels, if at all, pursuant to paragraph 17C, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 17C(1).

**C. SELLER RIGHT TO CANCEL:**

(1) SELLER RIGHT TO CANCEL; BUYER CONTINGENCIES: If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

(2) SELLER RIGHT TO CANCEL; BUYER CONTRACT OBLIGATIONS: Seller, after first Delivering to Buyer a Notice to Buyer to Perform, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3D(1) or 3D(2) or if the funds deposited pursuant to paragraph 3D(1) or 3D(2) are not good when deposited; (ii) Deliver updated contact information for Buyer's lender(s) as required by paragraph 5C(3); (iii) Deliver a notice of FHA or VA costs or terms, if any, as specified by paragraph 5C(5) (C.A.R. Form RR); (iv) Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by paragraph 5B or 6A; (v) Deliver a letter as required by paragraph 6B; (vi) In writing assume or accept leases or liens specified in paragraph 8G; (vii) Cooperate with the title company's effort to comply with the GTO as required by paragraph 16E; (viii) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraph 5A(2) and 36; (ix) Provide evidence of authority to Sign in a representative capacity as specified in paragraph 35; or (x) Perform any additional Buyer contractual obligation(s) included in this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees allocated to Seller in this Agreement and already paid by Escrow prior to cancellation of this Agreement and notification to Escrow.

(3) SELLER RIGHT TO CANCEL; SELLER CONTINGENCIES: Seller may cancel this Agreement by good faith exercise of any Seller contingency included in this Agreement, or Otherwise Agreed, so long as that contingency has not already been removed or waived in writing.

**D. BUYER RIGHT TO CANCEL:**

(1) BUYER RIGHT TO CANCEL; SELLER CONTINGENCIES: If, by the time specified in this Agreement, Seller does not Deliver to Buyer a removal of the applicable contingency or cancellation of this Agreement, then Buyer, after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees allocated to Seller in the Agreement and already paid by Escrow prior to cancellation of this Agreement and notification to Escrow.

(2) BUYER RIGHT TO CANCEL; SELLER CONTRACT OBLIGATIONS: If, by the time specified, Seller has not Delivered any item specified in paragraph 3N(1) or Seller has not performed any Seller contractual obligation included in this Agreement by the time specified, Buyer, after first Delivering to Seller a Notice to Seller to Perform, may cancel this Agreement.

(3) BUYER RIGHT TO CANCEL; BUYER CONTINGENCIES: Buyer may cancel this Agreement by good faith exercise of any Buyer contingency included in paragraph 8, or Otherwise Agreed, so long as that contingency has not already been removed in writing.

**E. NOTICE TO BUYER OR SELLER TO PERFORM:** The Notice to Buyer to Perform or Notice to Seller to Perform shall: (i) be in writing; (ii) be Signed by the applicable Buyer or Seller; and (iii) give the other Party at least 2 Days after Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A Notice to Buyer to Perform or Notice to Seller to Perform may not be Delivered any earlier than 2 Days prior to the Scheduled Performance Day to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 17, whether or not the Scheduled Performance Day falls on a Saturday, Sunday or legal holiday. If a Notice to Buyer to Perform or Notice to Seller to Perform is incorrectly Delivered or specifies a time less than the agreed time, the notice shall be deemed invalid and void and Seller or Buyer shall be required to Deliver a new Notice to Buyer to Perform or Notice to Seller to Perform with the specified timeframe.

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Buyer's Initials

*[Signature]*

Seller's Initials

*[Signature]*



COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 10 OF 17)

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971 Broadway



Property Address: 971 Broadway Ave, Atwater, CA 95301

Date: February 18, 2022

**F. EFFECT OF REMOVAL OF CONTINGENCIES:**

- (1) **REMOVAL OF BUYER CONTINGENCIES:** If Buyer removes any contingency or cancellation rights, unless Otherwise Agreed, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for the non-delivery of any reports, disclosures or information outside of Seller's control and for any Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.
- (2) **REMOVAL OF SELLER CONTINGENCIES:** If Seller removes any contingency or cancellation rights, unless Otherwise Agreed, Seller shall conclusively be deemed to have: (i) satisfied themselves regarding such contingency, (ii) elected to proceed with the transaction; and (iii) given up any right to cancel this Agreement based on such contingency.
- G. DEMAND TO CLOSE ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a Demand to Close Escrow (C.A.R. Form DCE). The DCE shall: (i) be Signed by the applicable Buyer or Seller; and (ii) give the other Party at least 3 Days after Delivery to close escrow. A DCE may not be Delivered any earlier than 3 Days prior to the Scheduled Performance Day for the Close Of Escrow. If a DCE is incorrectly Delivered or specifies a time less than the agreed time, the DCE shall be deemed invalid and void and Seller or Buyer shall be required to Deliver a new DCE.
- H. EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign and Deliver mutual instructions to cancel the sale and escrow and release deposits, if any, to the Party entitled to the funds, less (i) fees and costs paid by Escrow Holder on behalf of that Party, if required by this Agreement; and (ii) any escrow cancellation fee charged to that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. A release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. A Party may be subject to a civil penalty of up to \$1,000 for refusal to Sign cancellation instructions if no good faith dispute exists as to which Party is entitled to the deposited funds (Civil Code § 1057.3). Note: Neither Agents nor Escrow Holder are qualified to provide any opinion on whether either Party has acted in good faith or which Party is entitled to the deposited funds, Buyer and Seller are advised to seek the advice of a qualified California real estate attorney regarding this matter.
- 18. REPAIRS:** Repairs shall be completed prior to final verification of condition unless Otherwise Agreed. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. Buyer acknowledges that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
- 19. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property condition within the time specified in paragraph 3J, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 7B; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).
- 20. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless Otherwise Agreed, the following Items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, Seller rental payments, OA regular assessments due prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. Seller shall pay any OA special or emergency assessments due prior to Close Of Escrow. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and OA special or emergency assessments that are due after Close Of Escrow. Property will be reassessed upon change of ownership. Any supplemental tax bills delivered to Escrow Holder prior to closing shall be prorated and paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). Seller agrees all service fees, maintenance costs and utility bills will be paid current up and through the date of Close Of Escrow. TAX BILLS AND UTILITY BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.
- 21. BROKERS AND AGENTS:**
- A. COMPENSATION:** Seller or Buyer, or both, as applicable, agree to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
- B. SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Agent: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Agent; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.
- C. BROKERAGE:** Neither Buyer nor Seller has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as specified in this Agreement, in connection with any act relating to the Property, including, but not limited to, inquiries, introductions, consultations, and negotiations leading to this Agreement. Buyer and Seller each agree to indemnify and hold the other, the Brokers specified herein and their agents, harmless from and against any costs, expenses or liability for compensation claimed inconsistent with the warranty and representation in this paragraph.

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Buyer's Initials

*[Signature]*

Seller's Initials

*[Signature]*



**COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 11 OF 17)**

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971 Broadway

Property Address: 971 Broadway Ave, Atwater, CA 95301

Date: February 18, 2022

22. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:

- A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3A, 3B, 3D-G, 3N(2), 3Q, 3S, 4A, 4B, 5A(1-2) 5D, 5E, 10B(2)(A), 10B(3), 11A, 11C(2), 16 (except 16D), 17H, 20, 21A, 22, 26, 32, 33, 34, 35, 39, 40, and paragraph 3 of the Real Estate Brokers Section. If a Copy of the separate compensation agreement(s) provided for in paragraph 21A or paragraph 3 of the Real Estate Brokers Section is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned.
- B. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller shall Sign and return Escrow Holder's general provisions or supplemental instructions within the time specified in paragraph 3N(2). Buyer and Seller shall execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within 3 Days, shall pay to Escrow Holder or OA or OA management company or others any fee required by paragraphs 3, 8, 10, 11, or elsewhere in this Agreement.
- C. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within 3 Days after Acceptance. Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title Company when received from Seller, if a separate company is providing title insurance. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 11A, Escrow Holder shall deliver to Buyer, Buyer's Agent, and Seller's Agent a Qualified Substitute statement that complies with federal law. If Escrow Holder's Qualified Substitute statement does not comply with federal law, the Parties instruct escrow to withhold all applicable required amounts under paragraph 11A.
- D. Agents are not a party to the escrow except for the sole purpose of receiving compensation pursuant to paragraph 21A and paragraph 3 of the Real Estate Brokers Section. If a Copy of the separate compensation agreement(s) provided for in either of those paragraphs is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 21A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.
- E. Buyer and Seller acknowledge that Escrow Holder may require invoices for expenses under this Agreement. Buyer and Seller, upon request by Escrow Holder, within 3 Days or within a sufficient time to close escrow, whichever is sooner, shall provide any such invoices to Escrow Holder.
- F. Upon receipt, Escrow Holder shall provide Buyer, Seller, and each Agent verification of Buyer's deposit of funds pursuant to paragraph 5A(1) and 5A(2). Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify each Agent: (i) if Buyer's initial or any additional deposit or down payment is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- G. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 3 Days after mutual execution of the amendment.
23. SELECTION OF SERVICE PROVIDERS: Agents do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Agent or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
24. MULTIPLE LISTING SERVICE ("MLS"): Agents are authorized to report to the MLS that an offer has been accepted and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS. Buyer acknowledges that: (i) any pictures, videos, floor plans (collectively, "Images") or other information about the Property that has been or will be inputted into the MLS or internet portals, or both, at the instruction of Seller or in compliance with MLS rules, will not be removed after Close Of Escrow; (ii) California Civil Code § 1088(c) requires the MLS to maintain such Images and information for at least three years and as a result they may be displayed or circulated on the Internet, which cannot be controlled or removed by Seller or Agents; and (iii) Seller, Seller's Agent, Buyer's Agent, and MLS have no obligation or ability to remove such Images or information from the Internet.
25. ATTORNEY FEES AND COSTS: In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 37A.
26. ASSIGNMENT: Buyer shall have the right to assign all of Buyer's interest in this Agreement to Buyer's own trust or to any wholly owned entity of Buyer that is in existence at the time of such assignment. Otherwise, Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee. Such consent shall not be unreasonably withheld. Prior to any assignment, Buyer shall disclose to Seller the name of the assignee and the amount of any monetary consideration between Buyer and assignee. Buyer shall provide assignee with all documents related to this Agreement including, but not limited to, the Agreement and any disclosures. If assignee is a wholly owned entity or trust of Buyer, that assignee does not need to re-sign or initial all documents provided. Whether or not an assignment requires seller's consent, at the time of assignment, assignee shall deliver a letter from assignee's lender that assignee is prequalified or preapproved as specified in paragraph 6B. Should assignee fail to deliver such a letter, Seller, after first giving Assignee an Notice to Buyer to Perform, shall have the right to terminate the assignment. Buyer shall, within the time specified in paragraph 3K, Deliver any request to assign this Agreement for Seller's consent. If Buyer fails to provide the required information within this time frame, Seller's withholding of consent shall be deemed reasonable. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless Otherwise Agreed by Seller (C.A.R. Form AOA).
27. SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon, and inure to the benefit of, Buyer and Seller and their respective successors and assigns, except as otherwise provided herein.

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Buyer's Initials

*[Signature]*

Seller's Initials

*[Signature]*



COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 12 OF 17)

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971 Broadway

Property Address: 971 Broadway Ave, Atwater, CA 95301

Date: February 18, 2022

28. **ENVIRONMENTAL HAZARD CONSULTATION:** Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Agent(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Agent(s) has/have made no representation concerning the existence, testing, discovery, location, and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, in any, located on or potentially affecting the Property.
29. **AMERICANS WITH DISABILITIES ACT:** The Americans With Disabilities Act ("ADA") prohibits discrimination against individuals with disabilities. The ADA affects almost all commercial facilities and public accommodations. Residential properties are not typically covered by the ADA, but may be governed by its provisions if used for certain purposes. The ADA can require, among other things, that building be made readily accessible to the disabled. Different requirements apply to new construction, alterations to existing buildings, and removal of barriers in existing buildings. Compliance with the ADA may require significant costs. Monetary and injunctive remedies may be incurred if the Property is not in compliance. A real estate broker or agent does not have the technical expertise to determine whether a building is in compliance with ADA requirements, or to advise a principal on those requirements. Buyer and Seller are advised to contact a qualified California real estate attorney, contractor, architect, engineer, or other qualified professional of Buyer or Seller's own choosing to determine to what degree, if any, the ADA impacts that principal or this transaction.
30. **EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
31. **COPIES:** Seller and buyer each represent that Copies of all reports, certificates, approvals, and other documents that are furnished to the other are true, correct, and unaltered Copies of the original documents, if the originals are in the possession of the furnishing party.
32. **DEFINITIONS and INSTRUCTIONS:** The following words are defined terms in this Agreement, shall be indicated by initial capital letters throughout this Agreement, and have the following meaning whenever used:
- A. "Acceptance" means the time the offer or final counter offer is fully executed, in writing, by the recipient Party and is Delivered to the offering Party or that Party's Authorized Agent.
  - B. "Agent" means the Broker, salesperson, broker-associate or any other real estate licensee licensed under the brokerage firm identified in paragraph 2B.
  - C. "Agreement" means this document and any counter offers and any incorporated addenda or amendments, collectively forming the binding agreement between the Parties. Addenda and amendments are incorporated only when Signed and Delivered by all Parties.
  - D. "As-Is" condition: Seller shall disclose known material facts and defects as specified in this Agreement. Buyer has the right to inspect the Property and, within the time specified, request that Seller make repairs or take other corrective action, or exercise any contingency cancellation rights in this Agreement. Seller is only required to make repairs specified in this Agreement or as Otherwise Agreed.
  - E. "Authorized Agent" means an individual real estate licensee specified in the Real Estate Broker Section.
  - F. "C.A.R. Form" means the most current version of the specific form referenced or another comparable form agreed to by the Parties.
  - G. "Close Of Escrow", including "COE", means the date the grant deed, or other evidence of transfer of title, is recorded for any real property, or the date of Delivery of a document evidencing the transfer of title for any non-real property transaction.
  - H. "Copy" means copy by any means including photocopy, facsimile and electronic.
  - I. Counting Days is done as follows unless Otherwise Agreed: (1) The first Day after an event is the first full calendar date following the event, and ending at 11:59 pm. For example, if a Notice to Buyer to Perform (C.A.R. form NBP) is Delivered at 3 pm on the 7th calendar day of the month, or Acceptance of a counter offer is personally received at 12 noon on the 7th calendar day of the month, then the 7th is Day "0" for purposes of counting days to respond to the NBP or calculating the Close Of Escrow date or contingency removal dates and the 8th of the month is Day 1 for those same purposes. (2) All calendar days are counted in establishing the first Day after an event. (3) All calendar days are counted in determining the date upon which performance must be completed, ending at 11:59 pm on the last day for performance ("Scheduled Performance Day"). (4) After Acceptance, if the Scheduled Performance Day for any act required by this Agreement, including Close Of Escrow, lands on a Saturday, Sunday, or legal holiday, the performing party shall be allowed to perform on the next day that is not a Saturday, Sunday or legal holiday ("Allowable Performance Day"), and ending at 11:59 pm. (5) For the purposes of COE, any day that the Recorder's office in the County where the Property is located is closed, the COE shall occur on the next day the Recorder's office in that County is open. (6) COE is considered Day 0 for purposes of counting days Seller is allowed to remain in possession, if permitted by this Agreement.
  - J. "Day" or "Days" means calendar day or days. However, delivery of deposit to escrow is based on business days.
  - K. "Deliver", "Delivered" or "Delivery" of documents, unless Otherwise Agreed, means and shall be effective upon personal receipt of the document by Buyer or Seller or their Authorized Agent. Personal receipt means (i) a Copy of the document, or as applicable, link to the document, is in the possession of the Party or Authorized Agent, regardless of the Delivery method used (i.e. e-mail, text, other), or (ii) an Electronic Copy of the document, or as applicable, link to the document, has been sent to any of the designated electronic delivery addresses specified in the Real Estate Broker Section on page 16. After Acceptance, Agent may change the designated electronic delivery address for that Agent by, in writing, Delivering notice of the change in designated electronic delivery address to the other Party. Links could be, for example, to DropBox or GoogleDrive or other functionally equivalent program. If the recipient of a link is unable or unwilling to open the link or download the documents or otherwise prefers Delivery of the documents directly, Recipient of a link shall notify the sender in writing, within 3 Days after Delivery of the link (C.A.R. Form RFR). In such case, Delivery shall be effective upon Delivery of the documents and not the link. Failure to notify sender within the time specified above shall be deemed consent to receive, and Buyer opening, the document by link.
  - L. "Electronic Copy" or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
  - M. "Law" means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
  - N. "Legally Authorized Signer" means an individual who has authority to Sign for the principal as specified in paragraph 39 or paragraph 40.
  - O. "Otherwise Agreed" means an agreement in writing, signed by both Parties and Delivered to each.
  - P. "Repairs" means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
  - Q. "Sign" or "Signed" means either a handwritten or Electronic signature on an original document, Copy or any counterpart.

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Buyer's Initials

Seller's Initials

COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 13 OF 17)

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971 Broadway





Property Address: 971 Broadway Ave, Atwater, CA 95301

Date: February 18, 2022

33. **TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the terms and conditions herein. The individual Liquidated Damages and Arbitration of Disputes paragraphs are incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a Counter Offer or addendum. If at least one but not all Parties Initial, a Counter Offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance and to market the Property for backup offers after Acceptance. The Parties have read and acknowledge receipt of a Copy of the offer and agree to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing. By signing this offer or any document in the transaction, the Party Signing the document is deemed to have read the document in its entirety.
34. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as Otherwise Agreed, this Agreement shall be interpreted, and disputes shall be resolved in accordance with the Laws of the State of California. Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.
35. **LEGALLY AUTHORIZED SIGNER:** Wherever the signature or initials of the Legally Authorized Signer identified in paragraph 39 or 40 appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Legally Authorized Signer (i) represents that the entity for which that person is acting already exists and is in good standing to do business in California and (ii) shall Deliver to the other Party and Escrow Holder, as specified in paragraph 3N(5), evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code § 18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).

36. **LIQUIDATED DAMAGES**

If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. **AT THE TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM DID).**

Buyer's Initials JEH

Seller's Initials JBH

37. **MEDIATION:**

- A. The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. The mediation shall be conducted through the C.A.R. Real Estate Mediation Center for Consumers ([www.consumermediation.org](http://www.consumermediation.org)) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Agents(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. Mediation fees, if any, shall be divided equally among the Parties involved, and shall be recoverable under the prevailing party attorney fees clause. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. **THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.**
- B. **ADDITIONAL MEDIATION TERMS:** (i) Exclusions from this mediation agreement are specified in paragraph 38B; (ii) The obligation to mediate does not preclude the right of either Party to seek a preservation of rights under paragraph 38C; and (iii) Agent's rights and obligations are further specified in paragraph 38D. These terms apply even if the Arbitration of Disputes paragraph is not initialed.



**38. ARBITRATION OF DISPUTES:**

- A. The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitration shall be conducted through any arbitration provider or service mutually agreed to by the Parties, OR ☐ . The Parties also agree to arbitrate any disputes or claims with Agents(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the Parties mutually agree to a different arbitrator. Enforcement of, and any motion to compel arbitration pursuant to, this agreement to arbitrate shall be governed by the procedural rules of the Federal Arbitration Act, and not the California Arbitration Act, notwithstanding any language seemingly to the contrary in this Agreement. The Parties shall have the right to discovery in accordance with Code of Civil Procedure § 1283.05. The arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction.
- B. **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) Any matter that is within the jurisdiction of a probate, small claims or bankruptcy court; (ii) an unlawful detainer action; and (iii) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code § 2985.
- C. **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- D. **AGENTS:** Agents shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Agents(s) participating in mediation or arbitration shall not be deemed a party to this Agreement.
- E. **"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."**

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

Buyer's Initials JSHSeller's Initials JBH**39. OFFER**

- A. **EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless by the date and time specified in paragraph 3C, the offer is Signed by Seller and a Copy of the Signed offer is Delivered to Buyer or Buyer's Authorized Agent. Seller has no obligation to respond to an offer made.
- B. ☐ **ENTITY BUYERS:** (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)
- (1) One or more Buyers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or other entity.
  - (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See paragraph 35 for additional terms.
  - (3) The name(s) of the Legally Authorized Signer(s) is/are: \_\_\_\_\_
  - (4) If a trust, identify Buyer as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: \_\_\_\_\_

- C. The CPA has 17 pages. Buyer acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

**D. BUYER SIGNATURE(S):**(Signature) By [Signature] Date: 2-18-22Printed name of BUYER: Homen Properties LLC☐ Printed Name of Legally Authorized Signer: \_\_\_\_\_ Title, if applicable, \_\_\_\_\_

(Signature) By, \_\_\_\_\_ Date: \_\_\_\_\_

Printed name of BUYER: \_\_\_\_\_

☐ Printed Name of Legally Authorized Signer: \_\_\_\_\_ Title, if applicable, \_\_\_\_\_☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).



Property Address: 971 Broadway Ave, Atwater, CA 95301

Date: February 18, 2022

**40. ACCEPTANCE**

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

Seller's acceptance is subject to the attached Counter Offer or Back-Up Offer Addendum, or both, checked below, Seller shall return and include the entire agreement with any response.

- ☒ Seller Counter Offer (C.A.R. Form SCO or SMCO)  
☐ Back-Up Offer Addendum (C.A.R. Form BUO)

B. ☐ **Entity Sellers:** (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure form (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)

- (1) One or more Sellers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or other entity.
- (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See paragraph 35 for additional terms.
- (3) The name(s) of the Legally Authorized Signer(s) is/are: \_\_\_\_\_
- (4) If a trust, identify Seller as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: \_\_\_\_\_

C. The RPA has 17 pages. Seller acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

**D. SELLER SIGNATURE(S):**

(Signature) By, Merced Property & Casualty Company in liquidation Date: 2-22-22  
Printed name of SELLER: \_\_\_\_\_

☐ Printed Name of Legally Authorized Signer: \_\_\_\_\_ Title, if applicable, \_\_\_\_\_

(Signature) By, Joe Holloway Date: 2-22-22

Printed name of SELLER: Joe Holloway

☐ Printed Name of Legally Authorized Signer: \_\_\_\_\_ Title, if applicable, \_\_\_\_\_

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

OFFER NOT ACCEPTED: \_\_\_\_\_ / \_\_\_\_\_ No Counter Offer is being made. This offer was not accepted by Seller \_\_\_\_\_ (date)  
Seller's Initials



Property Address: 971 Broadway Ave, Atwater, CA 95301

Date: February 18, 2022

**REAL ESTATE BROKERS SECTION:**

1. Real Estate Agents are not parties to the Agreement between Buyer and Seller.
2. Agency relationships are confirmed as stated in paragraph 2.
3. Cooperating Broker Compensation: Seller's Broker agrees to pay Buyer's Broker and Buyer's Broker agrees to accept, out of Seller's Broker's proceeds in escrow, the amount specified in the MLS, provided Buyer's Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Seller's Broker and Buyer's Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC), Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.
4. Presentation of Offer: Pursuant to the National Association of REALTORS® Standard of Practice 1-7, If Buyer's Agent makes a written request, Seller's Agent shall confirm in writing that this offer has been presented to Seller.
5. Agents' Signatures and designated electronic delivery address:

A. Buyer's Brokerage Firm Berkshire Hathaway Drysdale Properties

Lic. # Q149908

By [Signature] OCTAVIO VALENZUELA Lic. # Q1371325

Date 2-18/22

By \_\_\_\_\_ Lic. # \_\_\_\_\_

Date \_\_\_\_\_

☐ More than one agent from the same firm represents Buyer. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.

☐ More than one brokerage firm represents Buyer. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.

Designated Electronic Delivery Address(es):

Email \_\_\_\_\_ Text # \_\_\_\_\_

Alternate:

☐ If checked, Delivery shall be made to the alternate designated electronic delivery address only.

Address 2985 G St City Merced State CA Zip 95340

B. Seller's Brokerage Firm CB Commercial, Gonella

Lic. # D1103054

By [Signature] Dan Gallagher Lic. # Q1819755

Date \_\_\_\_\_

By \_\_\_\_\_ Lic. # \_\_\_\_\_

Date \_\_\_\_\_

☐ More than one agent from the same firm represents Seller. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.

☐ More than one brokerage firm represents Seller. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.

Designated Electronic Delivery Address(es) (To be filled out by Seller's Agent):

Email \_\_\_\_\_ Text # \_\_\_\_\_

Alternate:

☐ If checked, Delivery shall be made to the alternate designated electronic delivery address only.

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**ESCROW HOLDER ACKNOWLEDGMENT:**

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, ☐ a deposit in the amount of \$ \_\_\_\_\_). Counter Offer numbers \_\_\_\_\_ and \_\_\_\_\_, and agrees to act as Escrow Holder subject to paragraph 22 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised by \_\_\_\_\_ that the date of Acceptance of the Agreement is \_\_\_\_\_

Escrow Holder Title Co Escrow # \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

Phone/Fax/E-mail \_\_\_\_\_

Escrow Holder has the following license number # \_\_\_\_\_

☐ Department of Financial Protection and Innovation, ☐ Department of Insurance, ☐ Department of Real Estate.

**PRESENTATION OF OFFER:** \_\_\_\_\_ / \_\_\_\_\_ Seller's Brokerage Firm presented this offer to Seller on \_\_\_\_\_ (date).  
Broker or Designee Initials

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Buyer's Initials [Signature]

Seller's Initials [Signature]



**COMMERCIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (CPA PAGE 17 OF 17)**

Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwtx.com

971 Broadway



## BUYER'S INVESTIGATION ADVISORY

(C.A.R. Form BIA, Revised 12/21)

Property Address 971 Broadway Ave, Atwater, CA 95301

1. **IMPORTANCE OF PROPERTY INVESTIGATION:** The physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If the professionals recommend further investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional investigations.
2. **BROKER OBLIGATIONS:** Brokers do not have expertise in all areas and therefore cannot advise you on many items, such as those listed below. If Broker gives you referrals to professionals, Broker does not guarantee their performance.
3. **YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE FOLLOWING. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.**
  - A. **GENERAL CONDITION OF THE PROPERTY, ITS SYSTEMS AND COMPONENTS:** Foundation, roof (condition, age, leaks, useful life), plumbing, heating, air conditioning, electrical, mechanical, security, pool/spa (cracks, leaks, operation), other structural and non-structural systems and components, fixtures, built-in appliances, any personal property included in the sale, and energy efficiency of the Property.
  - B. **SQUARE FOOTAGE, AGE, BOUNDARIES:** Square footage, room dimensions, lot size, age of improvements and boundaries. Any numerical statements regarding these items are APPROXIMATIONS ONLY and have not been verified by Seller and cannot be verified by Brokers. Fences, hedges, walls, retaining walls and other barriers or markers do not necessarily identify true Property boundaries.
  - C. **WOOD DESTROYING PESTS:** Presence of, or conditions likely to lead to the presence of wood destroying pests and organisms.
  - D. **SOIL STABILITY:** Existence of fill or compacted soil, expansive or contracting soil, susceptibility to slippage, settling or movement, and the adequacy of drainage.
  - E. **WATER AND UTILITIES; WELL SYSTEMS AND COMPONENTS; WASTE DISPOSAL:** Water and utility availability, use restrictions and costs. Water quality, adequacy, condition, and performance of well systems and components. The type, size, adequacy, capacity and condition of sewer and septic systems and components, connection to sewer, and applicable fees.
  - F. **ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, materials, products, or conditions (including mold (airborne, toxic or otherwise), fungus or similar contaminants).
  - G. **EARTHQUAKES AND FLOODING:** Susceptibility of the Property to earthquake/seismic hazards and propensity of the Property to flood.
  - H. **FIRE, HAZARD, AND OTHER INSURANCE:** The availability and cost of necessary or desired insurance may vary. The location of the Property in a seismic, flood or fire hazard zone, and other conditions, such as the age of the Property and the claims history of the Property and Buyer, may affect the availability and need for certain types of insurance. Buyer should explore insurance options early as this information may affect other decisions, including the removal of loan and inspection contingencies.
  - I. **BUILDING PERMITS, ZONING, GOVERNMENTAL REQUIREMENTS, AND ADDRESS:** Permits, inspections, certificates, zoning, other governmental limitations, restrictions, and requirements affecting the current or future use of the Property, its development or size. Postal/mailing address and zip code may not accurately reflect the city which has jurisdiction over the property.
  - J. **RENTAL PROPERTY RESTRICTIONS:** The State, some counties, and some cities 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.

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BIA REVISED 12/21 (PAGE 1 OF 2)



### BUYER'S INVESTIGATION ADVISORY (BIA PAGE 1 OF 2)

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GCTAYO VALENZUELA

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Fax: 209.358.2356  
www.hard.com

971 Broadway

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

Buyer [Signature] Homen Properties LLC Date 2-18-22  
Buyer \_\_\_\_\_ Date \_\_\_\_\_

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BUYER'S INVESTIGATION ADVISORY (BIA PAGE 2 OF 2)

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571 Broadway



CALIFORNIA  
ASSOCIATION  
OF REALTORS®

# ADDENDUM No. 1

(C.A.R. Form ADM, Revised 12/21)

The following terms and conditions are hereby incorporated in and made a part of the Purchase Agreement, OR ☐ 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 CPA

dated February 18, 2022, on property known as 871 Broadway Ave

in which Atwater, CA 95301 ("Property/Premises"),

and Homen Properties LLC is referred to as ("Buyer/Tenant")

is referred to as ("Seller/Landlord").

Buyer/Tenant and Seller/Landlord are referred to as the "Parties,"

All Existing Office Equipment In Building To Be Included In Sale.

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

Buyer/Tenant [Signature] Date 2-18-22

Homen Properties LLC

Buyer/Tenant \_\_\_\_\_ Date \_\_\_\_\_

Seller/Landlord Merced Property and Casualty Company in liquidation Date 2-22-22

Seller/Landlord Joe Holloway Date 2-22-22  
Joe Holloway

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## ADDENDUM (ADM PAGE 1 OF 1)

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Fax: 214.352.1356 www.lenswolf.com

871 Broadway





## POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER - DISCLOSURE AND CONSENT

(C.A.R. Form PRBS, Revised 12/21)

A real estate broker (Broker), whether a corporation, partnership or sole proprietorship, may represent more than one buyer or seller. This multiple representation can occur through an individual licensed as a broker or salesperson or through different individual broker's or salespersons (associate licensees) acting under the Broker's license. The associate licensees may be working out of the same or different office locations.

**Multiple Buyers:** Broker (individually or through its associate licensees) may be working with many prospective buyers at the same time. These prospective buyers may have an interest in, and make offers on, the same properties. Some of these properties may be listed with Broker and some may not. Broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not Broker represents other buyers interested in the same property.

**Multiple Sellers:** Broker (individually or through its associate licensees) may have listings on many properties at the same time. As a result, Broker will attempt to find buyers for each of those listed properties. Some listed properties may appeal to the same prospective buyers. Some properties may attract more prospective buyers than others. Some of these prospective buyers may be represented by Broker and some may not. Broker will market all listed properties to all prospective buyers whether or not Broker has another or other listed properties that may appeal to the same prospective buyers.

**Dual Agency:** If Seller is represented by Broker, Seller acknowledges that broker may represent prospective buyers of Seller's property and consents to Broker acting as a dual agent for both seller and buyer in that transaction. If Buyer is represented by Broker, buyer acknowledges that Broker may represent sellers of property that Buyer is interested in acquiring and consents to Broker acting as a dual agent for both buyer and seller with regard to that property.

In the event of dual agency, seller and buyer agree that: a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the buyer's or seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the seller's willingness to accept a price less than the listing price or the buyer's willingness to pay a price greater than the price offered; and except as set forth above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.

**Offers not necessarily confidential:** Buyer is advised that seller or listing agent may disclose the existence, terms, or conditions of buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the listing agent's marketing strategy and the instructions of the seller.

Buyer and seller understand that Broker may represent more than one buyer or more than one seller and even both buyer and seller on the same transaction and consents to such relationships.

Seller and/or Buyer acknowledges reading and understanding this Possible Representation of More Than One Buyer or Seller - Disclosure and Consent and agrees to the agency possibilities disclosed.

Seller	<u>Merced Property and Casualty Company in liquidation</u>	Date	<u>2-22-22</u>
Seller	<u>Joe Hollaway</u>	Date	<u>2-22-22</u>
Buyer	<u>Home Properties LLC</u>	Date	<u>2-18-22</u>
Buyer		Date	
Buyer's Brokerage Firm	<u>Berkshire Hathaway Drysdale Properties</u>	DRE Lic #	<u>0149908</u>
By	<u>OCTAVIO VALENZUELA</u>	DRE Lic #	<u>01371325</u>
		Date	<u>2/18/22</u>
Seller's Brokerage Firm	<u>CB Commercial, Gonella</u>	DRE Lic #	<u>01103054</u>
By	<u>Dan Gallagher</u>	DRE Lic #	<u>01819755</u>
		Date	

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### POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER (PRBS PAGE 1 OF 1)

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**CALIFORNIA CONSUMER PRIVACY ACT ADVISORY,  
DISCLOSURE AND NOTICE**  
(C.A.R. Form CCPA, Revised 12/21)

The California Consumer Privacy Act (commencing with Civil Code § 1798.100) ("CCPA") grants to California residents certain rights in their private, personal information ("PI") that is collected by companies with whom they do business. Under the CCPA, PI is defined broadly to encompass non-public records information that could reasonably be linked directly or indirectly to you. PI could potentially include photographs of, or sales information about, your property.

During the process of buying and selling real estate your PI will be collected and likely shared with others, including real estate licensees, a Multiple Listing Service, real estate internet websites, service providers, lenders, and title and escrow companies, to name several possibilities. Businesses that are covered by the CCPA are required to grant you various rights in your PI, including the right to know what PI is collected, "opt out" or stop the transfer of your PI to others, and the right to request that the business delete your PI entirely. You may get one or more notices regarding your CCPA rights from businesses you interact with in a real estate transaction. However, not all businesses that receive or share your PI are obligated to comply with the CCPA. Also, even businesses that are otherwise covered under the CCPA may have a legal obligation to maintain PI, notwithstanding your instruction to the contrary. For instance, regardless of whether they are covered by CCPA, under California law, brokers and Multiple Listing Services are required to maintain their records for 3 years. If you wish to exercise your rights under CCPA, where applicable, you should contact the respective business directly.

You can obtain more information about the CCPA and your rights under the law from the State of California Department of Justice ([oag.ca.gov/privacy/ccpa](http://oag.ca.gov/privacy/ccpa)).

I/we acknowledge receipt of a copy of this California Consumer Privacy Act Advisory, Disclosure and Notice.

Buyer/Seller/Landlord/Tenant [Signature] Date 2-18-22  
Homen Properties LLC

Buyer/Seller/Landlord/Tenant Merced Property and Casualty Company in liquidation Date 2-22-22  
by: Joe Holloway  
Joe Holloway

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**CALIFORNIA CONSUMER PRIVACY ACT ADVISORY (CCPA PAGE 1 OF 1)**

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971 Broadway



## DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)  
(C.A.R. Form AD, Revised 12/21)

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

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

### SELLER'S AGENT

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

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

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties,
- (b) A duty of honest and fair dealing and good faith,
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

### BUYER'S AGENT

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

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

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties,
- (b) A duty of honest and fair dealing and good faith,
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

### AGENT REPRESENTING BOTH SELLER AND BUYER

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

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

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

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

### SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation.

Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

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

☒ Buyer ☐ Seller ☐ Landlord ☐ Tenant 2580 Homen Properties LLC Date 2-18-22  
☐ Buyer ☒ Seller ☐ Landlord ☐ Tenant Merced Property and Casualty Company in liquidation Date 2-22-22  
 Agent Berkshire Hathaway Drysdale Properties DRE Lic. # 0149908  
 Real Estate Broker (Firm)  
 By [Signature] OCTAVIO VALENZUELA DRE Lic. # 01371325 Date 2/18/22  
 (Salesperson or Broker-Associate, if any)

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AD REVISED 12/21 (PAGE 1 OF 2)



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

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**CIVIL CODE SECTIONS 2079.13 – 2079.24 (2079.16 APPEARS ON THE FRONT)**

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

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions.

(b) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property.

(c) "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29.

(d) "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction.

(e) "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement.

(f) "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation.

(g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent.

(h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property.

(i) "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller.

(j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multifamily residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code.

(k) "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase.

(l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration.

(m) "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another.

"Seller" includes both a vendor and a lessor of real property.

(n) "Buyer's agent" means an agent who represents a buyer in a real property transaction.

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

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

2079.16. Reproduced on Page 1 of this AD form.

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

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

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

Seller's Brokerage Firm	DO NOT COMPLETE, SAMPLE ONLY	License Number _____
Is the broker of (check one): <input type="checkbox"/> the seller; or <input type="checkbox"/> both the buyer and seller. (dual agent)		
Seller's Agent	DO NOT COMPLETE, SAMPLE ONLY	License Number _____
Is (check one): <input type="checkbox"/> the Seller's Agent. (salesperson or broker associate) <input type="checkbox"/> both the Buyer's and Seller's Agent. (dual agent)		
Buyer's Brokerage Firm	DO NOT COMPLETE, SAMPLE ONLY	License Number _____
Is the broker of (check one): <input type="checkbox"/> the buyer; or <input type="checkbox"/> both the buyer and seller. (dual agent)		
Buyer's Agent	DO NOT COMPLETE, SAMPLE ONLY	License Number _____
Is (check one): <input type="checkbox"/> the Buyer's Agent. (salesperson or broker associate) <input type="checkbox"/> both the Buyer's and Seller's Agent. (dual agent)		

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

2079.18 (Repealed pursuant to AB-1289)

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

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

2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller.

(b) A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. (c) "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered.

(d) This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that 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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AD REVISED 12/21 (PAGE 2 OF 2)

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

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971 Broadway





## FAIR HOUSING & DISCRIMINATION ADVISORY

(C.A.R. Form FHDA, 10/20)

- EQUAL ACCESS TO HOUSING FOR ALL:** All housing in California is available to all persons. Discrimination as noted below is prohibited by law. Resources are available for those who have experienced unequal treatment under the law.
- FEDERAL AND STATE LAWS PROHIBIT DISCRIMINATION AGAINST IDENTIFIED PROTECTED CLASSES:**
  - FEDERAL FAIR HOUSING ACT ("FHA")** Title VIII of the Civil Rights Act; 42 U.S.C. §§ 3601-3619; Prohibits discrimination in sales, rental or financing of residential housing against persons in protected classes;
  - CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT ("FEHA")** California Government Code ("GC") §§12900-12996, 12955; 2 California Code of Regulations ("CCR") §§12005-12271; Prohibits discrimination in sales, rental or financing of housing opportunity against persons in protected classes by providers of housing accommodation and financial assistance services as related to housing;
  - CALIFORNIA UNRUH CIVIL RIGHTS ACT ("Unruh")** California Civil Code ("CC") §51; Prohibits business establishments from discriminating against, and requires full and equal accommodation, advantages, facilities, privileges, and services to persons in protected classes;
  - AMERICANS WITH DISABILITIES ACT ("ADA")** 42 U.S.C. §§12181-12189; Title III of the ADA prohibits discrimination based on disability in public accommodations; and
  - OTHER FAIR HOUSING LAWS:** Section 504 of Rehabilitation Act of 1973 29 U.S.C. §794; Ralph Civil Rights Act CC §51.7.; California Disabled Persons Act; CC §§54-55.32; any local city or county fair housing ordinances, as applicable.
- POTENTIAL LEGAL REMEDIES FOR UNLAWFUL DISCRIMINATION:** Violations of fair housing laws may result in monetary civil fines, injunctive relief, compensatory and/or punitive damages, and attorney fees and costs.
- PROTECTED CLASSES/CHARACTERISTICS:** Whether specified in Federal or State law or both, discrimination against persons if based on that person's belonging to, association with, or perceived membership to, any of the following classes or categories is prohibited.

Race	Color	Ancestry	National Origin	Religion
Sex	Sexual Orientation	Gender	Gender Identity	Gender Expression
Marital Status	Familial Status (family with a child or children under 18)	Source of Income (e.g., Section 8 Voucher)	Disability (Mental & Physical)	Medical Condition
Citizenship	Primary Language	Immigration Status	Military/Veteran Status	Age
Criminal History (non-relevant convictions)			Any arbitrary characteristic	

- THE CALIFORNIA DEPARTMENT OF REAL ESTATE REQUIRES TRAINING AND SUPERVISION TO PREVENT HOUSING DISCRIMINATION BY REAL ESTATE LICENSEES:**
  - California Business & Professions Code ("B&PC") §10170.5(a)(4) requires 3 hours of training on fair housing for DRE license renewal; Real Estate Regulation §2725(f) requires brokers who oversee salespersons to be familiar with the requirements of federal and state laws relating to the prohibition of discrimination.
  - Violation of DRE regulations or real estate laws against housing discrimination by a real estate licensee may result in the loss or suspension of the licensee's real estate license. B&PC §10177(1)(1); 10 CCR §2780.
- REALTOR® ORGANIZATIONS PROHIBIT DISCRIMINATION:** NAR Code of Ethics Article 10 prohibits discrimination in employment practices or in rendering real estate license services against any person because of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity by REALTORS®.
- WHO IS REQUIRED TO COMPLY WITH FAIR HOUSING LAWS?**

Below is a non-exclusive list of providers of housing accommodations or financial assistance services as related to housing who are most likely to be encountered in a housing transaction and who must comply with fair housing laws.

• Sellers	• Landlords	• Sublessors
• Real estate licensees	• Real estate brokerage firms	• Property managers
• Mobilehome parks	• Homeowners Associations ("HOAs");	• Banks and Mortgage lenders
• Insurance companies	• Government housing services	
- EXAMPLES OF CONDUCT THAT MAY NOT BE MOTIVATED BY DISCRIMINATORY INTENT BUT COULD HAVE A DISCRIMINATORY EFFECT:**
  - Prior to acceptance of an offer, asking for or offering buyer personal information or letters from the buyer, especially with photos. Those types of documents may inadvertently reveal, or be perceived as revealing, protected status information thereby increasing the risk of (I) actual or unconscious bias, and (II) potential legal claims against sellers and others by prospective buyers whose offers were rejected.
  - Refusing to rent (I) an upper level unit to an elderly tenant out of concern for the tenant's ability to navigate stairs or (II) a house with a pool to a person with young children out of concern for the children's safety.
- EXAMPLES OF UNLAWFUL OR IMPROPER CONDUCT BASED ON A PROTECTED CLASS OR CHARACTERISTIC:**
  - Refusing to negotiate for a sale, rental or financing or otherwise make a housing opportunity unavailable; failing to present offers due to a person's protected status;
  - Refusing or failing to show, rent, sell or finance housing; "channeling" or "steering" a prospective buyer or tenant to or away from a particular area due to that person's protected status or because of the racial, religious or ethnic composition of the neighborhood;
  - "Blockbusting" or causing "panic selling" by inducing a listing, sale or rental based on the grounds of loss of value of property, increase in crime, or decline in school quality due to the entry or prospective entry of people in protected categories into the neighborhood;
  - Making any statement or advertisement that indicates any preference, limitation, or discrimination;



- E. Inquiring about protected characteristics (such as asking tenant applicants if they are married, or prospective purchasers if they have children or are planning to start a family);
  - F. Using criminal history information before otherwise affirming eligibility, and without a legally sufficient justification;
  - G. Failing to assess financial standards based on the portion of the income responsible by a tenant who receives government subsidies (such as basing an otherwise neutral rent to income ratio on the whole rent rather than just the part of rent that is the tenant's responsibility);
  - H. Denying a home loan or homeowner's insurance;
  - I. Offering inferior terms, conditions, privileges, facilities or services;
  - J. Using different qualification criteria or procedures for sale or rental of housing such as income standards, application requirements, application fees, credit analyses, sale or rental approval procedures or other requirements;
  - K. Harassing a person;
  - L. Taking an adverse action based on protected characteristics;
  - M. Refusing to permit a reasonable modification to the premises, as requested by a person with a disability (such as refusing to allow a wheel chair bound tenant to install, at their expense, a ramp over front or rear steps, or refusing to allow a physically disabled tenant from installing, at their own expense, grab bars in a shower or bathtub);
  - N. Refusing to make reasonable accommodation in policies, rules, practices, or services for a person with a disability (such as the following, if an actual or prospective tenant with a disability has a service animal or support animal):
    - (i) Failing to allow that person to keep the service animal or emotional support animal in rental property,
    - (ii) Charging that person higher rent or increased security deposit, or
    - (iii) Failing to show rental or sale property to that person who is accompanied by the service animal or support animal, and;
  - O. Retaliating for asserting rights under fair housing laws.
10. **EXAMPLES OF POSITIVE PRACTICES:**
- A. Real estate licensees working with buyers or tenants should apply the same objective property selection criteria, such as location/neighborhood, property features, and price range and other considerations, to all prospects.
  - B. Real estate licensees should provide complete and objective information to all clients based on the client's selection criteria.
  - C. Real estate licensees should provide the same professional courtesy in responding to inquiries, sharing of information and offers of assistance to all clients and prospects.
  - D. Housing providers should not make any statement or advertisement that directly or indirectly implies preference, limitation, or discrimination regarding any protected characteristic (such as "no children" or "English-speakers only").
  - E. Housing providers should use a selection process relying on objective information about a prospective buyer's offer or tenant's application and not seek any information that may disclose any protected characteristics (such as using a summary document, e.g. C.A.R. Form SUM-MO, to compare multiple offers on objective terms).
11. **FAIR HOUSING RESOURCES:** If you have questions about your obligations or rights under the Fair Housing laws, or you think you have been discriminated against, you may want to contact one or more of the sources listed below to discuss what you can do about it, and whether the resource is able to assist you.
- A. Federal: [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp](https://www.hud.gov/program_offices/fair_housing_equal_opp)
  - B. State: <https://www.dfeh.ca.gov/housing/>
  - C. Local: local Fair Housing Council office (non-profit, free service)
  - D. DRE: <https://www.dre.ca.gov/Consumers/FileComplaint.html>
  - E. Local Association of REALTORS®. List available at: <https://www.car.org/en/contactus/rosters/localassociationroster>.
  - F. Any qualified California fair housing attorney, or if applicable, landlord-tenant attorney.
12. **LIMITED EXCEPTIONS TO FAIR HOUSING REQUIREMENTS:** No person should rely on any exception below without first seeking legal advice about whether the exception applies to their situation. Real estate licensees are not qualified to provide advice on the application of these exceptions.
- A. Legally compliant senior housing is exempt from FHA, FEHA and Unruh as related to age or familial status only;
  - B. An owner of a single-family residence who resides at the property with one lodger may be exempt from FEHA for rental purposes, PROVIDED no real estate licensee is involved in the rental;
  - C. An owner of a single-family residence may be exempt from FHA for sale or rental purposes, PROVIDED (i) no real estate licensee is involved in the sale or rental and (ii) no discriminatory advertising is used, and (iii) the owner owns no more than three single-family residences. Other restrictions apply;
  - D. An owner of residential property with one to four units who resides at the property, may be exempt from FHA for rental purposes, PROVIDED no real estate licensee is involved in the rental; and
  - E. Both FHA and FEHA do not apply to roommate situations. See, *Fair Housing Council v Roommate.com LLC*, 866 F.3d 1216 (2019).
  - F. Since both the 14th Amendment of the U.S. Constitution and the Civil Rights Act of 1866 prohibit discrimination based on race, the FHA and FEHA exemptions do not extend to discrimination based on race.

Buyer/Tenant and Seller/Landlord have read, understand and acknowledge receipt of a copy of this Fair Housing & Discrimination Advisory.

Buyer/Tenant [Signature] Homen Properties LLC Date 2-18-22  
 Buyer/Tenant \_\_\_\_\_ Date \_\_\_\_\_  
 Seller/Landlord Merced Property and Casualty Company in liquidation Date 2-22-22  
 Seller/Landlord Joe Holloway Date 2-22-22

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FHDA 10/20 (PAGE 2 OF 2)

FAIR HOUSING & DISCRIMINATION ADVISORY (FHDA PAGE 2 OF 2)

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971 Broadway





**WIRE FRAUD AND ELECTRONIC FUNDS  
TRANSFER ADVISORY**  
(C.A.R. Form WFA, Revised 12/21)

Property Address: 971 Broadway Ave, Atwater, CA 95301

("Property").

**WIRE FRAUD AND ELECTRONIC FUNDS TRANSFERS ADVISORY:**

The ability to communicate and conduct business electronically is a convenience and reality in nearly all parts of our lives. At the same time, it has provided hackers and scammers new opportunities for their criminal activity. Many businesses have been victimized and the real estate business is no exception.

While wiring or electronically transferring funds is a welcome convenience, we all need to exercise extreme caution. Emails attempting to induce fraudulent wire transfers have been received and have appeared to be legitimate. Reports indicate that some hackers have been able to intercept emailed transfer instructions, obtain account information and, by altering some of the data, redirect the funds to a different account. It also appears that some hackers were able to provide false phone numbers for verifying the wiring or funds transfer instructions. In those cases, the victim called the number provided to confirm the instructions, and then unwittingly authorized a transfer to somewhere or someone other than the intended recipient.

**ACCORDINGLY, YOU ARE ADVISED:**

1. Obtain phone numbers and account numbers only from Escrow Officers, Property Managers, or Landlords at the beginning of the transaction.
2. **DO NOT EVER WIRE OR ELECTRONICALLY TRANSFER FUNDS PRIOR TO CALLING TO CONFIRM THE TRANSFER INSTRUCTIONS. ONLY USE A PHONE NUMBER YOU WERE PROVIDED PREVIOUSLY.** Do not use any different phone number or account number included in any emailed transfer instructions.
3. Orally confirm the transfer instruction is legitimate and confirm the bank routing number, account numbers and other codes before taking steps to transfer the funds.
4. Avoid sending personal information in emails or texts. Provide such information in person or over the telephone directly to the Escrow Officer, Property Manager, or Landlord.
5. Take steps to secure the system you are using with your email account. These steps include creating strong passwords, using secure WiFi, and not using free services.

If you believe you have received questionable or suspicious wire or funds transfer instructions, immediately notify your bank, and the other party, and the Escrow Office, Landlord, or Property Manager. The sources below, as well as others, can also provide information:

Federal Bureau of Investigation: <https://www.fbi.gov/>; the FBI's IC3 at [www.ic3.gov](http://www.ic3.gov); or 310-477-6565

National White Collar Crime Center: <http://www.nw3c.org/>

On Guard Online: <https://www.onguardonline.gov/>

**NOTE:** There are existing alternatives to electronic and wired fund transfers such as cashier's checks. By signing below, the undersigned acknowledge that each has read, understands and has received a copy of this Wire Fraud and Electronic Funds Transfer Advisory.

Buyer/Tenant [Signature] Homen Properties LLC Date 2-18-22

Buyer/Tenant \_\_\_\_\_ Date \_\_\_\_\_

Seller/Landlord Merced Property and Casualty Company in liquidation Date 2-22-22

Seller/Landlord [Signature] Date 2-22-22

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WFA REVISED 12/21 (PAGE 1 OF 1)

**WIRE FRAUD AND ELECTRONIC FUNDS TRANSFER ADVISORY (WFA PAGE 1 OF 1)**

COLDWELL BANKER GONELLA REALTY, 2581 FIRST ST ATWATER CA 95301  
OCTAVIO VALENZUELA

Phone: 209.254.1564 Fax: 209.254.7356  
Produced with Lend Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 [www.lendwolf.com](http://www.lendwolf.com)

971 Broadway

# EXHIBIT B



CALIFORNIA  
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## SELLER COUNTER OFFER No. 1

May not be used as a multiple counter offer.  
(C.A.R. Form SCO, Revised 12/21)

Date 02/21/2022

This is a counter offer to the Purchase Agreement, OR ☐ Buyer Counter Offer No.           , ☐ Other            ("Offer"),  
dated 02/18/2022, on property known as 971 E. Broadway Ave., Atwater, CA 95301 ("Property"),  
between Homen Properties LLC, by Joe Homen, Manager ("Buyer"),  
and Merced Property & Casualty Company, in liquidation ("Seller").  
Buyer and Seller are referred to as the "Parties."

1. **TERMS:** The terms and conditions of the above referenced document are accepted subject to the following:
- A. The Liquidated Damages and Arbitration of Disputes paragraphs in the Offer each require initials by all Parties. If either of those paragraphs is not initialed by all Parties, that paragraph is excluded from the final agreement unless specifically referenced for inclusion in paragraph 1C of this or another Counter Offer or an addendum.
  - B. Unless otherwise agreed in writing, down payment and loan amount(s) will be adjusted in the same proportion as in the original Offer, but initial and increased deposit amount(s) shall remain unchanged from the original Offer.
  - C. **OTHER TERMS:**

See Text Overflow Addendum (C.A.R. Form TOA) paragraph 1

- D. The following attached documents are incorporated into this Seller Counter Offer when Signed and Delivered by both Parties (if both parties do not Sign and Deliver all attached addenda, then any acceptance of this Seller Counter Offer is not valid):

- ☐ Addendum No.            (C.A.R. Form ADM)
- ☐ Back Up Offer Addendum (C.A.R. Form BUD)
- ☐ Seller License to Remain in Possession Addendum (C.A.R. Form SIP) (occupancy up to 29 days)
- ☐ Seller Purchase of Replacement Property (C.A.R. Form SPRP)
- ☐ Tenant Occupied Property Addendum (C.A.R. Form TOPA)
- ☐ Residential Lease After Sale (C.A.R. Form RLAS) (occupancy for 30 or more days)
- ☐ Seller Intent to Exchange Addendum (C.A.R. Form SXA)
- ☐ Other            ☐ Other

2. **EXPIRATION:** This Seller Counter Offer shall be deemed revoked and the deposits, if any, shall be returned:
- A. Unless by 5:00 PM on the third Day after the date this Seller Counter Offer is signed in paragraph 4 (if more than one signature then, the last signature date)(or by ☐ AM/ ☐ PM on            (date)) (i) It is signed in paragraph 5 by Buyer and (ii) a copy of the Signed Seller Counter Offer is Delivered to Seller or Seller's Authorized Agent.
  - B. OR If Seller withdraws this Seller Counter Offer anytime prior to Buyer's Acceptance by communicating withdrawal to Buyer or Buyer's Agent (C.A.R. Form WOO may be used).
  - C. OR If Seller accepts another offer prior to Buyer's Acceptance of this Seller Counter Offer.
3. **MARKETING TO OTHER BUYERS:** Seller has the right to continue to offer the Property for sale. Seller has the right to accept any other offer received, prior to Acceptance of this Counter Offer by Buyer as specified in 2A and 5. In such event, Seller is advised to withdraw this Seller Counter Offer before accepting another offer.
4. **OFFER: SELLER MAKES THIS COUNTER OFFER ON THE TERMS ABOVE AND ACKNOWLEDGES RECEIPT OF A COPY. BY MAKING THIS COUNTER OFFER, ANY PREVIOUS OFFER OR COUNTER OFFER CAN NO LONGER BE ACCEPTED.** The terms and conditions of those documents are incorporated into this Seller Counter Offer unless Otherwise Agreed.

Seller Merced Property & Casualty Company, in liquidation Date             
Seller Joe Holloway Joe Holloway Date 2-22-22

5. **ACCEPTANCE:** I/WE accept the above Seller Counter Offer (If checked ☐ SUBJECT TO THE ATTACHED BUYER COUNTER OFFER) and acknowledge receipt of a Copy.
- Buyer HOMEN PROPERTIES LLC Homen Properties LLC Date 2-22-22  
Buyer Joe Homen, Manager by Joe Homen, Manager Date 2-22-22

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SCO Revised 12/21 (PAGE 1 OF 1)



## SELLER COUNTER OFFER (SCO PAGE 1 OF 1)

COLDWELL BANKER GONELLA REALTY, 3179 COLLINS DR. STE A MERCED CA 95348  
DAN GALLAGHER

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Phone: 1897217155 Fax: 1897217152  
www.lwof.com

921 E Broadway



CALIFORNIA  
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TEXT OVERFLOW ADDENDUM No. 1  
(C.A.R. Form TOA, Revised 6/16)

This addendum is given in connection with the property known as 971 E. Broadway Ave., Atwater, CA 95301

In which Homen Properties LLC, by Joe Homen, Manager ("Property"),  
and Merced Property & Casualty Company, in liquidation is referred to as ("Buyer")  
is referred to as ("Seller").

1) SCO, Paragraph 1C, Agent Other Terms:

Upon execution of a final contract between the Parties the Merced liquidation estate will apply to the Merced County Superior Court to seek approval of the Commercial Purchase Agreement in accordance with California Insurance Code 1037 (d). Purchase Agreement terms: 3. B. CLOSE OF ESCROW: Close of escrow shall be 60 days or within 15 days of Court approval whichever occurs first. 3. D (1) INITIAL DEPOSIT AMOUNT: Seller requires a deposit of 3% or \$49,995.00 which shall be deposited to escrow within 5 days of acceptance. Q.(2) Seller will not provide an Environmental Survey. Q.(7) & Q(8): Escrow and Title Co. shall be Transcounty Title, Tami Fournier. The Seller will provide the Buyer with as many CAR form disclosures as it deems necessary to comply with CAR form Commercial Purchase Agreement.

The foregoing terms and conditions are hereby incorporated in and made a part of the paragraph(s) referred to in the document to which this TOA is attached. The undersigned acknowledge receipt of a copy of this TOA.

Buyer HOMEN PROPERTIES LLC

Date 2-22-22

Homen Properties LLC

Buyer By Joe Homen MANAGER

Date 2-22-22

by Joe Homen, Manager

Seller Merced Property & Casualty Company, in liquidation

Date \_\_\_\_\_

Seller Joe Holloway

Date 2-22-22

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TOA REVISED 6/16 (PAGE 1 OF 1)

TEXT OVERFLOW ADDENDUM (TOA PAGE 1 OF 1)





# EXHIBIT C

**RECEIPT NO. 25148**

**TransCounty Title Company**  
635 West 19th Street  
Merced, CA 95340  
(209) 383-4660

Certified to be a true complete  
copy of the original hereof  
Transcounty Title Company

By: 

DATE: 2/25/2022

ESCROW NO. 22-00284-TAF

TIME: 4:34PM

ESCROW OFFICER: Tami A Fournier

**Received From: Margaret K. Homen FBO Homen Properties LLC**

THE SUM OF: *FORTY NINE THOUSAND NINE HUNDRED NINETY FIVE AND NO/100 DOLLARS*  
**( \$49,995.00 )**

RECEIVED FOR: Initial

RECEIVED BY: Tami A Fournier

COMMENTS:

☐ Received After Hours

Buyer: Homen Properties LLC

Seller: Merced Mutual Insurance

Property: 971 Broadway Ave, Atwater, CA 95301

Detail

Tender Type	Check Number	ABA Number		Amount
Cashier's Check	436034	121108441	\$	49,995.00
Total			\$	49,995.00

# F&M BANK

FARMERS & MERCHANTS BANK OF CENTRAL CALIFORNIA

## Cashier's Check

Date: 2/25/22

436034

Branch: 0085

REMITTER

MARGARET K HOMEN  
4224 TURLOCK RD

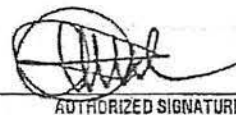
**PAY  
TO THE**

EXACTLY \*\*49,995 AND 00/100 DOLLARS

\$49,995.00

**ORDER OF** TRANS COUNTY TITLE COMPANY

ESCROW #22-00284-TAF

  
AUTHORIZED SIGNATURE

⑈436034⑈ ⑆121108441⑆ 9899987701⑈

Certified to be a true complete  
copy of the original hereof  
Transcounty Title Company

By: 

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2 MOLLY K. MOSLEY  
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*Attorneys for Applicant Insurance Commissioner*  
8 *of the State of California*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MERCED

11  
12 **INSURANCE COMMISSIONER OF THE**  
13 **STATE OF CALIFORNIA,**

14 Applicant,

15 v.

16 **MERCED PROPERTY & CASUALTY**  
17 **COMPANY, a California corporation,**

18 Respondent.

Case No. 18CV-04739

**[PROPOSED] ORDER 1) APPROVING  
LIQUIDATOR'S SALE OF MERCED  
REAL PROPERTY TO HOMEN  
PROPERTIES, LLC, 2) RELEASING  
HOMEN FROM LIABILITY AND  
ENJOINING THIRD-PARTY CLAIMS,  
AND 3) RETAINING THE COURT'S  
JURISDICTION TO RESOLVE  
RELATED DISPUTES**

Date: May 13, 2022  
Time: 8:15 a.m.  
Dept: 8  
Judge: Hon. Brian McCabe  
Action Filed: November 30, 2018

22  
23 The Application of the Insurance Commissioner of the State of California (Commissioner),  
24 in his capacity as Liquidator of Merced Property & Casualty Company (Merced), for an Order 1)  
25 Approving Liquidator's Sale of Merced Real Property to Homen Properties, LLC, 2) Releasing  
26 Homen From Liability and Enjoining Third-Party Claims, and 3) Retaining the Court's  
27 Jurisdiction to Resolve Related Disputes was heard in Department 8 of the above-entitled court  
28 on May 13, 2022, at 8:15 a.m., the Honorable Brian McCabe presiding. Having read and

1 considered the Application, the Memorandum of Points and Authorities, the Declaration of Scott  
2 Pearce submitted in support thereof, the Exhibits submitted in support thereof and, argument  
3 having been heard and good cause appearing,

4 IT IS HEREBY ORDERED that:

5 1. The Application is granted;

6 2. The Commissioner is authorized to sell the Merced real property, which consists of  
7 1) a home office building located at 971 E. Broadway Ave., Atwater, California, 95301  
8 (APN:004-010-015-000), and 2) an adjacent and contiguous parcel of vacant land (APN:004-010-  
9 014-000) located at 3349 Station Ave., Atwater, California, 95301 (hereafter, collectively referred  
10 to as “the Merced Real Property”), to Homen Properties LLC (Homen) “as-is” for \$1,665,000  
11 cash;

12 3. Homen is released from any and all claims, demands, actions or causes of action of  
13 any policyholder, contract holder, creditor, claimant (including holders of contingent claims), or  
14 stockholders of Merced arising out of or relating in any manner whatsoever to Homen’s purchase  
15 of the Merced Real Property;

16 4. Any and all policyholders, contract holders, creditors, claimants (including holders of  
17 contingent claims), or stockholders of Merced are permanently enjoined from asserting any and  
18 all claims, demands, actions or causes of action against the Merced Real Property and/or Homen  
19 arising out of or relating in any manner whatsoever to Homen’s purchase of the property;

20 5. The court shall retain exclusive jurisdiction to resolve any and all claims, demands,  
21 actions or causes of action against Homen that arise out of or relate to Homen’s purchase of the  
22 Merced Real Property and/or to any pre-closing liability, claim, or lien against the property; and

23 6. The Commissioner is authorized to take any and all action necessary to accomplish  
24 the purposes of this Order.

25  
26 Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Brian McCabe



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8 of the State of California*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MERCED

11  
12 **INSURANCE COMMISSIONER OF THE  
STATE OF CALIFORNIA,**

13 Applicant,

14 v.  
15

16 **MERCED PROPERTY & CASUALTY  
COMPANY, a California corporation,**

17 Respondent.  
18  
19  
20  
21

Case No. 18CV-04739

**PROOF OF SERVICE RE**

**NOTICE OF APPLICATION AND  
APPLICATION FOR ORDER**

**1) APPROVING LIQUIDATOR'S  
SALE OF MERCED REAL PROPERTY  
TO HOMEN PROPERTIES, LLC,  
2) RELEASING HOMEN FROM  
LIABILITY AND ENJOINING THIRD-  
PARTY CLAIMS, AND 3) RETAINING  
THE COURT'S JURISDICTION TO  
RESOLVE RELATED DISPUTES;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

**[FILED CONCURRENTLY WITH  
DECLARATION OF SCOTT PEARCE]**

Date: May 13, 2022  
Time: 8:15 a.m.  
Dept: 8  
Judge: Hon. Brian McCabe  
Action Filed: November 30, 2018

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**DECLARATION OF SERVICE BY E-MAIL**

Case Name: **Insurance Commissioner of the State of California  
v. Merced Property & Casualty Co.**

Case No.: **18CV-04739**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On April 21, 2022, I served the attached:

- **NOTICE OF APPLICATION AND APPLICATION FOR ORDER 1) APPROVING LIQUIDATOR'S SALE OF MERCED REAL PROPERTY TO HOMEN PROPERTIES, LLC, 2) RELEASING HOMEN FROM LIABILITY AND ENJOINING THIRD-PARTY CLAIMS, AND 3) RETAINING THE COURT'S JURISDICTION TO RESOLVE RELATED DISPUTES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**
- **DECLARATION OF SCOTT PEARCE IN SUPPORT OF APPLICATION FOR ORDER 1) APPROVING LIQUIDATOR'S SALE OF MERCED REAL PROPERTY TO HOMEN PROPERTIES, LLC, 2) RELEASING HOMEN FROM LIABILITY AND ENJOINING THIRD-PARTY CLAIMS, AND 3) RETAINING THE COURT'S JURISDICTION TO RESOLVE RELATED DISPUTES**
- **[PROPOSED] ORDER 1) APPROVING LIQUIDATOR'S SALE OF MERCED REAL PROPERTY TO HOMEN PROPERTIES, LLC, 2) RELEASING HOMEN FROM LIABILITY AND ENJOINING THIRD-PARTY CLAIMS, AND 3) RETAINING THE COURT'S JURISDICTION TO RESOLVE RELATED DISPUTES**

by transmitting a true copy via electronic mail.

Jeffrey D. Neumeyer, Esq.  
Sr. Vice President, General Counsel and  
Corporate Secretary  
United Heritage Financial Group  
Email to [jneumeyer@unitedheritage.com](mailto:jneumeyer@unitedheritage.com)

Brad Roeber  
Executive Director  
California Insurance Guarantee Association  
Email to [roeberb@ciga.org](mailto:roeberb@ciga.org)

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 21, 2022, at Sacramento, California.

\_\_\_\_\_  
M. Garcia  
Declarant

\_\_\_\_\_  
/s/ M. Garcia  
Signature