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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF LOS ANGELES**

19 INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,
20 Applicant,
21 v.
22 GOLDEN STATE MUTUAL LIFE
23 INSURANCE COMPANY, a California
corporation,
24 Respondent.

Case No. BS123005
Assigned to Hon. Robert H. O'Brien, Dept. 86

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
APPLICATION FOR ORDER
AUTHORIZING INSURANCE
COMMISSIONER TO SELL REAL
PROPERTY LOCATED AT 1244
SOLANO AVENUE, CITY OF VALLEJO,
CALIFORNIA; AND DECLARATIONS
THERETO**

[Filed concurrently with Notice, Proposed
Order, and Proof of Service]

Date: April 9, 2014
Time: 9:30 a.m.
Dept: 86

Epstein Turner Weiss
A Professional Corporation
633 West Fifth Street
Suite 3330
Los Angeles, CA 90071

1 **I. INTRODUCTION**

2 This Application seeks the Court's approval for Applicant Insurance Commissioner of the
3 State of California in his official statutory capacity as Liquidator (hereinafter, "Commissioner")
4 of Golden State Mutual Life Insurance Company ("Golden State") to sell the real property, owned
5 by Golden State, located at 1244 Solano Avenue in City of Vallejo, County of Solano, California
6 [APN 0059-012-060] (the "Property"), to Gerald Hinton ("Hinton"), pursuant to the terms of the
7 Real Estate Purchase Agreement and its First Amendment (collectively, "Purchase Agreement")
8 between the Commissioner and Hinton. The Purchase Agreement is attached hereto as Exhibit 2.

9 Court approval of this sale should be granted for the following reasons:

10 1. The sale price of \$63,625 as stated in the Purchase Agreement is the reasonable
11 fair market value for the Property;

12 2. Hinton is a third party purchaser not related to the Commissioner or to any person
13 involved in Golden State's liquidation;

14 3. The Property was used for many years as Golden State's district office in the City
15 of Vallejo and has been listed for sale for over three years since October 15, 2010;

16 4. The sale of the Property stops the further expenditure of Golden State's limited
17 assets on property maintenance expenses including maintenance, insurance, property taxes and
18 other costs associated with ownership and maintenance of the Property; and

19 5. The sale is consistent with the Commissioner's duty to marshal and monetize
20 Golden State's remaining assets for distribution to creditors, and is consistent with the
21 Commissioner's authority and discretion under the Court's Order of Liquidation, the Insurance
22 Code and case law.

23
24 **II. FACTUAL BACKGROUND.**

25 **A. Liquidation Order.**

26 On January 28, 2011, this Court terminated the Insurance Commissioner's status as
27 Golden State's Conservator, and ordered and appointed the Insurance Commissioner to serve as
28 Golden State's Liquidator. (Declaration of Scott Pearce ("Pearce Dec."), ¶¶ 6-7; and Order of

1 Liquidation, ¶¶ 1, 2, Exhibit 1.) The Order of Liquidation directs the Commissioner to liquidate
2 and wind up the business of Golden State, and to sell, transfer or otherwise dispose of Golden
3 State's property at its reasonable market value; provided, however, Court approval is required for
4 sales where the market value of the property involved exceeds \$20,000. (Order of Liquidation, ¶
5 8, attached hereto as Exhibit 1; see also Insurance Code § 1037(d).)

6 **B. Golden State's assets to be liquidated.**

7 Currently there are two categories of Golden State's assets to be liquidated by the
8 Commissioner: (1) real estate valued at approximately \$263,000, which includes the Property at
9 issue here, and (2) artwork and murals whose value is estimated to be at least \$603,200. The real
10 estate remains listed for sale and/or under contract for sale. (Pearce Dec., ¶ 8.)

11 **C. Purchase Agreement for the Property.**

12 On or about October 15, 2010, Golden State, through real estate turnaround company
13 Kane Corporation, commenced marketing all of Golden State's district office buildings for sale
14 including the Property. Kane Corporation interviewed local Vallejo, California real estate brokers
15 and recommended the selection of Fred Sessler Real Estate (its broker, Fred Sessler) and Elliot
16 Real Estate (its broker, Bill Elliot). At the commencement of the engagement, the Property was
17 listed for sale at the listing price recommended by the brokers based on comparable list and sale
18 data from the immediate market of \$140,000. The Property has been readily available for
19 inspection and was exposed via Fred Sessler Real Estate and Elliot Real Estate website,
20 CoStar.com, MLS, and LoopNet.com throughout the listing period. Over the last three years, the
21 Property had many showings and generated six (6) offers to purchase ranging from \$70,000 to
22 \$100,000. However, due to the amount of renovations and repairs frequently requested by
23 prospective buyers and the City of Vallejo, coupled with the lack of readily available and
24 affordable financing, each transaction was terminated as a result of Golden State's inability to
25 finalize negotiations with an end user. (Declaration of Peter Kane ("Kane Dec."), ¶ 7.)

26 On September 9, 2013, after nearly three years of active marketing, the Commissioner on
27 behalf of Golden State entered into the Purchase Agreement with the buyer Hinton, for the sale of
28 the Property at the sale price of \$70,000. Thereafter, the City of Vallejo conditioned Hinton's use

1 of the Property on Hinton installing street curbs, gutters and sidewalks. The cost of the City's
2 mandated installations was estimated to be \$12,751. At first Hinton was not agreeable to incur
3 said costs and stated his intent to terminate the transaction. However, after further negotiation,
4 the Commissioner and Hinton agreed to split the costs, with the Commissioner agreeing to lower
5 the sale price by \$6,375 to \$63,625 and Hinton agreeing to accept the Property in its "as-is"
6 condition, remove all contingencies and complete the purchase of the Property. This agreement is
7 reflected in the First Amendment to the Purchase Agreement and incorporated into the Purchase
8 Agreement. (Pearce Dec., ¶¶ 9-132; Kane Dec., ¶¶ 8-9, and Purchase Agreement and First
9 Amendment, Exhibit 2.)

10 Hinton is a third party purchaser not related to the Commissioner or to any other person
11 involved in Golden State's liquidation. (Pearce Dec., ¶ 10.)

12 **D. Market Value of the Property.**

13 After taking into account the amount of time the Property remained on the open market
14 and the continuing cost to hold the Property, the sale price of \$63,625 for the Property is the
15 reasonable fair market value for the Property, as established in the Declaration of Peter C. Kane
16 attached hereto. It is not believed that holding on to the Property for more time will materially
17 increase the fair market value of the Property. To the contrary, holding the Property under the
18 expectation that its fair market value may increase is not reasonable, based on the expenses to
19 maintain the Property which average approximately \$24,000 annually and the fact that the Vallejo
20 market for the Property remains very depressed. (Kane Dec., ¶¶ 7-9; and Pearce Dec., ¶¶ 11-13.)

21 **E. Notice of this Application.**

22 The Commissioner is not aware of any persons or entities that may be adversely affected
23 by this application. Nonetheless, the Commissioner has provided written notice of this
24 application to all persons who have routinely been provided notice of the Commissioner's Court
25 applications. Such persons include Golden State's Certificate of Contribution holders and, due to
26 prior requests to receive copies of court filings in this matter, The National Organization of Life
27 and Health Insurance Guaranty Associations ("NOLHGA") and its attorneys, Pension Benefit
28 Guaranty Corporation, attorneys for Community Impact Development II, LLC, and Pitney Bowes,

1 Inc. The above described persons and entities are listed on the Proof of Service filed concurrently
2 herewith. (Declaration of Michael R. Weiss (“Weiss Dec.”), ¶ 3; and Proof of Service.)
3

4 **III. ARGUMENT**

5 There is good cause for the Court to authorize the sale of the Property to Hinton.

6 **A. The Sale Is Consistent With The Commissioner’s Authority Set Forth In The**
7 **Order Of Liquidation.**

8 The Order of Liquidation directs the Commissioner to liquidate and wind up the business
9 of Golden State, and to sell, transfer or otherwise dispose of Golden State’s property at its
10 reasonable market value with Court approval. (Order of Liquidation, ¶¶ 1, 2 and 8, Exhibit 1; see
11 also Insurance Code § 1037(d).)

12 Here, the sale of the Property is rational, geared toward maximizing Golden State’s
13 liquidation estate value and in the best interests of Golden State’s policyholders and creditors
14 because:

15 1. The sale price of \$63,625 for the Property is the reasonable fair market
16 value for the Property. As established in the Declaration of Peter Kane, on or about October 15,
17 2010, Golden State, through Kane Corporation, commenced marketing the Property by listing it
18 with Fred Sessler Real Estate and Elliot Real Estate and its brokers Fred Sessler and Bill Elliott.
19 The original list price recommended by the brokers based on comparable list and sale data from
20 the immediate market was \$140,000. The Property has been readily available for inspection and
21 was exposed via Fred Sessler Real Estate and Elliot Real Estate websites, MLS, CoStar.com,
22 LoopNet.com and several other marketing mediums used to inform and track potential buyers
23 throughout the listing period. Over the last three years, the Property had many showings and
24 generated six (6) offers to purchase ranging from \$70,000 to \$100,000. However, due to the
25 amount of renovations and repairs frequently requested by prospective buyers and the City of
26 Vallejo, coupled with the lack of readily available and affordable financing, each transaction was
27 terminated as a result of Golden State’s inability to finalize negotiations with an end user. (Kane
28 Dec., ¶ 7; Pearce Dec., ¶¶ 9-13; and Exhibit 2.)

1 On September 9, 2013, after 3 years of active marketing, the Commissioner on behalf of
2 Golden State entered into a Purchase Agreement with the buyer Hinton for the sale of the
3 Property at the sales price of \$70,000. Thereafter, the City of Vallejo conditioned Hinton's use of
4 the Property on Hinton installing street curbs, gutters and sidewalks. The cost of the City's
5 mandated installations was estimated to be \$12,751. At first Hinton was not agreeable to incur
6 said costs and stated his intent to terminate the transaction. However, after further negotiation,
7 the Commissioner and Hinton agreed to split the costs, with the Commissioner agreeing to lower
8 the sale price by \$6,375 to \$63,625 and Hinton agreeing to accept the Property in its "as-is"
9 condition, remove all contingencies and to complete the purchase of the Property. This
10 agreement is reflected in the First Amendment to the Purchase Agreement and incorporated into
11 the Purchase Agreement. (Kane Dec., ¶¶ 7-8; Pearce Dec., ¶¶ 9-13; and Exhibit 2.)

12 Based upon the Property being exposed to the open market for approximately 3 years,
13 with postings on several websites, signage on the property and numerous Property showings, it is
14 believed that the sales price of \$63,625 for the sale of the Property to Hinton is the reasonable fair
15 market value for the Property. It is not believed and there have been no indications that holding
16 on to the Property for more time will materially increase the fair market value of the Property. To
17 the contrary, holding the Property under the expectation that its fair market value may increase is
18 not reasonable, based on the expenses to maintain the Property which average approximately
19 \$24,000 annually and the fact that the Vallejo market for the Property remains very depressed.
20 (Kane Dec., ¶ 9; Pearce Dec., ¶¶ 9-13; and Exhibit 2.)

21 2. Hinton is a third party purchaser not related to the Commissioner or to any
22 other person involved in Golden State's liquidation. (Pearce Dec., ¶ 10.)

23 3. The Property was used for Golden State's district office in the City of
24 Vallejo and has been listed for sale for three years since October 15, 2010. (Pearce Dec., ¶ 12.)

25 4. The sale of the Property stops the further expenditure of Golden State's
26 limited assets on property maintenance expenses including maintenance, insurance, property taxes
27 and any other costs associated with maintaining the Property, which have been averaging \$24,000
28 annually. Currently, the Property continues to incur such monthly costs at the expense of the

1 liquidation estate. Stopping such expenditure, in light of Golden State's liquidation and limited
2 assets, is reasonable and in the best interests of Golden State's creditors. (Pearce Dec., ¶ 13.)

3 **B. The Sale Is Consistent With The Commissioner's Authorities And Discretion**
4 **Under The Court's Order Of Liquidation, The Insurance Code And Case**
5 **Law – All Of Which Grant Broad Powers To The Insurance Commissioner**
6 **As Liquidator Of Insurance Companies.**

7 First, pursuant to the Order of Liquidation, the Commissioner is "authorized ... to do such
8 other acts as are necessary or expedient to collect, conserve, protect and/or liquidate Golden
9 State's assets, property and business." (Order of Liquidation, ¶ 5, Exhibit 1.)

10 Second, Insurance Code § 1037, entitled "Powers of commissioner as conservator or
11 liquidator," provides broad powers to the Insurance Commissioner as conservator and liquidator
12 of insurance companies and authorizes the Commissioner to sell and dispose of Golden State's
13 property. Section 1037 states in pertinent part:

14 Upon taking possession of the property and business of any person in any
15 proceeding under this article, the commissioner, exclusively and except as
16 otherwise expressly provided by this article, either as conservator or liquidator:

17 (a) [Conservation of assets; conduct of business.] Shall have authority to
18 collect all moneys due that person, and to do such other acts as are necessary or
19 expedient to collect, conserve, or protect its assets, property, and business, and to
20 carry on and conduct the business and affairs of that person or so much thereof as
21 to him or her may seem appropriate.

22
23 (d) [Acquisition and disposition of property.] Shall have authority without
24 notice, to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon,
25 or otherwise dispose of or deal with, any real or personal property of that person at
26 its reasonable market value, or, in cases other than acquisition, sale, or transfer on
27 the basis of reasonable market value, upon such terms and conditions as the
28 commissioner may deem proper. However, no transaction involving real or
personal property shall be made where the market value of the property involved
exceeds the sum of twenty thousand dollars (\$20,000) without first obtaining
permission of the court, and then only in accordance with any terms that court may
prescribe.

29
[General powers.] The enumeration, in this article, of the duties, powers
and authority of the commissioner in proceedings under this article shall not be
construed as a limitation upon the commissioner, nor shall it exclude in any

1 manner his or her right to perform and to do such other acts not herein specifically
2 enumerated, or otherwise provided for, which the commissioner may deem
3 necessary or expedient for the accomplishment or in aid of the purpose of such
proceedings.

4 Third, California case law supports the broad grant of powers accorded the Insurance
5 Commissioner to transfer assets when he is conserving, rehabilitating, and/or liquidating
6 insurance companies. For instance, in *In Re Executive Life Insurance Company* (1995) 32
7 Cal.App.4th 344, the Court of Appeal stated that:

8 The Commissioner is an officer of the state (*Caminetti v. Pac.*
9 *Mutual L. Ins. Co.* (1943) 22 Cal.2d 344, 354 [139 P.2d 908]) who, when
10 he or she is a conservator, exercises the state's police power to carry
11 forward the public interest and to protect policyholders and creditors of the
insolvent insurer. (*Carpenter v. Pacific Mut. Life Ins. Co.* (1937) 10 Cal.2d
307, 330-331 [74 P.2d 761].)

12 In exercising this power, the Commissioner is vested with broad discretion.
13 (*Commercial Nat. Bank v. Superior Court* [(1993)] 14 Cal.App.4th [393] at p.
14 402.) This discretion is subject to statutory limitations (see *id.* at p. 409) and the
15 requirement that the exercise of discretion be neither arbitrary nor improperly
16 discriminatory. (*Carpenter v. Pacific Mut. Life Ins. Co.*, *supra*, 10 Cal.2d at p.
329.) The Commissioner as conservator of the insolvent insurer is also a trustee for
the benefit of all creditors and other persons interested in the insolvency estate.
([Insurance Code] § 1057.)

17 (*In Re Executive Life, supra*, at p. 356.)

18 The Court concluded that:

19 . . . The trial court reviews the Commissioner's actions under the abuse of
20 discretion standard. (*Commercial Nat. Bank v. Superior Court, supra*, 14
21 Cal.App.4th 393, 398): was the action arbitrary, i.e. unsupported by a rational
22 basis, or is it contrary to specific statute, a breach of the fiduciary duty of the
conservator as trustee, or improperly discriminatory?

23 (*In Re Executive Life, supra*, at p. 358.)

24
25 **IV. CONCLUSION**

26 In sum, there is good cause for the Court to grant this Application. Accordingly, the
27 Commissioner requests that the Court grant this Application and issue the following orders:

28


1 1. An Order authorizing the Commissioner to sell the Property to Gerald Hinton
2 pursuant to the terms of the Purchase Agreement; and

3 2. An Order authorizing the Commissioner to take any and all actions necessary to
4 accomplish the purposes of the requested Order.

5
6 DATE: December 27, 2013

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Attorney General of California
FELIX E. LEATHERWOOD
W. DEAN FREEMAN
Supervising Deputy Attorneys General
LISA W. CHAO
Deputy Attorney General

EPSTEIN TURNER WEISS
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13 By: 
14 MICHAEL R. WEISS
15 Attorneys for Applicant
16 INSURANCE COMMISSIONER OF THE
17 STATE OF CALIFORNIA
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1 and remains insolvent in that, as of September 30, 2010, Golden State's estimated liabilities of
2 \$9,291,895 exceeded its estimated remaining assets of \$5,721,154 by over \$3.5 million
3 (\$5,721,154 in assets - \$9,291,895 in liabilities = \$-3,570,741). Attached hereto and incorporated
4 herein as Exhibit 1 is a true and correct copy of the Court's Order of Liquidation. The Order of
5 Liquidation directs the Insurance Commissioner to liquidate and wind up the business of Golden
6 State.

7 **Golden State's Assets Currently to be Liquidated.**

8 8. Currently there are two categories of Golden State's assets to be liquidated by the
9 Commissioner: (1) real estate valued at approximately \$263,000, which includes the Property at
10 issue here, and (2) artwork and murals whose value is estimated to be at least \$603,200. The real
11 estate remains listed for sale and/or under contract for sale.

12 **Purchase Agreement for Property.**

13 9. On September 9, 2013, the Commissioner on behalf of Golden State entered into a
14 Real Estate Purchase Agreement, Subject To Liquidation Court Confirmation ("Purchase
15 Agreement"), with the buyer Hinton, for the sale of the Property at the sale price of \$70,000.
16 Thereafter, the City of Vallejo conditioned Hinton's use of the Property on Hinton installing street
17 curbs, gutters and sidewalks. The cost of the City's mandated installations was estimated to be
18 \$12,751. At first Hinton was not agreeable to incur said costs and stated his intent to terminate
19 the Purchase Agreement. However, after further negotiation, the Commissioner and Hinton
20 agreed to split the costs, with the Commissioner agreeing to lower the sale price by \$6,375 to
21 \$63,625 and Hinton agreeing to accept the Property in its "as-is" condition, remove all
22 contingencies and complete the purchase of the Property. This agreement is reflected in the First
23 Amendment to the Purchase Agreement and incorporated into the Purchase Agreement. A true
24 and correct copy of the Purchase Agreement is attached hereto and incorporated herein as Exhibit
25 2.

26 10. Gerald Hinton is a third party purchaser not related to the Commissioner or to any
27 other person involved in Golden State's liquidation.

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Market Value of the Property.

11. Based on my involvement in the sale of the Property and my understanding of the sale efforts and information regarding the Property, and after taking into account the amount of time the Property remained on the open market and the continuing cost to hold the Property, I believe the sale price of \$63,625 is the reasonable fair market value for the Property. I do not believe and there has been no indication that holding on to the Property for more time will materially increase the fair market value of the Property. To the contrary, I believe that holding the Property under the expectation that its fair market value may increase is not reasonable, based on the expenses to maintain the Property which average approximately \$24,000 annually and the fact that the Vallejo market for the Property remains very depressed.

12. The Property was used for Golden State's district office in the City of Vallejo and has been listed for sale for nearly three years since October 15, 2010.

13. The sale of the Property stops the further expenditure of Golden State's limited assets on property maintenance expenses including maintenance, insurance, property taxes and any other costs associated with maintaining the Property. Currently, the Property continues to incur such monthly costs at the expense of the liquidation estate. Stopping such expenditure, in light of Golden State's liquidation and limited assets, is reasonable and in the best interests of Golden State's creditors.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 23 day of December, 2013, at San Francisco, California.



SCOTT PEARCE

1 this Application and its supporting papers and documents, I state the following:

2 7. On or about October 15, 2010, Golden State, through Kane, commenced marketing
3 all of Golden State's district office buildings for sale including the Property. I interviewed local
4 Vallejo, California real estate brokers and recommended the selection of Fred Sessler Real Estate
5 (its broker, Fred Sessler) and Elliot Real Estate (its broker, Bill Elliot). At the commencement of
6 the engagement, the Property was listed for sale at the listing price recommended by the brokers
7 based on comparable list and sale data from the immediate market of \$140,000. The Property has
8 been readily available for inspection and was exposed via Fred Sessler Real Estate and Elliot Real
9 Estate website, CoStar.com, MLS, and LoopNet.com throughout the listing period. Over the last
10 three years, the Property had many showings and generated six (6) offers to purchase ranging
11 from \$70,000 to \$100,000. However, due to the amount of renovations and repairs frequently
12 requested by prospective buyers and the City of Vallejo, coupled with the lack of readily available
13 and affordable financing, each transaction was terminated as a result of Golden State's inability to
14 finalize negotiations with an end user.

15 8. On September 9, 2013, after nearly three years of active marketing, the
16 Commissioner on behalf of Golden State entered into a Real Estate Purchase Agreement, Subject
17 To Liquidation Court Confirmation, with the buyer Hinton, for the sale of the Property at the sale
18 price of \$70,000. Thereafter, the City of Vallejo conditioned Hinton's use of the Property on
19 Hinton installing street curbs, gutters and sidewalks. The cost of the City's mandated installations
20 was estimated to be \$12,751. At first Hinton was not agreeable to incur said costs and stated his
21 intent to terminate the Purchase Agreement. However, after further negotiation, the
22 Commissioner and Hinton agreed to split the costs, with the Commissioner agreeing to lower the
23 sale price by \$6,325 to \$63,625 and Hinton agreeing to complete the purchase of the Property.
24 This agreement is reflected in the First Amendment to the Purchase Agreement and incorporated
25 into the Purchase Agreement (collectively, "Purchase Agreement") A true and correct copy of the
26 Purchase Agreement and its First Amendment are attached hereto and incorporated herein as
27 Exhibit 2.

28 9. Based upon the Property being exposed to the open market for three (3) years, with

1 postings on several websites, signage on the property and numerous Property showings. I believe
2 the sales price of \$63,625 for the sale of the Property to Gerald Hinton is the reasonable fair
3 market value for the Property. The Property continues to incur monthly costs at the expense of
4 the liquidation estate including taxes, insurance, utilities and periodic repairs, which average
5 approximately \$24,000 annually. I do not believe that holding on to the Property for more time
6 will materially increase the fair market value of the Property. To the contrary, I believe that
7 holding the Property under the expectation that its fair market value may increase is not
8 reasonable, based on the expenses to maintain the Property which average approximately \$24,000
9 annually and the fact that the Vallejo market for the Property remains very depressed.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 Executed on this 21st day of December, 2013, at Atherton, California.

13
14 
15 PETER C. KANE

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on this 27th day of December, 2013, at Los Angeles, California.

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6 MICHAEL R. WEISS

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EXHIBIT 1

ORIGINAL FILED

JAN 28 2011

RECEIVED

LOS ANGELES
SUPERIOR COURT

DEC 21 2010

DEPT 86

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14 Attorneys for Applicant
 15 Insurance Commissioner of the State of California

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 17 FOR THE COUNTY OF LOS ANGELES

18 INSURANCE COMMISSIONER OF THE
19 STATE OF CALIFORNIA,

20 Applicant,

21 v.

22 GOLDEN STATE MUTUAL LIFE
23 INSURANCE COMPANY, a California
corporation,

24 Respondent.

Case No. BS123005
Assigned to Hon. Ann I. Jones, Dept. 86

~~PROPOSED~~ ORDER OF LIQUIDATION
AND ORDERS AND INJUNCTIONS IN
AID OF LIQUIDATION FOR GOLDEN
STATE MUTUAL LIFE INSURANCE
COMPANY

Date: January 28, 2011
Time: 9:30 a.m.
Dept: 86

1 On January 28, 2011, in Department 86 of the above-entitled Court, the Honorable Ann I.
2 Jones, Judge Presiding (the "Court"), the Court held the hearing on the Court's Order to Show
3 Cause and the Motion For Order Of Liquidation And Orders And Injunctions In Aid Of
4 Liquidation For Golden State Mutual Life Insurance Company, filed by Applicant Steve Poizner,
5 Insurance Commissioner of the State of California, in his capacity as Conservator ("Conservator")
6 of Golden State Mutual Life Insurance Company in Conservation ("Golden State"). Deputy
7 Attorney General Marta L. Smith and attorney Michael R. Weiss appeared on behalf of the
8 Conservator. Other appearances, if any, are noted in the record.

9 The Court, having read and considered the Conservator's Notice of Order to Show Cause
10 and Motion, Memorandum of Points and Authorities in support of the Motion, the Declarations of
11 David E. Wilson and Michael R. Weiss, and all documents and evidence submitted, and having
12 heard and considered the arguments presented to the Court, and upon good cause shown,

13 IT IS HEREBY ORDERED that the Conservator's Motion is granted and that:

14 **A. Liquidation, Administration and Operation**

15 1. As of September 30, 2010, Golden State is insolvent and remains insolvent today,
16 and it would be futile for the Commissioner to proceed as Conservator; and therefore, sufficient
17 grounds exist in accordance with Insurance Code § 1016 for entry of an order of liquidation of
18 Golden State. (Insurance Code § 1016.)

19 2. The Commissioner's status as Conservator is terminated, he is appointed
20 Liquidator of Golden State as set forth in Insurance Code § 1016, and he is directed as Liquidator
21 to liquidate and wind up the business of Golden State and to act in all ways and exercise all
22 powers necessary for the purpose of carrying out this Order. (Insurance Code § 1016.)

23 3. Title to all of the assets of Golden State, wheresoever situated, shall remain vested
24 in the Commissioner, now as Liquidator, or his successor in office, in his official capacity as
25 such, including without limitation real and personal property, deposits, certificates of deposit,
26 bank accounts, mutual funds, securities, contracts, rights of actions, books, records and other
27 assets of any and every type and nature, wheresoever situated, presently in Golden State's
28

1 possession and/or those which may be discovered hereafter. (Insurance Code §§ 1011, 1016 and
2 1037 General Powers.)

3 4. All funds and assets, including without limitation deposits, certificates of deposit,
4 bank accounts, securities, and mutual fund shares of Golden State, in various financial depository
5 institutions, including without limitation banks, savings and loan associations, industrial loan
6 companies, mutual funds and/or stock brokerages, wheresoever situated, are subject to withdrawal
7 only upon direction or order by the Liquidator. (Insurance Code §§ 1011, 1016 and 1037 General
8 Powers.)

9 5. The Liquidator is authorized to collect all moneys due to Golden State, and to do
10 such other acts as are necessary or expedient to collect, conserve, protect and/or liquidate Golden
11 State's assets, property and business. (Insurance Code § 1037(a).)

12 6. The Conservator is authorized to collect all debts due and claims belonging to
13 Golden State and to have the authority to sell, compound, compromise, or assign, for the purpose
14 of collection upon such terms and conditions as the Liquidator deems best, any bad or doubtful
15 debts. (Insurance Code § 1037(b).)

16 7. The Liquidator is authorized to compound, compromise or in any other manner
17 negotiate settlements of claims against Golden State upon such terms and conditions as the
18 Liquidator shall deem to be most advantageous to the estate of Golden State. (Insurance Code §
19 1037(c).)

20 8. The Liquidator is authorized, without permission of the court and without notice,
21 to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of
22 or deal with, any real or personal property of Golden State at its reasonable market value, or, in
23 cases other than acquisition, sale, or transfer on the basis of reasonable market value, upon such
24 terms and conditions as the Liquidator may deem proper, provided the market value of the
25 property involved does not exceed the sum of twenty thousand dollars (\$20,000). (Insurance
26 Code § 1037(d).)

27 9. The Liquidator is authorized to transfer to a trustee or trustees, under a voting trust
28 agreement, the stock of Golden State heretofore or hereafter issued to the Liquidator in

1 connection with a rehabilitation or reinsurance agreement, or any other proceeding under
2 Insurance Code § 1010 *et seq.* (Insurance Code § 1037(e).)

3 10. The Liquidator is authorized, for the purpose of executing and performing any of
4 the powers and authority conferred upon the Liquidator under Insurance Code § 1010 *et seq.*, in
5 the name of Golden State or in the Liquidator's own name, to initiate, prosecute and/or defend any
6 and all suits and other legal proceedings, legal or equitable, and to execute, acknowledge and
7 deliver any and all deeds, assignments, releases and other instruments necessary and proper to
8 effectuate any sale of any real and personal property or other transaction in connection with the
9 administration, liquidation or other disposition of the assets of Golden State, in this or other states
10 as may appear to him necessary to carry out his functions as Liquidator. (Insurance Code §
11 1037(f) and 1037 General Powers.)

12 11. The Liquidator is authorized to divert, take possession of and secure all mail of
13 Golden State and to effect a change in the rights to use any and all post office boxes and other
14 mail collection facilities used by Golden State. (Insurance Code §§ 1011 and 1037 General
15 Powers.)

16 12. The Liquidator is authorized, without permission of the court and without notice,
17 to invest and reinvest, in such manner as the Liquidator may deem suitable for the best interests of
18 the policyholders and/or creditors of Golden State, such portions of the funds and assets of
19 Golden State in his possession as do not exceed the amount of the reserves required by law to be
20 maintained by Golden State as reserves for life insurance policies, annuity contracts,
21 supplementary agreements incidental to life business, and reserves for non-cancelable disability
22 policies, and which funds and assets are not immediately distributable to creditors, provided the
23 investment or reinvestment to be made does not exceed the sum of one hundred thousand dollars
24 (\$100,000), except that the Liquidator, without permission of the court and without notice, may
25 make investments or reinvestments in excess of \$100,000, but not exceeding \$5,000,000 per
26 investment or reinvestment, if such investments or reinvestments are part of Golden State's
27 existing investments or are made pursuant to the investment guidelines of the Commissioner's
28 Conservation & Liquidation Office including investments and reinvestments through an

1 investment pool consisting exclusively of assets from conserved and/or liquidating estates.
2 (Insurance Code § 1037(g) and General Powers.)

3 13. The Liquidator is authorized, in his discretion, without permission of the court and
4 without notice, to pay or defer payment of some or all claims, expenses, liabilities and/or
5 obligations of Golden State, in whole or in part, accruing prior and/or subsequent to his
6 appointment as Liquidator. (Insurance Code §§ 1011 and 1037 General Powers.)

7 14. The Liquidator is authorized to appoint and employ under his hand and official
8 seal, special deputy commissioners and/or legal counsel, as his agents, and to employ clerks
9 and/or assistants, and to give to each of them those powers that the Liquidator deems necessary.
10 (Insurance Code §§ 1035(a) and 1036.)

11 15. The Liquidator is authorized to fix the costs of employing special deputy
12 commissioners, legal counsel, clerks, and/or assistants, and all expenses of taking possession of,
13 conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and
14 property of Golden State, subject to the approval of the court, and to pay such costs out of the
15 assets of Golden State to the Liquidator and others including without limitation expenses, expense
16 allocations, administrative costs, administrative overhead, and costs incurred and/or allocated by
17 the Conservation & Liquidation Office, and if there are insufficient funds to pay such costs, then
18 to pay such costs out of the Insurance Fund pursuant to Insurance Code § 1035. (Insurance Code
19 §§ 1035(a), 1036 and 1037 General Powers.)

20 16. The Liquidator is authorized to assume or reject, or to modify, any executory
21 contract, including without limitation, any lease, rental or utilization contract or agreement
22 (including any schedule to any such contract or agreement), and any license or other arrangement
23 for the use of computer software of business information systems, to which Golden State is a
24 party or as to which Golden State agrees to accept an assignment of such contract, not later than
25 120 days of the date of the Order Appointing Conservator, unless such date is extended by
26 application to and further order of this Court, and if not expressly assumed by the Conservator
27 within that time then such executory contract is deemed rejected. (Insurance Code § 1037
28 General Powers.)

1 17. The Liquidator is authorized to terminate compensation arrangements with
2 employees, to enter into new compensation arrangements with employees including arrangements
3 containing retention incentives, and to hire employees on such terms and conditions as he deems
4 reasonable. (Insurance Code § 1037 General Powers.)

5 18. The Liquidator is vested with all the powers of the directors, officers and managers
6 of Golden State, whose authorities are suspended except as such powers may be re-delegated by
7 the Liquidator. (Insurance Code § 1037 General Powers.)

8 **B. Injunctions and Other Orders**

9 19. Except upon the express authorization of the Liquidator, all persons are hereby
10 enjoined, including without limitation Golden State and its officers, directors, agents, servants,
11 and employees, from the transaction of Golden State's business or disposition of its property
12 including without limitation from disposing of, using, transferring, selling, assigning, canceling,
13 alienating, hypothecating or concealing in any manner or any way, or assisting any person in any
14 of the foregoing, of the property or assets of Golden State or property or assets in the possession
15 of Golden State, of any nature or kind, including without limitation claims or causes of action,
16 until further order of this Court and further, enjoining such persons from obstructing or interfering
17 with the Liquidator's conduct of his or her duties as Liquidator. (Insurance Code §§ 1011, 1020
18 and 1037.)

19 20. All persons are enjoined from instituting or prosecuting or maintaining any action
20 at law or suit in equity including without limitation actions or proceedings to compel discovery or
21 production of documents or testimony, and matters in arbitration, and from obtaining or
22 attempting to attain preferences, judgments, foreclosures, attachments or other liens of any kind
23 or nature, against Golden State, its assets, or the Liquidator, and from attaching, executing upon,
24 foreclosing upon, redeeming of, making levy upon, or taking any other legal proceedings against
25 any of the property and/or assets of Golden State, and from doing any act interfering with the
26 conduct of said business by the Liquidator, except after an order from this Court obtained after
27 reasonable notice to the Liquidator. (Insurance Code §§ 1011, 1020 and 1037 General Powers.)

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1 21. All persons are enjoined from the sale or deed for nonpayment of taxes or
2 assessments levied by any taxing agency of property and/or assets of Golden State. (Insurance
3 Code § 1020(f).)

4 22. Except with leave of court issued after a hearing in which the Liquidator has
5 received reasonable and statutory notice, all persons are enjoined from accelerating the due date
6 of any obligation or claimed obligation, exercising any right of set-off, taking, retaining, retaking
7 or attempting to retake possession of any real or personal property, withholding or diverting any
8 rent or other obligation, and doing any act or other thing whatsoever to interfere with the
9 possession of or management by the Liquidator of the property and assets, owned or controlled,
10 by Golden State or in the possession of Golden State or in any way interfering with the Liquidator
11 or interfering in any manner during the pendency of this proceeding with the exclusive
12 jurisdiction of this Court over Golden State. (Insurance Code §§ 1020 and 1037 General Powers.)

13 23. All persons are enjoined from the waste of the assets of Golden State. (Insurance
14 Code § 1020.)

15 24. Golden State and all officers, directors, agents and employees of Golden State are
16 ordered to deliver to, and immediately make available to, the Liquidator all assets, books,
17 accounts, records, information, computers, tapes, discs, writings, other recordings of information,
18 equipment and other property of Golden State, wheresoever situated, in said person's custody or
19 control and further, and are directed the aforesaid to disclose verbally, or in writing if requested
20 by the Liquidator, the exact whereabouts of the foregoing items if such items are not in the
21 possession, custody or control of said persons. (Insurance Code §§ 1011, 1016, 1020 and 1037
22 General Powers.)

23 25. Golden State and all officers, directors, trustees, employees or agents of Golden
24 State, or any other person, firm, association, partnership, corporate parent, holding company,
25 affiliate or other entity in charge of any aspect of Golden State's affairs, either in whole or in part,
26 and including but not limited to banks, savings and loan associations, financial or lending
27 institutions, brokers, stock or mutual associations, or any parent, holding company, subsidiary or
28 affiliated corporation or any other representative acting in concert with Golden State, are ordered

1 to cooperate with the Liquidator in the performance of his or her duties. (Insurance Code § 1037
2 General Powers.)

3 26. All persons who maintain records for Golden State, pursuant to written contract or
4 any other agreement, are ordered to maintain such records and to deliver to the Liquidator such
5 records upon his request. (Insurance Code §§ 1020 and 1037 General Powers.)

6 27. All agents of Golden State, and all brokers who have done business with Golden
7 State, are ordered to make all remittances of all funds collected by them or in their hands directly
8 to the Liquidator. (Insurance Code §§ 1020 and 1037 General Powers.)

9 28. All persons having possession of any lists of policyholders, escrow holders,
10 mortgages or mortgagees of Golden State are ordered to deliver such lists to the Liquidator and all
11 persons are enjoined from using any such lists or any information contained therein without the
12 consent of the Liquidator. (Insurance Code §§ 1020 and 1037 General Powers.)

13 29. Golden State and its officers, directors, agents, servants, employees, successors,
14 assigns, affiliates, and other persons or entities under their control and all persons or entities in
15 concert or participation with Golden State, and each of them, are ordered to turn over to the
16 Liquidator all records, documentation, charts and/or descriptive materials of all funds, assets,
17 property (owned beneficially or otherwise), and all other assets of Golden State wherever situated,
18 and all books and records of accounts, title documents and other documents in their possession or
19 under their control, which relate, directly or indirectly, to assets or property owned or held by
20 Golden State or to the business or operations of Golden State. (Insurance Code §§ 1020 and 1037
21 General Powers.)

22 30. Any and all provisions of any agreement entered into by and between any third
23 party and Golden State, including by way of illustration, but not limited to, the following types of
24 agreements (as well as any amendments, assignments, or modifications thereto), are stayed, and
25 the assertion of any and all rights and remedies relating thereto are also stayed and barred, except
26 as otherwise ordered by this Court, and this Court shall retain jurisdiction over any cause of action
27 that has arisen or may otherwise arise under any such provision: financial guarantee bonds,
28 promissory notes, loan agreements, security agreements, deeds of trust, mortgages,

1 indemnification agreements, subrogation agreements, subordination agreements, pledge
2 agreements, assignments of rents or other collateral, financial statements, letters of credit, leases,
3 insurance policies, guaranties, escrow agreements, management agreements, real estate brokerage
4 and rental agreements, servicing agreements, attorney agreements, consulting agreements,
5 easement agreements, license agreements, franchise agreements, or employment contracts that
6 provide in any manner that selection, appointment or retention of a conservator, receiver or trustee
7 by any court, or entry of any order such as hereby made, shall be deemed to be, or otherwise
8 operate as, a breach, violation, event of default, termination, event of dissolution, event of
9 acceleration, insolvency, bankruptcy, or liquidation. (Insurance Code §§ 1020 and 1037 General
10 Powers).

11 **C. Creditors and Setting of Claims Bar Date**

12 31. The rights and liabilities of claimants, policyholders, shareholders, members and
13 all other persons interested in the assets of Golden State are fixed as of the date of entry of this
14 Order. (Insurance Code § 1019.)

15 32. Any and all claims against Golden State, including without limitation those claims
16 which in any way affect or seek to affect any of the assets of Golden State, wherever or however
17 such assets may be owned or held, must be filed no later than December 31, 2011 (the "Claims
18 Bar Date"), together with proper proofs thereof, in accordance with the provisions of Insurance
19 Code § 1010 *et seq.* including without limitation Insurance Code § 1023. The proof of claim must
20 be timely filed on the form provided by the Liquidator, together with proper proofs thereof, and
21 must be supplemented with such further information as the Liquidator requests, in accordance
22 with Insurance Code § 1023(f). Except for persons deemed to have filed claims against Golden
23 State in accordance with the provisions of Insurance Code § 1010 *et seq.* including without
24 limitation Insurance Code § 1024 and § 1025.5, any claims not filed by the Claims Bar Date shall
25 be conclusively deemed forever waived. (Insurance Code § 1024.)

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33. For such other and further relief as may be proper or necessary.

34. The Liquidator is authorized to take any and all action necessary to accomplish the purposes of this Order and the Orders requested herein.

DATED: 1-28-11

ANN I. JONES

THE HONORABLE ANN I. JONES
Los Angeles Superior Court Judge

EXHIBIT 2

**REAL ESTATE PURCHASE AGREEMENT, SUBJECT TO LIQUIDATION
COURT CONFIRMATION**

THIS REAL ESTATE PURCHASE AGREEMENT, SUBJECT TO LIQUIDATION COURT CONFIRMATION ("Agreement") is entered into as of the date signed by the last of the parties hereto (the "Effective Date") by and between **GOLDEN STATE MUTUAL LIFE INSURANCE COMPANY, IN LIQUIDATION**, a California Corporation ("Seller"), and **GERALD HINTON, AND/OR ASSIGNS**, ("Buyer").

Buyer understands and acknowledges that Seller is making a counteroffer to more than one prospective buyer and that the counteroffers may not contain identical terms and provisions. Further, until Buyer's written acceptance is received and Seller accepts in writing this multiple counteroffer by dating and executing this Agreement at the place provided below Buyer's signature, this Agreement shall not be binding and Seller may negotiate with any and all interested parties regarding the sale of the Property, may enter into any agreements for the sale of the Property with any such parties, and shall have no duties or obligations whatsoever to Buyer including, without limitation, any duty or obligation to sell the Property to Buyer.

Buyer agrees to purchase from Seller all of Seller's right, title and interest in and to that certain real property located at **1244 Solano Avenue, City of Vallejo, County of Solano, CA (APN: 0059-012-060)** more particularly described on Exhibit A attached hereto and by this reference incorporated herein and all fixtures, buildings, and improvements thereon (the "Property"), on the following terms and conditions:

ARTICLE 1. PURCHASE PRICE

SECTION 1.01. The purchase price for the Property shall be the sum of **Seventy Thousand and No/100ths Dollars (\$70,000)** payable by Buyer to Seller as follows:

- (a) **\$ 3,000** To be deposited by the Buyer in escrow with the Title Company within three (3) business days after the Effective Date (the "Initial Deposit")
- (b) **\$67,000** Balance due at Closing.
- (c) **\$ 70,000** Total Purchase Price

ARTICLE 2. ESCROW

SECTION 2.01. **OPENING ESCROW AND CLOSING.** An escrow shall be opened at * Old Republic Title Company Attn: Leslie [unclear] herein referred to as the "Title Company", to consummate the purchase of the Property pursuant to this Agreement. The closing of the sale and conveyance of title on the terms and conditions hereof (the "Closing") will take place commencing at 10:00 A.M. at the office of the Title Company, or at such other time and/or location as the parties agree, on the date (the "Closing Date")

* Escrow # 171 400 7443
* 120 Springtowne Center
Suite B
Vallejo, Ca. 94591

that is the later of either (a) the thirtieth (30th) day after the expiration of the Due Diligence Term, or (b) the tenth (10th) day after satisfaction or waiver of the conditions set forth in Section 2.02 below; *provided* that if such date is not a business day, on the next succeeding business day.

SECTION 2.02. CONDITIONS OF CLOSING. The Closing of sale and conveyance of title to the Buyer and the respective obligations of Buyer and Seller to consummate the transactions contemplated under this Agreement are conditioned on:

- (a) **Liquidation and Court Confirmation of this sale as follows:**
1. Seller shall have accepted this Agreement by executing below in the space provided. When this Agreement has been accepted in this manner, it shall constitute a binding obligation upon the Buyer to purchase and Seller to sell the Property on the terms and conditions as set forth herein.
 2. Seller shall petition the Superior Court of the State of California, in and for the County of Los Angeles, in connection with Case Number BS 123005 (hereinafter "*Court*") for confirmation of this Agreement no later than thirty (30) days after the date of Buyer's acceptance or waiver of the conditions set forth in Sections 2.02(c) and (e) below. In connection with such petition, a Court hearing for Confirmation will be set for a date no sooner than twenty-five (25) days after the date the petition is submitted.
 3. The Court shall have entered a Final Order that approves this Agreement and the transactions contemplated hereunder. As used in this Agreement the term "*Final Order*" shall mean an order of the Court as to which the time for appeal has expired without a notice of appeal having been filed or, if a notice of appeal has been filed, as to which no stay pending appeal has been entered.
- (b) No domestic or foreign, federal, state, county, parish, municipal or other local court, agency, department, legislative body, commission, council, board or other administrative or governmental body shall have issued any order, writ, judgment, injunction, decree, determination or award that directs that the transactions contemplated hereunder not be consummated.
- (c) The conveyance to Buyer of title by Special Warranty Deed free of liens, encumbrances, easements, restrictions, rights and conditions of record or known to Seller, other than the following (each a "*Permitted Encumbrance*"):
1. Current property taxes and current bond(s) or improvement assessment(s), if any;
 2. Matters not in the public record which would be disclosed by a survey or physical inspection of the Property; and

3. Covenants, conditions, restrictions, easements, and other matters of record, if any, unless disapproved by Buyer in writing within ten (10) days of receipt of a current commitment for issuance of an ALTA owner's policy in the amount of the Purchase Price issued by the Title Company, together with legible copies of all documents referenced therein (collectively, the "Title Commitment"), which shall be furnished at Seller's expense. Any matter shown on such Title Commitment and not objected to by Buyer shall be a Permitted Encumbrance hereunder. Seller will have five (5) days after receipt of Buyer's objections to cure such objections. If Buyer's objections are not cured within such 5-day period, Buyer will have the option to either: (a) terminate this Agreement, in which case the Deposit shall be refunded to Buyer; or (b) waive the objections and proceed to Closing, in which case such matters shall be Permitted Encumbrances. Seller shall furnish the Title Commitment to Buyer within ten (10) days after Seller's acceptance.

At the Closing, Seller shall cause the Title Company to irrevocably commit to issue an owner's policy of title insurance in the form a "marked up" Title Commitment or a proforma showing title to the Property vested in Buyer subject only to the Permitted Encumbrances. Seller shall pay the portion of the title insurance premium applicable to a standard ALTA form owner's policy. Buyer shall pay the portion of the premium attributable to extended coverage and the cost of any endorsements required by Buyer.

- (d) Buyer shall furnish concurrently with the execution and return of this Agreement, financial statements and/or information indicating Buyer's ability to perform its obligations hereunder (the "Confidential Information"). Seller and its representatives agree to keep the Confidential Information, that such information will be used solely for the purpose of evaluating a possible transaction with Buyer, that the Confidential Information will be kept confidential, and that neither Seller nor its representatives will disclose any of the Confidential Information to any other person or entity in any manner whatsoever. If this Agreement is terminated for any reason, Seller shall promptly cause the Confidential Information and all copies of the same to be returned to Buyer.
- (e) The purchase of the Property is contingent upon a **sixty (60) day due diligence and feasibility period** (hereinafter referred to as the "*Due Diligence Term*") which shall commence upon the Effective Date.

During the Due Diligence Term, Buyer may complete physical and geological inspections of the Property and improvements thereon, including but not limited to, taking soil borings as desired, obtaining engineering studies, and such other matters relating to the Property as Buyer deems appropriate, so as to ensure that the Property is acceptable in its "As-Is" condition. Such inspection shall be at Buyer's sole cost and expense. Buyer will indemnify, defend, and hold Seller harmless from and against any claims for injury or death to persons, damage to property or other losses, actual damages or claims, including, without limitation, claims of any tenants, and including, in each instance, reasonable attorneys' fees

and litigation costs, arising out of any action of any person or firm entering the Property on Buyer's behalf as aforesaid, which indemnity shall expressly survive Closing or the earlier expiration or termination of this Agreement.

BUYER IS PURCHASING THE PROPERTY "AS IS, WHERE IS" IN ITS PRESENT CONDITION. BUYER HAS THE OPPORTUNITY TO INSPECT THE PROPERTY AS PROVIDED HEREIN. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO, HEREBY DISCLAIMS, AND SHALL HAVE NO LIABILITY FOR; (A) THE CONDITION OF THE PROPERTY OR ANY BUILDINGS, STRUCTURES OR IMPROVEMENTS THEREON OR THE SUITABILITY OF THE PROPERTY FOR HABITATION OR FOR BUYER'S INTENDED USE, (B) ANY APPLICABLE BUILDING, ZONING OR FIRE LAWS OR REGULATIONS OR WITH RESPECT TO THE EXISTENCE OF OR COMPLIANCE WITH ANY REQUIRED PERMITS, IF ANY, OF ANY GOVERNMENTAL AUTHORITY; (C) THE AVAILABILITY OR EXISTENCE OF ANY WATER, SEWER OR UTILITIES, ANY RIGHTS THERETO, OR ANY WATER, SEWER OR UTILITY DISTRICTS; (D) ACCESS TO ANY PUBLIC OR PRIVATE SANITARY SEWER OR UTILITY SYSTEMS; OR (E) THE PRESENCE OF ANY HAZARDOUS SUBSTANCES AT THE PROPERTY OR IN ANY IMPROVEMENTS ON THE PROPERTY, INCLUDING WITHOUT LIMITATION ASBESTOS OR UREA-FORMALDEHYDE, OR THE PRESENCE OF ANY ENVIRONMENTALLY HAZARDOUS WASTES OR MATERIALS ON OR UNDER THE PROPERTY. BUYER ACKNOWLEDGES THAT BUYER IS GIVEN THE OPPORTUNITY UNDER THIS AGREEMENT TO FULLY INSPECT THE PROPERTY AND BUYER ASSUMES THE RESPONSIBILITY AND RISKS OF ALL DEFECTS AND CONDITIONS AT THE PROPERTY, INCLUDING WITHOUT LIMITATION, SUCH DEFECTS AND CONDITIONS, IF ANY, THAT CANNOT BE OBSERVED BY CASUAL INSPECTION.

During the term of this Agreement and at any time following the expiration or earlier termination thereof, upon Seller's request, Buyer shall provide Seller with copies of any third party reports or surveys obtained by Buyer during the Due Diligence Term and any extensions thereof at no cost to the Seller.

Prior to the end of the Due Diligence Term, the Buyer must accept the Property in its "As Is" condition. Said acceptance must be delivered to the Seller in writing reflecting that all contingencies set forth in this subsection (e) have been removed. If for any reason during Due Diligence Term, Buyer finds the Property unacceptable, in Buyer's sole and absolute discretion, Buyer must advise Seller in writing and the Agreement thereupon shall be terminated and all monies deposited shall be returned to Buyer. Upon Buyer's acceptance of the Property in its "As-Is" condition and Buyer's acceptance or waiver of the title matters in Section 2.02(c), Seller shall submit a petition to the Court for confirmation of this Agreement as provided in Section 2.02(a)(2).

SECTION 2.03. FAILURE OF CONDITIONS. If any condition specified in Section 2.02 above is not satisfied or waived within one hundred fifty (150) days after the Effective Date, then Seller may, at any time thereafter, elect to terminate this Agreement by giving written notice to Buyer and the Title Company. The Title Company shall be, and is hereby, irrevocably instructed by Seller on receipt of such notice from either party, to immediately refund to Buyer all monies and instruments deposited by Buyer in escrow pursuant to this Agreement.

SECTION 2.04. PRORATIONS. The following proration shall be made between Buyer and Seller at Closing: property taxes, rents, and homeowners/association dues (if applicable).

SECTION 2.05. BONDS AND ASSESSMENTS. Any bonds or improvement assessments which are a lien on the Property shall, at Closing, be paid/assumed by Buyer, except any past due/delinquent amounts shall be paid by Seller at Closing.


SECTION 2.06. BROKERS' COMPENSATION AND DISPOSITION FEES. If Buyer is confirmed as the purchaser of the Property and thereafter performs in accordance with this Agreement, any and all compensation and disposition fees due to real estate or other brokers shall be paid by Seller at Closing based upon the confirmed sales price or, if no overbidding occurs, as follows:

6% of the accepted price to Fred Sessler Real Estate, who represents Seller,
and N/A of the accepted price to N/A, who represents Buyer.

Seller and Buyer each warrant that they have dealt with no other real estate brokers in connection with this transaction except those brokers stated above.

SECTION 2.07. EXPENSES OF ESCROW. The expenses of the escrow described in this section shall be paid in the following manner:

(a) The cost of recording any deeds or other instruments required to convey title of the Property to Buyer as described in Section 2.02 of this Agreement shall be paid by Buyer.

 (b) ^{Seller} Buyer shall pay all real estate excise tax payable in connection with this transaction.

(c) Any escrow fee charged by the Title Company shall be paid as follows 50% by Seller and 50% by Buyer.

SECTION 2.08. POSSESSION. Possession of the Property shall be delivered to Buyer upon Closing.

SECTION 2.09. TITLE. Title shall vest as follows: to Buyer, or to any entity owned or controlled by Buyer or a nominee, with Buyer remaining liable for the Purchase Price and

any and all duties and obligations of the Buyer until the Close of Escrow, which shall be designated in writing by Buyer no later than five (5) days prior to the Closing.

ARTICLE 3. MISCELLANEOUS

SECTION 3.01. **DEFAULT BY Buyer.** Should Buyer fail to complete said purchase as herein provided by reason of any default of Buyer, Seller shall be released from its obligation to sell the Property to Buyer and Seller shall retain the Deposit, as liquidated damages for such default as Seller's sole and exclusive remedy hereunder.

SECTION 3.02. **TIME.** Time is of the essence in the performance of this Agreement.

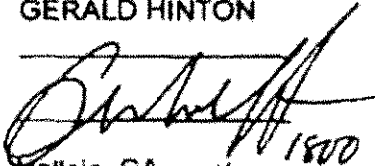
SECTION 3.03. **MODIFICATIONS.** All modifications or extensions shall be in writing signed by all parties.

SECTION 3.04. **LAND USE RESTRICTIONS.** Buyer shall satisfy itself through sources of information, other than the Seller or real estate brokers, or salespersons of such brokers in this transaction, whether any public or private action in the form of a vote, initiative, referendum, local ordinance, law, or other measure presently in force or contemplated by a governing or other body may halt entirely or otherwise restrict Buyer's use of the Property for improvement or other use, and Buyer acknowledges that it has not relied on any advice or representations by the Seller or real estate representatives in this transaction for such independent information to any extent.

SECTION 3.05. **NOTICES.** Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party hereto, or the Title Company, shall be in writing and shall be deemed duly served and given when (a) personally delivered to any of the parties, to whom it is directed; (b) by deposit in the United States mail as first-class certified mail, return receipt requested, postage paid; (c) by overnight nationwide commercial courier service; or (d) by telecopy transmission with a confirmation copy to be delivered by duplicate notice in accordance with any of clauses (a) through (c) above, in each case, to the party intended to receive the same at the following address(es):

If to Buyer at:

GERALD HINTON


Vallejo, CA 94591 1800 SPRINGS RD #10
E-mail: gehinton@berber.com

If to Seller at:

Golden State Mutual Life Insurance Company, in Liquidation
100 Pine Street, 26th Floor
San Francisco, CA 94111-5212
Attn: Scott D. Pearce, Senior Estate Trust Officer
FAX: (415) 676-5002

With copy to:

Golden State Mutual Life Insurance Company, In Liquidation
c/o Kane Corporation
67 Selby Lane, Suite 100
Atherton, CA 94027-3926
Attn: Peter C. Kane
FAX: (650) 369-9106

If to the Title Company at:

Old Republic Title Co.

120 Springtowne Center Ste B

Vellajo, Ca. 94540

Fax: (707) 676-9022

Notice delivered in accordance with the foregoing shall be effective (x) when delivered, if delivered personally or by receipted-for telex, telecopier or facsimile transmission, (y) on the next business day after being delivered in the United States (properly addressed and all fees paid) for overnight delivery service to a courier (such as Federal Express) which regularly provides such service and regularly obtains executed receipts evidencing delivery, or (z) five (5) days after being deposited (properly addressed and stamped for first-class delivery) in a daily serviced United States mail box. Either party, Buyer or Seller, may change its address for the purposes of this section by giving written notice of such change to the other party in the manner provided in this section.

SECTION 3.06. DISCLAIMER OF WARRANTIES. The parties acknowledge that this transaction is entered into by them in full reliance on their own independent investigations, and not on any statements, representations, or agreements made by the other party, or by the broker(s), if any herein, or any salesperson(s) of such broker. It is also agreed by both parties that no statements, representations, or agreements made by either party, the broker(s), or any salesperson(s) of such broker(s), are valid unless such statements,

representations or agreements are reduced to writing and made a part hereof. Seller expressly makes no warranties regarding the suitability of the Property for any purpose and Buyer acknowledges that all real property and improvements, if any, thereon are taken in an "As Is" Condition including all known and unknown defects.

Buyer:  Seller: 

SECTION 3.07. ATTORNEY'S FEES. Should any litigation be commenced between the parties hereto concerning the Property, this Agreement, or the rights and duties of either in relation thereto, the party, Buyer or Seller, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorney's fees and expenses in such litigation which shall be determined by the Court in such litigation or in a separate action brought for that purpose.

SECTION 3.08. ENTIRE AGREEMENT. This instrument contains the entire Agreement between Buyer and Seller respecting the Property, and any agreement or representation respecting the Property or the duties of either Buyer or Seller in relation thereto not expressly set forth in this instrument is null and void.

SECTION 3.09. COUNTERPARTS; FACSIMILE SIGNATURES. This Agreement may be executed in any number of counterparts and all counterparts shall be deemed to constitute a single agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts. The signatures to this Agreement may be executed on separate pages and when attached to this Agreement shall constitute one complete document. This Agreement may be signed by facsimile, and each facsimile copy so signed shall be deemed an original hereof.

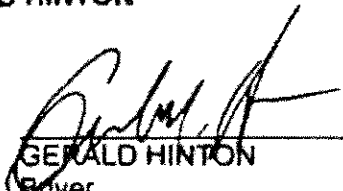
SECTION 3.10. GOVERNING LAW; VENUE. This Agreement is governed by and construed in accordance with the laws of the State of California. Buyer hereby waives any defense it may have based on *forum non conveniens*. As a material part of the consideration for this Agreement, and with the understanding that Seller would not enter into this Agreement without such agreement, Buyer hereby irrevocably submits to the jurisdiction of the State of California in any such action.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year shown opposite their signatures below.

[Signatures on following page]

BUYER:

GERALD HINTON

By: 
Name: GERALD HINTON
Title: Buyer

Date: 8/27/13

SELLER:

**GOLDEN STATE MUTUAL LIFE INSURANCE
COMPANY, IN LIQUIDATION, a California
corporation**

By: 
Name: David E. Wilson
Title: Special Deputy Insurance Commissioner

Date: 9/9/13

EXHIBIT A

LEGAL DESCRIPTION

Portions of

Lots 13 and 14, Block 255, according to the Official Map of the City of Vallejo made by E. H. Rowe, C. E., filed for record September 19, 1868, in Book 1 of Maps, page 123.

EXHIBIT A

**FIRST AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT, SUBJECT TO
LIQUIDATION COURT CONFIRMATION**

THIS FIRST AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT, SUBJECT TO LIQUIDATION COURT CONFIRMATION ("*Amendment*") is made as of October 21, 2013, by and between GOLDEN STATE MUTUAL LIFE INSURANCE COMPANY, IN LIQUIDATION, a California Corporation ("*Seller*"), and GERALD HINTON, AND/OR ASSIGNS, ("*Buyer*").

RECITALS:

A. Buyer and Seller are parties to that certain Real Estate Purchase Agreement, Subject to Liquidation Court Confirmation with an Effective Date of September 9, 2013 (the "*Agreement*"). Unless otherwise defined herein, all capitalized terms shall have the same meaning set forth in the Agreement.

Buyer and Seller agree to amend the Agreement as set forth below.

AGREEMENT:

NOW, THEREFORE, in consideration of the above recitals, which are incorporated by this reference, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Acceptance of Property in its "As Is" Condition: Buyer has completed its due diligence review and hereby accepts the Property in its "As Is" condition and removes all contingencies set forth in Section 2.02(e) of the Agreement and accepts any and all title matters in Section 2.02(c) of the Agreement.

2. Reduction of Purchase Price: Buyer accepts the Property in its "As-Is" condition. Notwithstanding Buyer's acceptance of the Property in its "As-Is", the City of Vallejo has conditioned Buyer's intended use of the Property by requesting Buyer to install street curbs, gutters, and sidewalks. The cost of these city mandated improvements has been established by a contractors bid at Twelve Thousand Seven Hundred Fifty-One (\$12,751.00) Dollars. By mutual agreement, the Seller and Buyer have agreed to split these costs. Accordingly, the Purchase Price of the Property shall be reduced by Six Thousand Three Hundred Seventy-Five (\$6,375.00) Dollars to a final agreed to Purchase Price of Sixty-Three Thousand Six Hundred Twenty-Five (\$63,625.00) Dollars.

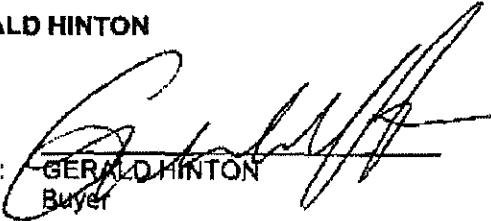
3. Counterparts: Facsimile. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same agreement. A party shall be bound to this Amendment when a signed counterpart is transmitted to the other parties by facsimile. Any party signing by facsimile shall deliver the original, signed counterparts to any other party upon request.

4. No Other Modification. Except as specifically set forth herein, all other terms and conditions of the Agreement shall remain unmodified and in full force and effect, the same being confirmed and republished hereby.

IN WITNESS WHEREOF, the parties have entered into this Amendment effective as of the date set forth above.

BUYER:

GERALD HINTON

By:  Date: 10/31/13
Name: GERALD HINTON
Title: Buyer

SELLER:

**GOLDEN STATE MUTUAL LIFE INSURANCE
COMPANY, IN LIQUIDATION, a California
corporation**

By:  Date: 11/6/13
Name: David E. Wilson
Title: Special Deputy Insurance Commissioner