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21 Insurance Commissioner of the State of California

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **FOR THE COUNTY OF LOS ANGELES**

24 INSURANCE COMMISSIONER OF THE
25 STATE OF CALIFORNIA,

26 Applicant,

27 v.

28 GOLDEN STATE MUTUAL LIFE
INSURANCE COMPANY, a California
corporation,

Respondent.

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
APPLICATION FOR ORDER
AUTHORIZING LIQUIDATOR TO SELL
REAL PROPERTY LOCATED AT 4575
VILLAGE FAIR DRIVE IN DALLAS
TEXAS; AND DECLARATIONS OF
SCOTT PEARCE, PETER C. KANE AND
MICHAEL R. WEISS**

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

Date: December 20, 2011
Time: 9:30 a.m.
Dept: 86

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 ("Liquidator") of Golden State
4 Mutual Life Insurance Company ("Golden State") to sell the real property, owned by Golden
5 State, located at 4575 Village Fair Drive in Dallas, Texas [APN: 00-59920-B00-03A-00-00]
6 ("Property"), to Mark Tolocko ("Tolocko"), pursuant to the terms of a Real Estate Purchase
7 Agreement between the Liquidator and Tolocko. The Purchase Agreement is attached hereto as
8 Exhibit 2.

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

- 10 1. The sale price of \$250,000 is the market value for the Property in its current,
11 significantly vandalized and damaged condition;
- 12 2. Tolocko has waived all claims to the \$201,941.27 in insurance proceeds to be
13 received by Golden State from the Property's insurer as compensation for the vandalism damages;
- 14 3. The fair market value of the Property if the vandalism damages are repaired and
15 after taking into account the costs of continuing to maintain the Property, is not greater than the
16 current sale price of \$250,000 plus the \$201,941.27 in insurance proceeds to be received by
17 Golden State, which totals \$451,941.27;
- 18 4. Tolocko is a third party purchaser not related to the Liquidator or to any person
19 involved in Golden State's liquidation;
- 20 5. The Property was used for Golden State's district office in Dallas and has been
21 vacant for at least the last 13 months as Golden State's district office was closed on October 31,
22 2010 and listed on the market for sale by December 31, 2010;
- 23 6. The sale of the Property stops the further expenditure of Golden State's limited
24 assets on property maintenance expenses including maintenance, insurance, property taxes and
25 other costs associated with ownership and maintenance of the Property; and
- 26 7. The sale is consistent with the Liquidator's duty to marshal and monetize Golden
27 State's remaining assets for distribution to creditors, and is consistent with the Liquidator's
28

authorities and discretion under the Court's Order of Liquidation, the Insurance Code and case law.

II. FACTUAL BACKGROUND.

A. Liquidation Order.

On January 28, 2011, this Court terminated the Insurance Commissioner's status as Golden State's Conservator, and ordered and appointed the Insurance Commissioner to serve as Golden State's Liquidator. (Declaration of Scott Pearce ("Pearce Dec."), ¶¶ 6-8; and Order of Liquidation, ¶¶ 1, 2, Exhibit 1.) The Order of Liquidation directs the Liquidator to liquidate and wind up the business of Golden State, and to sell, transfer or otherwise dispose of Golden State's property at its reasonable market value; provided, however, Court approval is required for sales where the market value of the property involved exceeds \$20,000. (Order of Liquidation, ¶ 8, Exhibit 1; see also Insurance Code § 1037(d).)

B. Golden State's assets to be liquidated.

Currently there are two categories of Golden State's assets to be liquidated by the Liquidator: (1) real estate valued at approximately \$1,486,579, which includes the Property at issue here, and (2) artwork and murals whose value is estimated to be at least \$753,200. The real estate remains for sale and/or under contract for sale, and the sale of the artwork and murals is delayed pending resolution of a quiet title lawsuit and a monument designation by the City of Los Angeles, and further evaluation by the Liquidator of the value of the artwork and murals once confirmed to be Golden State's personal property. (Pearce Dec., ¶ 9; Declaration of Michael R. Weiss ("Weiss Dec."), ¶ 4.)

C. Purchase Agreement for the Property.

On October 17, 2011, the Liquidator on behalf of Golden State entered into a Real Estate Purchase Agreement, Subject To Liquidation Court Confirmation ("Purchase Agreement"), with the buyer Tolocko, for the sale of the Property at the sale price of \$250,000. Tolocko is a third party purchaser not related to the Liquidator or to any other person involved in Golden State's liquidation. (Pearce Dec., ¶¶ 10-11; and Purchase Agreement, Exhibit 2.)

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

2 The sale price of \$250,000 for the Property is the reasonable fair market value for the
 3 Property in its current as-is damaged and vandalized condition, as established in the Declarations
 4 of Scott Pearce and Peter C. Kane attached hereto. In June 2011, the Property was vandalized and
 5 extensively damaged. The vandalism and damages included without limitation that entry to the
 6 Property was gained through broken windows at the Property in at least 4 locations, that interior
 7 glass had been broken, that electrical wires and other wiring had been removed, and that copper
 8 piping and plumbing fixtures were removed from the walls causing water to be released unabated
 9 into the interior of the Property for a significant amount of time resulting in extensive water
 10 damages. As a result of the water intrusion and damages, the floor coverings, interior walls, base
 11 cabinets, ceilings and much of the insulation above the ceiling was assessed as a total loss. A post
 12 damage assessment by Golden State's insurance company for the Property estimated that to bring
 13 the Property back to its "original or similar" condition, it would cost approximately \$298,797.72.
 14 Based on the post damage assessment and after subtracting for the deductible and other policy
 15 deductions, the Liquidator completed an essential clean up and made minimal repairs to the
 16 interior of the property and then agreed to accept an insurance settlement of \$201,927.41 from
 17 Golden State's insurance company for the Property. (Pearce Dec., ¶¶ 14-17; and Declaration of
 18 Peter C. Kane ("Kane Dec."), ¶¶ 7-12.)

19 After the vandalism, Golden State received an offer from Tolocko, the Buyer herein, to
 20 purchase the Property in its "as-is" condition for a purchase price of \$250,000. No other offers of
 21 a higher amount have been received after the vandalism. As part of Tolocko's purchase of the
 22 Property, Tolocko has waived all claims to the \$201,941.27 insurance proceeds to be received by
 23 Golden State. (Pearce Dec., ¶ 15; and Kane Dec., ¶ 10.)

24 The sale price of \$250,000 plus the \$201,941.27 in insurance proceeds totals \$451,941.27,
 25 which the Liquidator believes is equal to or greater than the market value for the Property if the
 26 damages to the Property were repaired and the Liquidator continues to incur maintenance and
 27 other expenses for the property. (Pearce Dec., ¶ 16; and Kane Dec., ¶ 11.)

1 **E. Notice of this Application.**

2 The Liquidator is not aware of any persons or entities that may be adversely affected by
3 this application. Nonetheless, the Liquidator has provided written notice of this application to all
4 persons who have routinely been provided notice of the Liquidator's Court applications. Such
5 persons include Golden State's Certificate of Contribution holders and, due to prior requests to
6 receive copies of court filings in this matter, The National Organization of Life and Health
7 Insurance Guaranty Associations ("NOLHGA") and its attorneys, Pension Benefit Guaranty
8 Corporation, attorneys for Community Impact Development II, LLC, and Pitney Bowes, Inc. The
9 above described persons and entities are listed on the Proof of Service filed concurrently
10 herewith. (Weiss Dec., ¶ 3; and Proof of Service.)

11 **III. ARGUMENT**

12 There is good cause for the Court to authorize the sale of the Property to Tolocko.

13 **A. The Sale Is Consistent With The Liquidator's Authority Set Forth In The**
14 **Order Of Liquidation.**

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

19 Here, the sale of the Property is rational, geared toward maximizing Golden State's
20 liquidation estate value and in the best interests of Golden State's policyholders and creditors
21 because:

22 1. The sale price of \$250,000 for the Property is the reasonable fair market
23 value for the Property in its current damaged and vandalized condition. (Kane Dec., ¶¶ 7-11; and
24 Pearce Dec., ¶¶ 12-17.)

25 2. The sale price of \$250,000 plus the \$201,941.27 in insurance proceeds
26 totals \$451,941.27, which the Liquidator believes is equal to or greater than the market value for
27 the Property if the damages to the Property were repaired and the Liquidator continues to incur
28

1 maintenance and other expenses for the property. (Kane Dec., ¶¶ 7-11; and Pearce Dec., ¶¶ 12-
2 17.)

3 3. Tolocko is a third party purchaser not related to the Liquidator or to any
4 other person involved in Golden State's liquidation, and has waived all claims to the \$201,941.27
5 insurance proceeds to be received by the Liquidator from the Property's insurer. (Pearce Dec., ¶¶
6 11 and 15.)

7 4. The Property was used for Golden State's district office in Dallas and has
8 been vacant for the last 13 months as Golden State's district office was closed on October 31,
9 2010 and listed on the market for sale by December 31, 2010. (Pearce Dec., ¶ 13.)

10 5. The sale of the Property stops the further expenditure of Golden State's
11 limited assets on property maintenance expenses including maintenance, insurance, property taxes
12 and any other costs associated with maintaining the Property. Stopping such expenditure, in light
13 of Golden State's liquidation and limited assets, is reasonable and in the best interests of Golden
14 State's policyholders and creditors. (Pearce Dec., ¶ 17.)

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

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

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

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

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

6
7 (d) [Acquisition and disposition of property.] Shall have authority without
8 notice, to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon,
9 or otherwise dispose of or deal with, any real or personal property of that person at
10 its reasonable market value, or, in cases other than acquisition, sale, or transfer on
11 the basis of reasonable market value, upon such terms and conditions as the
12 commissioner may deem proper. However, no transaction involving real or
13 personal property shall be made where the market value of the property involved
14 exceeds the sum of twenty thousand dollars (\$20,000) without first obtaining
15 permission of the court, and then only in accordance with any terms that court may
16 prescribe.

17 . . .
18 [General powers.] The enumeration, in this article, of the duties, powers
19 and authority of the commissioner in proceedings under this article shall not be
20 construed as a limitation upon the commissioner, nor shall it exclude in any
21 manner his or her right to perform and to do such other acts not herein specifically
22 enumerated, or otherwise provided for, which the commissioner may deem
23 necessary or expedient for the accomplishment or in aid of the purpose of such
24 proceedings.

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

29 The Commissioner is an officer of the state (*Caminetti v. Pac.*
30 *Mutual L. Ins. Co.* (1943) 22 Cal.2d 344, 354 [139 P.2d 908]) who, when
31 he or she is a conservator, exercises the state's police power to carry
32 forward the public interest and to protect policyholders and creditors of the
33 insolvent insurer. (*Carpenter v. Pacific Mut. Life Ins. Co.* (1937) 10 Cal.2d
34 307, 330-331 [74 P.2d 761].)

35 In exercising this power, the Commissioner is vested with broad discretion.
36 (*Commercial Nat. Bank v. Superior Court* [(1993)] 14 Cal.App.4th [393] at p.
37 402.) This discretion is subject to statutory limitations (see *id.* at p. 409) and the
38 requirement that the exercise of discretion be neither arbitrary nor improperly
39 discriminatory. (*Carpenter v. Pacific Mut. Life Ins. Co.*, *supra*, 10 Cal.2d at p.
40 329.) The Commissioner as conservator of the insolvent insurer is also a trustee for

1 the benefit of all creditors and other persons interested in the insolvency estate.
2 ([Insurance Code] § 1057.)

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

4 The Court concluded that:

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

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

9 **IV. CONCLUSION**

10 In sum, there is good cause for the Court to grant this Application. Accordingly, the
11 Liquidator requests that the Court grant this Application and issue the following orders:

- 12 1. An Order authorizing the Liquidator to sell the Property to Tolocko pursuant to the
13 terms of the Purchase Agreement; and
14 2. An Order authorizing the Liquidator to take any and all actions necessary to
15 accomplish the purposes of the requested Order.

16 DATE: November 17, 2011

KAMALA D. HARRIS
Attorney General of California
W. DEAN FREEMAN
Supervising Deputy Attorneys General
ELISA B. WOLFE-DONATO
Deputy Attorney General

EPSTEIN TURNER WEISS
A Professional Corporation

22
23 By: 

MICHAEL R. WEISS
Attorneys for Applicant
INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA

DECLARATION OF SCOTT PEARCE

I, Scott Pearce, declare as follows:

1. I have personal knowledge of the facts and circumstances set forth in this declaration, and if called upon to do so, I could and would competently testify thereto.

2. I am the Senior Estate Trust Officer for the Insurance Commissioner's Conservation & Liquidation Office. Starting on September 30, 2009, and continuing to the present, I have been and currently am the Estate Trust Officer on behalf of the Insurance Commissioner in his Statutory Capacity as Conservator ("Conservator") and then as Liquidator ("Liquidator") of Golden State Mutual Life Insurance Company ("Golden State").

3. As the Senior Estate Trust Officer on behalf of the Conservator and now Liquidator of Golden State, I am responsible for the supervision and management of matters pertaining to the conservation and liquidation of Golden State.

4. I have read the Liquidator's Application For Order Authorizing Liquidator To Sell Real Property Located At 4575 Village Fair Drive In Dallas Texas, and the attached Memorandum and Declarations of Michael R. Weiss and Peter C. Kane ("Application").

5. Based on my supervision and management of matters pertaining to Golden State, my experience, review and understanding of the events related to the conservation and now liquidation of Golden State, my and my staff's review of the files and records routinely maintained in the regular and ordinary course of business and believed to be entered contemporaneously by persons having knowledge of the events recorded and whose job duties include recording them, my involvement in the sale of this Property, and my review of this Application and its supporting papers and documents, I state the following:

Order of Liquidation for Golden State.

6. On January 28, 2011, this Court terminated the Insurance Commissioner's status as Conservator and ordered and appointed the Insurance Commissioner to serve as Liquidator of Golden State.

7. The Insurance Commissioner was appointed Liquidator because Golden State was and remains insolvent in that, as of September 30, 2010, Golden State's estimated liabilities of

1 \$9,291,895 exceed its estimated remaining assets of \$5,721,154 by over \$3.5 million (\$5,721,154
2 in assets - \$9,291,895 in liabilities = \$-3,570,741). The current estimated deficiency is
3 \$5,946,228. Attached hereto and incorporated herein as Exhibit 1 is a true and correct copy of the
4 Court's Order of Liquidation. The Order of Liquidation directs the Insurance Commissioner to
5 liquidate and wind up the business of Golden State.

6 8. The June 30, 2011 financials have increased the shortfall to \$5,946,228, in that as
7 of June 30, 2011 estimated liabilities are \$8,191,012 and remaining estimated assets are
8 \$2,244,784.

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

10 9. Currently there are two categories of Golden State's assets to be liquidated by the
11 Liquidator: (1) real estate valued at approximately \$1,486,579, which includes the real property,
12 owned by Golden State, located at 4575 Village Fair Drive in Dallas, Texas [APN: 00-59920-
13 B00-03A-00-00] at issue here ("Property"), and (2) artwork and murals whose value is estimated
14 to be at least \$753,200. The real estate remains for sale and/or is under contract for sale, and the
15 sale of the artwork and murals is delayed pending resolution of a quiet title lawsuit commenced
16 by Community Impact Development II, LLC, and a monument designation by the City of Los
17 Angeles, and further evaluation by the Liquidator of the value of the artwork and murals once
18 confirmed to be Golden State's personal property.

19 **Purchase Agreement for Property.**

20 10. On October 17, 2011, the Liquidator on behalf of Golden State entered into a Real
21 Estate Purchase Agreement, Subject To Liquidation Court Confirmation ("Purchase Agreement"),
22 with the buyer Mark Tolocko ("Tolocko"), for the sale of the Property at the sale price of
23 \$250,000, a true and correct copy of which is attached hereto and incorporated herein as Exhibit
24 2.

25 11. Tolocko is a third party purchaser not related to the Liquidator or to any other
26 person involved in Golden State's liquidation.

27 **Market Value of the Property.**

28 12. Based on my involvement in the sale of the Property and my understanding of the

1 sale efforts and information regarding the Property, I believe the sale price of \$250,000 is the
2 reasonable fair market value for the Property in its current “as-is” condition.

3 13. The Property was used for Golden State’s district office in Dallas and has been
4 vacant for the last 13 months as Golden State’s district office was closed on October 31, 2010 and
5 listed on the market for sale by December 31, 2010.

6 14. I believe the sale price of \$250,000 for the Property is the reasonable fair market
7 value for the Property in its current as-is damaged and vandalized condition. In June 2011, the
8 Property was vandalized and extensively damaged. I have been advised that the vandalism and
9 damages included without limitation that entry to the Property was gained through broken
10 windows at the Property in at least 4 locations, that interior glass had been broken, that electrical
11 wires and other wiring had been removed, and that copper piping and plumbing fixtures were
12 removed from the walls causing water to be released unabated into the interior of the Property for
13 a significant amount of time resulting in extensive water damages. As a result of the water
14 intrusion and damages, the floor coverings, interior walls, base cabinets, ceilings and much of the
15 insulation above the ceiling were assessed as a total loss. A post damage assessment by Golden
16 State’s insurance company for the Property estimated that to bring the Property back to its
17 “original or similar” condition, it would cost approximately \$298,797.72. Based on the post
18 damage assessment and after subtracting for the deductible and other policy deductions, the
19 Liquidator completed an essential clean up and made minimal repairs to the interior of the
20 property and then agreed to accept an insurance settlement of \$201,927.41 from Golden State’s
21 insurance company for the Property

22 15. After the vandalism, Golden State received an offer from Tolocko to purchase the
23 Property in its “as-is” condition for a purchase price of \$250,000. No other offers of a higher
24 amount have been received after the vandalism. As part of Tolocko’s purchase of the Property,
25 Tolocko has waived all claims to the \$201,941.27 insurance proceeds to be received by the
26 Liquidator from the Property’s insurer.

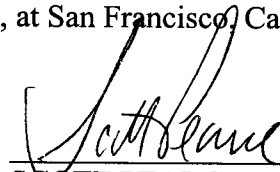
27 16. The sale price of \$250,000 plus the \$201,941.27 in insurance proceeds totals
28 \$451,941.27. I believe the fair market value for the Property if the damages to the Property were

1 repaired and after subtracting the costs to continue to maintain the property, is not more than the
2 combined \$451,941.27 realized for the Property from this sale and from the insurance proceeds.

3 17. The sale of the Property stops the further expenditure of Golden State's limited
4 assets on property maintenance expenses including maintenance, insurance, property taxes and
5 any other costs associated with maintaining the Property. Stopping such expenditure, in light of
6 Golden State's liquidation and limited assets, is reasonable and in the best interests of Golden
7 State's policyholders and creditors.

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

10 Executed on this 20 day of November, 2011, at San Francisco, California.

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12 
13 SCOTT PEARCE
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DECLARATION OF PETER C. KANE

I, Peter C. Kane, declare as follows:

1. I have personal knowledge of the facts and circumstances set forth in this declaration, and if called upon to do so, I could and would competently testify thereto.

2. I am a real estate consultant and have been actively engaged in the real estate and real estate “turnaround” profession since 1984. I am the chief executive officer of Kane Corporation. Kane Corporation (“Kane”) is a real estate “turnaround” firm specializing in solving complex operational, financial, structural, and managerial problems for some of the largest problematic real estate portfolios in the United States. Kane has provided asset analysis, acquisition management, capital enhancement, debt/equity structuring, valuation, disposition, and consultation services for a variety of clients, including without limitation life insurance companies, property and casualty insurance companies, Fortune 500 companies, savings banks, community banks, national banks, state/federal regulatory authorities, public accounting firms, attorneys, real estate service companies, and private investors.

3. I have been a licensed real estate professional since 1980, and maintain affiliations with the National Association of Realtors, California Association of Realtors, National Association of Insurance Commissioners, and International Association of Insurance Receivers.

4. Starting on September 30, 2009, Kane has been retained by the Insurance Commissioner of the State of California, in his capacity as Conservator (“Conservator”) and then as Liquidator (“Liquidator”) of Golden State Mutual Life Insurance Company (“Golden State”), to provide, and has provided, real estate consulting services including real estate asset analyses, valuation, marketing, disposition and sales services concerning Golden State’s real estate mortgage portfolio and real estate holdings throughout the country that are owned by Golden State.

5. I have read the Liquidator’s Application For Order Authorizing Liquidator To Sell Real Property Located At 4575 Village Fair Drive In Dallas Texas, and the attached Memorandum and Declarations of Scott Pearce and Michael R. Weiss (“Application”). I make this declaration in support of said Application.

1 6. Based on the above described consulting services provided by Kane, my review of
2 this Application and its supporting papers and documents, I state the following:

3 7. On or about September 14, 2010, Golden State, through Kane, commenced
4 marketing the real property, owned by Golden State, located at 4575 Village Fair Drive, Dallas,
5 Texas 75224 [APN: 00-59920-B00-03A-00-00] ("Property"). Kane first interviewed local Dallas,
6 Texas real estate brokers. Kane recommended the selection of a qualified real estate resource
7 with expertise in the Dallas, Texas sub-market of Oak Cliff where the Property is located. The
8 Property was listed for sale with Venture Commercial Real Estate, LLC ("Venture Commercial"),
9 a licensed realtor in Dallas, Texas with Oak Cliff experience. The initial listing price
10 recommended by the broker for the Property in September 2010 was \$549,000. The Property was
11 exposed via Venture Commercial's website, real estate sale website LoopNet.com, CCIM
12 Network E-mail blasts, and several other marketing mediums used to inform and track potential
13 buyers. This market exposure over a nine (9) month period did not produce any purchase offers
14 above \$400,000 or of an adequate value that the Liquidator could recommend or accept.

15 8. On June 28, 2011, Kane received a phone call from David Schnitzer of Venture
16 Commercial who informed Kane that the Property had been broken into and was significantly
17 vandalized and damaged. The vandalism and damages included without limitation that entry to
18 the Property was gained through broken windows at the Property in at least 4 locations, that
19 interior glass had been broken, that electrical wires and other wiring had been removed, and that
20 copper piping and plumbing fixtures were removed from the walls causing water to be released
21 unabated into the interior of the Property for a significant amount of time resulting in extensive
22 water damages. As a result of the water intrusion and damages, the floor coverings, interior
23 walls, base cabinets, ceilings and much of the insulation above the ceiling was assessed as a total
24 loss. A post damage assessment by Golden State's insurance company for the Property estimated
25 that to bring the Property back to its "original or similar" condition, it would cost approximately
26 \$298,797.72.

27 9. Based on the post damage assessment, the Liquidator has agreed to accept an
28 insurance settlement of \$201,927.41 from Golden State's insurance company for the Property.

10. After the vandalism, Golden State received through Venture Commercial an offer from Mark Tolocko (“Tolocko”), the Buyer herein, to purchase the Property in its “as-is” condition for a purchase price of \$250,000. No other offers of a higher amount have been received after the vandalism. As part of Tolocko’s purchase of the Property, Tolocko has agreed to waive all claims to the insurance proceeds.

11. In the Property's current vandalized and damaged condition, I believe the fair market value of the Property is not more than \$250,000. Further, if the Property were repaired using the \$201,927.41 in insurance proceeds, I believe the fair market value of the Property is not more than \$451,927. Accordingly, I believe the fair market value for the Property if the damages to the Property were repaired and after subtracting the costs to continue to maintain the property, is not more than the combined \$451,941.27 realized for the Property from this sale and from the insurance proceeds.

12. On October 17, 2011, the Liquidator on behalf of Golden State entered into a Real Estate Purchase Agreement, Subject To Liquidation Court Confirmation (“Purchase Agreement”), with the buyer Tolocko, for the sale of the Property at the sale price of \$250,000, a true and correct copy of which is attached hereto and incorporated herein as Exhibit 2.

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

Executed on this 16TH day of November, 2011, at Atherton, California.

Peter C. Kane
PETER C. KANE

DECLARATION OF MICHAEL R. WEISS

I, Michael R. Weiss, declare as follows:

1. I am over 18 years of age and have personal knowledge of the facts and circumstances set forth in this declaration, and if called upon to do so, I could and would competently testify thereto.

2. I am an attorney licensed to practice law in the State of California, and am a partner with the law firm Epstein Turner Weiss, A Professional Corporation. I and Epstein, Turner Weiss have been retained by the Insurance Commissioner of the State of California, in his capacity as Conservator (“Conservator”) and then as Liquidator (“Liquidator”) of Golden State Mutual Life Insurance Company (“Golden State”), to provide legal services concerning Golden State. I make this declaration in support of the Liquidator’s Application For Order Authorizing Liquidator To Sell Real Property Located At 4575 Village Fair Drive In Dallas Texas (“Application”).

3. The Liquidator has provided written notice of this Application to all persons and entities known to the Liquidator or his staff that may have a substantial, unsatisfied claim that may be affected by this application and any Court Orders pertaining thereto, regardless of whether the persons or entities are a party to this action or have appeared in it, in compliance with California Rules of Court Rule 3.1184(c). Said persons and entities include the Pension Benefit Guaranty Corporation, National Organization of Life and Health Insurance Guaranty Associations and its attorneys, and Certificate of Contribution holders. Additionally, due to prior requests to receive copies of court filings in this matter, the Liquidator has provided notice of this application to Community Impact Development II, LLC, and Pitney Bowes, Inc. The above described persons and entities are listed on the Proof of Service filed concurrently herewith. To maintain confidentiality, the names and addresses of Certificate of Contribution Holders are not listed on the Proof of Service.

4. As the Court is aware, the Golden State murals are the subject of a quiet title lawsuit filed by Community Impact Development (“CID”) in which CID seeks ownership of the murals. The murals also are the subject of a monument designation by the City of Los Angeles,

1 which has caused Golden State to file a petition for writ of mandate proceeding. Therefore the
2 sale of the murals is delayed pending final determination of these actions.

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

5 Executed on this 17th day of November, 2011, at Los Angeles, California.

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8 MICHAEL R. WEISS
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EXHIBIT 1

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LOS ANGELES
SUPERIOR COURT

DEC 21 2010

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

18
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. 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.)
28

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

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

4 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 **MARK TOLOCKO, 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 **4575 Village Fair Drive, City of Dallas, County of Dallas, TX (APN: 00-59920-B00-03A-00-00)** 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 **Two Hundred Fifty Thousand and No/100ths Dollars (\$250,000.00)** payable by Buyer to Seller as follows:

- (a) **\$15,000** 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) **\$ 235,000** Balance due at Closing.
- (d) **\$250,000** Total Purchase Price

It is understood between Buyer and Seller that the agreed to Purchase Price is at a significant discount to the original list price due to an event of significant vandalism that occurred at the Property.

Buyer understands that the Property is being sold in its "**As is**" condition and that the Buyer will complete a thorough inspection of the Property during the Due Diligence Term in order to assure themselves that the "**As is**" condition is acceptable.

It is understood between Buyer and Seller that an insurance claim has been filed and

that any and all proceeds derived there from shall be exclusive to the Seller.

ARTICLE 2. ESCROW

SECTION 2.01. OPENING ESCROW AND CLOSING. An escrow shall be opened at First American Title Insurance Company, 2711 Haskell Avenue, Dallas, TX 75204 ~ Phone: (972) 892-9300 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*") 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 **ten (10) 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 homeowner's/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 Venture Commercial Real Estate. LLC, who represents Seller; and

N/A of the accepted price to _____, 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) 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:

Mark Tolocko
2480 Victor Park Lane
Suite 1431
Dallas, TX 75219
FAX: _____

If to Seller at:

Golden State Mutual Life Insurance Company, in Liquidation
425 Market Street, 23rd Floor
San Francisco, CA 94105
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:

First American Title Insurance Company
2711 Haskell Avenue
Dallas, TX 75204
Attn: _____
FAX: _____

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 sales-person(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: (no) Seller: (Dew)

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.

BUYER:

MARK TOLOCKO AND/OR ASSIGNS

By: 

Name: Mark Tolocko

Title: Buyer

Date: 8/16/2011

SELLER:

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

By: 

Name: David E. Wilson

Title: Special Deputy Insurance Commissioner

Date: 10/12/2011

EXHIBIT A

LEGAL DESCRIPTION

Lot 3-A, Block B/5992, of the subdivision of Lot 3, of the FOURTH INSTALLMENT OF VILLAGE FAIR, an Addition to the City of Dallas, Dallas County, Texas, according to the Map thereof recorded in Volume 83167, Page 2950, Map Records, Dallas County, Texas.