



CALIFORNIA  
ASSOCIATION  
OF REALTORS®

## DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

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

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

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

### SELLER'S AGENT

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

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

To the Buyer and the Seller:

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

### BUYER'S AGENT

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

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

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

### AGENT REPRESENTING BOTH SELLER AND BUYER

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

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

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

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

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

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

☒ Buyer ☐ Seller ☐ Landlord ☐ Tenant \_\_\_\_\_ Date \_\_\_\_\_  
Western International Gas & Cylinders, Inc.

☐ Buyer ☐ Seller ☐ Landlord ☐ Tenant \_\_\_\_\_ Date \_\_\_\_\_

Agent Cushman & Wakefield BRE Lic. # 01329963  
Real Estate Broker (Firm)

By \_\_\_\_\_ BRE Lic. # 1758818 Date \_\_\_\_\_  
(Salesperson or Broker-Associate) Matt Davis

#### Agency Disclosure Compliance (Civil Code §2079.14):

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

Seller/Landlord \_\_\_\_\_ Date \_\_\_\_\_ Seller/Landlord \_\_\_\_\_ Date \_\_\_\_\_  
Community Development Commission of the

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

Cushman & Wakefield, 4747 Executive Drive, 9th Floor San Diego, CA 92121  
Matthew Davis

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 [www.zipLogix.com](http://www.zipLogix.com)

Phone: (858)344-4026

Fax: (858)452-3206

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



## CIVIL CODE SECTIONS 2079.24 (2079.16 APPEARS ON THE FRONT)

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

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

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

**2079.16** Reproduced on Page 1 of this AD form.

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

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

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

(Name of Listing Agent)

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

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

☐ both the buyer and seller.

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

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

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

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

**2079.21** A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

**2079.22** Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

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

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



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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

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Western Mauna



# VACANT LAND PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

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

**Date Prepared:** April 30, 2018

### 1. OFFER:

- A. THIS IS AN OFFER FROM Western International Gas & Cylinders, Inc. ("Buyer"),  
 B. THE REAL PROPERTY to be acquired is Vacant land located on Manua Loa Street, situated in  
Hesperia (City), San Bernardino (County), California, 92345 (Zip Code), Assessor's Parcel No. 0410-031-06 ("Property").  
 Further Described As An 11 Acre Vacant Land Parcel with Access to the G Ave Rail Spur.  
 C. THE PURCHASE PRICE offered is Three Hundred Eighty-Three Thousand, Three Hundred Twenty-Eight  
Dollars \$ 383,328.00  
 D. CLOSE OF ESCROW shall occur on ☐ \_\_\_\_\_ (date) (or ☒ See Addendum Days After Acceptance).  
 E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.

**2. AGENCY:**

- A. **DISCLOSURE:** The Parties each acknowledge receipt of a ☒ "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
- B. **CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction:  
Listing Agent \_\_\_\_\_ (Print Firm Name) is the agent of (check one):  
☒ the Seller exclusively; or ☐ both the Buyer and Seller.  
Selling Agent Cushman & Wakefield \_\_\_\_\_ (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one): ☒ the Buyer exclusively; or ☐ the Seller exclusively; or ☐ both the Buyer and Seller.
- C. **POTENTIALLY COMPETING BUYERS AND SELLERS:** The Parties each acknowledge receipt of a ☒ "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

**3. FINANCE TERMS:** Buyer represents that funds will be good when deposited with Escrow Holder.

- A. INITIAL DEPOSIT:** Deposit shall be in the amount of \$ 10,000.00
- (1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, ☐ cashier's check, ☐ personal check, ☐ other \_\_\_\_\_ within 3 business days after Acceptance (or \_\_\_\_\_);
- OR (2) ☐ Buyer Deposit with Agent: Buyer has given the deposit by personal check (or \_\_\_\_\_) to the agent submitting the offer (or to \_\_\_\_\_), made payable to \_\_\_\_\_. The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or \_\_\_\_\_). Deposit checks given to agent shall be an original signed check and not a copy.

(Note: Initial and increased deposits checks received by agent shall be recorded in Broker's trust fund log.)

- B. INCREASED DEPOSIT:** Buyer shall deposit with Escrow Holder an increased deposit in the amount of . . . \$ \_\_\_\_\_ within \_\_\_\_\_ Days After Acceptance (or \_\_\_\_\_). If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder.

- C. ☒ **ALL CASH OFFER:** No loan is needed to purchase the Property. This offer is NOT contingent on Buyer obtaining a loan. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or ☒ Buyer shall, within 3 (or \_\_\_\_\_) Days After Acceptance, Deliver to Seller such verification.

**D. LOAN(S):**

- (1) **FIRST LOAN:** in the amount of ..... \$ \_\_\_\_\_  
 This loan will be conventional financing or ☐ FHA, ☐ VA, ☐ Seller financing (C.A.R. Form SFA),  
☐ assumed financing (C.A.R. Form AFA), ☐ subject to financing, ☐ Other \_\_\_\_\_. This  
 loan shall be at a fixed rate not to exceed \_\_\_\_\_% or, ☐ an adjustable rate loan with initial rate not  
 to exceed \_\_\_\_\_%. Regardless of the type of loan, Buyer shall pay points not to exceed \_\_\_\_\_%  
 of the loan amount.

- (2) ☐ **SECOND LOAN** in the amount of ..... \$ .....
- This loan will be conventional financing or ☐ Seller financing (C.A.R. Form SFA), ☐ assumed financing (C.A.R. Form AFA), ☐ subject to financing ☐ Other ..... This loan shall be at a fixed rate not to exceed \_\_\_\_\_% or, ☐ an adjustable rate loan with initial rate not to exceed \_\_\_\_\_%. Regardless of the type of loan, Buyer shall pay points not to exceed \_\_\_\_\_% of the loan amount.

- (3) **FHA/VA:** For any FHA or VA loan specified in 3D(1), Buyer has 17 (or     ) **Days** After Acceptance to Deliver to Seller written notice (C.A.R. Form FVA) of any lender-required repairs or costs that Buyer requests Seller to pay for or otherwise correct. Seller has no obligation to pay or satisfy lender requirements unless agreed in writing. A FHA/VA amendatory clause (C.A.R. Form FVAC) shall be a part of this transaction.

**E. ADDITIONAL FINANCING TERMS:**

Buyer's Initials ( ) ( )  
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**Seller's Initials ( ) (**



**VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 1 OF 11)**

Cushman & Wakefield, 4747 Executive Drive, 9th Floor San Diego, CA 92121  
Matthew Davis Produced with zipForm® by z

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Phone: (858) 344-4026

Fax: (858) 452-3206

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- F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE** in the amount of \$ 373,328.00  
to be deposited with Escrow Holder pursuant to Escrow Holder instructions.
- G. PURCHASE PRICE (TOTAL):** \$ 383,328.00
- H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Buyer (or Buyer's lender or loan broker pursuant to paragraph 3J(1)) shall, within 3 (or     ) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. ( ☐ Verification attached.)
- I. APPRAISAL CONTINGENCY AND REMOVAL:** This Agreement is (or ☒ is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 19B(3), in writing, remove the appraisal contingency or cancel this Agreement within 17 (or     ) Days After Acceptance.
- J. LOAN TERMS:**
- (1) **LOAN APPLICATIONS:** Within 3 (or     ) Days After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate. ( ☐ Letter attached.)
- (2) **LOAN CONTINGENCY:** Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above is a contingency of this Agreement unless otherwise agreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs are not contingencies of this Agreement.
- (3) **LOAN CONTINGENCY REMOVAL:**  
Within 21 (or     ) Days After Acceptance, Buyer shall, as specified in paragraph 19, in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
- (4) ☐ **NO LOAN CONTINGENCY:** Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.
- (5) **LENDER LIMITS ON BUYER CREDITS:** Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.
- K. BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price and to sell to Buyer in reliance on Buyer's covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.
- L. SELLER FINANCING:** The following terms (or ☐ the terms specified in the attached Seller Financing Addendum) (C.A.R. Form SFA) apply ONLY to financing extended by Seller under this Agreement.
- (1) **BUYER'S CREDIT-WORTHINESS:** Buyer authorizes Seller and/or Brokers to obtain, at Buyer's expense, a copy of Buyer's credit report. Within 7 (or     ) Days After Acceptance, Buyer shall provide any supporting documentation reasonably requested by Seller.
- (2) **TERMS:** Buyer's promissory note, deed of trust and other documents as appropriate shall incorporate and implement the following additional terms: (i) the maximum interest rate specified in paragraph 3D shall be the actual fixed interest rate for Seller financing; (ii) deed of trust shall contain a REQUEST FOR NOTICE OF DEFAULT on senior loans; (iii) Buyer shall sign and pay for a REQUEST FOR NOTICE OF DELINQUENCY prior to Close Of Escrow and at any future time if requested by Seller; (iv) note and deed of trust shall contain an acceleration clause making the loan due, when permitted by law and at Seller's option, upon the sale or transfer of the Property or any interest in it; (v) note shall contain a late charge of 6% of the installment due (or     ) if the installment is not received within 10 days of the date due; (vi) title insurance coverage in the form of a joint protection policy shall be provided insuring Seller's deed of trust interest in the Property (any increased cost over owner's policy shall be paid by Buyer); and (vii) tax service shall be obtained and paid for by Buyer to notify Seller if property taxes have not been paid.
- (3) **ADDED, DELETED OR SUBSTITUTED BUYERS:** The addition, deletion or substitution of any person or entity under this Agreement or to title prior to Close Of Escrow shall require Seller's written consent. Seller may grant or withhold consent in Seller's sole discretion. Any additional or substituted person or entity shall, if requested by Seller, submit to Seller the same documentation as required for the original named Buyer. Seller and/or Brokers may obtain a credit report, at Buyer's expense, on any such person or entity.
- M. ASSUMED OR "SUBJECT TO" FINANCING:** Seller represents that Seller is not delinquent on any payments due on any loans. Seller shall, within the time specified in paragraph 19, provide Copies of all applicable notes and deeds of trust, loan balances and current interest rates to Buyer. Buyer shall then, as specified in paragraph 19B(3), remove this contingency or cancel this Agreement. Differences between estimated and actual loan balances shall be adjusted at Close Of Escrow by cash down payment. Impound accounts, if any, shall be assigned and charged to Buyer and credited to Seller. Seller is advised that Buyer's assumption of an existing loan may not release Seller from liability on that loan. If this is an assumption of a VA Loan, the sale is contingent upon Seller being provided a release of liability and substitution of eligibility, unless otherwise agreed in writing. If the Property is acquired subject to an existing loan, Buyer and Seller are advised to consult with legal counsel regarding the ability of an existing lender to call the loan due, and the consequences thereof.

Buyer's Initials (      ) (      )Seller's Initials (      ) (      )

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VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 2 OF 11)

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**4. SALE OF BUYER'S PROPERTY:**

- A. This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer.
- OR B. ☐ This Agreement and Buyer's ability to obtain financing are contingent upon the sale of property owned by Buyer as specified in the attached addendum (C.A.R. Form COP).

5. ☐ **MANUFACTURED HOME PURCHASE:** The purchase of the Property is contingent upon Buyer acquiring a personal property manufactured home to be placed on the Property after Close Of Escrow. Buyer ☐ has ☐ has not entered into a contract for the purchase of a personal property manufactured home. Within the time specified in paragraph 19, Buyer shall remove this contingency or cancel this Agreement, (or ☐ this contingency shall remain in effect until the Close Of Escrow of the Property).

6. ☐ **CONSTRUCTION LOAN FINANCING:** The purchase of the Property is contingent upon Buyer obtaining a construction loan. A draw from the construction loan ☐ will ☐ will not be used to finance the Property. Within the time specified in paragraph 19, Buyer shall remove this contingency or cancel this Agreement (or ☐ this contingency shall remain in effect until Close Of Escrow of the Property).

**7. ADDENDA AND ADVISORIES:****A. ADDENDA:**

- ☒ Addendum # 1 (C.A.R. Form ADM)
- ☐ Back Up Offer Addendum (C.A.R. Form BUO) ☐ Court Confirmation Addendum (C.A.R. Form CCA)
- ☐ Septic, Well and Property Monument Addendum (C.A.R. Form SWPI)
- ☐ Short Sale Addendum (C.A.R. Form SSA) ☐ Other

**B. BUYER AND SELLER ADVISORIES:**

- ☒ Buyer's Inspection Advisory (C.A.R. Form BIA)
- ☐ Probate Advisory (C.A.R. Form PA) ☐ Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
- ☐ Trust Advisory (C.A.R. Form TA) ☐ REO Advisory (C.A.R. Form REO)
- ☐ Short Sale Information and Advisory (C.A.R. Form SSIA) ☐ Other

**8. OTHER TERMS:****9. ALLOCATION OF COSTS**

- A. INSPECTIONS, REPORTS AND CERTIFICATES:** Unless otherwise agreed, in writing, this paragraph only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it **does not determine who is to pay for any work recommended or identified in the Report.**

- (1) ☐ Buyer ☒ Seller shall pay for a natural hazard zone disclosure report, including tax ☐ environmental ☐ Other: \_\_\_\_\_ prepared by Disclosure Source

- (2) ☐ Buyer ☐ Seller shall pay for the following Report \_\_\_\_\_ prepared by \_\_\_\_\_

- (3) ☐ Buyer ☐ Seller shall pay for the following Report \_\_\_\_\_ prepared by \_\_\_\_\_

**B. ESCROW AND TITLE:**

- (1) (a) ☒ Buyer ☒ Seller shall pay escrow fee SPLIT COSTS 50/50

(b) Escrow Holder shall be Commonwealth Land Title/Lawyers Title - Joy Eaton

(c) The Parties shall, within 5 (or \_\_\_\_\_) Days After receipt, sign and return Escrow Holder's general provisions.

- (2) (a) ☐ Buyer ☒ Seller shall pay for owner's title insurance policy specified in paragraph 18E

(b) Owner's title policy to be issued by Commonwealth Land Title/Lawyers Title - William Shebesta

(Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

**C. OTHER COSTS:**

- (1) ☐ Buyer ☒ Seller shall pay County transfer tax or fee \_\_\_\_\_

- (2) ☐ Buyer ☒ Seller shall pay City transfer tax or fee \_\_\_\_\_

- (3) ☐ Buyer ☐ Seller shall pay Homeowners' Association ("HOA") transfer fee \_\_\_\_\_

- (4) Seller shall pay HOA fees for preparing all documents required to be delivered by Civil Code §4525.

- (5) Buyer to pay for any HOA certification fee.

- (6) ☐ Buyer ☐ Seller shall pay HOA fees for preparing all documents other than those required by Civil Code §4525.

- (7) ☐ Buyer ☐ Seller shall pay for any private transfer fee \_\_\_\_\_

- (8) ☐ Buyer ☐ Seller shall pay for \_\_\_\_\_

- (9) ☐ Buyer ☐ Seller shall pay for \_\_\_\_\_

- 10. CLOSING AND POSSESSION:** Possession shall be delivered to Buyer: (i) ☒ at 6 PM or (\_\_\_\_\_) ☐ AM/ ☐ PM on the date of Close Of Escrow; (ii) ☐ no later than \_\_\_\_\_ calendar days after Close Of Escrow; or (iii) ☐ at \_\_\_\_\_ ☐ AM/ ☐ PM on \_\_\_\_\_. The Property shall be unoccupied, unless otherwise agreed in writing. Seller shall provide keys and/or means to operate all Property locks. If Property is located in a common interest subdivision, Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.

**11. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:**

- A. NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the MLS, flyers or marketing materials are **not** included in the purchase price or excluded from the sale unless specified in 11B or C.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )





**B. ITEMS INCLUDED IN SALE:**

- (1) All EXISTING fixtures and fittings that are attached to the Property;  
(2) The following items: N/A

- (3) Seller represents that all items included in the purchase price, unless otherwise specified, are owned by Seller.  
(4) All items included shall be transferred free of liens and without Seller warranty.

**C. ITEMS EXCLUDED FROM SALE:****12. STATUTORY AND OTHER DISCLOSURES AND CANCELLATION RIGHTS:**

- A. NATURAL AND ENVIRONMENTAL HAZARD DISCLOSURES AND OTHER BOOKLETS:** Within the time specified in paragraph 19A, Seller shall, if required by Law: (i) Deliver to Buyer earthquake guide(s) (and questionnaire), environmental hazards booklet; (ii) disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; and Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
- B. WITHHOLDING TAXES:** Within the time specified in paragraph 19A, to avoid required withholding, Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law (C.A.R. Form AS or QS).
- C. MEGAN'S LAW DATABASE DISCLOSURE:** Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov). Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer's inspection contingency period. Brokers do not have expertise in this area.)
- D. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.
- E. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**  
(1) **SELLER HAS:** 7 (or     ) Days After Acceptance to disclose to Buyer whether the Property is a condominium, or is located in a planned development or other common interest subdivision (C.A.R. Form VLQ).  
(2) If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has 3 (or     ) Days After Acceptance to request from the HOA (C.A.R. Form HOA1): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; and (v) the names and contact information of all HOAs governing the Property (collectively, "CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 19B(3). The Party specified in paragraph 9, as directed by escrow, shall deposit funds into escrow or direct to HOA or management company to pay for any of the above.

**13. SELLER DOCUMENTATION AND ADDITIONAL DISCLOSURE:**

- A.** Within the time specified in paragraph 19, if Seller has actual knowledge, Seller shall provide to Buyer, in writing, the following information:
- (1) **LEGAL PROCEEDINGS:** Any lawsuits by or against Seller, threatening or affecting the Property, including any lawsuits alleging a defect or deficiency in the Property or common areas, or any known notices of abatement or citations filed or issued against the Property.
  - (2) **AGRICULTURAL USE:** Whether the Property is subject to restrictions for agricultural use pursuant to the Williamson Act (Government Code §§51200-51295).
  - (3) **DEED RESTRICTIONS:** Any deed restrictions or obligations.
  - (4) **FARM USE:** Whether the Property is in, or adjacent to, an area with Right to Farm rights (Civil Code §3482.5 and §3482.6).
  - (5) **ENDANGERED SPECIES:** Presence of endangered, threatened, 'candidate' species, or wetlands on the Property.
  - (6) **ENVIRONMENTAL HAZARDS:** Any substances, materials, or products that may be an environmental hazard including, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the Property.
  - (7) **COMMON WALLS:** Any features of the Property shared in common with adjoining landowners, such as walls, fences, roads, and driveways, and agriculture and domestic wells whose use or responsibility for maintenance may have an effect on the Property.
  - (8) **LANDLOCKED:** The absence of legal or physical access to the Property.
  - (9) **EASEMENTS/ENCROACHMENTS:** Any encroachments, easements or similar matters that may affect the Property.
  - (10) **SOIL FILL:** Any fill (compacted or otherwise), or abandoned mining operations on the Property.
  - (11) **SOIL PROBLEMS:** Any slippage, sliding, flooding, drainage, grading, or other soil problems.
  - (12) **EARTHQUAKE DAMAGE:** Major damage to the Property or any of the structures from fire, earthquake, floods, or landslides.
  - (13) **ZONING ISSUES:** Any zoning violations, non-conforming uses, or violations of "setback" requirements.
  - (14) **NEIGHBORHOOD PROBLEMS:** Any neighborhood noise problems, or other nuisances.
- B. RENTAL AND SERVICE AGREEMENTS:** Within the time specified in paragraph 19, Seller shall make available to Buyer for inspection and review, all current leases, rental agreements, service contracts and other related agreements, licenses, and permits pertaining to the operation or use of the Property.
- C. ☐ TENANT ESTOPPEL CERTIFICATES:** Within the time specified in paragraph 19, Seller shall deliver to Buyer tenant estoppel certificates (C.A.R. Form TEC) completed by Seller or Seller's agent, and signed by tenants, acknowledging: (i) that tenants' rental or lease agreements are unmodified and in full force and effect (or if modified, stating all such modifications); (ii) that no lessor defaults exist; and (iii) stating the amount of any prepaid rent or security deposit.

Buyer's Initials (          ) (          )Seller's Initials (          ) (          )

- D. MELLO-ROOS TAX; 1915 BOND ACT:** Within the time specified in paragraph 19, Seller shall: (i) make a good faith effort to obtain a notice from any local agencies that levy a special tax or assessment on the Property (or, if allowed, substantially equivalent notice), pursuant to the Mello-Roos Community Facilities Act, and Improvement Bond Act of 1915, and (ii) promptly deliver to Buyer any such notice obtained.
- E. SELLER VACANT LAND QUESTIONNAIRE:** Seller shall, within the time specified in paragraph 19, complete and provide Buyer with a Seller Vacant Land Questionnaire (C.A.R. Form VLQ).
- 14. SUBSEQUENT DISCLOSURES:** In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer of which Buyer is otherwise unaware, Seller shall promptly provide a subsequent or amended disclosure or notice, in writing, covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies disclosed in reports ordered and paid for by Buyer.
- 15. CHANGES DURING ESCROW:**
- A.** Prior to Close Of Escrow, Seller may engage in the following acts, ("Proposed Changes"), subject to Buyer's rights in paragraph 15B: (i) rent or lease any part of the premises; (ii) alter, modify or extend any existing rental or lease agreement; (iii) enter into, alter, modify or extend any service contract(s); or (iv) change the status of the condition of the Property.
- B.** At least 7 (or \_\_\_\_ ) Days prior to any Proposed Changes, Seller shall give written notice to Buyer of such Proposed Changes. Within 5 (or \_\_\_\_ ) Days After receipt of such notice, Buyer, in writing, may give Seller notice of Buyer's objection to the Proposed Changes, in which case Seller shall not make the Proposed Changes.
- 16. CONDITION OF PROPERTY:** Unless otherwise agreed in writing: (i) the Property is sold (a) "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's Investigation rights; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow.
- A.** Seller shall, within the time specified in paragraph 19A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.
- B.** Buyer has the right to conduct Buyer Investigations of the property and, as specified in paragraph 19B, based upon information discovered in those investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.
- C.** Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.
- 17. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**
- A.** Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 19B. Within the time specified in paragraph 19B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards; (ii) inspect for wood destroying pests and organisms; (iii) review the registered sex offender database; (iv) confirm the insurability of Buyer and the Property; and (v) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA). Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations except for minimally invasive testing; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- B.** Seller shall make the Property available for all Buyer Investigations. Buyer shall (i) as specified in paragraph 19B, complete Buyer Investigations and, either remove the contingency or cancel this Agreement, and (ii) give Seller, at no cost, complete Copies of all Investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
- C.** **Buyer indemnity and Seller protection for entry upon property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs of Buyer's Investigations. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination or cancellation of this Agreement and Close Of Escrow.
- D. BUYER IS STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY AND ALL MATTERS AFFECTING THE VALUE OR DESIRABILITY OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE ITEMS SPECIFIED BELOW. IF BUYER DOES NOT EXERCISE THESE RIGHTS, BUYER IS ACTING AGAINST THE ADVICE OF BROKERS. BUYER UNDERSTANDS THAT ALTHOUGH CONDITIONS ARE OFTEN DIFFICULT TO LOCATE AND DISCOVER, ALL REAL PROPERTY CONTAINS CONDITIONS THAT ARE NOT READILY APPARENT AND THAT MAY AFFECT THE VALUE OR DESIRABILITY OF THE PROPERTY. BUYER AND SELLER ARE AWARE THAT BROKERS DO NOT GUARANTEE, AND IN NO WAY ASSUME RESPONSIBILITY FOR, THE CONDITION OF THE PROPERTY. BROKERS HAVE NOT AND WILL NOT VERIFY ANY OF THE ITEMS IN THIS PARAGRAPH 17, UNLESS OTHERWISE AGREED IN WRITING.**
- E. SIZE, LINES, ACCESS AND BOUNDARIES:** Lot size, property lines, legal or physical access and boundaries including features of the Property shared in common with adjoining landowners, such as walls, fences, roads and driveways, whose use or responsibility for maintenance may have an effect on the Property and any encroachments, easements or similar matters that may affect the Property. (Fences, hedges, walls and other natural or constructed barriers or markers do not necessarily identify true Property boundaries. Property lines may be verified by survey.) (Unless otherwise specified in writing, any numerical statements by Brokers regarding lot size are APPROXIMATIONS ONLY, which have not been and will not be verified, and should not be relied upon by Buyer.)
- F. ZONING AND LAND USE:** Past, present, or proposed laws, ordinances, referendums, initiatives, votes, applications and permits affecting the current use of the Property, future development, zoning, building, size, governmental permits and inspections. Any zoning violations, non-conforming uses, or violations of "setback" requirements. (Buyer should also investigate whether these matters affect Buyer's intended use of the Property.)
- G. UTILITIES AND SERVICES:** Availability, costs, restrictions and location of utilities and services, including but not limited to, sewerage, sanitation, septic and leach lines, water, electricity, gas, telephone, cable TV and drainage.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

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- H. **ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel, oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, including mold (airborne, toxic or otherwise), fungus or similar contaminant, materials, products or conditions.
- I. **GEOLOGIC CONDITIONS:** Geologic/seismic conditions, soil and terrain stability, suitability and drainage including any slippage, sliding, flooding, drainage, grading, fill (compacted or otherwise), or other soil problems.
- J. **NATURAL HAZARD ZONE:** Special Flood Hazard Areas, Potential Flooding (Inundation) Areas, Very High Fire Hazard Zones, State Fire Responsibility Areas, Earthquake Fault Zones, Seismic Hazard Zones, or any other zone for which disclosure is required by Law.
- K. **PROPERTY DAMAGE:** Major damage to the Property or any of the structures or non-structural systems and components and any personal property included in the sale from fire, earthquake, floods, landslides or other causes.
- L. **NEIGHBORHOOD, AREA AND PROPERTY CONDITIONS:** Neighborhood or area conditions, including Agricultural Use Restrictions pursuant to the Williamson Act (Government Code §§51200-51295), Right To Farm Laws (Civil Code §3482.5 and §3482.6), schools, proximity and adequacy of law enforcement, crime statistics, the proximity of registered felons or offenders, fire protection, other government services, availability, adequacy and cost of any speed-wired, wireless internet connections or other telecommunications or other technology services and installations, proximity to commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, abandoned mining operations on the Property, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.
- M. **COMMON INTEREST SUBDIVISIONS: OWNER ASSOCIATIONS:** Facilities and condition of common areas (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others), Owners' Association that has any authority over the subject property, CC&Rs, or other deed restrictions or obligations, and possible lack of compliance with any Owners' Association requirements.
- N. **SPECIAL TAX:** Any local agencies that levy a special tax on the Property pursuant to the Mello-Roos Community Facilities Act or Improvement Bond Act of 1915.
- O. **RENTAL PROPERTY RESTRICTIONS:** Some cities and counties impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants and the right of a landlord to terminate a tenancy.
- P. **MANUFACTURED HOME PLACEMENT:** Conditions that may affect the ability to place and use a manufactured home on the Property.
- 18. TITLE AND VESTING:**
- A. Within the time specified in paragraph 19, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 19B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities. Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information.
- B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record (which Seller is obligated to pay off) unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.
- C. Within the time specified in paragraph 19A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.
- E. Buyer shall receive a "CLTA/ALTA Homeowner's Policy of Title Insurance", if applicable to the type of property and buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and shall pay any increase in cost.
- 19. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS:** The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).
- A. **SELLER HAS:** 7 (or 5) Days After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 3M, 7A, 8, 9, 12A, B, and E, 13, 16A and 18A. Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement if Seller has not Delivered the items within the time specified.
- B. (1) **BUYER HAS:** 17 (or 120) Days After Acceptance, unless otherwise agreed in writing, to:
- (i) complete all Buyer Investigations: review all disclosures, reports, and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and (ii) Deliver to Seller Signed Copies of Statutory Disclosures and other disclosures Delivered by Seller in accordance with paragraph 12A.
- (2) Within the time specified in paragraph 19B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to (C.A.R. Form RRRR) Buyer's requests.
- (3) By the end of the time specified in paragraph 19B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 19A, then Buyer has 5 (or     ) Days After Delivery of any such items, or the time specified in paragraph 19B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.

Buyer's Initials (          ) (          )Seller's Initials (          ) (          )

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- (4) **Continuation of Contingency:** Even after the end of the time specified in paragraph 19B(1) and before Seller cancels, if at all, pursuant to paragraph 19C, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 19C(1).
- C. SELLER RIGHT TO CANCEL:**
- (1) **Seller right to Cancel; Buyer Contingencies:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
- (2) **Seller right to Cancel; Buyer Contract Obligations:** Seller, after first delivering to Buyer a NBP, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3A or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited; (ii) Deliver a notice of FHA or VA costs or terms as required by paragraph 3D(3) (C.A.R. Form FVA); (iii) Deliver a letter as required by paragraph 3J(1); (iv) Deliver verification as required by paragraph 3C or 3H or if Seller reasonably disapproves of the verification provided by paragraph 3C or 3H; (v) Return Statutory Disclosures as required by paragraph 12A; or (vi) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 27B; or (vii) Provide evidence of authority to sign in a representative capacity as specified in paragraph 19. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
- D. NOTICE TO BUYER OR SELLER TO PERFORM:** The NBP or NSP shall: (i) be in writing; (ii) be signed by the applicable Buyer or Seller; and (iii) give the other Party at least 2(or \_\_\_\_ ) Days After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP or NSP may not be Delivered any earlier than 2 Days Prior to the expiration of the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 19.
- E. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES:** If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in writing, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.
- F. CLOSE OF ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: (i) be signed by the applicable Buyer or Seller; and (ii) give the other Party at least 3 (or \_\_\_\_ ) Days After Delivery to close escrow. A DCE may not be Delivered any earlier than 3 Days Prior to the scheduled close of escrow.
- G. EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Except as specified below, **release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award.** If either Party fails to execute mutual instructions to cancel escrow, one Party may make a written demand to Escrow Holder for the deposit (C.A.R. Form BDRD or SDRD). Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within 10 Days After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursement of the deposit. Escrow Holder, at its discretion, may nonetheless require mutual cancellation instructions. A Party may be subject to a civil penalty of up to \$1,000 for refusal to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).
- 20. REPAIRS:** Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
- 21. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property within 5 (or \_\_\_\_ ) Days Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 16; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).
- 22. ENVIRONMENTAL HAZARD CONSULTATION:** Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Broker(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Broker(s) has/have made no representation concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property.
- 23. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )



District bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). **TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.** Prorations shall be made based on a 30-day month.

**24. BROKERS:**

- A. COMPENSATION:** Seller or Buyer, or both, as applicable, agrees to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
- B. SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

**25. REPRESENTATIVE CAPACITY:** If one or more Parties is signing the Agreement in a representative capacity and not for him/herself as an individual then that Party shall so indicate in paragraph 37 or 38 and attach a Representative Capacity Signature Addendum (C.A.R. Form RCSD). Wherever the signature or initials of the representative identified in the RCSD appear on the Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Party acting in a representative capacity (i) represents that the entity for which that party is acting already exists and (ii) shall Deliver to the other Party and Escrow Holder, within 3 Days After Acceptance, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code §18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).

**26. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**

- A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3, 4B, 5, 6, 7A, 8, 9, 12B, 18, 19G, 23, 24A, 25, 26, 32, 35, 36, 37, 38 and paragraph D of the section titled Real Estate Brokers on page 11. If a Copy of the separate compensation agreement(s) provided for in paragraph 24A, or paragraph D of the section titled Real Estate Brokers on page 10 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 9B(1)(c). To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within 3 (or \_\_\_\_\_) Days, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 9, 12 or elsewhere in this Agreement.**
- B. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within 3 Days After Acceptance (or \_\_\_\_\_). Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title company when received from Seller. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 12B, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.**
- C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 24A and paragraph D of the section titled Real Estate Brokers on page 11. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 24A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.**
- D. Upon receipt, Escrow Holder shall provide Seller and Seller's Broker verification of Buyer's deposit of funds pursuant to paragraph 3A and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (i) if Buyer's initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.**
- E. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 3 Days after mutual execution of the amendment.**

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )





**27. REMEDIES FOR BUYER'S BREACH OF CONTRACT:**

- A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.
- B. **LIQUIDATED DAMAGES:** If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. **AT TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM RID).**

Buyer's Initials \_\_\_\_\_ / \_\_\_\_\_

Seller's Initials \_\_\_\_\_ / \_\_\_\_\_

**28. DISPUTE RESOLUTION:**

- A. **MEDIATION:** The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action through the C.A.R. Consumer Mediation Center ([www.consumermediation.org](http://www.consumermediation.org)) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the Parties involved. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. **THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED. Exclusions from this mediation agreement are specified in paragraph 28C.**

- B. **ARBITRATION OF DISPUTES:** The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 28C.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

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

Buyer's Initials \_\_\_\_\_ / \_\_\_\_\_

Seller's Initials \_\_\_\_\_ / \_\_\_\_\_

**C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:**

- (1) **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.
- (2) **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- (3) **BROKERS:** Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to the Agreement.

**29. SELECTION OF SERVICE PROVIDERS:** Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.

**30. MULTIPLE LISTING SERVICE ("MLS"):** Brokers are authorized to report to the MLS a pending sale and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

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**VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 9 OF 11)**Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 [www.zipLogix.com](http://www.zipLogix.com)

Western Mauna



Date: April 30, 2018



Property Address: Vacant land located on Manua Loa Street, Hesperia, CA 92345Date: April 30, 2018

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

☐ (If checked) SELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMCO) DATED: \_\_\_\_\_

☐ One or more Sellers is signing the Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-S) for additional terms.

Date 03/15/2018 SELLER \_\_\_\_\_(Print name) Community Development Commission of the City of Hesperia

Date \_\_\_\_\_ SELLER \_\_\_\_\_

(Print name) \_\_\_\_\_

☐ Additional Signature Addendum attached (C.A.R. Form ASA).

(\_\_\_\_\_/\_\_\_\_\_) (Do not initial if making a counter offer.) CONFIRMATION OF ACCEPTANCE: A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) \_\_\_\_\_ at \_\_\_\_\_

(Initials)

☐ AM/ ☐ PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.

**REAL ESTATE BROKERS:****A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.****B. Agency relationships are confirmed as stated in paragraph 2.****C. If specified in paragraph 3A(2), Agent who submitted the offer for Buyer acknowledges receipt of deposit.**

**D. COOPERATING BROKER COMPENSATION:** Listing Broker agrees to pay Cooperating Broker (Selling Firm) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow, the amount specified in the MLS, provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Listing Broker and Cooperating Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.

Real Estate Broker (Selling Firm) Cushman & WakefieldCalBRE Lic. # 01329963By Matt Davis CalBRE Lic. # 1758818

Date \_\_\_\_\_

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

Date \_\_\_\_\_

Address 4747 Executive Drive, 9th FloorCity San DiegoState CAZip 92121Telephone (858)334-4026

Fax \_\_\_\_\_

E-mail matt.davis@cushwake.com

Real Estate Broker (Listing Firm) \_\_\_\_\_

CalBRE Lic. # \_\_\_\_\_

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

Date \_\_\_\_\_

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

Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

**ESCROW HOLDER ACKNOWLEDGMENT:**

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, ☐ a deposit in the amount of \$ \_\_\_\_\_), counter offer numbers \_\_\_\_\_ ☐ Seller's Statement of Information and \_\_\_\_\_

and agrees to act as Escrow Holder subject to paragraph 26 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is \_\_\_\_\_

Escrow Holder \_\_\_\_\_ Escrow # \_\_\_\_\_

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

Address \_\_\_\_\_

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

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

☐ Department of Business Oversight, ☐ Department of Insurance, ☐ Bureau of Real Estate.

**PRESENTATION OF OFFER:** (\_\_\_\_\_) Listing Broker presented this offer to Seller on \_\_\_\_\_ (date).  
Broker or Designee Initials \_\_\_\_\_

**REJECTION OF OFFER:** (\_\_\_\_\_) (\_\_\_\_\_) No counter offer is being made. This offer was rejected by Seller on \_\_\_\_\_ (date).  
Seller's Initials \_\_\_\_\_

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Buyer's Acknowledge that page 11 is part of  
this Agreement (\_\_\_\_\_) (\_\_\_\_\_)

Reviewed by  
Broker or Designee \_\_\_\_\_



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**VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 11 OF 11)**Produced with zipForm® by zipLogix 19070 Fifteen Mile Road, Fraser, Michigan 48066 [www.zipLogix.com](http://www.zipLogix.com)

Western Mauna



## BUYER'S INSPECTION ADVISORY

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

Property Address: Vacant land located on Manua Loa Street, Hesperia, CA 92345

("Property").

**1. IMPORTANCE OF PROPERTY INVESTIGATION:** The physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If the professionals recommend further investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional investigations.

**2. BROKER OBLIGATIONS:** Brokers do not have expertise in all areas and therefore cannot advise you on many items, such as those listed below. If Broker gives you referrals to professionals, Broker does not guarantee their performance.

**3. YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE FOLLOWING. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.**

**A. GENERAL CONDITION OF THE PROPERTY, ITS SYSTEMS AND COMPONENTS:** Foundation, roof (condition, age, leaks, useful life), plumbing, heating, air conditioning, electrical, mechanical, security, pool/spa (cracks, leaks, operation), other structural and nonstructural systems and components, fixtures, built-in appliances, any personal property included in the sale, and energy efficiency of the Property.

**B. SQUARE FOOTAGE, AGE, BOUNDARIES:** Square footage, room dimensions, lot size, age of improvements and boundaries. Any numerical statements regarding these items are APPROXIMATIONS ONLY and have not been verified by Seller and cannot be verified by Brokers. Fences, hedges, walls, retaining walls and other barriers or markers do not necessarily identify true Property boundaries.

**C. WOOD DESTROYING PESTS:** Presence of, or conditions likely to lead to the presence of wood destroying pests and organisms.

**D. SOIL STABILITY:** Existence of fill or compacted soil, expansive or contracting soil, susceptibility to slippage, settling or movement, and the adequacy of drainage.

**E. WATER AND UTILITIES; WELL SYSTEMS AND COMPONENTS; WASTE DISPOSAL:** Water and utility availability, use restrictions and costs. Water quality, adequacy, condition, and performance of well systems and components. The type, size, adequacy, capacity and condition of sewer and septic systems and components, connection to sewer, and applicable fees.

**F. ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, materials, products, or conditions (including mold (airborne, toxic or otherwise), fungus or similar contaminants).

**G. EARTHQUAKES AND FLOODING:** Susceptibility of the Property to earthquake/seismic hazards and propensity of the Property to flood.

**H. FIRE, HAZARD AND OTHER INSURANCE:** The availability and cost of necessary or desired insurance may vary. The location of the Property in a seismic, flood or fire hazard zone, and other conditions, such as the age of the Property and the claims history of the Property and Buyer, may affect the availability and need for certain types of insurance. Buyer should explore insurance options early as this information may affect other decisions, including the removal of loan and inspection contingencies.

**I. BUILDING PERMITS, ZONING AND GOVERNMENTAL REQUIREMENTS:** Permits, inspections, certificates, zoning, other governmental limitations, restrictions, and requirements affecting the current or future use of the Property, its development or size.

**J. RENTAL PROPERTY RESTRICTIONS:** Some cities and counties impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants, and the right of a landlord to terminate a tenancy. Deadbolt or other locks and security systems for doors and windows, including window bars, should be examined to determine whether they satisfy legal requirements.

**K. SECURITY AND SAFETY:** State and local Law may require the installation of barriers, access alarms, self-latching mechanisms and/or other measures to decrease the risk to children and other persons of existing swimming pools and hot tubs, as well as various fire safety and other measures concerning other features of the Property.

**L. NEIGHBORHOOD, AREA, SUBDIVISION CONDITIONS; PERSONAL FACTORS:** Neighborhood or area conditions, including schools, law enforcement, crime statistics, registered felons or offenders, fire protection, other government services, availability, adequacy and cost of internet connections or other technology services and installations, commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.

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

Buyer

Western International Gas & Cylinders, Inc.

Buyer

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



BIA REVISED 11/14 (PAGE 1 OF 1)

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





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

(C.A.R. Form PRBS, 11/14)

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

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

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

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

In the event of dual agency, seller and buyer agree that: (a) Broker, without the prior written consent of the Buyer, will not disclose to seller that the Buyer is willing to pay a price greater than the offered price; (b) Broker, without the prior written consent of the seller, will not disclose to the buyer that seller is willing to sell property at a price less than the listing price; and (c) other than as set forth in (a) and (b) above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the property to both parties.

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

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

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

Seller \_\_\_\_\_ *Community Development Commission of the City* Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ *Western International Gas & Cylinders, Inc.* Date \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Real Estate Broker (Firm) \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_ CalBRE Lic # \_\_\_\_\_ Date \_\_\_\_\_

Real Estate Broker (Firm) *Cushman & Wakefield* CalBRE Lic # *01329963* Date \_\_\_\_\_

By \_\_\_\_\_ CalBRE Lic # *1758818* Date \_\_\_\_\_

*Matt Davis*

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



PRBS 11/14 (PAGE 1 OF 1)

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

Cushman & Wakefield, 4747 Executive Drive, 9th Floor San Diego, CA 92121  
Matthew Davis

Phone: (858)344-4026  
Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 [www.zipLogix.com](http://www.zipLogix.com)

Fax: (858)452-3206

Western Mauna

**ADDENDUM TO VACANT LAND PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS  
(C.A.R. FORM VLPA, Revised 12/15)**

THIS ADDENDUM TO VACANT LAND PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "Addendum"), dated April \_\_, 2018, is an addendum, modification, and amendment to that certain VACANT LAND PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS, of even date with this Addendum (C.A.R. FORM VLPA, REVISED 12/15) (the "Form Agreement"), by and between WESTERN INTERNATIONAL GAS & CYLINDERS, INC., a Texas corporation ("Buyer") and COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF HESPERIA ("Seller") for the real property commonly known as an eleven (11) acre vacant land parcel on Mauna Loa Street, Hesperia, California (the "Property"), as more particularly described in the Form Agreement. In the event of any conflict between the provisions of this Addendum and the provisions of the Form Agreement, the provisions of this Addendum shall prevail. Collectively, the Form Agreement and this Addendum shall be known as the "Agreement", and all capitalized terms used in this Addendum shall have the meanings set forth in the Form Agreement.

1. **Representations and Warranties of Seller.** Seller represents and warrants that as of the date of this Agreement and as of the Close of Escrow:

(i) The persons executing this Agreement on Seller's behalf are authorized to do so and this Agreement shall be valid and binding upon and enforceable against Seller in accordance with the terms and conditions set forth herein.

(ii) Neither the execution of this Agreement nor the consummation by Seller of the transaction contemplated hereby will (A) conflict with or result in a breach or default of any agreement or instrument to which Seller is a party or (B) result in the creation of any lien, charge or encumbrance upon the Property or any part thereof.

(iii) No taking by power of eminent domain or condemnation proceeding has been instituted or, to Seller's knowledge, threatened for the permanent or temporary taking or condemnation (or private purchase in lieu thereof) of all or any portion of the Property.

(iv) No legal or administrative proceeding is pending or, to Seller's knowledge, threatened which could affect the Property or Seller's right to sell the Property, or if determined adversely, would individually or in the aggregate materially and adversely affect Seller's ability to perform its obligations in this Agreement.

(v) No person or entity constituting Seller has commenced a voluntary case, consented to the entry of an order for relief against it in an involuntary case, or consented to the appointment of a custodian for it or for all or a substantial part of its property, nor has a court of competent jurisdiction entered an order or decree under any bankruptcy or insolvency law that is for relief against Seller in an involuntary case or that appoints a custodian for Seller or for all or any substantial part of its property.

(vi) Notwithstanding anything stated to the contrary in Section 13(B) of the Form Agreement, there are no leases, rental agreements, service contracts or other related agreements, licenses, or permits pertaining to the operation, use or right to possess any portion of the Property as of the date hereof. Notwithstanding anything stated in Section 16 of the Form Agreement to the contrary, Seller shall not enter into any lease, license or contract affecting the Property prior to the Close of Escrow.

(vii) Seller has not granted to any party any option, rights of first refusal, license or other similar agreement with respect to a purchase or sale of the Property or any portion thereof or any interest therein. There will be no unrecorded agreements affecting the Property as of Close of Escrow.



(viii) Except as disclosed in (iii) above, Seller has not received any written notification from any governmental authority or quasi-governmental authority having jurisdiction over the Property (each, a "**Governmental Authority**") that (i) the Property (or any part thereof) is in violation of any law, ordinance, rule, order, regulation or requirement affecting the Property or any part thereof, including, without limitation, those pertaining to zoning, building or environmental matters, or (ii) work is required to be performed upon or in connection with the Property.

(ix) There are no pending tax appeals with respect to the Property.

The foregoing representations and covenants shall survive Close of Escrow for one year.

2. **Delivery Items.** In addition to the items specified in Sections 13 of the Form Agreement, Seller shall deliver the items set forth in the diligence list attached to this Addendum as Exhibit B to Buyer within three (3) business days after the full execution and delivery of the Agreement (to the extent that the same exist and are in the possession or control of Seller).

3. **Buyer's Entry and Inspection; Invasive Testing and Indemnity.**

(i) Notwithstanding anything to the contrary contained in Section 17(A) of the Form Agreement, until the expiration of the Feasibility Period (and thereafter if Buyer has sent Seller its Notice to Proceed), Buyer and its representatives (including, without limitation, any architects, engineers, surveyors, attorneys, consultants, investors and lenders) shall have the right to enter upon the Property for the purpose of conducting any due diligence reasonably related to the purchase of the Property (including, but not limited to, conducting interviews with tenants and on-site property management personnel (if applicable), reviewing files related to the Property, and conducting legal (title, survey and zoning, including, but not limited to, searching governmental records for notices of zoning compliance and building, environmental or other legal violations and to request a customary zoning letter), engineering and environmental due diligence on the Property (including, but not limited to, a Phase I Environmental Site Assessment)). Buyer shall notify Seller in writing at least twenty-four (24) hours prior to the date that such testing, inspections or interviews are to be conducted on the Property (and Seller shall have the right to be present at such interviews) and provide evidence, reasonably satisfactory to Seller, of the availability of adequate public liability and other insurance, which insurance shall name Seller as an additional insured. In the event that the results of the Phase I Environmental Site Assessment support the completion of a Phase II environmental study or Buyer's environmental consultant otherwise reasonably recommends it, Buyer shall notify Seller in writing. If Seller does not grant Buyer permission to complete the Phase II environmental study within five (5) days of its receipt of notice from Buyer, the Agreement shall automatically terminate and the Deposit plus accrued interest (if any) shall be returned to Buyer and neither party shall have any further liability to the other under the Agreement (except for indemnity obligations of Buyer to Seller under this Agreement which shall survive termination of this Agreement).

(ii) Notwithstanding the provisions of Section 17(C) of the Form Agreement or of this Addendum, Buyer shall have no obligation to repair any damage to the extent caused by Seller's negligence or misconduct, to remediate, contain, abate or control any Hazardous Materials not placed on the Property by Buyer or its consultants, or to repair or restore any latent condition discovered by Buyer or its consultants (as long as Buyer or its consultants take reasonable steps not to exacerbate such condition once discovered by Buyer), and notwithstanding anything to the contrary contained in Section 17(C) of the Form Agreement, Buyer shall only be responsible for liens arising from Buyer's Investigations and shall have no liability for the mere discovery of any pre-existing condition at the Property.

4. **Title.** Notwithstanding anything to the contrary contained in Section 18 of the Form Agreement, as a condition to Close of Escrow in favor of Buyer, Commonwealth Land Title Insurance Company (in its capacity as title insurer, the "**Title Company**") shall have unconditionally and irrevocably (subject, however, only to the deliveries at Close of Escrow to the Title Company required hereunder) committed to insure Buyer as the fee owner of the Property effective upon the Closing by issuance of an ALTA Form 2006 extended coverage owner's title insurance policy in an amount not less than the Purchase Price

(collectively, the “**Owner’s Policy**”) and in the standard form issued by the Title Company in the State of California, subject only to title exceptions approved by Buyer in writing prior to the expiration of the Feasibility Period (as defined below), in the form and containing the endorsements that Title Company agreed to issue within such period. Seller shall execute and deliver at Close of Escrow an owner’s affidavit, gap and mechanics’ lien indemnity in the form required by the Title Company, and deliver such other instruments and evidence of Seller’s authority to sell the Property as is required by the Title Company to issue the Owner’s Policy.

5. **Feasibility Period.** Notwithstanding anything stated to the contrary in Section 19(B) of the Form Agreement, Buyer shall have until 5:00 P.M. California time on the 120<sup>th</sup> day following the day the Form Agreement is signed and dated by Seller and delivered to Buyer (the “**Feasibility Period**”) to satisfy itself with all items set forth in Sections 17 and 18 of the Form Agreement (as modified by this Addendum) and with regards to title and survey matters, zoning, building codes, geologic, seismic, physical condition, environmental condition and all other aspects of the Property (except for suitability regarding Buyer’s intended use and development of the Property as referenced below in Section 6 of this Addendum), in its sole and absolute discretion. Buyer may terminate the Agreement and cancel the escrow in its sole and absolute discretion by notifying Seller and Escrow Holder in writing prior to the end of the Feasibility Period. Notwithstanding anything to the contrary contained in Section 19 of the Form Agreement, if Buyer approves of the Property (subject to the Entitlement Period (defined below) provisions in Section 6 below), Buyer shall send an approval notice to Seller on or before the end of the Feasibility Period approving the matters set forth in Section 17(A), (B), (H) though (K), and (M) and Section 5 of this Addendum (“**Notice to Proceed**”). If Buyer fails to deliver a Notice to Proceed to Seller on or before the end of the Feasibility Period for any reason whatsoever, the Agreement shall automatically terminate and the Deposit plus accrued interest (if any) shall be returned to Buyer and neither party shall have any further liability to the other under the Agreement (except for indemnity obligations of Buyer to Seller under this Agreement which shall survive termination of this Agreement).

6. **Entitlement Period.** Notwithstanding anything stated to the contrary in Section 17 of the Form Agreement or Section 5 of this Addendum, Buyer shall have until 5:00 P.M. California time on the 210<sup>th</sup> day following Buyer’s delivery to Seller of the Notice to Proceed (the “**Entitlement Period**”) to satisfy itself with all items set forth in Section 17(E) through (G), (L), (N) and (O), suitability regarding Buyer’s intended use and development of the Property, and to obtain approval for the desired entitlements for the Property (including, but not limited to, obtaining approval from the City of Hesperia for the same) (collectively, the “**Entitlements**”), in its sole and absolute discretion. Notwithstanding anything to the contrary contained in Section 19 of the Form Agreement, if Buyer approves of the Entitlements, Buyer shall send an approval notice to Seller on or before the end of the Entitlement Period approving the Entitlements (the “**Entitlement Approval Notice**”), and the Close of Escrow shall occur on the first business day that is thirty (30) days after the date of the Entitlement Approval Notice. If Buyer fails to deliver the Entitlement Approval Notice to Seller (or Buyer sends a written notice to Seller disapproving the Entitlements) on or before the end of the Entitlement Period, the Agreement shall automatically terminate and the Deposit plus accrued interest (if any), plus any Extension Payment then held in escrow (if applicable), shall be tendered by the Escrow Holder to Seller and neither party shall have any further liability to the other under the Agreement (except for indemnity obligations of Buyer to Seller under this Agreement which shall survive termination of this Agreement). Notwithstanding anything stated to the contrary in this Section 6, if Buyer has not received the Entitlements acceptable to it in its sole discretion on or before the date that is five (5) days prior to the expiration of the Entitlement Period, Buyer shall have the right to extend the Entitlement Period twice, up to ninety (90) days for each extension period (each 90-day period, an “**Extension Period**”), by depositing an amount equal to \$5,000.00 (the “**Extension Payment**”) for each extension exercised by Buyer hereunder, no later than five (5) calendar days prior to the expiration of the Entitlement Period (as the same may be extended from time to time). Each Extension Payment made by Buyer shall be non-refundable, except in the event of a Seller default or a failed condition precedent to Buyer’s obligation to purchase the Property under the Form Agreement (as modified by this Addendum), and shall be applied to the Purchase Price.



7. **Independent Consideration.** A portion of the Deposit deposited by Buyer in the amount of One Hundred Dollars and No/100 (\$100) (the “**Independent Consideration**”) shall be earned by Seller upon execution and delivery of this Agreement by Seller and Buyer. The Independent Consideration represents adequate bargained for consideration for Seller’s execution and delivery of this Agreement and Buyer’s right to have inspected the Property pursuant to the terms hereof. The Independent Consideration is in addition to and independent of any other consideration or payment provided for herein and is nonrefundable in all events. Upon the Close of Escrow, or earlier termination of this Agreement, the Independent Consideration shall be paid to Seller.

8. **Casualty/Condemnation.** In the event that all or any portion of the Property is damaged or destroyed by any casualty or is the subject of a taking or condemnation under the provisions of eminent domain law after the date hereof but prior to the Close of Escrow, Seller shall have no obligation to repair or replace any damage or destruction caused by the foregoing, but the following shall apply at the Closing: (1) in the event of a casualty, Buyer shall receive a credit against the Purchase Price at Closing for the reasonably estimated remaining cost to restore the Property to its condition immediately prior to such casualty; and (2) in the event of a taking, Seller shall assign to Buyer its rights to any condemnation proceeds resulting from such taking. Notwithstanding the foregoing, if such casualty or taking is a “Material Event” (as defined below), then Buyer, at its option, may terminate this Agreement by written notice to Seller given on or before the Closing Date, and upon such termination, the Deposit shall be returned to Buyer and the parties shall have no further liability or obligation hereunder. As used in this Section, a “**Material Event**” means either of the following: (a) a casualty resulting in damage or destruction to the Property, if the cost to restore the Property to its condition immediately prior to such casualty is reasonably estimated to exceed \$25,000.00; or (b) a taking or condemnation which would impede access to the Property or materially affect the intended development of the Property by Buyer pursuant to the Entitlements, or result in a condemnation award reasonably estimated to exceed \$25,000.00.

9. **Conditions to Closing.** In addition to the conditions provided in other provisions of the Agreement, Buyer’s obligations to perform its undertakings provided in this Agreement (including its obligation to purchase the Property) the following are additional conditions that are precedent to Buyer’s obligation to purchase the Property (the “**Conditions Precedent**”):

(i) The Title Company shall be unconditionally and irrevocably committed to issue to Buyer the Owner’s Policy, subject to the provisions of Section 4 of this Addendum.

(ii) All of Seller’s representations and warranties contained in or made pursuant to the Agreement shall have been true and correct when made and shall be true and correct in all material respects as of the Closing.

(iii) Seller shall have, in all material respects, performed all covenants and obligations required by the Agreement to be performed or complied with by Seller on or before the Closing.

(iv) Buyer has received authorization to proceed with the Closing in accordance with all applicable corporate governance requirements of Buyer and its sole shareholder.

These Conditions Precedent are solely for the benefit of Buyer and can only be waived by Buyer by an instrument in writing. In the event the sale of the Property is not consummated because of the non-satisfaction and non-waiver of Conditions Precedent (i)-(iii), the Deposit (and any Extension Payments made by Buyer) shall immediately be returned to Buyer and Buyer and Seller shall split equally any cancellation fees and costs of the Title Company and Escrow Holder. In the event the sale of the Property is not consummated because of the non-satisfaction and non-waiver of Condition Precedent (iv), the Deposit (and any Extension Payments made by Buyer) shall be deemed forfeited by Buyer and immediately dispersed to Seller and Buyer and Seller shall split equally any cancellation fees and costs of the Title Company and Escrow Holder.

10. **Assignment.** Notwithstanding anything stated to the contrary set forth in Section 32 of the Form Agreement, Buyer may assign its rights under this Agreement to an entity in which Buyer or any of its principals has a direct or indirect ownership interest, without the consent of Seller, provided that Buyer provides Seller with an assumption by such assignee of all of Buyer's rights and obligations under this Agreement accruing from and after the date of such assignment.

11. **Legal Description.** The Property is more particularly described in Exhibit A attached hereto and made a part hereof.

12. **Documents Required at or Before Closing.** Notwithstanding anything stated to the contrary in the Form Agreement, (i) Buyer and Seller shall use their commercially reasonable efforts to agree upon the forms of Grant Deed and the other requisite and customary closing documents prior to the end of the Feasibility Period, and (ii) Buyer and Seller hereby agree to deliver such other documents as are reasonably required by Title Company and/or Escrow Holder for the consummation of the transaction contemplated by this Agreement.

13. **Seller Default.** In the event the sale of the Property is not consummated because of a default under the Agreement on the part of Seller, Buyer may either (1) terminate the Agreement by delivery of notice of termination to Seller, whereupon (A) Buyer's Deposit (and any Extension Payment made by Buyer) plus interest accrued thereon shall be immediately returned to Buyer, and (B) Seller shall pay to Buyer any title, escrow, legal and inspection fees incurred by Buyer and any other expenses incurred by Buyer in connection with the performance of its due diligence review of the Property, including, without limitation, environmental and engineering consultants' fees, and neither party shall have any further rights or obligations hereunder, up to an amount not to exceed \$50,000.00, or (2) continue the Agreement pending Buyer's action for specific performance.

14. **Buyer Default.** Paragraph 27 of the Agreement is hereby deleted in its entirety and replaced with the following:

27. **LIQUIDATED DAMAGES. (This Liquidated Damages section is applicable only if initialed by both Parties).**

THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX, PRIOR TO SIGNING THIS AGREEMENT, THE ACTUAL DAMAGES WHICH WOULD BE SUFFERED BY SELLER IF BUYER FAILS TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. THEREFORE, IF, AFTER THE SATISFACTION OR WAIVER OF ALL CONTINGENCIES PROVIDED FOR THE BUYER'S BENEFIT (INCLUDING THE CONDITIONS PRECEDENT), BUYER FAILS TO PURCHASE THE PROPERTY WHEN IT IS OBLIGATED TO DO SO UNDER THE TERMS OF THIS AGREEMENT, SELLER SHALL BE ENTITLED TO LIQUIDATED DAMAGES IN THE AMOUNT OF \$10,000.00, PLUS THE AMOUNT OF ANY EXTENSION PAYMENTS MADE BY BUYER. UPON PAYMENT OF SAID SUM TO SELLER, BUYER SHALL BE RELEASED FROM ANY FURTHER LIABILITY TO SELLER, AND ANY ESCROW CANCELLATION FEES AND TITLE COMPANY CHARGES SHALL BE PAID BY SELLER.

\_\_\_\_\_  
***Buyer Initials***

\_\_\_\_\_  
***Seller Initials***

15. **Confidentiality.** All of the terms and conditions of the Agreement (including the identity of Buyer and the existence of the Agreement) are confidential, and Seller shall not disclose such terms and conditions or the existence of the Agreement to anyone outside Seller other than to Seller's legal counsel and other agents and representatives who need to know such information in connection with the acquisition. Buyer may disclose the Agreement's terms and conditions and the existence of the Agreement (a) to its affiliates and its legal counsel and other agents and representatives, including prospective partners and lenders, and (b) as required by law, including without limitation, any disclosure



required by the United States Securities and Exchange Commission. Neither Seller nor Buyer shall issue any press release with respect to Buyer's acquisition of the Property or the terms of the Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

16. **Delivery of Purchase Price for Closing.** Notwithstanding anything stated to the contrary contained in the Agreement, provided that all of the Conditions Precedent have been satisfied (and/or waived by Buyer), Buyer shall deliver to Escrow Holder the Purchase Price, subject to the adjustments and prorations provided for under this Agreement, by direct deposit or by wire transfer of funds actually made in Escrow Holder's depository bank account by 12:00 P.M. California on the Closing Date.

17. **Buyer's Due Diligence Work Product.** Notwithstanding anything stated to the contrary in Section 17(B)(ii) of the Form Agreement, in the event the sale of the Property is not consummated for any reason other than Seller's breach or default, then, upon the written request of Seller, Buyer shall promptly deliver to Seller copies of the written results of any third-party inspections, tests, studies and/or investigations obtained by Buyer in connection with Buyer's due diligence, excluding any internal analyses or communications, drafts, attorney-client privileged communications, appraisals, evaluations, or internally generated work product. Notwithstanding the delivery of such written results, Seller acknowledges the same shall be provided without any representation or warranty as to their completeness or accuracy and that Seller shall not be entitled to rely upon the same, and subject to any confidentiality provisions set forth therein; provided, however, that Buyer shall not be required to deliver any such reports if the written contract which Buyer entered into with the consultant who prepared such report specifically forbids the dissemination of the report to others.

18. **Seller Contingency.** Buyer hereby acknowledges and agrees that Seller's obligation to sell the Property pursuant to the terms and conditions of the Agreement is contingent upon Seller's receipt of the approval by the City of Hesperia City Council (the "**City Council**") within ten (10) days after the execution and delivery of this Agreement by Buyer and Seller. If Seller does not provide Buyer with written notice of City Council's approval for Seller to proceed with the transaction within ten (10) days after the execution and delivery of this Agreement by Buyer and Seller, then this Agreement shall automatically terminate and the Deposit plus accrued interest (if any) shall be returned to Buyer and neither party shall have any further liability to the other under the Agreement (except for indemnity obligations of Buyer to Seller under this Agreement which shall survive termination of this Agreement).

19. **Brokerage Commission.** Seller and Buyer hereby agree that each party shall pay one-half of the brokerage commission to Cushman & Wakefield (the total brokerage commission shall be equal to 3.00% of the purchase price).

20. **Counterparts.** This Addendum and the Agreement may be signed in multiple counterparts, all of which, when taken together, shall constitute a single, binding Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the date written above.

<b>SELLER:</b>  COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF HESPERIA  By: _____ Name: _____ Title: _____	<b>BUYER:</b>  WESTERN INTERNATIONAL GAS & CYLINDERS, INC., a Texas corporation  By: _____ Name: _____ Title: _____
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EXHIBIT A  
Legal Description



EXHIBIT B  
Due Diligence Information

CC&R's/REA's if applicable  
Existing ALTA Survey  
Preliminary Title Report, plus underlying documents

Engineering/Property Condition Reports  
Geotechnical/Soils Report  
Seismic Report, if applicable  
Existing Environmental Report(s) - Phase I, Phase II, etc.  
Governmental Permits, Notices, Reports, Citations, Compliance / Non-Compliance & Correspondence  
Documents from any Governmental authority pertaining to the property  
Recent Inspection Reports (fire department, building inspections, zoning, if applicable)

Other Agreements  
Service/Maintenance Contracts  
Vendor Contact List

Real Estate Tax Bills (previous two years)  
History of Tax Protests, if any (including original and final valuations)  
Pending Tax Protests, if any

Seller's Issuance of Insurance Claims or Letter Stating None

Approvals, Site Plan, Zoning, Development and Other Agency (Historical, Traffic, etc.)  
Permits (grading, foundation, building, etc.)

Other information reasonably requested by Buyer