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**FILED**

**MAY 19 2020**

**DEPT. OF REAL ESTATE**

By *[Signature]*

8 **BEFORE THE DEPARTMENT OF REAL ESTATE**

9 **STATE OF CALIFORNIA**

10 \* \* \*

11 In the Matter of the Accusation of ) No. H-41676 LA  
12 )  
13 JRAK PROPERTY DEVELOPMENT, INC. ) **ACCUSATION**  
14 and )  
15 )  
16 JANEEN MARIAN ETTER, individually and )  
17 as former designated officer of JRAK )  
18 Property Development, Inc., )  
19 Respondents. )

20 The Complainant, Maria Suarez, a Supervising Special Investigator of the State of  
21 California, for cause of Accusation against JRAK PROPERTY DEVELOPMENT, INC. and  
22 JANEEN MARIAN ETTER, alleges as follows:

23 1.

24 The Complainant, Maria Suarez, a Supervising Special Investigator of the State of  
25 California, makes this Accusation in her official capacity.

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All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

**DEPARTMENT OF REAL ESTATE LICENSE HISTORY**

3.

**JRAK PROPERTY DEVELOPMENT, INC.**

A. Respondent corporation JRAK PROPERTY DEVELOPMENT, INC.

("JRAK") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate broker ("REB") California Department of Real Estate ("DRE" or "Department") license ID 01914718.

B. JRAK was originally licensed by the DRE on or about June 28, 2012.

C. According to the DRE's records, JRAK's mailing address of record is: 100 S. Chaparral, Ste. 220, Anaheim, CA 92808 ("Anaheim address"), and JRAK has no main office address of record on file.

D. According to the DRE's records, JRAK's license includes the current DBAs Performance Plus Escrow, a non independent broker escrow (active as of July 19, 2012) and Performance Plus Realty Group (active as of June 28, 2012).

E. According to the DRE's records, JRAK has no branch offices and no real estate salespersons ("RES") licensed under its REB license.

F. According to the DRE's records, JRAK's designated real estate broker/officer of record ("D.O.") was JANEEN MARIAN ETTER, whose designated officer affiliation was cancelled as of January 14, 2019.

G. Respondent JRAK's REB license will expire on June 27, 2020.

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1 4.

2 JANEEN MARIAN ETTER

3 A. Respondent JANEEN MARIAN ETTER ("ETTER") is presently licensed  
4 and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a REB,  
5 DRE license ID 01104982.

6 B. ETTER was originally licensed as a RES by the DRE on or about March 11,  
7 1991 and as a REB on or about April 6, 1995.

8 C. According to the DRE's records, ETTER's mailing and main address of record  
9 are JRAK's Anaheim address.

10 D. According to the DRE's records, ETTER's license includes no current DBAs  
11 and no branch offices.

12 E. According to the DRE's records, ETTER has one (1) RES licensed under her  
13 REB license.

14 F. According to the DRE's records, ETTER was the designated real estate  
15 broker/officer of record for JRAK until her officer affiliation was cancelled as of January 14,  
16 2019.

17 G. Respondent ETTER also holds a mortgage loan originator ("MLO")  
18 endorsement, Nationwide Multistate Licensing System ("NMLS") ID number 937300.

19 H. Respondent ETTER's REB license will expire on April 5, 2023.

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1                                    **APPLICABLE SECTIONS OF THE REAL ESTATE LAW**

2                                    **Trust Fund Handling**

3                                    **Code Section 10145**

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5                                    Pursuant to Code Section 10145 *Handling of Trust Funds* (selected portions):

6                                    “(a)(1): A real estate broker who accepts funds belonging to others in connection  
7 with a transaction subject to this part shall deposit all those funds that are not immediately placed  
8 into a neutral escrow depository or into the hands of the broker’s principal, into a trust fund  
9 account maintained by the broker in a bank or recognized depository in this state. All funds  
10 deposited by the broker in a trust account shall be maintained there until disbursed by the broker  
11 in accordance with instructions from the person entitled to the funds.

12                                    (2) Withdrawals may be made from a trust fund account of an individual  
13 broker only upon the signature of that broker, or in the case of a corporate  
14 broker, only upon the signature of an officer through whom the  
15 corporation is licensed pursuant to Section 10158 or 10211, or one, or  
16 more, of the following persons if specifically authorized in writing by the  
17 individual broker or officer:

18                                    (A) A real estate salesperson licensed to the broker.

19                                    (B) Another broker acting pursuant to a written agreement with the  
20 individual broker that conforms to the requirements of this part and any  
21 regulations promulgated pursuant to this part.

22                                    (C) An unlicensed employee of the individual broker, if the broker has  
23 fidelity bond coverage equal to at least the maximum amount of the trust  
24 funds to which the unlicensed employee has access at any time. For  
25 purposes of this section, bonds providing coverage may be written with a  
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1 deductible of up to 5 percent of the coverage amount. For bonds with a  
2 deductible, the employing broker shall have evidence of financial  
3 responsibility that is sufficient to protect members of the public against a  
4 loss subject to the deductible amount.

5 Evidence of financial responsibility shall include one or more of the  
6 following:

- 7 (i) Separate fidelity bond coverage adequate to cover the  
8 amount of the fidelity bond deductible.
- 9 (ii) A cash deposit held in a separate account, apart from other  
10 funds of the broker, the broker's employees, or the  
11 broker's principals, in a bank or recognized depository in  
12 this state adequate to cover the amount of the fidelity bond  
13 deductible and held exclusively and solely for the purpose  
14 of paying the fidelity bond deductible amount.
- 15 (iii) Any other evidence of financial responsibility approved by  
16 the commissioner.

17 (3) An arrangement under which a person enumerated in subparagraph  
18 (A),(B), or (C) of paragraph (2) is authorized to make withdrawals from a  
19 trust fund account of a broker shall not relieve an individual broker, nor the  
20 broker-officer of a corporate broker licensee, from responsibility or liability  
21 as provided by law in handling trust funds in the broker's custody.

22 ...

23 (4)(b) A real estate broker acting as a principal pursuant to Section  
24 10131.1 shall place all funds received from others for the purchase of real  
25 property sales contracts or promissory notes secured directly or collaterally  
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1 by liens on real property in a neutral escrow depository unless delivery of  
2 the contract or notes is made simultaneously with the receipt of the  
3 purchase funds.

4 ...

5 (4)(g) The broker shall maintain a separate record of the receipt and  
6 disposition of all funds described in subdivisions (a) and (b), including any  
7 interest earned on the funds...”

8 6.

9 **Retention of Records – Chargeable Audits – Cost Recovery – Penalties for Unlawful**  
10 **Destruction of Records –**  
11 **Code Section 10148**

12 Pursuant to Code Section 10148 *Retention of Records – Chargeable Audits – Cost*  
13 *Recovery – Penalties for Unlawful Destruction of Records:*

14 “(a) A licensed real estate broker shall retain for three years copies of all listings,  
15 deposit receipts, canceled checks, trust records, and other documents executed by him or her or  
16 obtained by him or her in connection with any transactions for which a real estate broker license  
17 is required. The retention period shall run from the date of the closing of the transaction or from  
18 the date of the listing if the transaction is not consummated. After notice, the books, accounts,  
19 and records shall be made available for examination, inspection, and copying by the  
20 commissioner or his or her designated representative during regular business hours; and shall,  
21 upon the appearance of sufficient cause, be subject to audit without further notice, except that the  
22 audit shall not be harassing in nature. This subdivision shall not be construed to require a  
23 licensed real estate broker to retain electronic messages of an ephemeral nature, as described in  
24 subdivision (d) of Section 1624 of the Civil Code.

1 (b) The commissioner shall charge a real estate broker for the cost of any audit, if  
2 the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a  
3 final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing  
4 with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker  
5 has violated Section 10145 or a regulation or rule of the commissioner interpreting Section  
6 10145.

7 (c) If a broker fails to pay for the cost of an audit as described in subdivision (b)  
8 within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the  
9 broker's license or deny renewal of the broker's license. The suspension or denial shall remain in  
10 effect until the cost is paid or until the broker's right to renew a license has expired.

11 (d) The commissioner may maintain an action for the recovery of the cost of an  
12 audit in any court of competent jurisdiction. In determining the cost incurred by the  
13 commissioner for an audit, the commissioner may use the estimated average hourly cost for all  
14 persons performing audits of real estate brokers.

15 (e) The bureau may suspend or revoke the license of any real estate broker, real  
16 estate salesperson, or corporation licensed as a real estate broker, if the real estate broker, real  
17 estate salesperson, or any director, officer, employee, or agent of the corporation licensed as a  
18 real estate broker knowingly destroys, alters, conceals, mutilates, or falsifies any of the books,  
19 papers, writings, documents, or tangible objects that are required to be maintained by this section  
20 or that have been sought in connection with an investigation, audit, or examination of a real  
21 estate licensee by the commissioner."

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Financial Code Section 17006

Pursuant to Financial Code Section 17006:

“(a) This division does not apply to:

(1) Any person doing business under any law of this state or the United States \ relating to banks, trust companies, building and loan or savings and loan associations, credit unions, or insurance companies.

(2) Any person licensed to practice law in California who has a bona fide client relationship with a principal in a real estate or personal property transaction and who is not actively engaged in the business of an escrow agent.

(3) Any person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of a policy of title insurance by a company doing business under any law of this state relating to insurance companies.

(4) Any broker licensed by the Real Estate Commissioner while performing acts in the course of or incidental to a real estate transaction in which the broker is an agent or a party to the transaction and in which the broker is performing an act for which a real estate license is required.

(b) The exemptions provided for in paragraphs (2) and (4) of subdivision (a) are personal to the persons listed, and those persons shall not delegate any duties other than duties performed under the direct supervision of those persons. Notwithstanding the provisions of this subdivision, the exemptions provided for in paragraphs (2) and (4) of subdivision (a) are not available for any arrangement entered into for the purpose of performing escrows for more than one business.”

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8.

**Place of Business: Contact Information**

**Code Section 10162 and Regulation 2715**

Pursuant to Code Section 10162 *Place of Business: Contact Information*,

“(a) Every licensed real estate broker shall have and maintain a definite place of business in the State of California that serves as his or her office for the transaction of business. This office shall be the place where his or her license is displayed and where personal consultations with clients are held.

(b) A real estate license does not authorize the licensee to do business except from the location stipulated in the real estate license as issued or as altered pursuant to Section 10161.8.

(c) (1) Every real estate broker and salesperson licensee shall provide to the commissioner his or her current office or mailing address, a current telephone number, and a current electronic mail address that he or she maintains or uses to perform any activity that requires a real estate license, at which the bureau may contact the licensee.

(2) Every real estate broker and salesperson licensee shall inform the commissioner of any change to his or her office or mailing address, telephone number, or electronic mail address no later than 30 days after making the change.

(d) Notwithstanding Section 10185, a violation of this section is not a misdemeanor.”

9.

Pursuant to Regulation 2715 *Business and Mailing Addresses of Licensees*:

“Every broker, except a broker acting in the capacity of a salesperson to another broker under written agreement, shall maintain on file with the commissioner the address of his

1 principal place of business for brokerage activities, the address of each branch business office  
2 and his current mailing address, if different from the business address. Every broker who is  
3 acting in the capacity of a salesperson to another broker under written agreement shall maintain  
4 on file with the commissioner the address of the business location where he expects to conduct  
5 most of the activities for which a license is required and his current mailing address. A real  
6 estate salesperson shall maintain on file with the commissioner his current mailing address, and  
7 when applicable, the address of the principal business office of the broker to whom the  
8 salesperson is at the time licensed. Whenever there is a change in the location or address of the  
9 principal place of business or of a branch office of a broker, he shall notify the commissioner  
10 thereof not later than the next business day following the change. This section shall apply to the  
11 holder of a real estate license who fails to renew it prior to the period for which it was issued and  
12 who is otherwise qualified for such license as set forth in Section 10201 of the Code.”

13 10.

14 **Further Grounds for Disciplinary Action – Code Section 10177**

15 Pursuant to Code Section 10177 *Further Grounds for Disciplinary Action*:

16 “The commissioner may suspend or revoke the license of a real estate licensee,  
17 delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an  
18 applicant, who has done any of the following:

19 ...

20 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing  
21 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and  
22 regulations of the commissioner for the administration and enforcement of the Real Estate Law  
23 and Chapter 1 (commencing with Section 11000) of Part 2.”

24 ...

1 (g) Demonstrated negligence or incompetence in performing an act for which he  
2 or she is required to hold a license.

3 (h) As a broker licensee, failed to exercise reasonable supervision over the  
4 activities of his or her salespersons, or, as the officer designated by a corporate broker licensee,  
5 failed to exercise reasonable supervision and control of the activities of the corporation for which  
6 a real estate license is required....”

7 **DRE AUDIT LA180036: JRAK PROPERTY DEVELOPMENT, INC.**

8 **(REAL ESTATE SALES & BROKER ESCROW ACTIVITY)**

9 11.

10 On April 30, 2019, the DRE completed its audit examinations of the books and  
11 records of Respondent JRAK pertaining to its real estate sales and broker escrow activities. The  
12 audit examination covered a period of time beginning on January 1, 2017 and ending on January  
13 13, 2019 (“audit examination period” or “audit period”), and was performed on January 18,  
14 2019. The final report of April 30, 2019 revealed violations of the Code and the Regulations as  
15 set forth in the following paragraphs, and more fully discussed in the Audit Report for  
16 LA180036.

17 12.

18 **Document Collection for Audit Examination**

19 **Audit Appointment Letter**

20 On November 27, 2018, the DRE Auditor contacted ETTER telephonically and  
21 sent an audit appointment letter to JRAK to ETTER’s attention via regular and certified mail  
22 U.S. Mail to JRAK’s Anaheim address of record on file with the DRE, advising of an audit  
23 scheduled for December 11, 2018 at 9:00 A.M at JRAK’s Anaheim address. The audit  
24 appointment letter also requested ETTER to produce JRAK’s books and records for the audit  
25 examination for the subject examination period of January 1, 2017 to the present. On December  
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1 7, 2018, via telephone, ETTER agreed to meet the DRE Auditor for an entrance interview on  
2 January 15, 2019, and the DRE Auditor requested that ETTER provide a written statement as to  
3 her availability for an audit on January 15, 2019 at JRAK's Anaheim address. ETTER did not  
4 respond.

5 13.

6 ETTER's Resignation as JRAK's Designated Officer of Record

7 A. In a letter dated January 8, 2019 and addressed to the DRE's Licensing Section  
8 in Sacramento, CA, ETTER indicated, "I, Janeen Etter, am resigning as the designated officer for  
9 JRAK Property Development, Inc. - License ID 01914718 effective immediately. I will not be  
10 remaining as an additionally licensed broker-officer."

11 B. In an email dated January 10, 2019 addressed to the DRE Auditor, ETTER  
12 indicated, "I apologize for this late e-mail and didn't want you to show up without confirming the  
13 appointment and now not necessary with this decision. Anyway I have been thinking about this  
14 for a while, even before the audit and now since my health hasn't been that good as of late and  
15 my Dr. agreed, I have decided to retire and close the business..."

16 C. In a letter dated January 14, 2019 and addressed to the DRE Auditor,  
17 subsequent to her resignation as the designated officer for JRAK, ETTER indicated, "Please be  
18 advised that I am retaining the Law Offices of Ronald A. Norman with regard to audit of JRAK  
19 Property Development, Inc and myself, D.O. Janeen M. Etter. Accordingly, you are hereby [sic]  
20 authorized by me to communicate directly with John Edwards of Mr. Norman's Office in regards  
21 to the current appointment date and future postponement date..."

22 14.

23 Audit Examination Date and Time

24 According to the DRE Auditor's discussions with Edwards, ETTER was not  
25 available for the audit on January 15, 2019. The DRE Auditor requested a written statement from  
26

1 Edwards and/or ETTER regarding future available dates for the audit. No response was received  
2 from either Edwards or ETTER.

3 15.

4 Subpoena Duces Tecum (Subpoena for Production of Evidence)

5 A subpoena duces tecum ("SDT") dated January 14, 2019 was served on JRAK  
6 through ETTER on January 18, 2019 to produce records relating to JRAK's real estate activity  
7 during the subject audit period on January 31, 2019 at 10:00 A.M. at the DRE's Los Angeles  
8 District Office. ETTER did not appear at the DRE's Los Angeles District Office on January 31,  
9 2019; nor did ETTER provide any of the subpoenaed books and records for the audit.

10 16.

11 DRE Auditor's Visit to JRAK Main Office Address of Record

12 On or about January 18, 2019, DRE Auditor drove to JRAK's Anaheim address,  
13 its main office address of record to determine whether JRAK continued to operate at this  
14 location. ETTER was not available at the Anaheim address.

15 17.

16 Telephonic Contacts for Non-Compliance Summary

17 On November 2, 2019, the February 5, 2019, the DRE Auditor attempted to  
18 telephone ETTER regarding the Non-Compliance Summary; ETTER did not respond and the  
19 DRE Auditor left a voicemail. The DRE Auditor received a return call from ETTER's attorney,  
20 Edwards, to discuss the Non-Compliance Summary, a hard copy of which was also mailed to  
21 JRAK to ETTER's attention at the Anaheim address.

22 18.

23 Incomplete Records for Audit Examination

24 The audit examination was limited to the verification of the Department's  
25 licensing records and limited documents submitted to the DRE. As described above, in  
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1 Paragraphs 12 through 17, ETTER was not available for the January 15, 2019 audit appointment.  
2 The DRE Auditor was unable to obtain necessary information for the audit.

3 19.

4 JRAK's Business Activities

5 Based on the DRE Auditor's telephonic communications with ETTER on  
6 November 27, 2018 ETTER indicated that JRAK closed approximately ten (10) REB escrow  
7 transactions and five (5) real estate sales transactions during the past twelve (12) months.  
8 Because ETTER produced no records for the audit examination, the DRE Auditor was unable to  
9 determine the total number of REB escrow transactions JRAK performed and the total dollar  
10 amount of trust funds collected by JRAK during the subject audit period.

11 20.

12 Trust Accounts

13 Because ETTER produced no records for the audit examination, the DRE Auditor  
14 was unable to determine whether JRAK maintained any trust accounts during the subject audit  
15 period.

16 **AUDIT FINDINGS: VIOLATIONS OF THE REAL ESTATE LAW**

17 21.

18 In the course of broker escrow activities described above in Paragraph 19 and  
19 during the audit examination period described in Paragraph 11, Respondent JRAK violated the  
20 Code and the Regulations, as described below:

21 22.

22 **Retention of Records/When Broker Handles Escrow**

23 **(Code Section 10148 and Regulation 2950(e))**

24 A. An audit examination of JRAK's real estate activities for the subject audit  
25 examination period could not be conducted, as D.O. ETTER failed to provide JRAK's books and  
26

1 records for examination. The DRE Auditor was unable to determine if JRAK conducted its real  
2 estate activities in accordance with the Real Estate Law and the Commissioner's Regulations.

3 B. An SDT dated January 14, 2019 was served on D.O. ETTER by a DRE Special  
4 Investigator on January 17, 2019 that ordered ETTER to produce books and records related to  
5 JRAK's real estate activities during the subject audit examination period on January 31, 2019 at  
6 10:00 A.M. at the DRE's Los Angeles District Office. ETTER did not appear on January 31,  
7 2019. Nor did ETTER provide any records for the audit.

8 C. As of the date of Audit Report LA180036 (April 30, 2019), the books and  
9 records for neither JRAK nor ETTER have been produced for audit examination period January  
10 1, 2017 to January 13, 2019, in violation of **Code Section 10148 and Regulation 2950(e)**.

11 23.

12 **Place of Business**

13 **(Code Section 10162 and Regulation 2715)**

14 A. According to the DRE's records dated November 27, 2018, JRAK's main  
15 office was maintained at 18 Truman, Ste. 202, Irvine, CA 92620. According to ETTER's written  
16 statement dated November 27, 2018, ETTER indicated, "My current address is 100 S. Chaparral  
17 Ct., Ste. 220, Anaheim, CA 92808. I have been located here since June 1, 2018. I no longer do  
18 any real estate business at 18 Truman, Ste. 202, Irvine, CA 92620. I will update my address with  
19 the Department of Real Estate. Thank you."

20 B. JRAK and ETTER's failure to timely notify the DRE of the change of JRAK's  
21 main office address is in violation of **Code Section 10162 and Regulation 2715**.

22 24.

23 **Additional Violations of the Real Estate Law**

24 A. The overall conduct of Respondent JRAK is violative of the Real Estate Law  
25 and constitutes cause for the suspension or revocation of its real estate license and license rights  
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1 under the provisions of **Code Section 10177(g)** for negligence and **Code Section 10177(d)** for  
2 willful disregard of the Real Estate Law.

3 B. D.O. ETTER failed to exercise reasonable control and supervision over the  
4 activities conducted by licensees and/or employees on behalf of JRAK as necessary to secure full  
5 compliance with the Real Estate Laws and Regulations, in violation of **Code Section 10177(h)**.

6 **COSTS**

7 **Investigation and Enforcement Costs**

8 25.

9 **Code Section 10106** provides, in pertinent part, that in any order issued in  
10 resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner  
11 may request the administrative law judge to direct a licensee found to have committed a violation  
12 of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement  
13 of the case.

14 **Audit Costs**

15 26.

16 **Code Section 10148(b)** provides, in pertinent part, the Commissioner shall charge a real  
17 estate broker for the cost of any audit, if the Commissioner has found in a final decision  
18 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation  
19 or rule of the Commissioner interpreting said section.

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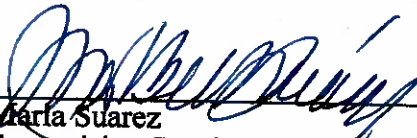
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1                   WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
3 action against the license and license rights of Respondents JRAK PROPERTY  
4 DEVELOPMENT, INC. and JANEEN MARIAN ETTER under the Real Estate Law (Part 1 of  
5 vision 4 of the Business and Professions Code), for the cost of investigation and enforcement as  
6 permitted by law, and for such other and further relief as may be proper under other provisions of  
7 law, and for costs of audit.

8 Dated at Los Angeles, California

9 this 6th day of May, 2020.

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11   
12 Maria Suarez  
13 Supervising Special Investigator  
14  
15

16 cc: JRAK PROPERTY DEVELOPMENT, INC.  
17 JANEEN MARIAN ETTER  
18 Enforcement – M. Suarez  
19 Audits – J. Lin  
20 Sacto.  
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