

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE SECOND APPELLATE DISTRICT

Skyler Wells,

Plaintiff-Appellant,

vs.

Cameron Hopkins,

Defendant-Respondent.

} Appellate Case No.: B347182

} Trial Court Case No.: 22STCV05843

Appeal from Superior Court of California, County of Los Angeles,
Case No. 22STCV05843
Honorable Wendy Chang, Judge

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APPELLANT'S APPENDIX VOL. II

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Attorney for Appellant

Section 3.2.1 is amended to read as follows in its entirety: "The Responsible Owners shall serve as the agents of all Owners until replaced and shall be responsible to diligently preserve, maintain, repair and replace as necessary, the common use improvements and facilities in the Easement Maintenance Areas. The Responsible Owners shall have the express authority of the Owners to initiate and prosecute legal action for the collection of the pro rata share of expenses assessed collectively by the Owners from each Owner. The Responsible Owners shall have the discretion to retain legal counsel, the cost of which shall become an expense which shall be borne collectively in pro rata shares by the Owners hereunder. The Responsible Owners may, in their sole discretion, prosecute any such collection action in Los Angeles Superior Court and shall not be obligated to engage in binding arbitration under Section 5.2 of this Declaration.

Section 3.4 is amended to read as follows in its entirety: "Financial Responsibility. The Responsible Owners shall cause the trash collection account, insurance policy and the electrical billing account for the Easement Maintenance Areas to be placed in his or her names, and shall have charge of the financial arrangements therefor, including maintenance of a separate bank account for the Easement Maintenance Areas, payment of bills, costs and expenses, and collection of the respective shares of such costs from the Owners as well as interest on said sums at 12% per annum commencing 30 days after payment is due and attorney's fees and legal costs incurred in the prosecution of any legal action to collect the respective shares of such costs. Costs of collection including costs of any necessary legal action that are not recovered, shall be a common cost of the Owners. Two bank accounts shall be established, one for payment of the operating expenses, including trash collection, utility bills, periodic cleaning and maintenance and minor repairs, and another account for the accumulation of reserves for the replacement capital improvements. The signatures of two (2) Owners (either both Responsible Owners, or at least one of the, Responsible Owners together with either the Record Keeper or another Owner) shall be required for any single check, expenditure or withdrawal in excess of \$250.00.

Section 3.4.2. is amended to read as follows in its entirety: "The Owner shall jointly establish the amount to be prepaid by each Owner on an annual or other more frequent basis to provide sufficient funds for the operation, maintenance and repair of the Easement Maintenance Areas, including common utility costs. Each Owner shall pay such one-sixth (1/6th) share of such expenses on the first day of each month to the elected Responsible Owners and said payment shall be delinquent if not received by Responsible Owners by the fifteenth day of each month. Notice shall be mailed via first class mail by the elected Responsible Owner to each of the Owners annually to inform concerning the amount of each Owner's share and the due dates for payment of same. The Owners shall also jointly establish the amount necessary for the accumulation of reserves to replace the capital improvements in the Easement Maintenance Areas, such as repaving of the Common Use Driveway, repainting or restaining of any fences and walls and bridge railing, and replacement of the common entrance gates and related equipment. Each Owner shall pay such Owner's one-sixth (1/6th) proportional share of such reserve amount to the Responsible Owners for deposit into the reserve account, on an annual or other more frequent agreed upon basis. Notice shall be mailed via first class mail by the

elected Responsible Owner to each of the Owners annually to inform concerning the amount of each Owner's share and the due dates for payment of same.

Section 5.2 shall be amended to read as follows in its entirety: "Remedies specified in this Declaration shall be deemed cumulative. Every act or omission whereby any covenant, restriction or condition in this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated by an Owner, Owners. Upon a two-third's vote of the Owners, the Responsible Owners may act as the representatives of the Owners in an action to enjoin or abate a nuisance. Such actions may be filed in any court of competent jurisdiction in the discretion of the filing party or parties. Upon mutual agreement of the disputing parties, such disputes may be arbitrated upon such terms and conditions agreed to by the parties. The failure of any Owners or Responsible Owners to enforce any of the covenants, restrictions or conditions contained herein shall not be deemed a waiver of the right to enforce the same thereafter or to enforce any other covenant, restriction or condition herein."

Section 5.3 shall be amended to read as follows in its entirety: "Owners collectively shall indemnify, defend and hold harmless the Responsible Owners to the fullest extent permitted under California law, in any action, claim, complaint, lawsuit, cross-complaint, judgment or the like, brought by another Owner arising out of or directly or indirectly relating to Responsible Owner's good faith prosecution of any action to collect an Owner's pro rata share of expenses assessed under this Declaration or any enforcement action concerning covenants, restrictions or conditions hereunder, brought as the agent of the Owners which has been approved by a vote of two-thirds (2/3rd) of the Owners at a meeting of the Owners under Section 5.2 hereof.

Section 5.4 shall be amended to read as follows in its entirety: "In the event of a dispute between an Owner and another Owner or Responsible Owners acting as agents of the Owners, relating to enforcement of this Declaration, excluding actions for collection of pro rata shares of expenses assessed to each Owner, the party seeking to enforce shall comply with the Alternative Dispute Resolution provisions as set forth in Civil Code Section 5925-5955."

Section 9.4 shall be amended to read as follows in its entirety: "In the event the Declarant, any Owner or Owners jointly, or the Responsible Owners acting as agent for the Owners collectively should commence any legal or equitable action or proceeding, including judicial reference or binding arbitration, to enforce the provisions of this Declaration, the prevailing party shall be entitled to recover, have judgment against and recover from the other party in such proceeding reasonable attorney's fees and costs of court, judicial reference or arbitration as the court, referee or arbitrator may determine reasonable and appropriate.

Exhibit S

00304

Document received by the CA 2nd District Court of Appeal.

Skyler Wells
3345 1/2 Rowena Avenue
Los Angeles, CA 90027

Via FedEx Mail

Jay Dyckman
3341 Rowena Avenue
Los Angeles, CA 90027

David Sweet
3341 1/2 Rowena Avenue
Los Angeles, CA 90027

Genevieve Sweet
3341 1/2 Rowena Avenue
Los Angeles, CA 90027

Cameron Hopkin
3343 Rowena Avenue
Los Angeles, CA 90027

RSK Property Trust
Ranya Kahtan
3343 1/2 Rowena Avenue
Los Angeles, CA 90027

Martin Park
3345 Rowena Avenue
Los Angeles, CA 90027

David Schiamberg
2246 Selby Avenue
Los Angeles, CA 90064

Marilyn Schiamberg
2246 Selby Avenue
Los Angeles, CA 90064

Regarding

Breaches of Rowena Lofts CC&Rs and Other Violations

July 20, 2022

Owners at Rowena Lofts Community:

Pursuant to CC&Rs Section 5.3, any of the foregoing to the contrary notwithstanding, no action to enforce this Declaration shall be instituted unless and until a written notice of such breach setting forth the facts of such breach has been delivered by certified mail to the Owner of such Lot. Delivered by certified mail, or equivalent FedEx/UPS tracked mail.

Pursuant to CC&Rs Section 5.4, for any dispute between Owners, Owner of Lot 1 will comply with CCP § 1363.810 and 1369.510, prior to filing any civil action.

Pursuant to CC&Rs Section 5.2, the Declarant, or any Owner shall have the right to enforce. by binding arbitration, all restrictions, conditions, covenants, reservations, and charges now or hereafter imposed by the provisions of this Declaration or any amendment thereto. In the event of a dispute between any of the foregoing parties concerning the provisions of this Declaration or any amendments thereto, the issue shall, at the request of a party, be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). In the event of a referral to arbitration, the party initiating the arbitration will remit the fee to initiate the arbitration. The parties agree, however, that the costs of arbitration shall ultimately be borne and determined by the arbitrator. The arbitrator's decision shall be binding and conclusive on all of the parties with respect to the resolution of the dispute and with respect to the payment of the costs of arbitration. For LASC Case # 22STCV05843 (SKYLER WELLS VS CAMERON HOPKINS, and JAY DYCKMAN), a motion to compel arbitration will be filed.

Pursuant to CC&Rs Section 9.4, in the event the Declarant or any Owner(s) should commence any legal or equitable proceeding, including judicial reference or binding arbitration, to enforce any of the provisions of this Declaration, the prevailing party, shall be entitled to have judgment against and recover from any defendant in such proceeding such attorney's fees (other than nominal) and costs as the court, judicial referee, arbitration panel or arbitrator may adjudge reasonable and proper.

My attorney is James Diefenbach.

1) CC&Rs Section 1.1.11, Section 3.1, Section 3.2, Section 3.2.1, Section 10.1.2.1 Breached: "Responsible Owner" Cameron Hopkins and "Responsible Owner" Jay Dyckman did not preserve, operate, maintain, repair, replace, and improve, as reasonably necessary, all the common use improvements and facilities in the Easement Maintenance Areas, for the last 4 years, on behalf of all Owners, including:

A) Site Utility Easements: Sewer Lines Annual Maintenance – Annually inspect sewer lines with camera, then snake, waterjet, and/or repair as necessary based on inspection, which was not maintained for the 2-3 years prior to Sewer Blackwater Property Loss on Lot 1 on December 17, 2020.

B) Site Utility Easements: Water Lines Annual Maintenance – Annually inspect water lines, then perform applicable maintenance and/or repair as necessary based on inspection, which has not been maintained for the last 4 years.

C) Site Utility Easements: Gas Lines Annual Maintenance – Annually inspect gas lines, then perform applicable maintenance and/or repair as necessary based on inspection, which has not been maintained for the last 4 years.

D) Pedestrian Promenade Easements: Post Lights Bulb Changes – Determine schedule for changing 2 post light bulbs, then change light bulbs according to schedule, which have not been changed for the last 4 years.

E) Pedestrian Promenade Easements: Wall Lights Repair – Repair 6 walls lights, which have not been repaired for the last 4 years

F) Pedestrian Promenade Easements: Wall Lights Bulb Changes – Determine schedule for changing 12 wall light bulbs, then change light bulbs according to schedule, which have not been changed for the last 4 years.

G) Pedestrian Promenade Easements: Ground Lights Bulb Changes – Determine schedule for changing 3 ground light bulbs, then change light bulbs according to schedule, which have not been changed for the last 4 years.

H) Pedestrian Promenade Easements: Lights Timer Settings – Change lights timer settings to make light go on at 6:30 pm, not at 4:30 pm, and make light go off at 6:30 am, not at 4:30 am, which has not been properly set up for the last 4 years.

I) Pedestrian Promenade Easements: Mailboxes Housing Wood Annual Maintenance and Repair – Annually repair mailboxes housing wood gashes and stain wood, in a first class condition, which has not been maintained or repaired for the last 4 years.

J) Pedestrian Promenade Easements: Front Access Gate Repair – Repair metal and paint metal, in a first class condition, damaged by “Responsible Owners” on November 29, 2017, during work performed to modify front access gate, which has not been repaired for the last 4 years.

K) Pedestrian Promenade Easements: West Perimeter Wood Fence 5 Year Maintenance – Every 5 year period, maintain, in a first class condition, west perimeter wood fence, by wet sanding, cleaning, staining, then applying clear seal, which has not been maintained for the last 5 years.

L) Pedestrian Promenade Easements: Front Retaining Walls Repair – Repair front retaining walls cracking, spalling, and stucco surface, in a first class condition, which has not been repaired for the last 4 years.

M) Pedestrian Promenade Easements: Pedestrian Promenade Biweekly Cleaning – Biweekly cleaning, in a first class condition, of pedestrian promenade from start of city sidewalk in front of Lot 1, to start of driveway at rear of Lot 1, including staircase on west side of Lot 1, to start of city alley at rear of Lot 6, most of which has not been cleaned for the last 4 years.

N) Project Wall: Wood Wall 5 Year Maintenance – Every 5 year period, maintain, in a first class condition, project wood wall, which is attached to home front envelope on Lot 1, by wet sanding, cleaning, staining, then applying clear seal, which has not been maintained for the last 5 years.

O) Utility Room Easement: Utility Room Door Repair – Repair door, in a first class condition, which is misaligned and has not opened for the last 4 years due to damage caused by “Responsible Owners” in 2018 during installation of a surveillance camera on utility room exterior wall by positioning associated power cord through small gap between door and door jam. Door has not been repaired for the last 4 years.

P) Utility Room Easement: Utility Room Contents Annual Organization – Annually organize, in a first class condition, contents in utility room, which has not been organized for the last 4 years.

Q) Utility Room Easement: Utility Room Monthly Cleaning – Monthly clean, in a first class condition, utility room interior and utility room door exterior, which has not been cleaned for the last 4 years.

R) Common Use Driveway Easements: Asphalt Floor Repair – Repair, level, and smooth, in a first class condition, driveway uneven and broken asphalt floor, which has not been repaired for the last 4 years.

S) Common Use Driveway Easements: Asphalt Floor Weekly Cleaning – Weekly remove debris from and rinse with water, in a first class condition, driveway asphalt floor, which has not been cleaned for the last 4 years.

T) Common Use Driveway Easements: Retaining Wall Surface Repair – Repair retaining wall stucco surface, in a first class condition, damaged by “Responsible Owners” in 2014 during work performed to clean retaining wall stucco surface, inappropriately with a pressure washer, which has not been repaired for the last 4 years.

U) Common Use Driveway Easements: Walls and Ceiling Monthly Cleaning – Monthly clean, in a first class condition, driveway stucco painted walls and ceiling, which have not been cleaned for the last 4 years.

V) Common Use Driveway Easements: Ceiling Water Damage Repair – Repair ceiling drywall and paint ceiling, in a first class condition, damaged by Owner and “Responsible Owner” Michael Kremin from 2013 to 2018 by over-watering plants on terrace above, which has not been repaired for the last 4 years.

W) Common Use Driveway Easements: Ceiling Light Repair – Repair 1 ceiling light, which is ceiling light fixture outside driveway access gate, which has not been repaired for the last 4 years.

X) Common Use Driveway Easements: Ceiling Light Fixtures Monthly Cleaning – Monthly clean, in a first class condition, all ceiling light fixtures in driveway, including ceiling light fixture outside driveway access gate, which have not been cleaned for the last 4 years.

Y) Common Use Driveway Easements: Ceiling Lights Timer Settings – Change lights timer settings to make lights go on at 6:30 pm, not at 4:30 pm, and make lights go off at 6:30 am, not at 4:30 am, which has not been properly set up for the last 4 years.

Z) Common Use Driveway Easements: Driveway Access Gate Annual Maintenance – Annually maintain, in a first class condition, driveway access gate, which has not been maintained for the last 4 years.

AA) Common Use Driveway Easements: Driveway Access Gate Annual Cleaning – Annually clean, in a first class condition, driveway access gate, which has not been cleaned for the last 4 years.

AB) Trash Area Easements: Trash Room Monthly Cleaning – Monthly clean, in a first class condition, trash room, which has not been cleaned for the last 4 years.

AC) Trash Area Easements: Trash Room Door Exterior Weekly Cleaning – Weekly clean, in a first class condition, trash room door exterior, which has not been cleaned for the last 4 years.

AD) Trash Area Easements: Trash Room Door Improvement and Closure – Modify trash room door to add door vent, in a first class condition, then keep trash room door closed, which has not been modified or closed for the last 4 years.

Owner of Lot 1 seeks \$100,000 in monetary relief for reduction in property value due to the deferred maintenance of Easement Maintenance Areas, equitable relief to comply with CC&Rs, and injunctive relief to not use an electric blower on Lot 1.

2) CC&Rs Section 1.1.11, Section 3.1, Section 3.2, Section 3.2.1, Section 10.1.2.1 Breached: "Responsible Owner" Cameron Hopkins and "Responsible Owner" Jay Dyckman did not preserve, operate, maintain, repair, replace, and improve, as reasonably necessary, the sewer lines Easement Maintenance Area, for the 2-3 years prior to Sewer Blackwater Property Loss on Lot 1 on December 17, 2020, resulting in Sewer Blackwater Property Loss on Lot 1 on December 17, 2020.

Owner of Lot 1 seeks \$973,461.59 in monetary relief for cost of remediation, cost of repair, loss of personal property, loss of vehicle 1, loss of vehicle 2, loss of valuable papers and records, loss of revenue, and loss of use.

3) CC&Rs Section 1.1.11, Section 3.2 Breached: "Responsible Owner" Cameron Hopkins and "Responsible Owner" Jay Dyckman did not manage the sub-metering of common utilities, on behalf of all Owners, including:

A) Water Utility: Install private individual sub-meters within each individual Lot, or at a central location on one Lot, that measures water usage for each of the individual Lots, allowing each Lot to be responsible to pay such Lot's portion of the bill. A single person uses substantially less water than a single-family of 2-4 persons or a single person with 1-2 occupants/residents/leasers.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

4) CC&Rs Section 3.2 Breached: Owners of all the Lots did not meet and confer annually in person, by phone, and/or by online meeting.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

5) CC&Rs Section 3.2 Breached: Record Keeper did not record, maintain, and preserve for ten years all records relative to written minutes of Owners meetings.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

6) CC&Rs Section 3.3 Breached: Record Keeper did not record, maintain, and preserve for ten years all records relative to the operation, maintenance, repair, replacement, and improvement of the Easement Maintenance Areas.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

7) CC&Rs Section 3.3 Breached: Record Keeper did not provide all records for ten years or for any years for inspection and/or copying within 48 hours of written request. All records defined by CC&Rs Section 3.2 and 3.3, also include A) All insurance policies in effect on December 17, 2020, B) All insurance policy claims initiated on or after December 17, 2020, B) Monthly income statement summary and detail for ten years, C) Monthly balance sheet summary and detail for ten years, and D) Monthly cash flow statement for ten years. First written request for all records for ten years was provided by Owner of Lot 1 on 5/20/2021. This notice is second written request for all records for ten years provided by Owner of Lot 1.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

8) CC&Rs Section 3.4 Breached: "Responsible Owner" Cameron Hopkins and "Responsible Owner" Jay Dyckman did not place the insurance policy for the Easement Maintenance Areas in their names, according to insurance agent for Rowena Lofts Community, Ellen Ford at Ford and Ford Insurance Services.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

9) CC&Rs Section 3.4 Breached: "Responsible Owner" Cameron Hopkins and "Responsible Owner" Jay Dyckman did not maintain separate bank accounts for operating expenses, and accumulation of reserves.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

10) CC&Rs Section 3.4 Breached: Two signatures, either "Responsible Owner", Record Keeper, or Owner, was not applied to expenditures over \$250.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

11) CC&Rs Section 3.4.2 Breached: All Owners did not jointly establish the amount to be prepaid by each Lot, on an annual or other more frequent basis.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

12) CC&Rs Section 3.4.2 Breached: All Owners did not jointly establish the amount necessary for the accumulation of reserves to be paid by each Lot, on an annual or other more frequent basis.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

13) CC&Rs Section 3.4.3 Breached: "Responsible Owner" Cameron Hopkins and "Responsible Owner" Jay Dyckman did not notify Owner of Lot 1 in writing, including copies of all invoices and/or proposals, of insufficient funds (if applicable) to pay the necessary costs and expenses for the Easement Maintenance Areas.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

14) CC&Rs Section 3.6 Breached: "Responsible Owner" Cameron Hopkins and "Responsible Owner" Jay Dyckman did not maintain a master or blanket public liability and property damage insurance policy with minimum \$1,000,000 per occurrence of coverage for property damage, which names all Owners as insured.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

15) CC&Rs Section 3.6 Breached: "Responsible Owner" Cameron Hopkins and "Responsible Owner" Jay Dyckman did not maintain a fidelity bond or insurance policy with minimum amount of coverage equal to the maximum amount anticipated to be held in the bank accounts for operations and reserves for the Easement Maintenance Areas during the year.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

16) CC&Rs Section 4.1.1 Breached: Owner Jay Dyckman, Owner Genevieve Sweet, and/or Owner David Sweet, leased and/or are currently leasing their lot for purpose other than a single-family dwelling, because additional occupants/residents/leasers Alexandra Reich and Whembley Sewell are not a member of the single-family.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs, and injunctive relief.

17) CC&Rs Section 4.4.2 Breached: Between March 11, 2022 and March 18, 2022, Owner Jay Dyckman, used the community for movie/television filming business, commercial, or other such non-residential purposes which had signs, sounds, smells, and other external evidence.

Owner of Lot 1 seeks emotional distress, and punitive and exemplary damages to be determined by arbitrator, equitable relief to comply with CC&Rs, and injunctive relief.

18) CC&Rs Section 4.4.3 Breached: Between March 11, 2022 and March 18, 2022, Owner Jay Dyckman, posted signage on easement maintenance areas through the community for movie/television filming.

Owner of Lot 1 seeks emotional distress, and punitive and exemplary damages to be determined by arbitrator, equitable relief to comply with CC&Rs, and injunctive relief.

19) CC&Rs Section 4.4.3 Property Theft: "Responsible Owners" in April 2016 removed and discarded a plastic sign posted to an outside wall on Lot 1, without notice to Owner of Lot 1, and without authorization from Owner of Lot 1, then discarded the plastic sign.

Owner of Lot 1 seeks \$939 in monetary relief for property theft.

20) CC&Rs Section 4.4.4 Breached: Between March 11, 2022 and March 18, 2022, Owner Jay Dyckman, caused a nuisance, which is an annoyance or which obstructs or interferes with the rights of quiet enjoyment in the community or on any public street abutting or visible from the community, in the community through movie/television filming.

Owner of Lot 1 seeks emotional distress, and punitive and exemplary damages to be determined by arbitrator, equitable relief to comply with CC&Rs, and injunctive relief.

21) CC&Rs Section 4.4.4 Breached: Between March 11, 2022 and March 18, 2022, Owner Jay Dyckman, placed bathrooms trailer for movie/television filming, which are items which create or emit loud noises or noxious odors located, used, or placed in the community, or on any public street abutting or visible from the community.

Owner of Lot 1 seeks emotional distress, and punitive and exemplary damages to be determined by arbitrator, equitable relief to comply with CC&Rs, and injunctive relief.

22) CC&Rs Section 4.4.4 Breached: Between December 17, 2020 and December 30, 2020, Owner Martin Park, Owner RSK Property Trust (Ranya Kahtan), Owner Cameron Hopkins, Owner Genevieve Sweet, Owner David Sweet, and Owner Jay Dyckman did not clean up a substantial amount of their feces, urine, and used toilet paper from the front of Lot 1, which are items which create or emit loud noises or noxious odors located, used, or placed in the community, or on any public street abutting or visible from the community.

Owner of Lot 1 seeks emotional distress, and punitive and exemplary damages to be determined by arbitrator.

23) CC&Rs Section 4.4.4 Breached: Between January 1, 2019 and current date, Owner Martin Park, Owner RSK Property Trust (Ranya Kahtan), Owner Cameron Hopkins, Owner Genevieve Sweet, Owner David Sweet, and Owner Jay Dyckman did not close the trash room door, which are items which create or emit loud noises or noxious odors located, used, or placed in the community, or on any public street abutting or visible from the community.

Owner of Lot 1 seeks emotional distress, and punitive and exemplary damages to be determined by arbitrator, and injunctive relief.

24) CC&Rs Section 4.4.4 Breached: Between January 1, 2019 and the current date, every day between 7 am and 11 pm, Owner Martin Park, Owner RSK Property Trust (Ranya Kahtan), Owner Cameron Hopkins, Owner Genevieve Sweet, Owner David Sweet, and Owner Jay Dyckman, caused a nuisance, which is an annoyance or which obstructs or interferes with the rights of quiet enjoyment in the community or on any public street abutting or visible from the community, in the community through excessively loud banging noises from slamming their mailbox door closed, located in the mailbox housing on the pedestrian promenade walkway on Lot 1.

Owner of Lot 1 seeks emotional distress, and punitive and exemplary damages to be determined by arbitrator, and injunctive relief.

25) CC&Rs Section 4.4.4 Breached: Between January 1, 2022 and the current date, 2-3 days each week between 7 pm and 12 pm, and 12 am and 4 am, Owner Martin park occupant/resident/leaser Sunyoung Park and guests of occupant/resident/leaser Sunyoung Park, caused a nuisance, which is an annoyance or which obstructs or interferes with the rights of quiet enjoyment in the community or on any public street abutting or visible from the community, in the community through A) Excessively loud cheering and speaking on the pedestrian promenade staircase, walkway, steps, and stairs on Lot 1; and city sidewalk and parkway abutting the front of Lot 1, and B) Excessively loud honking of horns in cars parked along the street abutting the front of Lot 1. Sunyoung Park has awoken Owner of Lot 1 over 100 times in 2022. Owner of Lot 1 seeks injunctive relief for the removal of Sunyoung Park from Rowena Lofts Community.

Owner of Lot 1 seeks emotional distress, and punitive and exemplary damages to be determined by arbitrator, equitable relief to comply with CC&Rs, and injunctive relief.

26) CC&Rs Section 4.4.4 Breached: Between January 1, 2019 and the current date, 1-3 days each week between 5 am and 8 am, Owner David Sweet and guest/spouse/child/other, caused a nuisance, which is an annoyance or which obstructs or interferes with the rights of quiet enjoyment in the community or on any public street abutting or visible from the community, in the community through A) Excessively loud banging noises from rolling luggage and/or riding a skateboard on the pedestrian promenade staircase, walkway, steps, and stairs on Lot 1; and city sidewalk, parkway, and street abutting the front of Lot 1, and B) Excessively load speaking on the pedestrian promenade staircase, walkway, steps, and stairs on Lot 1; and city sidewalk, parkway, and street abutting the front of Lot 1.

Owner of Lot 1 seeks emotional distress, and punitive and exemplary damages to be determined by arbitrator, equitable relief to comply with CC&Rs, and injunctive relief.

27) CC&Rs Section 4.4.4 Breached: Between January 1, 2019 and the current date, every day around 7 am, 7:30 am, 4 pm, and 4:30 pm Owner Jay Dyckman, caused a nuisance, which is an annoyance or which obstructs or interferes with the rights of quiet

enjoyment in the community or on any public street abutting or visible from the community, in the community by allowing his dog to bark excessively loud and continuously on the pedestrian promenade staircase, walkway, steps, and stairs on Lot 1; and city sidewalk, and parkway abutting the front of Lot 1.

Owner of Lot 1 seeks emotional distress, and punitive and exemplary damages to be determined by arbitrator, equitable relief to comply with CC&Rs, and injunctive relief.

28) CC&Rs Section 4.4.5.1, Section 10.1.2.3 Breached: Between January 1, 2019 and the current date, on numerous occasions, one or more Owners, permitted their cars, the cars of their guests, and/or the cars of their vendors/contractors, including but not limited to a white colored Range Rover car, to be parked in the common use driveway, restricting and obstructing the passage of cars in and out of the common use driveway.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs, and injunctive relief.

29) CC&Rs Section 4.4.5.1, Section 10.1.2.3 Breached: Between January 1, 2019 and the current date, on numerous occasions, Owner Jay Dyckman, permitted his cars, the cars of his non single-family occupants/residents/leasers, the cars of his guests, and/or the cars of his vendors/contractors to be parked in front of his garage door, extending into the city alley, restricting and obstructing the passage of cars in and out of the common use driveway.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs, and injunctive relief.

30) CC&Rs Section 4.4.5.1 Breached: Between January 1, 2019 and the current date, on numerous occasions, one or more Owners, permitted the washing of cars in their carport, their garage, and/or the common use driveway, allowing associated water with chemicals to run onto the garage flooring on Lot 1, which extends 1 foot outside of the closed garage door, resulting in erosion and damage to the garage flooring on Lot 1.

Owner of Lot 1 seeks \$3,000 in monetary relief for property damage, equitable relief to comply with CC&Rs, and injunctive relief.

31) CC&Rs Section 4.4.6 Breached: Between January 1, 2019 and the current date, every day around 7 am, 7:30 am, 4 pm, and 4:30 pm, Owner Jay Dyckman, permitted an animal in the community, which is a dog, which results in an annoyance, which is obnoxious, which causes unreasonable noise in the community by allowing, and not being able to control, the excessively loud and continuous barking of their dog on the pedestrian promenade staircase, walkway, steps, and stairs on Lot 1; and city sidewalk, and parkway abutting the front of Lot 1.

Owner of Lot 1 seeks emotional distress, and punitive and exemplary damages to be determined by arbitrator, equitable relief to comply with CC&Rs, and injunctive relief.

32) CC&Rs Section 4.4.8 Breached: On or after January 1, 2018, Owner Martin Park, installed a satellite dish and antenna on his east side terrace, which A) Is more than minimally visible from Lot 1 terrace, Lot 1 private walkway, city sidewalk, city parkway, and city street, and B) Extends over a shared metal fence onto Lot 1 terrace.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

33) CC&Rs Section 4.4.14.5 Breached: On or after January 1, 2018, Owner Martin park, erected a yellow colored temporary wall barrier on his east side terrace, which is A) Unsightly, B) Is visible from Lot 1, Lot 1 terrace, Lot 1 private walkway, city sidewalk, city parkway, and city street, and C) Is visible by the public in general from the city sidewalk, parkway, and street.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

34) CC&Rs Section 4.4.19 Breached: "Responsible Owner" Cameron Hopkins and "Responsible Owner" Jay Dyckman set out trash receptacles and containers in the city alley, which is equivalent of city curb (curbside), more than 12 hours before the scheduled trash collection hours, and move trash receptables and containers back into the trash room more than 12 hours after the scheduled trash collection hours.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

35) CC&Rs Section 4.4.23 Breached: On or after January 1, 2018, Owner Martin park, erected a yellow colored temporary wall barrier on his east side terrace, which A) Is not substantially identical to the original grey colored metal fence directly adjacent and in front, B) Did not have prior written consent of the Owners of a majority of the other Lots, and 3) Did not have prior consent of the Owners of Lot 1, as the adjoining Lot sharing such boundary line, which is the original grey colored metal fence.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

36) CC&Rs Section 4.5.1 Breached: "Responsible Owner" Cameron Hopkins and "Responsible Owner" Jay Dyckman did not install private individual sub-meters within each individual Lot, or at a central location on one Lot, that measures water usage for each of the individual Lots, allowing each Lot to be responsible to pay such Lot's portion of the bill. A single person uses substantially less water than a single-family of 2-4 persons or a single person with 1-2 occupants/residents/leasers.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

37) CC&Rs Section 4.5.1 Breached: "Responsible Owner" Cameron Hopkins and "Responsible Owner" Jay Dyckman did not fulfill their responsibility and obligation to allocate costs for water usage and the other charges levied by the water utility to the Lots in the community, if in the future there are no companies that can provide the water sub-metering service. A single person uses substantially less water than a single-family of 2-4 persons or a single person with 1-2 occupants/residents/leasers.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

38) CC&Rs Section 4.5.3 Breached: "Responsible Owner" Cameron Hopkins and "Responsible Owner" Jay Dyckman did not collect a deposit from Owner upon Owner purchase of Lot, whereby deposit amount will be determined by the "Responsible Owners", as a security for such Owner's obligation to pay such Owner's water bill when due.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

39) CC&Rs Section 5.2 Breached: For any disputes between Owners and Owners, or between Owners and "Responsible Owners", you must enforce the CC&Rs by binding arbitration in accordance with the Commercial Arbitration Rules of AAA, and not in state or

federal court. Owners breached CC&Rs Section 7.1 because CC&Rs was amended without an affirmative vote of not less than 66 2/3% of the Owners, resulting in invalid and unenforceable amendment to CC&Rs, therefore for the cross-complaint for LASC Case # 22STCV05843 (SKYLER WELLS VS CAMERON HOPKINS, and JAY DYCKMAN), you must enforce the CC&Rs by binding arbitration in accordance with the Commercial Arbitration Rules of AAA, and not in state or federal court. (See CC&Rs Section 7.1 below.) In addition, the cross-complaint for LASC Case # 22STCV05843 (SKYLER WELLS VS CAMERON HOPKINS, and JAY DYCKMAN), does not arise out of the same transaction as the complaint, a majority represents new enforcement of the CC&Rs, and a minority represents collection for a single Owner Martin Park, therefore you must enforce the CC&Rs by binding arbitration in accordance with the Commercial Arbitration Rules of AAA, and not in state or federal court. For LASC Case # 22STCV05843 (SKYLER WELLS VS CAMERON HOPKINS, and JAY DYCKMAN), an ex parte application or motion to strike cross-complaint and strike amendment to CC&Rs will be filed.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

40) CC&Rs Section 5.3 Breached: Owner of Lot 1 did not receive a written notice of breach of CC&Rs, setting forth the facts of such breach, delivered by certified mail, or equivalent FedEx/UPS tracked mail, prior to initiation of arbitration, state court, or federal court civil action.

Owner of Lot 1 seeks equitable relief to comply with CC&Rs.

41) CC&Rs Section 7.1 Breached: CC&Rs was amended without an affirmative vote of not less than 66 2/3% of the Owners. 5 of 8 Owners (excluding Skyler Wells, David Schiamberg, and Marilyn Schiamberg), which is 62 1/2%, or 5 of 9 Owners (excluding David Sweet, Skyler Wells, David Schiamberg, and Marilyn Schiamberg), which is 55 1/2%, gave an affirmative vote. CC&Rs Section 1.1.10 definition of Owner is "Owner shall mean and refer to the record Owners, whether one (1) or more persons or entities, of fee simple title to any Lot which is part of the Project, ...". CC&Rs Section 3.2 states "For all purposes of this Article, Owners representing sixty-six and two-thirds (66 2/3rds) of the Lots (ie., at least four (4) Lots), shall constitute a quorum of Owners.". The legal definition of Article is A) An article is a legal rule that can be set out under a statute, a code, or a paragraph in a legal document, and B) An article is a subdivision of a larger legal document or law. CC&Rs Section 1.1.4 definition of Declaration is "Declaration shall mean and refer to this enabling Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Rowena Lofts, ...". Therefore, "For all purposes of this Article, Owners representing sixty-six and two-thirds (66 2/3rds) of the Lots (ie., at least four (4) Lots), shall constitute a quorum of Owners." is applicable to Article 3 only, and does not apply to any other Article in the Declaration. Section 7.1 in Article 7, does not state "For all purposes of this Article, Owners representing sixty-six and two-thirds (66 2/3rds) of the Lots (ie., at least four (4) Lots), shall constitute a quorum of Owners.". CIV § 5115(g) "In an election to approve an amendment of the governing documents, the text of the proposed amendment shall be delivered to the members with the ballot." was violated by not delivering the text of the proposed amendment with the ballot to Owner Skyler Wells, Owner David Schiamberg, and Owner Marilyn Schiamberg. CIV § 5120(b) "The tabulated results of the election shall be promptly reported to the board and shall be recorded in the minutes of the next meeting of the board and shall be available for review by members of the association. Within 15 days of the election, the board shall give general notice pursuant to Section 4045 of the tabulated results of the election." was violated because "Responsible Owners" did not give general notice pursuant to Section 4045 of the tabulated results of the election within 15

days of the election to Owner Skyler Wells, Owner David Schiamberg, and Owner Marilyn Schiamberg. Therefore, amendment to CC&Rs is invalid and unenforceable.

Owner of Lot 1 seeks order to strike amendment to CC&Rs, and equitable relief to comply with CIV § 5115(g) and CIV § 5120(b).

42) CC&Rs Section 10.1.2.2: In 2013, Owner of Lot 1 replaced dead or diseased succulents with cacti on Lot 1 pursuant to CC&Rs Section 10.1.2.2. On October 16, 2019, "Responsible Owner" Cameron Hopkins and "Responsible Owner" Jay Dyckman permitted their vendor/contractor to trespass on Lot 1 front private walkway and destroy Owner of Lot 1 20 feet tall Euphorbia cactus on Lot 1, which Owner of Lot 1 purchased when 3 feet tall for \$3,000, which is \$1,000 per foot, then paid \$500 each year to care for this cactus for 7 years. On October 22, 2019, Owner of Lot 1 email communication to "Responsible Owner" Cameron Hopkins, sent by Owner of Lot 1 assistant Jennifer Nguyen, stated "I purchased, planted, watered, fed and loved this Euphorbia cactus for 7 years and last week your contractor chopped off 30% of this living property of mine. How would you feel if I chop off the arm of your living child, sibling or parent?". Chopping off 30% of Owner of Lot 1 20 feet tall Euphorbia cactus led to the death of Owner of Lot 1 Euphorbia cactus within 12 months. Owner of Lot 1 severe emotional distress and mental anguish caused by the action of "Responsible Owner" Cameron Hopkins and "Responsible Owner" Jay Dyckman is documented in Owner of Lot 1 October 22, 2019 email communication. (See CC&Rs Exhibit C below.)

Owner of Lot 1 seeks \$17,500 in monetary relief for property damage, emotional distress, and punitive and exemplary damages to be determined by arbitrator, and injunctive relief.

43) CC&Rs Exhibit C: Declarant provided Owners with the CC&Rs with Exhibit C shading of Pedestrian Promenade Easements which does not represent actual and original Exhibit C shading of Pedestrian Promenade Easements present in the actual and original CC&Rs prepared by Declarant attorney Robert Smylie & Associates. Actual and original CC&Rs Exhibit C shading of Pedestrian Promenade Easements stops at Lot 1 private walkway in front of Lot 1. Lot 1 private walkway in front of Lot 1 is private property, and therefore is not to be trespassed on by Owners, "Responsible Owners", Owners vendors/contractors/guests, "Responsible Owners" vendors/contractors/guests, or any other person.

Owner of Lot 1 seeks injunctive relief.

44) On November 29, 2017, "Responsible Owners" permitted their vendor/contractor 1 to initiate modifications to the front access gate easement on Lot 1, which is located 5 feet from the front door and integrated with the entry flooring and envelope of the home on Lot 1, without notification to Owner of Lot 1, and without any work area preparation protection applied to the entry flooring and envelope of the home on Lot 1, resulting in damage to the seal on the entry flooring on Lot 1. In addition, "Responsible Owners" permitted vendor/contractor 2 to administer security to the front access gate easement before, during, and after the work performed by vendor/contractor 1 on Lot 1, while wearing non-concealed gun or stun gun and alleged concealed gun or stun gun.

Owner of Lot 1 seeks \$1,500 in monetary relief for property damage, emotional distress, and punitive and exemplary damages to be determined by arbitrator, and injunctive relief.

45) Between December 17, 2020 and December 30, 2020, during the time Owner Genevieve Sweet and Owner David Sweet did not clean up the substantial amount of their

feces, urine, and used toilet paper from the front of Lot 1, Owner Genevieve Sweet and Owner David Sweet approached Owner of Lot 1 at the rear of Lot 1 and Owner David Sweet stated in an angry and confrontational tone "No one likes you here, and no one wants you here tough guy. You're a real tough guy.", then walked away north on the common use driveway. Owner of Lot 1 did not respond to Owner David Sweet.

Owner of Lot 1 seeks emotional distress, and punitive and exemplary damages to be determined by arbitrator.

Respectfully,

Skyler Wells

Skyler Wells
Owner of 3345 1/2 Rowena Avenue, Los Angeles, CA 90027

PROOF OF SERVICE

I am employed in the County of San Diego, California. I am over the age of 18 years and not a party to the action. My business address is 11835 Carmel Mountain Road, Suite 1304-313, San Diego, California 92128.

On December 25, 2023, I caused to be served the following document(s): **PLAINTIFF SKYLER WELLS FOURTH AMENDED COMPLAINT** on the party(ies) herein by enclosing a copy(ies) thereof addressed as follows:

☒ **BY ELECTRONIC TRANSMISSION** – I transmitted a PDF version(s) of the document(s) by electronic mail to the party(ies) identified on the attached service list using the email address(es) indicated.

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

Executed on December 25, 2023, at San Diego, California.



James C. Diefenbach

SERVICE LIST

Lagasse Branch Bell + Kinhead Email: aavetisove@lbbklaw.com	Attorney for Defendants CAMERON HOPKINS and JAY DYCKMAN
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Electronically FILED by
Superior Court of California,
County of Los Angeles
9/30/2024 12:00 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By K. Hung, Deputy Clerk

Attorney for Cross-Defendant
SKYLER WELLS

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL JUDICIAL DISTRICT

SKYLER WELLS

Plaintiff.

vs.

CAMERON HOPKINS, and JAY DYCKMAN

Defendants.

CAMERON HOPKINS

Cross-Complainant.

vs.

SKYLER WELLS, DAVID SCHIAMBERG,
MARILYN SCHIAMBERG, and ROES 1-20

Cross-Defendants.

) Case No. 22STCV05843

) [Unlimited Civil Action]

) **CROSS-DEFENDANT SKYLER WELLS**
) **NOTICE OF MOTION AND MOTION**
) **FOR SUMMARY ADJUDICATION OF**
) **ISSUES; MEMORANDUM OF POINTS**
) **AND AUTHORITIES**

) *[Filed Concurrently with Declaration of Skyler*
) *Wells, Request for Judicial Notice, Separate*
) *Statement, Compendium of Exhibits, and*
) *Proposed Order]*

) **DEPT:** 36

) **JUDGE:** Hon. Wendy Chang

) **DATE:** January 23, 2025

) **TIME:** 8:30 am

) **RESERVATION ID:** 867108915190

1 **TO THE COURT, CROSS-COMPLAINANT AND HIS ATTORNEY OF RECORD:**

2 PLEASE TAKE NOTICE that on January 23, 2025, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard, in Department 36 of the above-entitled Court, located at 111 N. Hill Street,
4 Los Angeles, CA 90012, Cross-Defendant Skyler Wells ("Cross-Defendant") will, and hereby does,
5 move the Court for an Order, pursuant to California Code of Civil Procedure §§
6 437c(f)(1),(o),and(p)(2), granting summary adjudication in favor of Cross-Defendant and against
7 Cross-Complainant Cameron Hopkins ("Cross-Complainant") on Cross-Complainant's First
8 Amended Cross-Complaint, as to the following causes of action and claims for damages:

9 **ISSUE 1:** Summary adjudication of Cross-Complainant Cameron Hopkins First Amended
10 Cross-Complaint Breach of Contract first cause of action, which has a complete defense, and is
11 without merit.

12 **ISSUE 2:** Summary adjudication of Cross-Complainant Cameron Hopkins First Amended
13 Cross-Complaint Premises Liability second cause of action, which has one or more elements of the
14 cause of action that cannot be established, and is without merit.

15 **ISSUE 3:** Summary adjudication of Cross-Complainant Cameron Hopkins First Amended
16 Cross-Complaint Private Nuisance third cause of action, which has no triable issue of material fact,
17 and is without merit.

18 **ISSUE 4:** Summary adjudication of Cross-Complainant Cameron Hopkins First Amended
19 Cross-Complaint claim for "An order directing each Cross-Defendant to comply with the 2016
20 Street Address, Pedestrian, Landscaping, Gate, and Park Injunctions and to restore the common
21 easements as previously mandated by the Court" damages associated with LASC Case No.
22 BS162671 Judgment ("2016 Judgment"), which is without merit.

23 **ISSUE 5:** Summary adjudication of Cross-Complainant Cameron Hopkins First Amended
24 Cross-Complaint claim for "A judgment reimbursing the current five (5) other property owners for
25 monthly fees they have paid, on behalf of Co-Defendants, for the five (5) years immediately
26 preceding the filing of this Cross-Complaint [Wells' Lot share is \$340/month] ..., which is without
27 merit.

ISSUE 6: Summary adjudication of Cross-Complainant Cameron Hopkins First Amended Cross-Complaint claim for "A judgment ..., plus interest, costs and reasonable attorney's fees" damages associated with LASC Case No. BS162671 Judgment ("2016 Judgment"), which is without merit.

ISSUE 7: Summary adjudication of Cross-Complainant Cameron Hopkins First Amended Cross-Complaint claim "For exemplary and punitive damages in an amount to be determined at trial", which is without merit.

ISSUE 8: Summary adjudication of Cross-Complainant Cameron Hopkins First Amended Cross-Complaint claim "For prejudgment interest on all other interest to which Cross-Complainant is entitled", which is without merit.

ISSUE 9: Summary adjudication of Cross-Complainant Cameron Hopkins First Amended Cross-Complaint claim "For Cross-Complainant's reasonable attorney's fees incurred in this action pursuant to statute and Governing Documents, as amended", which is without merit.

This Motion is based upon this Notice, the Memorandum of Points and Authorities, the concurrently filed Separate Statement of Undisputed Material Facts, Declaration of Skyler Wells, Request for Judicial Notice, and Compendium of Exhibits, the records of the Court, the pleadings and records on file herein, and any other oral and documentary evidence that may be presented at the hearing on this motion.

DATED: September 25, 2024

Respectfully submitted,

DIEFENBACH LAW GROUP

Jan Pfeiffer

James C. Diefenbach
Attorney for Cross-Defendant
SKYLER WELLS

TABLE OF CONTENTS

MEMORANDUM OF POINTS AND AUTHORITIES	8
I. INTRODUCTION	8
II. STATEMENT OF FACTS	8
A. The Cross-Complaint	8
B. The Statute of Limitations	8
C. The Community	8
D. The Parties	9
E. The CC&Rs	9
F. The CC&Rs - Roles	9
G. The Lot 1 Owner	10
H. The CC&Rs - Easement Maintenance Areas	11
I. The CC&Rs - Association	11
J. The Davis-Stirling Act	12
K. The Election and Voting Procedure	13
L. The CC&Rs - Written Notices	13
M. The Alleged Premises Liability	15
N. The Alleged Private Nuisance	16
O. The CC&Rs - Enforcement	17
P. The Punitive Damages	18
III. ARGUMENT	18
A. The Lot 1 owner is Cross-Defendant.	18
B. The Rowena Lofts Community has common areas and an association that maintains the common area with the power to levy and collect assessments.	18
C. The Rowena Lofts Community is subject to the Davis-Stirling Act.	18
D. Cross-Complainant held an illegal election and voting procedure and the 2019 Amendment to the CC&Rs is invalid and unenforceable.	19

1	E.	Cross-Complainant did not provide written notice by certified mail of alleged	
2		breaches of CC&Rs prior to filing the cross-complaint with breach of contract first cause of action.	
3			22
4	F.	Cross-Complainant cannot establish causation and physical injury damages for	
5		premise liability second cause of action.	22
6	G.	Cross-Complainant cannot establish that the alleged nuisance rose to the level of	
7		nuisance for private nuisance third cause of action.	23
8	H.	Cross-Complainant cannot establish malice, oppression, or fraud to merit punitive	
9		damages for premise liability and private nuisance causes of action.	24
10	I.	The CC&Rs operative document does not permit:	24
11	1.	The CC&Rs operative document does not permit any legal action by an	
12		owner or the responsible owners against a non-owner.	25
13	2.	The CC&Rs operative document does not permit any legal action by an	
14		owner or the responsible owners on behalf of another owner.	25
15	3.	The CC&Rs operative document does not permit collection for monthly	
16		HOA dues as an unlimited civil action.	25
17	4.	The CC&Rs operative document does not permit collection action for LASC	
18		Case No. BS162671 Judgment ("2016 Judgment").	25
19	5.	The CC&Rs operative document does not permit the recovery of	
20		prejudgment interest or any other interest.	26
21	6.	The CC&Rs operative document does not permit the recovery of attorney's	
22		fees for superior court.	26
23	J.	The invalid and unenforceable 2019 amendment to the CC&Rs does not permit: ..	26
24	1.	The invalid and unenforceable 2019 amendment to the CC&Rs does not	
25		permit legal action by one (1) of two (2) responsible owners on behalf of another owner.	26

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2. The invalid and unenforceable 2019 amendment to the CC&Rs does not permit premises liability action by an owner or the responsible owners on behalf of another owner. 27

K. The breach of contract damages are improper based on the statute of limitations for breach of contract. 27

L. The collection action for LASC Case No. BS162671 Judgment ("2016 Judgment") is improper based on the 2016 Judgment. 27

IV. CONCLUSION 27

TABLE OF AUTHORITIES

CASES

STATUTES

California Civil Code §§ 1354(a),(b), and (c)	24, 25
California Civil Code §§ 3294(c)(1)-(3)	24
California Civil Code § 3479	23
California Civil Code § 3481	23
California Civil Code § 4040	13, 14, 19, 20, 21
California Civil Code § 4041	13, 14, 20, 21
California Civil Code § 4100	12, 19
California Civil Code § 4160	19
California Civil Code § 4175	12, 19
California Civil Code § 4200	12, 19
California Civil Code § 4800	12, 19
California Civil Code §§ 5105(h)(1) and (4)	13, 14, 20, 21
California Civil Code §§ 5115(c) and (g)	13, 20, 21
California Civil Code § 5120(b)	14, 20, 21
California Code of Civil Procedure § 437c(f)(1)	
California Code of Civil Procedure § 437c(o)	
California Code of Civil Procedure § 437c(p)(2)	
California Corp Code § 5033	19, 21
California Corp Code § 5034	19, 21

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Cross-Complainant Cameron Hopkins ("Cross-Complainant") held an illegal election and
4 voting procedure, filed an invalid amendment to the contract, enforced the contract against Cross-
5 Defendant Skyler Wells ("Cross-Defendant") prior to satisfying a contractual prerequisite,
6 fabricated allegations of nuisance and premises liability, overreached on parties, overreached on
7 statutes of limitations, and overreached on damages.

8 **II. STATEMENT OF FACTS**

9 **A. The Cross-Complaint**

10 The Cross-Complaint with Breach of Contract, Private Nuisance, and Declaratory Relief
11 causes of action was filed on June 10, 2022. [Undisputed Material Fact ("UMF") No. 1] The First
12 Amended Cross-Complaint ("FACC") with Breach of Contract, Premises Liability, Private
13 Nuisance, and Declaratory Relief causes of action was filed on August 1, 2022. [UMF No. 2] Cross-
14 Complainant Cameron Hopkins ("Cross-Complainant") is the only Cross-Complainant. [UMF No.
15 3]

16 **B. The Statute of Limitations**

17 Breach of Contract cause of action for a written contract has a four (4) years statute of
18 limitations from the date of breach in California. [UMF No. 4] FACC Breach of Contract cause of
19 action allegations dated prior to June 10, 2018 are time barred. [UMF No. 5] Premises Liability
20 cause of action has a two (2) years statute of limitations from the date of injury in California. [UMF
21 No. 6] FACC Premises Liability cause of action allegations dated prior to August 1, 2020 are time
22 barred. [UMF No. 7] Private Nuisance cause of action has a three (3) years statute of limitations
23 from the date of nuisance in California. [UMF No. 8] FACC Private Nuisance cause of action
24 allegations dated prior to June 10, 2019 are time barred. [UMF No. 9]

25 **C. The Community**

26 Rowena Lofts is a residential community consisting of six (6) single-family residential lots
27 (Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6) in Los Angeles, California ("Rowena Lofts Community").
28 [UMF No. 10] Each of the six (6) single-family residential lots is a separately owned lot or separate
interest in the Rowena Lofts Community. [UMF No. 11] A Condominium Plan ("Condominium
Plan"), pursuant to CIV § 4285, does not exist for the Rowena Lofts Community. [UMF No. 12]
The Tract Map for the Rowena Lofts Community was recorded (filed) in Los Angeles County.
[UMF No. 13] The CC&Rs Introduction on page 1 refers to the Rowena Lofts Community as "Lots

1 1 through 6, inclusive, of Tract No. 63131, in the County of Los Angeles, State of California, as per
2 Map filed in Book 1360, Pages 39 through 41, of Maps, in the Office of the County Recorder of
3 said County [County of Los Angeles]." [UMF No. 15]

4 **D. The Parties**

5 In December 2012, Cross-Defendant Skyler Wells ("Cross-Defendant") purchased Lot 1 in
6 the Rowena Lofts Community. [UMF No. 16] David Schiamberg and Marilyn Schiamberg are the
7 biological parents of Cross-Defendant. [UMF No. 17] In March 2018, Cross-Complainant
8 purchased Lot 4 in the Rowena Lofts Community. [UMF No. 18] In November 2018, Jay Dyckman
9 purchased Lot 6 in the Rowena Lofts Community. [UMF No. 19] Between January 1, 2013 and
10 December 31, 2024, Cross-Defendant occupied and resided in Lot 1. [UMF No. 20] On January 1,
11 2024, Cross-Defendant relocated away from Lot 1. [UMF No. 21] Between January 1, 2013 and the
12 present date, David Schiamberg and Marilyn Schiamberg have not occupied or resided in Lot 1.
13 [UMF No. 22] Between March 2018 and the present date, Cross-Complainant has not occupied or
14 resided in Lot 4. [UMF No. 23] Between March 2018 and the present date, Cross-Complainant has
15 occupied and resided at 388 Brentwood Avenue, Ventura, California 93003. [UMF No. 24]

16 **E. The CC&Rs**

17 On February 7, 2012, Declaration of Covenants, Conditions, and Restrictions for the
18 Rowena Lofts Community was recorded (filed) in Los Angeles County as Instrument Number
19 20120210654 ("Declaration" or "CC&Rs"). [UMF No. 25] The Rowena Lofts Community is
20 governed by the CC&Rs. [UMF No. 26]

21 **F. The CC&Rs - Roles**

22 The CC&Rs § 1.1.10 defines Owner ("Owner") as:

23 "Owner shall mean and refer to the record Owners, whether one (1) or more persons or
24 entities, of fee simple title to any Lot which is part of the Project, including contract
25 sellers, but excluding those having such interests merely as security for the performance of
26 an obligation." [UMF No. 27]

27 The Owner of each of the six (6) lots, are collectively the Owners ("Owners") in the Rowena Lofts
28 Community. [UMF No. 28] A former owner is not an Owner pursuant to the CC&Rs § 1.1.10.

[UMF No. 29] The CC&Rs § 1.1.11 defines Responsible Owners ("Responsible Owners") as:

"Responsible Owner shall mean and refer to the **two (2) Owners** elected by all Owners to
serve as their agents for the preservation, operation, maintenance, management, repair and
replacement of the common improvements and facilities in the Easement Maintenance
Areas, and for managing the sub-metering of common utilities, on behalf of all Owners.".
[UMF No. 30]

The CC&Rs § 3.2.1 further defines "Responsible Owners" as:

"The Responsible Owners shall serve as the agents of all Owners until replaced and shall be responsible to diligently preserve, maintain, repair and replace as necessary, the common use improvements and facilities in the Easement Maintenance Areas." [UMF No. 31]

On or around March 2018, Cameron Hopkins was elected to and accepted the role of one (1) of two (2) "Responsible Owners". [UMF No. 32] Between March 2018 and the present date, Cameron Hopkins is one (1) of two (2) Responsible Owners. [UMF No. 33] On or around November 2018, Jay Dyckman was elected to and accepted the role of one (1) of two (2) "Responsible Owners". [UMF No. 34] Between November 2018 and the present date, Jay Dyckman is one (1) of two (2) "Responsible Owners". [UMF No. 35] The CC&Rs § 3.3 defines Record Keeper ("Record Keeper") as:

"The Owners, by a majority vote of a quorum thereof, shall designate in writing one (1) of the Responsible Owners, or another of their number, to maintain all records relative to the operation, maintenance, repair, replacement, or improvement of the Easement Maintenance Areas. The Owner to be designated by the other Owners shall be referred to as the "Record Keeper," who shall be designated on an annual basis, commencing on the first (1st) meeting of the Owner for purposes of this Article." [UMF No. 36]

The Rowena Lofts Community has an owners' association or community association ("Association"), consisting of two (2) "Responsible Owners", one (1) Record Keeper, and six (6) Owners. [UMF No. 37] Each Owner is a member in the Association. [UMF No. 38]

G. The Lot 1 Owner

On October 12, 2012, Cross-Defendant applied for and was preapproved for a mortgage loan for the Lot 1. [UMF No. 39] Cross-Defendant intended to purchase the Lot 1, without a co-signer on the mortgage loan for the Lot 1. [UMF No. 40] On October 29, 2012, Cross-Defendant and Open House Realty & Investments, LLC ("Open House") entered into a purchase agreement for the Lot 1 ("Lot 1 Purchase Agreement"), signed by Cross-Defendant, and signed by Peter Baer on behalf of Open House. [UMF No. 41] The Lot 1 Purchase Agreement was not signed by David Schiamberg and Marilyn Schiamberg. [UMF No. 42] Shortly before December 20, 2012, Cross-Defendant was informed by FHA of the requirement for a co-signer on the mortgage loan for the Lot 1. [UMF No. 43] On December 20, 2012, David Schiamberg and Marilyn Schiamberg co-signed the mortgage loan for the Lot 1. [UMF No. 44] On December 28, 2012, escrow closed on the Lot 1 when the mortgage loan was funded ("Close of Escrow Date"). [UMF No. 45]

On May 21, 2013, Skyler Wells, David Schiamberg, and Marilyn Schiamberg signed an ownership agreement for the Lot 1 ("Lot 1 Ownership Agreement") stating:

"Property: 3345 1/2 Rowena Avenue, Los Angeles, CA 90027. I, David Schiamberg and I, Marilyn Schiamberg, understand and agree that we have co-signed the loan for this

property as an accommodation and that Skylar Wells is the 100% owner of this property. We will at all times cooperate with any needs Skylar Wells may have in connection with the fact we are on title to this property. Including but not limited to, refinance of this property and sale of this property." [UMF No. 46]

H. The CC&Rs - Easement Maintenance Areas

The CC&Rs § 1.1.5 defines the Easement Maintenance Areas ("Easement Maintenance Areas") as:

"Easement Maintenance Area(s) shall mean and refer to those portions of the Lots, and the improvements thereon, for which all Owners of Lots within the Project shall have reciprocal easements of access for maintenance, repair, use and/or enjoyment, and which the Owners collectively shall have the duty and obligation to maintain, manage, operate, repair and/or replace, for the common use and/or benefit of the Owners. The Easement Maintenance Areas shall include, but not be limited to the following: (a)... - (m)..." [UMF No. 47]

The CC&Rs § 1.1.5 lists the Easement Maintenance Areas as (a) through (m). [UMF No. 48] The CC&Rs Exhibits A through E diagram the Easement Maintenance Areas. [UMF No. 49]

I. The CC&Rs - Association

The Association, through the "Responsible Owners" as the agents, maintains the Easement Maintenance Areas, pursuant to the CC&Rs § 1.1.11:

"Responsible Owner shall mean and refer to the two (2) Owners elected by all Owners to serve as their agents for the preservation, operation, maintenance, management. repair and replacement of the common improvements and facilities in the Easement Maintenance Areas, and for managing the sub-metering of common utilities, on behalf of all Owners.", and pursuant to the CC&Rs § 3.2.1:

"The Responsible Owners shall serve as the agents of all Owners until replaced and shall be responsible to diligently preserve, maintain, repair and replace as necessary, the common use improvements and facilities in the Easement Maintenance Areas." [UMF No. 50]

The Association, through the "Responsible Owners" as the agents, has the power to levy and collect assessments, pursuant to the CC&Rs § 3.4:

"The Responsible Owners shall cause the trash collection account, insurance policy and the electrical billing account for the Easement Maintenance Areas to be placed in his or her names, and shall have charge of the financial arrangements therefor, including maintenance of a separate bank account for the Easement Maintenance Areas, payment of bills, costs and expenses, and collection of the respective shares of such costs from the Owners.",

and pursuant to the CC&Rs § 3.4.3:

"In the event there are insufficient funds in the applicable account to pay the necessary costs and expenses for the Easement Maintenance Areas, the Responsible Owners shall promptly notify the other Owners in writing, with copies of all invoices and/or proposals attached, and all Owners shall make payment of their respective shares of such costs to the Responsible Owners within thirty (30) days after receipt of written notice." [UMF No. 51]

1 **J. The Davis-Stirling Act**

2 The Davis-Stirling Act ("Davis-Stirling Act") is a law that regulates common interest
3 developments in California. It applies to condominium, cooperative, and planned unit development
4 communities. [UMF No. 52] The Davis-Stirling Act includes California Civil Code Sections 4000–
5 6150 [CIV §§ 4000–6150]. [UMF No. 53]

6 Pursuant to the Davis-Stirling Act at CIV § 4100:

7 "'Common Interest Development' Defined.

8 'Common interest development' means any of the following:

9 (a) A community apartment project.

10 (b) A condominium project.

11 (c) A planned development.

12 (d) A stock cooperative." [UMF No. 54]

13 Pursuant to the Davis-Stirling Act at CIV § 4175:

14 "'Planned Development' Defined.

15 'Planned development' means a real property development other than a community
16 apartment project, a condominium project, or a stock cooperative, having either or both of
17 the following features:

18 (a) Common area that is owned either by an association or in common by the
19 owners of the separate interests who possess appurtenant rights to the beneficial use and
20 enjoyment of the common area.

21 (b) Common area and an association that maintains the common area with the
22 power to levy assessments that may become a lien upon the separate interests in
23 accordance with Article 2 (commencing with Section 5650) of Chapter 8." [UMF No. 55]

24 Pursuant to the Davis-Stirling Act at CIV § 4800:

25 "Association as Manager.

26 A common interest development shall be managed by an association that may be
27 incorporated or unincorporated. The association may be referred to as an owners'
28 association or a community association." [UMF No. 56]

 Pursuant to the Davis-Stirling Act at CIV § 4200:

 "Applicability of Act to Common Interest Developments.

 This act applies and a common interest development is created whenever a separate
interest coupled with an interest in the common area or membership in the association is,
or has been, conveyed, provided all of the following are recorded:

 (a) A declaration.

 (b) A condominium plan, if any exists.

 (c) A final map or parcel map, if Division 2 (commencing with Section 66410) of
Title 7 of the Government Code requires the recording of either a final map or parcel map
for the common interest development." [UMF No. 57]

 The Lot 1 is located in the Rowena Lofts Community. [UMF No. 58] The Lot 1 FHA Loan
3000142230 has a FHA Planned Unit Development Rider, which states:

 "The Property is part of a planned unit development ('PUD') known as: Rowena Lofts".
[UMF No. 59]

1 On November 27, 2012, Joseph Kwon, a Certified Residential Real Estate Appraiser,
2 prepared a Property Uniform Residential Appraisal Report for the Lot 1, which is marked with an
3 "X" next to "PUD". [UMF No. 60] On November 27, 2012, Joseph Kwon, a Certified Residential
4 Real Estate Appraiser, prepared a Property Uniform Residential Appraisal Report for the Lot 1,
5 which is marked with "199" next to "HOA \$" and with an "X" next to "per month". [UMF No. 61]

6 **K. The Election and Voting Procedure**

7 Between August 2019 and January 2020, Cameron Hopkins and Jay Dyckman were the
8 "Responsible Owners". [UMF No. 62] The "Responsible Owners" are not in possession of any
9 documents relating to a request for individual notice from the Association provided by the Owner of
10 Lot 1 to the "Responsible Owners" prior to August 2019, pursuant to the Davis-Stirling Act at CIV
11 § 4040. [UMF No. 63] The "Responsible Owners" are not in possession of any documents relating
12 to a written notice to the Association of the preferred delivery method for receiving notices from the
13 Association by the Owner of Lot 1 provided to the "Responsible Owners" prior to August 2019,
14 pursuant to the Davis-Stirling Act at CIV § 4041. [UMF No. 64] The "Responsible Owners" are not
15 in possession of any documents relating to the text of the proposed amendment to the CC&Rs with
16 the ballot provided by the "Responsible Owners" to the Owner of Lot 1 between August 2019 and
17 December 2019, pursuant to the Davis-Stirling Act at CIV §§ 5115(c) and (g). [UMF No. 65] The
18 "Responsible Owners" are not in possession of any documents evidencing that the text of the
19 proposed amendment to the CC&Rs with the ballot provided by the "Responsible Owners" to the
20 Owner of Lot 1 between August 2019 and December 2019, pursuant to the Davis-Stirling Act at
21 CIV §§ 5115(c) and (g) was sent via first-class mail, registered or certified mail, express mail, or
22 overnight delivery by an express service carrier addressed to the Owner of Lot 1 at the address last
23 shown on the books of the Association pursuant to the Davis-Stirling Act at CIV § 4040. [UMF No.
24 66] The "Responsible Owners" are not in possession of any documents evidencing that the text of
25 the proposed amendment to the CC&Rs with the ballot provided by the "Responsible Owners" to
26 the Owner of Lot 1 between August 2019 and December 2019, pursuant to the Davis-Stirling Act at
27 CIV §§ 5115(c) and (g) was sent via a valid email address, which did not result in a bounce or other
28 error notification indicating failure of the email message, pursuant to the Davis-Stirling Act at CIV
§ 4041. [UMF No. 67] The "Responsible Owners" are not in possession of any documents relating
to the ballot and a copy of election operation rules for the proposed amendment to the CC&Rs
provided by the "Responsible Owners" to the Owner of Lot 1 between August 2019 and December
2019, pursuant to the Davis-Stirling Act at CIV § 5105(h)(4). [UMF No. 68] The "Responsible

1 Owners" are not in possession of any documents evidencing that the ballot and a copy of election
2 operation rules for the proposed amendment to the CC&Rs provided by the "Responsible Owners"
3 to the Owner of Lot 1 between August 2019 and December 2019 pursuant to the Davis-Stirling Act
4 at CIV § 5105(h)(4) was sent via first-class mail, registered or certified mail, express mail, or
5 overnight delivery by an express service carrier addressed to the Owner of Lot 1 at the address last
6 shown on the books of the Association pursuant to the Davis-Stirling Act at CIV § 4040. [UMF No.
7 69] The "Responsible Owners" are not in possession of any documents evidencing that the ballot
8 and a copy of election operation rules for the proposed amendment to the CC&Rs provided by the
9 "Responsible Owners" to the Owner of Lot 1 between August 2019 and December 2019 pursuant to
10 California Civil Code § 5105(h)(4) was sent via a valid email address, which did not result in a
11 bounce or other error notification indicating failure of the email message, pursuant to the Davis-
12 Stirling Act at CIV § 4041. [UMF No. 70] The "Responsible Owners" are not in possession of any
13 documents relating to the tabulated results for the proposed amendment to the CC&Rs provided by
14 the "Responsible Owners" to the Owner of Lot 1 between August 2019 and January 2020 pursuant
15 to the Davis-Stirling Act at CIV § 5120(b). [UMF No. 71] The "Responsible Owners" are not in
16 possession of any documents evidencing that the tabulated results for the proposed amendment to
17 the CC&Rs provided by the "Responsible Owners" to the Owner of Lot 1 between August 2019 and
18 January 2020 pursuant to CIV § 5120(b) was sent via first-class mail, registered or certified mail,
19 express mail, or overnight delivery by an express service carrier addressed to the Owner of Lot 1 at
20 the address last shown on the books of the Association pursuant to the Davis-Stirling Act at CIV §
21 4040. [UMF No. 72] The "Responsible Owners" are not in possession of any documents evidencing
22 that the tabulated results for the proposed amendment to the CC&Rs provided by the "Responsible
23 Owners" to the Owner of Lot 1 between August 2019 and January 2020 pursuant to California Civil
24 Code § 5120(b) was sent via a valid email address, which did not result in a bounce or other error
25 notification indicating failure of the email message, pursuant to the Davis-Stirling Act at CIV §
26 4041. [UMF No. 73] On December 23, 2019, the 2019 Amendment to the CC&Rs was recorded
27 (filed) in Los Angeles County as Instrument Number 20191434431 ("2019 Amendment to the
28 CC&Rs"). [UMF No. 74] Cross-Defendant is not listed along with the other Owners in the first
paragraph in the 2019 Amendment to the CC&Rs: "We, Brandon Cohen, Cameron Hopkins, Martin
Park, Genevieve Ko and Jay Dyckman, certify and declare that: We are the Owners of Lots within
the Rowena Lofts project in Tract 63131 in the City of Los Angeles, County of Los Angeles, State
of California.". [UMF No. 75]

1 **L. The CC&Rs - Written Notices**

2 Between December 28, 2012 and the present date, Cross-Defendant received all written
3 correspondence regarding the Lot 1 and the Rowena Lofts Community provided to David
4 Schiamberg and Marilyn Schiamberg, which was forwarded to Cross-Defendant by David
5 Schiamberg and Marilyn Schiamberg. [UMF No. 76] Between 2018 and the present date, Cross-
6 Defendant did not receive any written correspondence regarding the Lot 1 and the Rowena Lofts
7 Community, which was originally sent by registered mail, return receipt requested, pursuant to the
8 CC&Rs § 1.1.9:

9 "Notice to the Owner shall mean written notice sent by registered mail, return receipt
10 requested, to the Owner at the address of the Lot, or the Owner's last known residential
11 address if different than the Lot." [UMF No. 77]

12 Between 2018 and the present date, Cross-Defendant did not receive any written
13 correspondence regarding alleged breaches of the CC&Rs, which was originally sent by certified
14 mail, pursuant to the CC&Rs § 5.3:

15 "Any of the foregoing to the contrary notwithstanding, no action to enforce this
16 Declaration shall be instituted unless and until a written notice of such breach setting forth
17 the facts of such breach has been delivered by certified mail to the Owner of such Lot.".
18 [UMF No. 78]

19 Between 2018 and the present date, Cross-Defendant did not receive any written
20 correspondence regarding the levy and collect of assessments, pursuant to the CC&Rs § 3.4.3:

21 "In the event there are insufficient funds in the applicable account to pay the necessary
22 costs and expenses for the Easement Maintenance Areas, the Responsible Owners shall
23 promptly notify the other Owners in writing, with copies of all invoices and/or proposals
24 attached, and all Owners shall make payment of their respective shares of such costs to the
25 Responsible Owners within thirty (30) days after receipt of written notice." [UMF No. 79]

26 **M. The Alleged Premises Liability**

27 Between August 1, 2020 and August 1, 2022, for the Premises Liability claim, Cross-
28 Complainant did not suffer a tangible physical injury on Lot 1. [UMF No. 80] Between August 1,
2020 and August 1, 2022, for the Premises Liability claim, Cross-Complainant did not suffer a
tangible physical injury in the Rowena Lofts Community. [UMF No. 81] Between August 1, 2020
and August 1, 2022, for the Premises Liability claim, Cross-Complainant did not suffer emotional
distress on Lot 1. [UMF No. 82] Between August 1, 2020 and August 1, 2022, for the Premises
Liability claim, Cross-Complainant did not suffer emotional distress in the Rowena Lofts
Community. [UMF No. 83] Between August 1, 2020 and August 1, 2022, for the Premises Liability
claim, Cross-Complainant did not suffer monetary damages on Lot 1. [UMF No. 84] Between

1 August 1, 2020 and August 1, 2022, for the Premises Liability claim, Cross-Complainant did not
2 suffer monetary damages in the Rowena Lofts Community. [UMF No. 85]

3 **N. The Alleged Private Nuisance**

4 Private Nuisance cause of action has a three (3) years statute of limitations from the date of
5 nuisance in California. [UMF No. 86] FACC Private Nuisance cause of action allegations dated
6 prior to June 10, 2019 are time barred. [UMF No. 87] On October 16, 2019, a landscaping
7 contractor chopped off 30% of a Euphorbia cactus on Lot 1, which Cross-Defendant purchased,
8 planted, watered, fed, and loved for seven (7) years ("Cactus Loss"). [UMF No. 88] Cross-
9 Complainant caused the Cactus Loss by hiring the landscaping contractor to perform work on Lot 1.
10 [UMF No. 89] Cross-Defendant incurred damages of \$10,000.00 on Lot 1 resulting from the Cactus
11 Loss. [UMF No. 90] Cross-Defendant incurred emotional distress due to the Cactus Loss. [UMF
12 No. 91] On December 17, 2020, the sewer lines common easement backed up and overflowed onto
13 the exterior and interior of Lot 1 ("Sewer Blackwater Property Loss"). [UMF No. 92] Cross-
14 Complainant caused the Sewer Blackwater Property Loss due to his deferred inspection and
15 maintenance of the sewer lines common easement on Lot 1. [UMF No. 93] Cross-Defendant
16 incurred damages of \$1,500,000.00 on Lot 1 resulting from the Sewer Blackwater Property Loss.
17 [UMF No. 94] Cross-Defendant incurred emotional distress due to the Sewer Blackwater Property
18 Loss. [UMF No. 95] On and after December 17, 2020, the trash system (side door, terrace, and two
19 (2) 200 gallon trash dumpsters) on Lot 1 was lost resulting from the Sewer Blackwater Property
20 Loss ("Trash System Loss"). [UMF No. 96] Cross-Complainant caused the Trash System Loss by
21 causing the Sewer Blackwater Property Loss. [UMF No. 97] Cross-Defendant incurred the loss of
22 his trash system on Lot 1 resulting from the Trash System Loss. [UMF No. 98] Cross-Defendant
23 incurred emotional distress due to the Trash System Loss. [UMF No. 99] Between June 10, 2019
24 and June 10, 2022, Cross-Defendant adamantly denies that the allegations of nuisance on Lot 1 and
25 in the Rowena Lofts Community occurred, except for the following brief incidents: A) October 22,
26 2019 email ("October 22, 2019 Email") sent to the Cross-Complainant by the Cross-Defendant in a
27 state of distress due to the Cactus Loss of \$10,000.00 on Lot 1 accompanied by emotional distress
28 caused by the Cross-Complainant; B) December 17, 2020 through December 28, 2020 emails
("December 17, 2020 through December 28, 2020 Emails") sent to the Cross-Complainant by the
Cross-Defendant in a state of distress due to the Sewer Blackwater Property Loss of \$1,500,000.00
on Lot 1 accompanied by emotional distress caused by the Cross-Complainant; and C) December
17, 2020 through January 9, 2021 trash (non-noxious sealed white trash bags, flattened or empty

1 cardboard boxes, and packing materials such as packing paper) placed on a walkway easement on
2 Lot 1 ("Trash") due to the Trash System Loss on Lot 1 resulting from the Sewer Blackwater
3 Property Loss on Lot 1 caused by the Cross-Complainant. [UMF No. 101] These three (3) brief
4 incidents occurred in response to damages and distress incurred by the Cross-Defendant and caused
5 by the Cross-Complainant. The Trash occurred for up to three (3) hours total, and there was always
6 a clear route, by path or stairs, to walk through the walkway easement on Lot 1 during the up to
7 three (3) hours total. [UMF No. 102] Between August 1, 2020 and August 1, 2022, Cross-
8 Defendant adamantly denies that the allegations of premises liability on Lot 1 and in the Rowena
Lofts Community occurred, except for the "Trash". [UMF No. 103]

9 **O. The CC&Rs - Enforcement**

10 On June 10, 2022 when the Cross-Complaint was filed, Cameron Hopkins and Jay Dyckman
11 were the "Responsible Owners". [UMF No. 104] On August 1, 2022 when the First Amended
12 Cross-Complaint was filed, Cameron Hopkins and Jay Dyckman were the "Responsible Owners".
13 [UMF No. 105] On June 10, 2022 when the Cross-Complaint was filed, Martin Park was the only
Owner that was also a party in LASC Case No. BS162671. [UMF No. 106]

14 David Schiamberg and Marilyn Schiamberg were not parties in LASC Case No. BS162671.
15 [UMF No. 107] LASC Case No. BS162671 Judgment and Confirmation of Arbitration Award filed
16 on September 30, 2016 ("2016 Judgment") does not order Cross-Defendant to restore any common
17 areas to their previous condition, instead it orders Owners collectively, or a majority of Owners, or
18 Owners excluding Cross-Defendant, to restore common areas. [UMF No. 108] Between September
19 30, 2016 and the present date, Owners collectively, or a majority of Owners, or Owners excluding
Cross-Defendant, have not restored common areas pursuant to the 2016 Judgment. [UMF No. 109]

20 The CC&Rs Introduction on page 1 states:

21 "The provisions of this Declaration shall be enforceable by any of the Owners of an
22 interest in the real property above described [Lots 1 through 6, inclusive, of Tract No.
63131], against any other Owner or Owners thereof." [UMF No. 111]

23 CC&Rs § 4.5.2 states:

24 "If the Defaulting Owner fails to reimburse the common funds expended, the Responsible
25 Owners will be entitled to bring a small claims action in the names of the non-defaulting
Owners against the Defaulting Owner to collect such amounts." [UMF No. 112]

26 CC&Rs § 9.4 states:

27 "In the event the Declarant or any Owner(s) should commence any legal or equitable
28 proceeding, including judicial reference or binding arbitration, to enforce any of the
provisions of this Declaration, the prevailing party, shall be entitled to have judgment
against and recover from any defendant in such proceeding such attorney's fees (other than

nominal) and costs as the court, judicial referee, arbitration panel or arbitrator may adjudge reasonable and proper." [UMF No. 113]

P. The Punitive Damages

The October 22, 2019 Email and December 17, 2020 through December 28, 2020 Emails the Cross-Defendant sent to the Cross-Complainant were not intended to harm the Cross-Complainant and were not sent without consideration for the rights of the Cross-Complainant, but instead were intended to inform the Cross-Complainant of the damages and distress the Cross-Defendant incurred, similar to Cease and Desist emails. [UMF No. 114] The Trash Cross-Defendant temporarily placed on the common walkway on Lot 1 was not intended to harm the Cross-Complainant, and was not placed without consideration for the rights of the Cross-Complainant, but instead was placed out of necessity due to the loss of Cross-Defendant trash system on Lot 1. [UMF No. 115]

III. ARGUMENT

A. The Lot 1 owner is Cross-Defendant.

David Schiamberg and Marilyn Schiamberg have an interest in the Lot 1 merely as security for the performance of an obligation, as co-signers on the mortgage loan for the Lot 1. David Schiamberg and Marilyn Schiamberg are not an Owner of Lot 1, pursuant to the CC&Rs § 1.1.10:

"Owner shall mean and refer to the record Owners, whether one (1) or more persons or entities, of fee simple title to any Lot which is part of the Project, including contract sellers, **but excluding those having such interests merely as security for the performance of an obligation.**" [UMF No. 16, 20-22, 39-46, 27]

B. The Rowena Lofts Community has common areas and an association that maintains the common area with the power to levy and collect assessments.

The Rowena Lofts Community has common areas and an association that maintains the common area with the power to levy and collect assessments, pursuant to the CC&Rs § 1.1.5, 1.1.11, 3.2.1, 3.4, 3.4.3, and Exhibits A through E.

C. The Rowena Lofts Community is subject to the Davis-Stirling Act.

Planned Development and Planned Unit Development ("PUD") refer to the same type of Common Interest Development ("CID"). The Rowena Lofts Community is a CID of type PUD. A Parcel Map, Final Map, and Tract Map refer to the same map, and the applicable one is used based on the number of lots and the process for approval. Parcel Map is a land division map used for developments of four (4) or fewer residential lots. Final Map is used for subdividing properties into five or more lots. Final Map is also known as Tract Map. Tract Map is used in planned developments with five or more lots to show the boundaries and location of each lot and the

1 common areas. The Property Uniform Residential Appraisal Report indicates that Lot 1 is part of a
2 PUD with a Homeowners Association (HOA). The Rowena Lofts Community satisfies the Davis-
3 Stirling Act at CIV §§ 4100, 4175, 4800, and 4200. The Rowena Lofts Community is subject to the
4 Davis-Stirling Act [CIV §§ 4000–6150], pursuant to CIV § 4200, because there are separate
5 interests, interest in the common area or membership in the association, a recorded Declaration or
6 CC&Rs, a Condominium Plan does not exist, and a recorded Final Map [Tract Map]. [UMF No. 10-
13, 15, 37-38, 47-61, 100, 110]

7 **D. Cross-Complainant held an illegal election and voting procedure and the 2019**
8 **Amendment to the CC&Rs is invalid and unenforceable.**

9 In a legal election and voting procedure, pursuant to the Davis-Stirling Act, the CC&Rs §
10 7.1:

11 "Amendment Vote. This Declaration may be amended only by an affirmative vote of not
12 less than sixty-six and two-thirds percent (66 2/3%) of the Owners, and further, this
13 amendment provision shall not be amended to allow amendments by vote of less than
14 sixty-six and two-thirds percent (66 2/3%) of the Owners. The percentage of the voting
power necessary to amend a specific provision shall not be less than the percentage of
affirmative votes prescribed for action to be taken under said provision.",
defines the percent of votes required to amend the Declaration (CC&Rs).

15 In a legal election and voting procedure, pursuant to the Davis-Stirling Act, CORP § 5033:
16 "'Approval by (or approval of) a majority of all members' means approval by an
17 affirmative vote (or written ballot in conformity with Section 5513, Section 7513, or
Section 9413) of a majority of the votes entitled to be cast.",
defines the number of votes required to approve the subject matter being voted upon.

18 In a legal election and voting procedure, pursuant to the Davis-Stirling Act, CORP § 5034:
19 "'Approval by (or approval of) the members' means approved or ratified by the affirmative
20 vote of a majority of the votes represented and voting at a duly held meeting at which a
21 quorum is present (which affirmative votes also constitute a majority of the required
22 quorum) or written ballot in conformity with Section 5513, 7513, or 9413 or by the
23 affirmative vote or written ballot of such greater proportion, including all of the votes of
24 the memberships of any class, unit, or grouping of members as may be provided in the
bylaws (subdivision (e) of Section 5151, subdivision (e) of Section 7151, or subdivision (e)
of Section 9151) or in Part 2, Part 3, Part 4 or Part 5 for all or any specified member
action.",
defines the number of votes required to approve the subject matter being voted upon.

25 Davis-Stirling Act at CIV § 4160:

26 "'Member' Defined.

27 "'Member' means an owner of a separate interest."

28 Davis-Stirling Act at CIV § 4040:

"Providing Notice or Delivery to Individuals.

1 (a)

2 (1) If a provision of this act requires an association to deliver a document by
3 "individual delivery" or "individual notice," the association shall deliver that document in
4 accordance with the preferred delivery method specified by the member pursuant to
5 Section 4041.

6 (2) If the member has not provided a valid delivery method pursuant to Section
7 4041, the association shall deliver the document by first-class mail, registered or certified
8 mail, express mail, or overnight delivery by an express service carrier addressed to the
9 recipient at the address last shown on the books of the association."

10 Davis-Stirling Act at CIV § 4041:

11 "Member Contact Information.

12 (a) A member shall, on an annual basis, provide written notice to the association of
13 all of the following:

14 (1) The member's preferred delivery method for receiving notices from the
15 association, which shall include the option of receiving notices at one or both of the
16 following:

17 (A) A mailing address.

18 (B) A valid email address."

19 Davis-Stirling Act at CIV §§ 5115(c) and (g):

20 "Voting Procedure.

21 (c) Ballots and two preaddressed envelopes with instructions on how to return
22 ballots shall be mailed by first-class mail or delivered by the association to every member
23 not less than 30 days prior to the deadline for voting.

24 (g) In an election to approve an amendment of the governing documents, the text of
25 the proposed amendment shall be delivered to the members with the ballot."

26 Davis-Stirling Act at CIV § 5105(h)(1) and (4):

27 "Election Rules.

28 (h) Notwithstanding any other law, the rules adopted pursuant to this section shall
do all of the following:

(1) Prohibit the denial of a ballot to a member for any reason other than not
being a member at the time when ballots are distributed.

(4) Require the inspector or inspectors of elections to deliver, or cause to be
delivered, at least 30 days before an election, to each member both of the following
documents:

(A) The ballot or ballots.

(B) A copy of the election operating rules."

Davis-Stirling Act at CIV § 5120(b):

"Counting Ballots; Irrevocable.

(b) The tabulated results of the election shall be promptly reported to the board and
shall be recorded in the minutes of the next meeting of the board and shall be available for
review by members of the association. Within 15 days of the election, the board shall give
general notice pursuant to Section 4045 of the tabulated results of the election."

Prior to August 2019, the Association did not make a request for individual notice to the
Owner of Lot 1, pursuant to the Davis-Stirling Act at CIV § 4040. Prior to August 2019, the Owner
of Lot 1 did not provide a written notice to the Association of the preferred delivery method for

1 receiving notices, pursuant to the Davis-Stirling Act at CIV § 4041. Between August 2019 and
2 January 2020, the "Responsible Owners" did not provide the four (4) required communications
3 (proposal, ballot, rules, results) to the Owner of Lot 1, pursuant to the Davis-Stirling Act at CIV §§
4 5115(c) and (g), 5105(h)(4), and 5120(b), by an acceptable method of delivery, pursuant to CIV §
5 4040. The "Responsible Owners" did not provide authentic proof of delivery, between August 2019
6 and January 2020, of the four (4) required communications (proposal, ballot, rules, results) to the
7 Owner of Lot 1, pursuant to the Davis-Stirling Act at CIV §§ 5115(c) and (g), 5105(h)(4), and
8 5120(b), by an acceptable method of delivery, pursuant to the Davis-Stirling Act at CIV § 4040.
9 Between August 2019 and January 2020, the "Responsible Owners" failed to deliver the text of the
10 proposed amendment to the CC&Rs, failed to deliver a ballot, failed to deliver the election
11 operation rules, and failed to deliver notice of the results to the Owner of Lot 1, as required by law,
12 pursuant to the Davis-Stirling Act at CIV §§ 5115(c) and (g), 5105(h)(4), and 5120(b), by an
13 acceptable method of delivery, pursuant to the Davis-Stirling Act at CIV § 4040. The CC&Rs § 7.1,
14 CORP § 5033, and CORP § 5034 do not define the legal election and voting procedure, including
15 notices, notices delivery method, copy of the text of the proposed subject matter, ballot, the election
16 operation rules, and notice of the results. Instead, in a legal election and voting procedure, pursuant
17 to the Davis-Stirling Act at CIV §§ 5115(c) and (g), 5105(h)(4), and 5120(b), the CC&Rs § 7.1,
18 CORP § 5033, and CORP § 5034 define the percent or number of votes required to approve the
19 subject matter being voted upon. The Davis-Stirling Act at CIV §§ 5115(c) and (g), 5105(h)(4), and
20 5120(b) define the legal election and voting procedure for any subject matter being voted upon in a
21 common interest development, including notices, notices delivery method, copy of the text of the
22 proposed subject matter, ballot, the election operation rules, and notice of the results. The CC&Rs
23 § 7.1, CORP § 5033, and CORP § 5034 require a legal election and voting procedure pursuant to the
24 Davis-Stirling Act at CIV §§ 5115(c) and (g), 5105(h)(4), and 5120(b). In a legal election and
25 voting procedure, a member is not denied a ballot and vote, pursuant to the Davis-Stirling Act at
26 CIV § 5105(h)(1). Between August 2019 and January 2020, a legal election and voting procedure
27 did not take place for the proposed 2019 Amendment to the CC&Rs, and the Owner of Lot 1 was
28 denied a ballot and vote for the proposed 2019 Amendment to the CC&Rs. Between August 2019
and January 2020, the "Responsible Owners" held an illegal election and voting procedure for the
proposed 2019 Amendment to the CC&Rs in violation of the Davis-Stirling Act at CIV §§ 5115(c)
and (g), 5105(h)(4), and 5120(b). Accordingly, the 2019 Amendment to the CC&Rs (Instrument
Number 20191434431) is invalid and unenforceable. The CC&Rs (Instrument Number

20120210654) is the operative document because a valid and enforceable amendment to the CC&Rs does not exist. [UMF No. 62-75, 86, 87]

E. Cross-Complainant did not provide written notice by certified mail of alleged breaches of CC&Rs prior to filing the cross-complaint with breach of contract first cause of action.

CC&Rs § 5.3 is included within "ARTICLE 5 SCOPE OF ENFORCEMENT", along with 3 other sections addressing enforcement of the Declaration (CC&Rs). CC&Rs § 5.3 intention is written notification by an Owner to an Owner or Owners by USPS certified mail before filing a complaint or cross-complaint with Breach of Contract or Breach of CC&Rs cause of action. CC&Rs § 5.3 is not applicable to the definition of "'Enforcement action' means a civil action or proceeding, other than a cross-complaint" in CIV § 5925 or CIV § 1369.510. CC&Rs § 5.3 "enforce this Declaration" must be interpreted as "enforce this Declaration", and must not be interpreted as "Enforcement Action" because such an erroneous and flawed interpretation defeats the intention of CC&Rs § 5.3 and all sections in ARTICLE 5 SCOPE OF ENFORCEMENT. CC&Rs § 5.4 "enforcement of this Declaration" must be interpreted as "enforcement of this Declaration", and must not be interpreted as "Enforcement Action" because such an erroneous and flawed interpretation defeats the intention of CC&Rs § 5.4 and all sections in ARTICLE 5 SCOPE OF ENFORCEMENT. Cross-Complainant did not provide Cross-Defendants with a written notice of breach of CC&Rs, setting forth the facts of such breach, delivered by certified mail, prior to taking action to enforce the CC&Rs by filing the First Amended Cross-Complaint with Breach of Contract cause of action, pursuant to the CC&Rs § 5.3. Accordingly, the Breach of Contract cause of action must be dismissed. The CC&Rs is the operative document, and the First Amended Cross-Complaint was filed in breach of the CC&Rs § 5.3, thereby prohibiting Cross-Complainant Cameron Hopkins from filing the First Amended Cross-Complaint Breach of Contract first cause of action. [UMF No. 76-79]

F. Cross-Complainant cannot establish causation and physical injury damages for premise liability second cause of action.

Premises Liability cause of action elements are duty of care, breach of duty, causation, and damages (physical injury). The FACC alleges duty of care. The FACC alleges breach of duty related to trash (trash bags, cardboard boxes, and packing material) on a walkway easement on Lot 1. Premises Liability cause of action requires a tangible physical injury. A tangible physical injury is a physical injury to the body of a person, such as bodily injury. The FACC does not allege Cross-

1 Complainant suffered a tangible physical injury on Lot 1 or in the Rowena Lofts Community.
2 Emotional distress is a mental injury. Emotional distress is not a tangible physical injury.
3 Furthermore, the allegation of emotional distress was not accompanied by a description of the
4 emotional distress and how the emotional distress is manifested for Cross-Complainant.
5 Accordingly, the FACC does not sufficiently allege emotional distress. The FACC does not allege
6 causation as to how the alleged breach of duty caused the not alleged physical injury or
7 insufficiently alleged emotional distress. The FACC fails to satisfy the element of causation for the
8 Premises Liability cause of action. The FACC fails to satisfy the element of damages (physical
9 injury) for the Premises Liability cause of action. Accordingly, the First Amended Cross-Complaint
10 Premises Liability cause of action is without merit, and thus must be dismissed. [UMF No. 80-85]

11 **G. Cross-Complainant cannot establish that the alleged nuisance rose to the level**
12 **of nuisance for private nuisance third cause of action.**

13 Cross-Complainant Private Nuisance third cause of action relies on alleged nuisances
14 fabricated by Cross-Complainant that Cross-Defendant adamantly denies occurred. Cross-
15 Complainant cannot produce photos or videos of Cross-Defendant actively participating in any of
16 the alleged nuisances fabricated by Cross-Complainant. Moreover, Cross-Complainant had added
17 participants other than Cross-Defendant, such as other Owners and former owners, to these alleged
18 nuisances fabricated by Cross-Complainant. Some of the alleged nuisances fabricated by Cross-
19 Complainant date back ten years, far exceeding the three (3) years statute of limitations. The
20 October 22, 2019 Email, December 17, 2020 through December 28, 2020 Emails, and Trash fail to
21 rise to the level of nuisance, pursuant to CIV §§ 3479 and 3481, pursuant to the CC&Rs § 4.4.4, and
22 do not show a substantial or unreasonable invasion of Cross-Complainant's interest in the use and
23 enjoyment of his land on Lot 4. Cross-Complainant cannot show that Cross-Defendant's conduct of
24 sending emails in response to damages and distress he incurred caused by the Cross-Complainant
25 and temporarily placing items on a common walkway on his lot for up to three (3) hours total due to
26 the loss of the trash system on his lot caused by the Cross-Complainant, amounted to an invasion
27 that is offensive, seriously annoying, or intolerable to a reasonable person. On September 3, 2024
28 the Court dismissed with prejudice the Private Nuisance forth cause of action in Plaintiff Skyler
Wells Fourth Amended Complaint for the alleged Trash Bags Nuisance, which occurred on the
same exact date range and dates, in the same exact location on Lot 1, with the same exact trash
(non-noxious sealed white trash bags, flattened or empty cardboard boxes, and packing materials
such as packing paper), and with a greater severity (due to blocking Plaintiff Skyler Wells only exit

1 and entrance to his home on Lot 1), as the alleged trash nuisance for the Private Nuisance third
2 cause of action in Cross-Complainant's First Amended Cross-Complaint. To any reasonable person,
3 the October 22, 2019 Email, December 17, 2020 through December 28, 2020 Emails, and Trash, do
4 not amount to a substantial and unreasonable invasion of their interest in the use and enjoyment of
5 their land, and cannot be characterized as offensive, seriously annoying, or intolerable. It is the
6 Cross-Complainant that is being unreasonably sensitive to the conduct of Cross-Defendant in
7 response to damages and distress he incurred caused by the Cross-Complainant. [UMF No. 88-99,
8 101, 102, 114-115] Cross-Complainant's Private Nuisance claim thus cannot be established and
9 should be dismissed.

10 **H. Cross-Complainant cannot establish malice, oppression, or fraud to merit**
11 **punitive damages for premise liability and private nuisance causes of action.**

12 Cross-Complainant cannot establish malice, oppression, or fraud, pursuant to CIV §
13 3294(c)(1)-(3), for premise liability and private nuisance causes of action. The October 22, 2019
14 Email, December 17, 2020 through December 28, 2020 Emails, and Trash occurred in response to
15 damages and distress incurred by Cross-Defendant and caused by Cross-Complainant. [UMF No.
16 88-99, 101, 102] The conduct of Cross-Defendant did not rise to the level of malice, oppression, or
17 fraud. The October 22, 2019 Email and December 17, 2020 through December 28, 2020 Emails sent
18 to the Cross-Complainant by the Cross-Defendant in a state of distress do not rise to the level of
19 malice, pursuant to CIV § 3294(c)(1), and do not amount to oppression or fraud. The Trash conducted
20 by the Cross-Defendant in a state of distress do not rise to the level of malice, pursuant to CIV §
21 3294(c)(1), and do not amount to oppression or fraud. The emails sent by the Cross-Defendant to
22 the Cross-Defendant were not intended to harm the Cross-Defendant and were not without
23 consideration for the rights of the Cross-Complainant, but instead were intended to inform the
24 Cross-Defendant of the damages and distress incurred by the Cross-Defendant, similar to Cease and
25 Desist emails. [UMF No. 114] The trash temporarily placed on the common walkway on Lot 1 by
26 the Cross-Defendant was not intended to harm the Cross-Complainant, who did not reside in Lot 4
27 in the Rowena Lofts Community at the time [UMF No. 23-24], and was not without consideration
28 for the rights of the Cross-Complainant, but instead was done out of necessity due to the loss of
Cross-Defendant's trash system on Lot 1. [UMF No. 115]

29 **I. The CC&Rs operative document does not permit:**

30 CIV §§ 1354(b) is not applicable to the CC&Rs. CIV §§ 1354(a) and (c) do not permit the
31 CC&Rs to be enforced by an Owner against an Owner. CIV §§ 1354(a) and (c) do not permit the

1 CC&Rs to be enforced by an Owner on behalf of an Owner. CIV §§ 1354(a) and (c) do not permit
2 the CC&Rs to be enforced by 1/2 of the association, or one (1) of two (2) "Responsible Owners".
3 [UMF No. 3, 25-36] CIV §§ 1354(a) and (c) does not permit the Premises Liability cause of action,
4 and does not permit monetary, emotional distress, or punitive damages, instead only injunctive
5 relief under Breach of Contract cause of action is permitted with the recovery of reasonable
6 attorney's fees and costs for injunctive relief. CIV §§ 1354(a) and (c) does not permit the Private
7 Nuisance cause of action, and does not permit monetary, emotional distress, or punitive damages,
8 instead only injunctive relief under Breach of Contract cause of action is permitted with the
9 recovery of reasonable attorney's fees and costs for injunctive relief. Accordingly, CIV §§
10 1354(a),(b), and (c) do not permit any cause of action, damage, relief, cost, or attorney's fees in the
11 FACC.

12 **1. The CC&Rs operative document does not permit any legal action by an**
13 **owner or the responsible owners against a non-owner.**

14 The CC&Rs are not enforceable against David Schiamberg and Marilyn Schiamberg,
15 who are excluded from the definition of Owner, pursuant to the CC&Rs § 1.1.10.

16 **2. The CC&Rs operative document does not permit any legal action by an**
17 **owner or the responsible owners on behalf of another owner.**

18 The CC&Rs do not permit enforcement of the CC&Rs against an Owner by an
19 Owner on behalf of an Owner or Owners. The CC&Rs do not permit enforcement of the CC&Rs
20 against an Owner by the "Responsible Owners" on behalf of an Owner or Owners. [UMF No. 111]

21 **3. The CC&Rs operative document does not permit collection for monthly**
22 **HOA dues as an unlimited civil action.**

23 CC&Rs § 4.5.2 is the only collection action for monthly HOA dues permitted in the
24 CC&Rs. The CC&Rs do not permit collection action for monthly HOA dues as an unlimited civil
25 action. The CC&Rs permit collection action for monthly HOA dues by the "Responsible Owners"
26 on behalf of the Owners as a small claims action. [UMF No. 112]

27 **4. The CC&Rs operative document does not permit collection action for**
28 **LASC Case No. BS162671 Judgment ("2016 Judgment").**

The FACC Breach of Contract cause of action, Premises Liability cause of action,
Private Nuisance cause of action, Declaratory Relief cause of action, and collection action for
LASC Case No. BS162671 Judgment ("2016 Judgment") for Owners, other than Cross-
Complainant, must be dismissed.

1 **5. The CC&Rs operative document does not permit the recovery of**
2 **prejudgment interest or any other interest.**

3 The CC&Rs do not permit prejudgment interest, or any other interest. The FACC
4 prejudgment interest and any other interest must be dismissed.

5 **6. The CC&Rs operative document does not permit the recovery of**
6 **attorney's fees for superior court.**

7 The CC&Rs § 9.4 permits the recovery of attorney's fees for judicial reference or
8 binding arbitration. The CC&Rs § 9.4 do not permit the recovery of attorney's fees for superior
9 court. [UMF No. 113] Accordingly, Cross-Complainant is not entitled to recover attorney's fees for
10 the First Amended Cross-Complaint ("FACC"), which was not filed as judicial reference or binding
11 arbitration, pursuant to the CC&Rs § 9.4. The FACC attorney's fees must be dismissed.

12 **J. The invalid and unenforceable 2019 amendment to the CC&Rs does not permit:**

13 The invalid and unenforceable 2019 Amendment to the CC&Rs includes amendments to
14 Sections 1.1.11, 3.2.1, 3.4, 3.4.2, 5.2, 5.3, 5.4, and 9.4.

15 The 2019 Amendment to the CC&Rs § 1.1.11 defines "Responsible Owners" as "Section
16 1.1.11 is amended to read as follows in its entirety:

17 "Responsible Owner shall mean and refer to the **two (2) Owners** elected by all Owners to
18 serve as their agents for the preservation, operation, maintenance, management, repair and
19 replacement of the common Improvements and facilities in the Easement Maintenance
20 Areas, and for managing the sub-metering of common utilities, on behalf of all Owners
21 and to collect the pro rata share of expenses from each Owner and prosecute any collection
22 action on behalf of all Owners as their appointed Agent."

23 The 2019 Amendment to the CC&Rs § 3.2.1 states:

24 "The Responsible Owners may, in **their** sole discretion, prosecute any such collection
25 action in Los Angeles Superior Court and shall not be obligated to engage in binding
26 arbitration under Section 5.2 of this Declaration."

27 The 2019 Amendment to the CC&Rs § 5.2 states:

28 "Upon a two-third's vote of the Owners, the Responsible Owners may act as the
representatives of the Owners in an action to enjoin or abate a nuisance."

1 **1. The invalid and unenforceable 2019 amendment to the CC&Rs does not**
2 **permit legal action by one (1) of two (2) responsible owners on behalf of another owner.**

3 The FACC Breach of Contract cause of action, Private Nuisance cause of action, and
4 collection action, filed by Cross-Complainant Cameron Hopkins, representing one (1) of two (2)
5 "Responsible Owners", breaches the 2019 Amendment to the CC&Rs §§ 1.1.11, 3.2.1, and 5.2.
6 [UMF No. 3, 25-36] Accordingly, the FACC Breach of Contract cause of action, Private Nuisance
7 cause of action, Declaratory Relief cause of action, and collection action for LASC Case No.
8

1 BS162671 Judgment ("2016 Judgment") for Owners, other than Cross-Complainant, must be
2 dismissed.

3 **2. The invalid and unenforceable 2019 amendment to the CC&Rs does not**
4 **permit premises liability action by an owner or the responsible owners on behalf of another**
5 **owner.**

6 The invalid and unenforceable 2019 Amendment to the CC&Rs does not permit
7 premises liability action by an Owner or the "Responsible Owners" on behalf of another Owner.
8 Accordingly, the FACC Premises Liability cause of action for Owners, other than Cross-
Complainant, must be dismissed.

9 **K. The breach of contract damages are improper based on the statute of**
10 **limitations for breach of contract.**

11 Breach of Contract cause of action for a written contract has a four (4) years statute of
12 limitations from the date of breach in California. Damages for "five (5) years immediately
13 preceding the filing of this Cross-Complaint" are improper because four (4) years prior to June 10,
14 2022 filing date of the Cross-Complaint is permitted pursuant to the four (4) years statute of
15 limitations from the date of breach in California. Accordingly, FACC Breach of Contract cause of
action claims and damages dated prior to June 10, 2018 are time barred. [UMF No. 4-5]

16 **L. The collection action for LASC Case No. BS162671 Judgment ("2016**
17 **Judgment") is improper based on the 2016 Judgment.**

18 Collection action for LASC Case No. BS162671 ("2016 Judgment") is not permitted for
19 David Schiamberg and Marilyn Schiamberg because David Schiamberg and Marilyn Schiamberg
20 were not parties in LASC Case No. BS162671. [UMF No. 107] Collection action for LASC Case
21 No. BS162671 for Owners would be limited to monetary damages only in the amount of \$22,890.94
22 for Martin Park because on June 10, 2022 when the Cross-Complaint was filed, Martin Park was the
23 only Owner that was also a party in LASC Case No. BS162671. [UMF No. 106] Furthermore, the
2016 Judgment does not order Cross-Defendant to restore common areas. [UMF No. 108-109]

24 **IV. CONCLUSION**

25 For the forgoing reasons, Cross-Defendant Skyler Wells respectfully requests that the Court
26 grant his Motion for Summary Adjudication of each issue.
27
28

1 DATED: September 25, 2024

Respectfully submitted,

DIEFENBACH LAW GROUP



James C. Diefenbach
Attorney for Cross-Defendant
SKYLER WELLS

Document received by the CA 2nd District Court of Appeal.



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Make a Reservation

SKYLER WELLS vs CAMERON HOPKINS, et al.

Case Number: 22STCV05843 Case Type: Civil Unlimited Category: Negligent Breach of Contract/Warranty (no fraud)

Date Filed: 2022-02-16 Location: Stanley Mosk Courthouse - Department 36

Reservation

Case Name: SKYLER WELLS vs CAMERON HOPKINS, et al.	Case Number: 22STCV05843
Type: Motion for Summary Adjudication	Status: RESERVED
Filing Party: SKYLER WELLS (Cross-Defendant)	Location: Stanley Mosk Courthouse - Department 36
Date/Time: 01/23/2025 8:30 AM	Number of Motions: 1
Reservation ID: 867108915190	Confirmation Code: CR-ZFUFJMQGAQVUIQV9N

Fees

Description	Fee	Qty	Amount
Motion for Summary Adjudication	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount: \$0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a
Payment Date: n/a	

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Electronically FILED by
Superior Court of California,
County of Los Angeles
9/30/2024 12:00 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By K. Hung, Deputy Clerk

Attorney for Cross-Defendant
SKYLER WELLS

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL JUDICIAL DISTRICT

SKYLER WELLS

Plaintiff.

vs.

CAMERON HOPKINS, and JAY DYCKMAN

Defendants.

CAMERON HOPKINS

Cross-Complainant.

vs.

SKYLER WELLS, DAVID SCHIAMBERG,
MARILYN SCHIAMBERG, and ROES 1-20

Cross-Defendants.

) Case No. 22STCV05843

) [Unlimited Civil Action]

) **CROSS-DEFENDANT SKYLER WELLS**
) **SEPARATE STATEMENT IN SUPPORT**
) **OF CROSS-DEFENDANT SKYLER**
) **WELLS MOTION FOR SUMMARY**
) **ADJUDICATION OF ISSUES**

) *[Filed Concurrently with Motion for Summary*
) *Adjudication of Issues, Declaration of Skyler*
) *Wells, Request for Judicial Notice,*
) *Compendium of Exhibits, and Proposed Order]*

) **DEPT:** 36

) **JUDGE:** Hon. Wendy Chang

) **DATE:** January 23, 2025

) **TIME:** 8:30 am

) **RESERVATION ID:** 867108915190

1 **TO THE COURT, CROSS-COMPLAINANT AND HIS ATTORNEY OF RECORD:**

2 Pursuant to California Rules of Court, Rule 3.1350(d), Cross-Defendant Skyler Wells
3 (“Cross-Defendant”) files his separate statement of undisputed material facts in support of his
4 Motion for Summary Adjudication of Issues.

5 **ISSUES SUBJECT TO AND SUPPORTED BY THE FOLLOWING FACTS:**

6 **ISSUE 1:** Cross-Defendant Skyler Wells is entitled to summary adjudication of Cross-Complainant
7 Cameron Hopkins First Amended Cross-Complaint Breach of Contract first cause of action, which
8 has a complete defense, and is without merit.

9 **ISSUE 2:** Cross-Defendant Skyler Wells is entitled to summary adjudication of Cross-Complainant
10 Cameron Hopkins First Amended Cross-Complaint Premises Liability second cause of action,
11 which has one or more elements of the cause of action that cannot be established, and is without
12 merit.

13 **ISSUE 3:** Cross-Defendant Skyler Wells is entitled to summary adjudication of Cross-Complainant
14 Cameron Hopkins First Amended Cross-Complaint Private Nuisance third cause of action, which
15 has no triable issue of material fact, and is without merit.

16 **ISSUE 4:** Cross-Defendant Skyler Wells is entitled to summary adjudication of Cross-Complainant
17 Cameron Hopkins First Amended Cross-Complaint claim for "An order directing each Cross-
18 Defendant to comply with the 2016 Street Address, Pedestrian, Landscaping, Gate, and Park
19 Injunctions and to restore the common easements as previously mandated by the Court" damages
20 associated with LASC Case No. BS162671 Judgment ("2016 Judgment"), which is without merit.

21 **ISSUE 5:** Cross-Defendant Skyler Wells is entitled to summary adjudication of Cross-Complainant
22 Cameron Hopkins First Amended Cross-Complaint claim for "A judgment reimbursing the current
23 five (5) other property owners for monthly fees they have paid, on behalf of Co-Defendants, for the
24 five (5) years immediately preceding the filing of this Cross-Complaint [Wells’ Lot share is
25 \$340/month], ..., which is without merit.

26 **ISSUE 6:** Cross-Defendant Skyler Wells is entitled to summary adjudication of Cross-Complainant
27 Cameron Hopkins First Amended Cross-Complaint claim for "A judgment ..., plus interest, costs
28

1 and reasonable attorney's fees" damages associated with LASC Case No. BS162671 Judgment
2 ("2016 Judgment"), which is without merit.

3 **ISSUE 7:** Cross-Defendant Skyler Wells is entitled to summary adjudication of Cross-Complainant
4 Cameron Hopkins First Amended Cross-Complaint claim "For exemplary and punitive damages in
5 an amount to be determined at trial", which is without merit.

6 **ISSUE 8:** Cross-Defendant Skyler Wells is entitled to summary adjudication of Cross-Complainant
7 Cameron Hopkins First Amended Cross-Complaint claim "For prejudgment interest on all other
8 interest to which Cross-Complainant is entitled", which is without merit.

9 **ISSUE 9:** Cross-Defendant Skyler Wells is entitled to summary adjudication of Cross-Complainant
10 Cameron Hopkins First Amended Cross-Complaint claim "For Cross-Complainant's reasonable
11 attorney's fees incurred in this action pursuant to statute and Governing Documents, as amended",
12 which is without merit.

NO.	Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Responses and Supporting Evidence:
1	The Cross-Complaint with Breach of Contract, Private Nuisance, and Declaratory Relief causes of action was filed on June 10, 2022. Evidence: Declaration of Skyler Wells ("Wells Decl.") ¶ 3	
2	The First Amended Cross-Complaint ("FACC") with Breach of Contract, Premises Liability, Private Nuisance, and Declaratory Relief causes of action was filed on August 1, 2022. Evidence: Wells Decl. ¶ 4	
3	Cross-Complainant Cameron Hopkins ("Cross-Complainant") is the only Cross-Complainant.	

	Evidence: Wells Decl. ¶ 5	
4	Breach of Contract cause of action for a written contract has a four (4) years statute of limitations from the date of breach in California. Evidence: Wells Decl. ¶ 6	
5	FACC Breach of Contract cause of action allegations dated prior to June 10, 2018 are time barred. Evidence: Wells Decl. ¶ 7	
6	Premises Liability cause of action has a two (2) years statute of limitations from the date of injury in California. Evidence: Wells Decl. ¶ 8	
7	FACC Premises Liability cause of action allegations dated prior to August 1, 2020 are time barred. Evidence: Wells Decl. ¶ 9	
8	Private Nuisance cause of action has a three (3) years statute of limitations from the date of nuisance in California. Evidence: Wells Decl. ¶ 10	
9	FACC Private Nuisance cause of action allegations dated prior to June 10, 2019 are time barred. Evidence: Wells Decl. ¶ 11	

10	Rowena Lofts is a residential community consisting of six (6) single-family residential lots (Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6) in Los Angeles, California ("Rowena Lofts Community"). Evidence: Wells Decl. ¶ 12 Exhibit 01, 02, 05	
11	Each of the six (6) single-family residential lots is a separately owned lot or separate interest in the Rowena Lofts Community. Evidence: Wells Decl. ¶ 13 Exhibit 01, 02, 05	
12	A Condominium Plan ("Condominium Plan"), pursuant to CIV § 4285, does not exist for the Rowena Lofts Community. Evidence: Wells Decl. ¶ 14 Exhibit 05, page 4, paragraph 1	
13	The Tract Map for the Rowena Lofts Community was recorded (filed) in Los Angeles County. Evidence: Exhibit 01, 02	
14	INTENTIONALLY BLANK	
15	The CC&Rs Introduction on page 1 refers to the Rowena Lofts Community as "Lots 1 through 6, inclusive, of Tract No. 63131, in the County of Los Angeles, State of California, as per Map filed in Book 1360, Pages 39 through 41, of Maps, in the Office of the County Recorder of said County [County of Los Angeles].".	

	Evidence:	
	Exhibit 01, 02	
16	In December 2012, Cross-Defendant Skyler Wells ("Cross-Defendant") purchased Lot 1 in the Rowena Lofts Community.	
	Evidence:	
	Wells Decl. ¶ 15	
	Exhibit 04, 06	
17	David Schiamberg and Marilyn Schiamberg are the biological parents of Cross-Defendant.	
	Evidence:	
	Wells Decl. ¶ 16	
18	In March 2018, Cross-Complainant purchased Lot 4 in the Rowena Lofts Community.	
	Evidence:	
	Wells Decl. ¶ 17	
19	In November 2018, Jay Dyckman purchased Lot 6 in the Rowena Lofts Community.	
	Evidence:	
	Wells Decl. ¶ 18	
20	Between January 1, 2013 and December 31, 2024, Cross-Defendant occupied and resided in Lot 1.	
	Evidence:	
	Wells Decl. ¶ 19	
21	On January 1, 2024, Cross-Defendant relocated away from Lot 1.	
	Evidence:	
	Wells Decl. ¶ 20	

22	Between January 1, 2013 and the present date, David Schiamberg and Marilyn Schiamberg have not occupied or resided in Lot 1. Evidence: Wells Decl. ¶ 21	
23	Between March 2018 and the present date, Cross-Complainant has not occupied or resided in Lot 4. Evidence: Wells Decl. ¶ 22	
24	Between March 2018 and the present date, Cross-Complainant has occupied and resided at 388 Brentwood Avenue, Ventura, California 93003. Evidence: Wells Decl. ¶ 23	
25	On February 7, 2012, Declaration of Covenants, Conditions, and Restrictions for the Rowena Lofts Community was recorded (filed) in Los Angeles County as Instrument Number 20120210654 ("Declaration" or "CC&Rs"). Evidence: Exhibit 02	
26	The Rowena Lofts Community is governed by the CC&Rs. Evidence: Wells Decl. ¶ 25 Exhibit 02	
27	The CC&Rs § 1.1.10 defines Owner ("Owner") as: "Owner shall mean and refer to the record Owners, whether one (1) or more persons or entities, of fee simple title to any Lot which is part of the Project, including contract sellers, but excluding those having such interests	

	<u>merely as security for the performance of an obligation."</u> Evidence: Exhibit 02	
28	The Owner of each of the six (6) lots, are collectively the Owners ("Owners") in the Rowena Lofts Community. Evidence: Wells Decl. ¶ 26	
29	A former owner is not an Owner pursuant to the CC&Rs § 1.1.10. Evidence: Exhibit 02	
30	The CC&Rs § 1.1.11 defines Responsible Owners ("Responsible Owners") as: "Responsible Owner shall mean and refer to the <u>two (2) Owners</u> elected by all Owners to serve as their agents for the preservation, operation, maintenance, management. repair and replacement of the common improvements and facilities in the Easement Maintenance Areas, and for managing the sub-metering of common utilities, on behalf of all Owners." Evidence: Exhibit 02	
31	The CC&Rs § 3.2.1 further defines "Responsible Owners" as: "The Responsible Owners shall serve as the <u>agents</u> of all Owners until replaced and shall be responsible to diligently preserve, maintain, repair and replace as necessary, the common use improvements and facilities in the Easement Maintenance Areas." Evidence: Exhibit 02	

32	On or around March 2018, Cameron Hopkins was elected to and accepted the role of one (1) of two (2) "Responsible Owners". Evidence: Wells Decl. ¶ 27	
33	Between March 2018 and the present date, Cameron Hopkins is one (1) of two (2) Responsible Owners. Evidence: Wells Decl. ¶ 28	
34	On or around November 2018, Jay Dyckman was elected to and accepted the role of one (1) of two (2) "Responsible Owners". Evidence: Wells Decl. ¶ 29	
35	Between November 2018 and the present date, Jay Dyckman is one (1) of two (2) "Responsible Owners". Evidence: Wells Decl. ¶ 30	
36	The CC&Rs § 3.3 defines Record Keeper ("Record Keeper") as: "The Owners, by a majority vote of a quorum thereof, shall designate in writing one (1) of the Responsible Owners, or another of their number, to maintain all records relative to the operation, maintenance, repair, replacement, or improvement of the Easement Maintenance Areas. The Owner to be designated by the other Owners shall be referred to as the "Record Keeper," who shall be designated on an annual basis, commencing on the first (1st) meeting of the Owner for purposes of this Article." Evidence:	

	Exhibit 02	
37	The Rowena Lofts Community has an owners' association or community association ("Association"), consisting of two (2) "Responsible Owners", one (1) Record Keeper, and six (6) Owners. Evidence: Wells Decl. ¶ 31 Exhibit 02	
38	Each Owner is a member in the Association. Evidence: Wells Decl. ¶ 32 Exhibit 02 Davis-Stirling Act	
39	On October 12, 2012, Cross-Defendant applied for and was preapproved for a mortgage loan for the Lot 1. Evidence: Wells Decl. ¶ 33 Exhibit 03	
40	Cross-Defendant intended to purchase the Lot 1, without a co-signer on the mortgage loan for the Lot 1. Evidence: Wells Decl. ¶ 34 Exhibit 03	
41	On October 29, 2012, Cross-Defendant and Open House Realty & Investments, LLC ("Open House") entered into a purchase agreement for the Lot 1 ("Lot 1 Purchase Agreement"), signed by Cross-Defendant, and signed by Peter Baer on behalf of Open House.	

	Evidence: Wells Decl. ¶ 35 Exhibit 04	
42	The Lot 1 Purchase Agreement was not signed by David Schiamberg and Marilyn Schiamberg. Evidence: Wells Decl. ¶ 36 Exhibit 04	
43	Shortly before December 20, 2012, Cross-Defendant was informed by FHA of the requirement for a co-signer on the mortgage loan for the Lot 1. Evidence: Wells Decl. ¶ 37	
44	On December 20, 2012, David Schiamberg and Marilyn Schiamberg co-signed the mortgage loan for the Lot 1. Evidence: Wells Decl. ¶ 38 Exhibit 06	
45	On December 28, 2012, escrow closed on the Lot 1 when the mortgage loan was funded ("Close of Escrow Date"). Evidence: Wells Decl. ¶ 39	
46	On May 21, 2013, Skyler Wells, David Schiamberg, and Marilyn Schiamberg signed an ownership agreement for the Lot 1 ("Lot 1 Ownership Agreement") stating: "Property: 3345 1/2 Rowena Avenue, Los Angeles, CA 90027. I, David Schiamberg and I, Marilyn Schiamberg, understand and agree that we have co-signed the loan for this property as an accommodation and that Skylar Wells is	

	the 100% owner of this property. We will at all times cooperate with any needs Skylar Wells may have in connection with the fact we are on title to this property. Including but not limited to, refinance of this property and sale of this property." Evidence: Wells Decl. ¶ 40 Exhibit 07	
47	The CC&Rs § 1.1.5 defines the Easement Maintenance Areas ("Easement Maintenance Areas") as: "Easement Maintenance Area(s) shall mean and refer to those portions of the Lots, and the improvements thereon, for which all Owners of Lots within the Project shall have reciprocal easements of access for maintenance, repair, use and/or enjoyment, and which the Owners collectively shall have the duty and obligation to maintain, manage, operate, repair and/or replace, for the common use and/or benefit of the Owners. The Easement Maintenance Areas shall include, but not be limited to the following: (a)... - (m)..." Evidence: Exhibit 02	
48	The CC&Rs § 1.1.5 lists the Easement Maintenance Areas as (a) through (m). Evidence: Exhibit 02	
49	The CC&Rs Exhibits A through E diagram the Easement Maintenance Areas. Evidence: Exhibit 02	
50	The Association, through the "Responsible Owners" as the agents,	

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	maintains the Easement Maintenance Areas, pursuant to the CC&Rs § 1.1.11: "Responsible Owner shall mean and refer to the two (2) Owners elected by all Owners to serve as their agents for the preservation, operation, maintenance, management. repair and replacement of the common improvements and facilities in the Easement Maintenance Areas, and for managing the sub-metering of common utilities, on behalf of all Owners.", and pursuant to the CC&Rs § 3.2.1: "The Responsible Owners shall serve as the agents of all Owners until replaced and shall be responsible to diligently preserve, maintain, repair and replace as necessary, the common use improvements and facilities in the Easement Maintenance Areas." Evidence: Exhibit 02	
51	The Association, through the "Responsible Owners" as the agents, has the power to levy and collect assessments, pursuant to the CC&Rs § 3.4: "The Responsible Owners shall cause the trash collection account, insurance policy and the electrical billing account for the Easement Maintenance Areas to be placed in his or her names, and shall have charge of the financial arrangements therefor, including maintenance of a separate bank account for the Easement Maintenance Areas, payment of bills, costs and expenses, and collection of the respective shares of such costs from the Owners.", and pursuant to the CC&Rs § 3.4.3: "In the event there are insufficient funds in the applicable account to pay the necessary costs and expenses for the Easement Maintenance Areas, the Responsible Owners shall promptly notify the other Owners in writing, with copies of all invoices and/or proposals attached, and all Owners shall make payment of their respective shares of such costs to the	

	Responsible Owners within thirty (30) days after receipt of written notice."	
	Evidence:	
	Exhibit 02	
52	The Davis-Stirling Act ("Davis-Stirling Act") is a law that regulates common interest developments in California. It applies to condominium, cooperative, and planned unit development communities.	
	Evidence:	
	Davis-Stirling Act	
53	The Davis-Stirling Act includes California Civil Code Sections 4000–6150 [CIV §§ 4000–6150].	
	Evidence:	
	Davis-Stirling Act	
54	Pursuant to the Davis-Stirling Act at CIV § 4100: "Common Interest Development' Defined. 'Common interest development' means any of the following: (a) A community apartment project. (b) A condominium project. (c) A planned development. (d) A stock cooperative."	
	Evidence:	
	Davis-Stirling Act	
55	Pursuant to the Davis-Stirling Act at CIV § 4175: "Planned Development' Defined. 'Planned development' means a real property development other than a community apartment project, a condominium project, or a stock cooperative, having either or both of the following features: (a) Common area that is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the	

1		beneficial use and enjoyment of the common area.	
2		(b) Common area and an association that maintains the common area with the power to levy assessments that may become a lien upon the separate interests in accordance with Article 2 (commencing with Section 5650) of Chapter 8."	
3		Evidence:	
4		Davis-Stirling Act	
5	56	Pursuant to the Davis-Stirling Act at CIV § 4800: "Association as Manager. A common interest development shall be managed by an association that may be incorporated or unincorporated. The association may be referred to as an owners' association or a community association."	
6		Evidence:	
7		Davis-Stirling Act	
8	57	Pursuant to the Davis-Stirling Act at CIV § 4200: "Applicability of Act to Common Interest Developments. This act applies and a common interest development is created whenever a separate interest coupled with an interest in the common area or membership in the association is, or has been, conveyed, provided all of the following are recorded: (a) A declaration. (b) A condominium plan, if any exists. (c) A final map or parcel map, if Division 2 (commencing with Section 66410) of Title 7 of the Government Code requires the recording of either a final map or parcel map for the common interest development."	
9		Evidence:	
10		Davis-Stirling Act	
11	58	The Lot 1 is located in the Rowena Lofts	

	Community.	
	Evidence:	
	Wells Decl. ¶ 41	
59	The Lot 1 FHA Loan # 3000142230 has a FHA Planned Unit Development Rider, which states: "The Property is part of a planned unit development ('PUD') known as: Rowena Lofts".	
	Evidence:	
	Exhibit 06	
60	On November 27, 2012, Joseph Kwon, a Certified Residential Real Estate Appraiser, prepared a Property Uniform Residential Appraisal Report for the Lot 1, which is marked with an "X" next to "PUD".	
	Evidence:	
	Wells Decl. ¶ 42	
	Exhibit 05	
61	On November 27, 2012, Joseph Kwon, a Certified Residential Real Estate Appraiser, prepared a Property Uniform Residential Appraisal Report for the Lot 1, which is marked with "199" next to "HOA \$" and with an "X" next to "per month".	
	Evidence:	
	Wells Decl. ¶ 42	
	Exhibit 05	
62	Between August 2019 and January 2020, Cameron Hopkins and Jay Dyckman were the "Responsible Owners".	
	Evidence:	
	Wells Decl. ¶ 43	
63	The "Responsible Owners" are not in possession of any documents relating to a	

	request for individual notice from the Association provided by the Owner of Lot 1 to the "Responsible Owners" prior to August 2019, pursuant to the Davis-Stirling Act at CIV § 4040. Evidence: Exhibit 09 No. 1-24 Davis-Stirling Act	
64	The "Responsible Owners" are not in possession of any documents relating to a written notice to the Association of the preferred delivery method for receiving notices from the Association by the Owner of Lot 1 provided to the "Responsible Owners" prior to August 2019, pursuant to the Davis-Stirling Act at CIV § 4041. Evidence: Exhibit 09 No. 1-24 Davis-Stirling Act	
65	The "Responsible Owners" are not in possession of any documents relating to the text of the proposed amendment to the CC&Rs with the ballot provided by the "Responsible Owners" to the Owner of Lot 1 between August 2019 and December 2019, pursuant to the Davis-Stirling Act at CIV §§ 5115(c) and (g). Evidence: Exhibit 09 No. 1-24 Davis-Stirling Act	
66	The "Responsible Owners" are not in possession of any documents evidencing that the text of the proposed amendment to the CC&Rs with the ballot provided by the "Responsible Owners" to the Owner of Lot 1 between August 2019 and December 2019, pursuant to the Davis-Stirling Act at CIV §§ 5115(c) and (g)	

	was sent via first-class mail, registered or certified mail, express mail, or overnight delivery by an express service carrier addressed to the Owner of Lot 1 at the address last shown on the books of the Association pursuant to the Davis-Stirling Act at CIV § 4040. Evidence: Exhibit 09 No. 1-24 Davis-Stirling Act	
67	The "Responsible Owners" are not in possession of any documents evidencing that the text of the proposed amendment to the CC&Rs with the ballot provided by the "Responsible Owners" to the Owner of Lot 1 between August 2019 and December 2019, pursuant to the Davis-Stirling Act at CIV §§ 5115(c) and (g) was sent via a valid email address, which did not result in a bounce or other error notification indicating failure of the email message, pursuant to the Davis-Stirling Act at CIV § 4041. Evidence: Exhibit 09 No. 1-24 Davis-Stirling Act	
68	The "Responsible Owners" are not in possession of any documents relating to the ballot and a copy of election operation rules for the proposed amendment to the CC&Rs provided by the "Responsible Owners" to the Owner of Lot 1 between August 2019 and December 2019, pursuant to the Davis-Stirling Act at CIV § 5105(h)(4). Evidence: Exhibit 09 No. 1-24 Davis-Stirling Act	
69	The "Responsible Owners" are not in	

	possession of any documents evidencing that the ballot and a copy of election operation rules for the proposed amendment to the CC&Rs provided by the "Responsible Owners" to the Owner of Lot 1 between August 2019 and December 2019 pursuant to the Davis-Stirling Act at CIV § 5105(h)(4) was sent via first-class mail, registered or certified mail, express mail, or overnight delivery by an express service carrier addressed to the Owner of Lot 1 at the address last shown on the books of the Association pursuant to the Davis-Stirling Act at CIV § 4040. Evidence: Exhibit 09 No. 1-24 Davis-Stirling Act	
70	The "Responsible Owners" are not in possession of any documents evidencing that the ballot and a copy of election operation rules for the proposed amendment to the CC&Rs provided by the "Responsible Owners" to the Owner of Lot 1 between August 2019 and December 2019 pursuant to California Civil Code § 5105(h)(4) was sent via a valid email address, which did not result in a bounce or other error notification indicating failure of the email message, pursuant to the Davis-Stirling Act at CIV § 4041. Evidence: Exhibit 09 No. 1-24 Davis-Stirling Act	
71	The "Responsible Owners" are not in possession of any documents relating to the tabulated results for the proposed amendment to the CC&Rs provided by the "Responsible Owners" to the Owner of Lot 1 between August 2019 and January 2020 pursuant to the Davis-Stirling Act at	

Document received by the CA 2nd District Court of Appeal.

	CIV § 5120(b). Evidence: Exhibit 09 No. 1-24 Davis-Stirling Act	
72	The "Responsible Owners" are not in possession of any documents evidencing that the tabulated results for the proposed amendment to the CC&Rs provided by the "Responsible Owners" to the Owner of Lot 1 between August 2019 and January 2020 pursuant to CIV § 5120(b) was sent via first-class mail, registered or certified mail, express mail, or overnight delivery by an express service carrier addressed to the Owner of Lot 1 at the address last shown on the books of the Association pursuant to the Davis-Stirling Act at CIV § 4040. Evidence: Exhibit 09 No. 1-24 Davis-Stirling Act	
73	The "Responsible Owners" are not in possession of any documents evidencing that the tabulated results for the proposed amendment to the CC&Rs provided by the "Responsible Owners" to the Owner of Lot 1 between August 2019 and January 2020 pursuant to California Civil Code § 5120(b) was sent via a valid email address, which did not result in a bounce or other error notification indicating failure of the email message, pursuant to the Davis-Stirling Act at CIV § 4041. Evidence: Exhibit 09 No. 1-24 Davis-Stirling Act	
74	On December 23, 2019, the 2019 Amendment to the CC&Rs was recorded (filed) in Los Angeles County as	

	Instrument Number 20191434431 ("2019 Amendment to the CC&Rs"). Evidence: Exhibit 08	
75	Cross-Defendant is not listed along with the other Owners in the first paragraph in the 2019 Amendment to the CC&Rs: "We, Brandon Cohen, Cameron Hopkins, Martin Park, Genevieve Ko and Jay Dyckman, certify and declare that: We are the Owners of Lots within the Rowena Lofts project in Tract 63131 in the City of Los Angeles, County of Los Angeles, State of California." Evidence: Exhibit 08	
76	Between December 28, 2012 and the present date, Cross-Defendant received all written correspondence regarding the Lot 1 and the Rowena Lofts Community provided to David Schiamberg and Marilyn Schiamberg, which was forwarded to Cross-Defendant by David Schiamberg and Marilyn Schiamberg. Evidence: Wells Decl. ¶ 44	
77	Between 2018 and the present date, Cross-Defendant did not receive any written correspondence regarding the Lot 1 and the Rowena Lofts Community, which was originally sent by registered mail, return receipt requested, pursuant to the CC&Rs § 1.1.9: "Notice to the Owner shall mean written notice sent by registered mail, return receipt requested, to the Owner at the address of the Lot, or the Owner's last known residential address if different than the Lot." Evidence: Wells Decl. ¶ 45	

Document received by the CA 2nd District Court of Appeal.

78	Between 2018 and the present date, Cross-Defendant did not receive any written correspondence regarding alleged breaches of the CC&Rs, which was originally sent by certified mail, pursuant to the CC&Rs § 5.3: "Any of the foregoing to the contrary notwithstanding, no action to enforce this Declaration shall be instituted unless and until a written notice of such breach setting forth the facts of such breach has been delivered by certified mail to the Owner of such Lot." Evidence: Wells Decl. ¶ 46	
79	Between 2018 and the present date, Cross-Defendant did not receive any written correspondence regarding the levy and collect of assessments, pursuant to the CC&Rs § 3.4.3: "In the event there are insufficient funds in the applicable account to pay the necessary costs and expenses for the Easement Maintenance Areas, the Responsible Owners shall promptly notify the other Owners in writing, with copies of all invoices and/or proposals attached, and all Owners shall make payment of their respective shares of such costs to the Responsible Owners within thirty (30) days after receipt of written notice." Evidence: Wells Decl. ¶ 47	
80	Between August 1, 2020 and August 1, 2022, for the Premises Liability claim, Cross-Complainant did not suffer a tangible physical injury on Lot 1. Evidence: First Amended Cross-Complaint ("FACC")	
81	Between August 1, 2020 and August 1, 2022, for the Premises Liability claim, Cross-Complainant did not suffer a	

	tangible physical injury in the Rowena Lofts Community. Evidence: FACC	
82	Between August 1, 2020 and August 1, 2022, for the Premises Liability claim, Cross-Complainant did not suffer emotional distress on Lot 1. Evidence: FACC	
83	Between August 1, 2020 and August 1, 2022, for the Premises Liability claim, Cross-Complainant did not suffer emotional distress in the Rowena Lofts Community. Evidence: FACC	
84	Between August 1, 2020 and August 1, 2022, for the Premises Liability claim, Cross-Complainant did not suffer monetary damages on Lot 1. Evidence: FACC	
85	Between August 1, 2020 and August 1, 2022, for the Premises Liability claim, Cross-Complainant did not suffer monetary damages in the Rowena Lofts Community. Evidence: FACC	
86	The 2019 Amendment to the CC&Rs (Instrument Number 20191434431) is invalid and unenforceable. Evidence: Exhibit 09 No. 1-24	

	Davis-Stirling Act at CIV §§ 5115(c) and (g), 5105(h)(4), and 5120(b)	
87	The CC&Rs (Instrument Number 20120210654) is the operative document in the Rowena Lofts Community. Evidence: Exhibit 09 No. 1-24 Davis-Stirling Act at CIV §§ 5115(c) and (g), 5105(h)(4), and 5120(b)	
88	On October 16, 2019, a landscaping contractor chopped off 30% of a Euphorbia cactus on Lot 1, which Cross-Defendant purchased, planted, watered, fed, and loved for seven (7) years ("Cactus Loss"). Evidence: Wells Decl. ¶ 48	
89	Cross-Complainant caused the Cactus Loss by hiring the landscaping contractor to perform work on Lot 1. Evidence: Wells Decl. ¶ 49	
90	Cross-Defendant incurred damages of \$10,000.00 on Lot 1 resulting from the Cactus Loss. Evidence: Wells Decl. ¶ 50	
91	Cross-Defendant incurred emotional distress due to the Cactus Loss. Evidence: Wells Decl. ¶ 51	
92	On December 17, 2020, the sewer lines common easement backed up and overflowed onto the exterior and interior of Lot 1 ("Sewer Blackwater Property Loss").	

	Evidence: Wells Decl. ¶ 52	
93	Cross-Complainant caused the Sewer Blackwater Property Loss due to his deferred inspection and maintenance of the sewer lines common easement on Lot 1. Evidence: Wells Decl. ¶ 53	
94	Cross-Defendant incurred damages of \$1,500,000.00 on Lot 1 resulting from the Sewer Blackwater Property Loss. Evidence: Wells Decl. ¶ 54	
95	Cross-Defendant incurred emotional distress due to the Sewer Blackwater Property Loss. Evidence: Wells Decl. ¶ 55	
96	On and after December 17, 2020, the trash system (side door, terrace, and two (2) 200 gallon trash dumpsters) on Lot 1 was lost resulting from the Sewer Blackwater Property Loss ("Trash System Loss"). Evidence: Wells Decl. ¶ 56	
97	Cross-Complainant caused the Trash System Loss by causing the Sewer Blackwater Property Loss. Evidence: Wells Decl. ¶ 57	
98	Cross-Defendant incurred the loss of his trash system on Lot 1 resulting from the Trash System Loss.	

	Evidence:	
	Wells Decl. ¶ 58	
99	Cross-Defendant incurred emotional distress due to the Trash System Loss.	
	Evidence:	
	Wells Decl. ¶ 59	
100	The Rowena Lofts Community is subject to the Davis-Stirling Act.	
	Evidence:	
	Wells Decl. ¶ 24	
	Exhibit 01, 02, 05, 06	
101	Between June 10, 2019 and June 10, 2022, Cross-Defendant adamantly denies that the allegations of nuisance on Lot 1 and in the Rowena Lofts Community occurred, except for the following brief incidents: A) October 22, 2019 email ("October 22, 2019 Email") sent to the Cross-Complainant by the Cross-Defendant in a state of distress due to the Cactus Loss of \$10,000.00 on Lot 1 accompanied by emotional distress caused by the Cross-Complainant; B) December 17, 2020 through December 28, 2020 emails ("December 17, 2020 through December 28, 2020 Emails") sent to the Cross-Complainant by the Cross-Defendant in a state of distress due to the Sewer Blackwater Property Loss of \$1,500,000.00 on Lot 1 accompanied by emotional distress caused by the Cross-Complainant; and C) December 17, 2020 through January 9, 2021 trash (non-noxious sealed white trash bags, flattened or empty cardboard boxes, and packing materials such as packing paper) placed on a walkway easement on Lot 1 ("Trash") due to the Trash System Loss on Lot 1 resulting from the Sewer Blackwater Property Loss on Lot 1 caused by the Cross-Complainant.	

	Evidence:	
	Wells Decl. ¶ 60	
102	These three (3) brief incidents occurred in response to damages and distress incurred by the Cross-Defendant and caused by the Cross-Complainant. The Trash occurred for up to three (3) hours total, and there was always a clear route, by path or stairs, to walk through the walkway easement on Lot 1 during the up to three (3) hours total. Evidence: Wells Decl. ¶ 61	
103	Between August 1, 2020 and August 1, 2022, Cross-Defendant adamantly denies that the allegations of premises liability on Lot 1 and in the Rowena Lofts Community occurred, except for the "Trash". Evidence: Wells Decl. ¶ 62	
104	On June 10, 2022 when the Cross-Complaint was filed, Cameron Hopkins and Jay Dyckman were the "Responsible Owners". Evidence: Wells Decl. ¶ 63	
105	On August 1, 2022 when the First Amended Cross-Complaint was filed, Cameron Hopkins and Jay Dyckman were the "Responsible Owners". Evidence: Wells Decl. ¶ 64	
106	On June 10, 2022 when the Cross-Complaint was filed, Martin Park was the only Owner that was also a party in LASC Case No. BS162671. Evidence:	

	Wells Decl. ¶ 65	
107	David Schiamberg and Marilyn Schiamberg were not parties in LASC Case No. BS162671. Evidence: Wells Decl. ¶ 66 Exhibit 10	
108	LASC Case No. BS162671 Judgment and Confirmation of Arbitration Award filed on September 30, 2016 (“2016 Judgment”) does not order Cross-Defendant to restore any common areas to their previous condition, instead it orders Owners collectively, or a majority of Owners, or Owners excluding Cross-Defendant, to restore common areas. Evidence: Wells Decl. ¶ 67 Exhibit 10	
109	Between September 30, 2016 and the present date, Owners collectively, or a majority of Owners, or Owners excluding Cross-Defendant, have not restored common areas pursuant to the 2016 Judgment. Evidence: Wells Decl. ¶ 68 Exhibit 10	
110	On November 27, 2012, Joseph Kwon, a Certified Residential Real Estate Appraiser, prepared a Property Uniform Residential Appraisal Report for the Lot 1, which states: "This report form [Uniform Residential Appraisal Report] is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit; including a unit in a planned unit development (PUD). This	

	report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project. Evidence: Exhibit 05, page 4, paragraph 1	
111	The CC&Rs Introduction on page 1 states: "The provisions of this Declaration shall be enforceable by any of the Owners of an interest in the real property above described [Lots 1 through 6, inclusive, of Tract No. 63131], against any other Owner or Owners thereof." Evidence: Exhibit 02	
112	CC&Rs § 4.5.2 states: "If the Defaulting Owner fails to reimburse the common funds expended, the Responsible Owners will be entitled to bring a small claims action in the names of the non-defaulting Owners against the Defaulting Owner to collect such amounts." Evidence: Exhibit 02	
113	CC&Rs § 9.4 states: "In the event the Declarant or any Owner(s) should commence any legal or equitable proceeding, including judicial reference or binding arbitration, to enforce any of the provisions of this Declaration, the prevailing party, shall be entitled to have judgment against and recover from any defendant in such proceeding such attorney's fees (other than nominal) and costs as the court, judicial referee, arbitration panel or arbitrator may adjudge reasonable and proper." Evidence: Exhibit 02	
114	The October 22, 2019 Email and	

	December 17, 2020 through December 28, 2020 Emails the Cross-Defendant sent to the Cross-Complainant were not intended to harm the Cross-Complainant and were not sent without consideration for the rights of the Cross-Complainant, but instead were intended to inform the Cross-Complainant of the damages and distress the Cross-Defendant incurred, similar to Cease and Desist emails. Evidence: Wells Decl. ¶ 69	
115	The Trash Cross-Defendant temporarily placed on the common walkway on Lot 1 was not intended to harm the Cross-Complainant, and was not placed without consideration for the rights of the Cross-Complainant, but instead was placed out of necessity due to the loss of Cross-Defendant trash system on Lot 1. Evidence: Wells Decl. ¶ 70	

DATED: September 25, 2024

Respectfully submitted,

DIEFENBACH LAW GROUP



James C. Diefenbach
Attorney for Cross-Defendant
SKYLER WELLS

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County of Los Angeles
9/30/2024 12:00 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By K. Hung, Deputy Clerk

Attorney for Cross-Defendant
SKYLER WELLS

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL JUDICIAL DISTRICT

SKYLER WELLS

Plaintiff.

vs.

CAMERON HOPKINS, and JAY DYCKMAN

Defendants.

CAMERON HOPKINS

Cross-Complainant.

vs.

SKYLER WELLS, DAVID SCHIAMBERG,
MARILYN SCHIAMBERG, and ROES 1-20

Cross-Defendants.

) Case No. 22STCV05843
) [Unlimited Civil Action]

) **DECLARATION OF SKYLER WELLS IN**
) **SUPPORT OF CROSS-DEFENDANT**
) **SKYLER WELLS MOTION FOR**
) **SUMMARY ADJUDICATION OF ISSUES**

) *[Filed Concurrently with Motion for Summary*
) *Adjudication of Issues, Request for Judicial*
) *Notice, Separate Statement, Compendium of*
) *Exhibits, and Proposed Order]*

) **DEPT:** 36

) **JUDGE:** Hon. Wendy Chang

) **DATE:** January 23, 2025

) **TIME:** 8:30 am

) **RESERVATION ID:** 867108915190

DECLARATION OF SKYLER WELLS

I, Skyler Wells, declare as follows:

1. I am the Cross-Defendant.

2. I am making this declaration based on my own personal knowledge.

3. The Cross-Complaint with Breach of Contract, Private Nuisance, and Declaratory Relief causes of action was filed on June 10, 2022.

4. The First Amended Cross-Complaint ("FACC") with Breach of Contract, Premises Liability, Private Nuisance, and Declaratory Relief causes of action was filed on August 1, 2022.

5. Cross-Complainant Cameron Hopkins ("Cross-Complainant") is the only Cross-Complainant.

6. Breach of Contract cause of action for a written contract has a four (4) years statute of limitations from the date of breach in California.

7. FACC Breach of Contract cause of action allegations dated prior to June 10, 2018 are time barred.

8. Premises Liability cause of action has a two (2) years statute of limitations from the date of injury in California.

9. FACC Premises Liability cause of action allegations dated prior to August 1, 2020 are time barred.

10. Private Nuisance cause of action has a three (3) years statute of limitations from the date of nuisance in California.

11. FACC Private Nuisance cause of action allegations dated prior to June 10, 2019 are time barred.

12. Rowena Lofts is a residential community consisting of six (6) single-family residential lots (Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6) in Los Angeles, California ("Rowena Lofts Community").

13. Each of the six (6) single-family residential lots is a separately owned lot or separate interest in the Rowena Lofts Community.

1 14. A Condominium Plan ("Condominium Plan"), pursuant to CIV § 4285, does not exist for
2 the Rowena Lofts Community.

3 15. In December 2012, I purchased Lot 1 in the Rowena Lofts Community.

4 16. David Schiamberg and Marilyn Schiamberg are my biological parents.

5 17. In March 2018, Cross-Complainant purchased Lot 4 in the Rowena Lofts Community.

6 18. In November 2018, Jay Dyckman purchased Lot 6 in the Rowena Lofts Community.

7 19. Between January 1, 2013 and December 31, 2024, I occupied and resided in Lot 1.

8 20. On January 1, 2024, I relocated away from Lot 1.

9 21. Between January 1, 2013 and the present date, David Schiamberg and Marilyn
10 Schiamberg have not occupied or resided in Lot 1.

11 22. Between March 2018 and the present date, Cross-Complainant has not occupied or
12 resided in Lot 4.

13 23. Between March 2018 and the present date, Cross-Complainant has occupied and resided
14 at 388 Brentwood Avenue, Ventura, California 93003.

15 24. The Rowena Lofts Community is subject to the Davis-Stirling Act.

16 25. The Rowena Lofts Community is governed by the CC&Rs.

17 26. The Owner of each of the six (6) lots, are collectively the Owners ("Owners") in the
18 Rowena Lofts Community.

19 27. On or around March 2018, Cameron Hopkins was elected to and accepted the role of one
20 (1) of two (2) "Responsible Owners".

21 28. Between March 2018 and the present date, Cameron Hopkins is one (1) of two (2)
22 Responsible Owners.

23 29. On or around November 2018, Jay Dyckman was elected to and accepted the role of one
24 (1) of two (2) "Responsible Owners".

25 30. Between November 2018 and the present date, Jay Dyckman is one (1) of two (2)
26 "Responsible Owners".

1 31. The Rowena Lofts Community has an owners' association or community association
2 ("Association"), consisting of two (2) "Responsible Owners", one (1) Record Keeper, and six (6)
3 Owners.

4 32. Each Owner is a member in the Association.

5 33. On October 12, 2012, I applied for and was preapproved for a mortgage loan for the Lot
6 1 ("Lot 1 Pre-Loan Approval"). A true and correct copy of the Lot 1 Pre-Loan Approval is hereto
7 attached as Exhibit "A".

8 34. I intended to purchase the Lot 1, without a co-signer on the mortgage loan for the Lot 1.

9 35. On October 29, 2012, I and Open House Realty & Investments, LLC ("Open House")
10 entered into a purchase agreement for the Lot 1 ("Lot 1 Purchase Agreement"), signed by me, and
11 signed by Peter Baer on behalf of Open House. A true and correct copy of the Lot 1 Purchase
12 Agreement is hereto attached as Exhibit "B".

13 36. The Lot 1 Purchase Agreement was not signed by David Schiamberg and Marilyn
14 Schiamberg.

15 37. Shortly before December 20, 2012, I was informed by FHA of the requirement for a co-
16 signer on the mortgage loan for the Lot 1.

17 38. On December 20, 2012, David Schiamberg and Marilyn Schiamberg co-signed the
18 mortgage loan for the Lot 1.

19 39. On December 28, 2012, escrow closed on the Lot 1 when the mortgage loan was funded
20 ("Close of Escrow Date").

21 40. On May 21, 2013, I, David Schiamberg, and Marilyn Schiamberg signed an ownership
22 agreement for the Lot 1 ("Lot 1 Ownership Agreement") stating: "Property: 3345 1/2 Rowena
23 Avenue, Los Angeles, CA 90027. I, David Schiamberg and I, Marilyn Schiamberg, understand and
24 agree that we have co-signed the loan for this property as an accommodation and that Skylar Wells
25 is the 100% owner of this property. We will at all times cooperate with any needs Skylar Wells may
26 have in connection with the fact we are on title to this property. Including but not limited to
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1 refinance of this property and sale of this property.". A true and correct copy of the Lot 1
2 Ownership Agreement is hereto attached as Exhibit "D".

3 41. The Lot 1 is located in the Rowena Lofts Community.

4 42. On November 27, 2012, Joseph Kwon, a Certified Residential Real Estate Appraiser,
5 prepared a Property Uniform Residential Appraisal Report for the Lot 1 ("Lot 1 Appraisal Report"),
6 which is marked with an "X" next to "PUD", with "199" next to "HOA \$" and with an "X" next to
7 "per month". A true and correct copy of the Lot 1 Appraisal Report is hereto attached as Exhibit
8 "C".

9 43. Between August 2019 and January 2020, Cameron Hopkins and Jay Dyckman were the
10 "Responsible Owners".

11 44. Between December 28, 2012 and the present date, I received all written correspondence
12 regarding the Lot 1 and the Rowena Lofts Community provided to David Schiamberg and Marilyn
13 Schiamberg, which was forwarded to me by David Schiamberg and Marilyn Schiamberg.

14 45. Between 2018 and the present date, I did not receive any written correspondence
15 regarding the Lot 1 and the Rowena Lofts Community, which was originally sent by registered
16 mail, return receipt requested, pursuant to the CC&Rs § 1.1.9: "Notice to the Owner shall mean
17 written notice sent by registered mail, return receipt requested, to the Owner at the address of the
18 Lot, or the Owner's last known residential address if different than the Lot."

19 46. Between 2018 and the present date, I did not receive any written correspondence
20 regarding alleged breaches of the CC&Rs, which was originally sent by certified mail, pursuant to
21 the CC&Rs § 5.3: "Any of the foregoing to the contrary notwithstanding, no action to enforce this
22 Declaration shall be instituted unless and until a written notice of such breach setting forth the facts
23 of such breach has been delivered by certified mail to the Owner of such Lot."

24 47. Between 2018 and the present date, I did not receive any written correspondence
25 regarding the levy and collect of assessments, pursuant to the CC&Rs § 3.4.3: "In the event there
26 are insufficient funds in the applicable account to pay the necessary costs and expenses for the
27 Easement Maintenance Areas, the Responsible Owners shall promptly notify the other Owners in
28

1 writing, with copies of all invoices and/or proposals attached, and all Owners shall make payment
2 of their respective shares of such costs to the Responsible Owners within thirty (30) days after
3 receipt of written notice."

4 48. On October 16, 2019, a landscaping contractor chopped off 30% of a Euphorbia cactus
5 on Lot 1, which I purchased, planted, watered, fed, and loved for seven (7) years ("Cactus Loss").

6 49. Cross-Complainant caused the Cactus Loss by hiring the landscaping contractor to
7 perform work on Lot 1.

8 50. I incurred damages of \$10,000.00 on Lot 1 resulting from the Cactus Loss.

9 51. I incurred emotional distress due to the Cactus Loss.

10 52. On December 17, 2020, the sewer lines common easement backed up and overflowed
11 onto the exterior and interior of Lot 1 ("Sewer Blackwater Property Loss").

12 53. Cross-Complainant caused the Sewer Blackwater Property Loss due to his deferred
13 inspection and maintenance of the sewer lines common easement on Lot 1.

14 54. I incurred damages of \$1,500,000.00 on Lot 1 resulting from the Sewer Blackwater
15 Property Loss.

16 55. I incurred emotional distress due to the Sewer Blackwater Property Loss.

17 56. On and after December 17, 2020, the trash system (side door, terrace, and two (2) 200
18 gallon trash dumpsters) on Lot 1 was lost resulting from the Sewer Blackwater Property Loss
19 ("Trash System Loss").

20 57. Cross-Complainant caused the Trash System Loss by causing the Sewer Blackwater
21 Property Loss.

22 58. I incurred the loss of my trash system on Lot 1 resulting from the Trash System Loss.

23 59. I incurred emotional distress due to the Trash System Loss.

24 60. Between June 10, 2019 and June 10, 2022, I adamantly deny that the allegations of
25 nuisance on Lot 1 and in the Rowena Lofts Community occurred, except for the following brief
26 incidents:
27
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1 A) October 22, 2019 email ("October 22, 2019 Email") sent to the Cross-Complainant by me
2 in a state of distress due to the Cactus Loss of \$10,000.00 on Lot 1 accompanied by emotional
3 distress caused by the Cross-Complainant;

4 B) December 17, 2020 through December 28, 2020 emails ("December 17, 2020 through
5 December 28, 2020 Emails") sent to the Cross-Complainant by me in a state of distress due to the
6 Sewer Blackwater Property Loss of \$1,500,000.00 on Lot 1 accompanied by emotional distress
7 caused by the Cross-Complainant; and

8 C) December 17, 2020 through January 9, 2021 trash (non-noxious sealed white trash bags,
9 flattened or empty cardboard boxes, and packing materials such as packing paper) placed on a
10 walkway easement on Lot 1 ("Trash") due to the Trash System Loss on Lot 1 resulting from the
11 Sewer Blackwater Property Loss on Lot 1 caused by the Cross-Complainant.

12 61. These three (3) brief incidents occurred in response to damages and distress incurred by
13 me and caused by the Cross-Complainant. The Trash occurred for up to three (3) hours total, and
14 there was always a clear route, by path or stairs, to walk through the walkway easement on Lot
15 during the up to three (3) hours total.

16 62. Between August 1, 2020 and August 1, 2022, I adamantly deny that the allegations of
17 premises liability on Lot 1 and in the Rowena Lofts Community occurred, except for the "Trash".

18 63. On June 10, 2022 when the Cross-Complaint was filed, Cameron Hopkins and Jay
19 Dyckman were the "Responsible Owners".

20 64. On August 1, 2022 when the First Amended Cross-Complaint was filed, Cameron
21 Hopkins and Jay Dyckman were the "Responsible Owners".

22 65. On June 10, 2022 when the Cross-Complaint was filed, Martin Park was the only Owner
23 that was also a party in LASC Case No. BS162671.

24 66. David Schiamberg and Marilyn Schiamberg were not parties in LASC Case No.
25 BS162671.

26 67. LASC Case No. BS162671 Judgment and Confirmation of Arbitration Award filed on
27 September 30, 2016 ("2016 Judgment") does not order Cross-Defendant to restore any common
28

1 areas to their previous condition, instead it orders Owners collectively, or a majority of Owners, or
2 Owners excluding Cross-Defendant, to restore common areas.

3 68. Between September 30, 2016 and the present date, Owners collectively, or a majority of
4 Owners, or Owners excluding Cross-Defendant, have not restored common areas, pursuant to the
5 2016 Judgment.

6 69. The October 22, 2019 Email and December 17, 2020 through December 28, 2020
7 Emails I sent to the Cross-Complainant were not intended to harm the Cross-Complainant and were
8 not sent without consideration for the rights of the Cross-Complainant, but instead were intended to
9 inform the Cross-Complainant of the damages and distress I incurred, similar to Cease and Desist
10 emails.

11 70. The Trash I temporarily placed on the common walkway on Lot 1 was not intended to
12 harm the Cross-Complainant, and was not placed without consideration for the rights of the Cross-
13 Complainant, but instead was placed out of necessity due to the loss of my trash system on Lot 1.

14 71. On July 15, 2024, I received the response from Cameron Hopkins and Jay Dyckman to a
15 request for production of documents ("Response To RPD"). A true and correct copy of the
16 Response To RPD is hereto attached as Exhibit "E".

17 72. Attached to the Compendium of Exhibits is a true and correct copy of:

- 18 Exhibit 01 Rowena Lofts Community Tract Map filed in Los Angeles County
- 19 Exhibit 02 Rowena Lofts Community Declaration of Covenants, Conditions, and
20 Restrictions filed in Los Angeles County on February 7, 2012
- 21 Exhibit 03 Lot 1 Pre-Loan Approval Confirmation on October 12, 2012
- 22 Exhibit 04 Lot 1 Purchase Agreement signed on October 29, 2012
- 23 Exhibit 05 Lot 1 Property Uniform Residential Appraisal Report on November 27, 2012
- 24 Exhibit 06 Lot 1 Loan Note and Security Instrument filed in Los Angeles County on
25 December 28, 2012
- 26 Exhibit 07 Lot 1 Ownership Agreement signed on May 21, 2012
- 27
- 28

1 Exhibit 08 Rowena Lofts Community 2019 Amendment to the CC&Rs filed in Los
2 Angeles County on December 23, 2019

3 Exhibit 09 Defendant Cameron Hopkins and Jay Dyckman's Response To Plaintiff
4 Skyler Wells' Request For Production of Documents, Set One on July 15, 2024

5 Exhibit 10 Los Angeles Superior Court Case No. BS162671 Judgment and Confirmation
6 of Arbitration Award filed on September 30, 2016

7 I declare under penalty of perjury that the foregoing is true and correct.

8 Executed on September 25, 2024 at Porter Ranch, California.

9
10 *Skyler Wells*

11 Skyler Wells
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Exhibit A

00388

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October 12, 2012



9100 Wilshire Boulevard
Suite 275, East Tower
Beverly Hills, CA 90212-3415
Telephone: 310-275-3202
Toll Free: 888-283-6648
Fax: 310-247-1232;
E-Mail: mail@centek.com

PRE-LOAN APPROVAL CONFIRMATION

CenTek Capital Group is in receipt of a completed loan application package on the following referenced client. Based on the information submitted, we are able to issue this Pre-Loan Approval.

BORROWER: Skylar Wells
PROPERTY ADDRESS: 3345 ½ West Rowena Avenue
Los Angeles, CA 90027
SALES PRICE: \$799,000
APPROXIMATE LOAN AMOUNT: \$625,500 (78%)
EXPIRATION OF LOAN APPROVAL: 60 Days

CONDITIONS FOR FUNDING:

Purchase Agreement and Escrow Instructions Verifying Terms
Satisfactory Preliminary Title Report
Satisfactory Appraisal
Maintenance of all information provided
Satisfactory Condo Documentation

COMMENTS:

CenTek Capital Group will be prepared to close within the escrow time frame required. Credit, tax returns and source of down payment are satisfactory, and have been approved. Mr. Skylar Wells is an excellent potential buyer for this property. Please feel free to contact us for more details.



Gloria Shulman

Preliminary Underwriting Findings

SUMMARY

Preliminary Recommendation	Approve/Eligible		
Primary Borrower	SKYLAR WELLS	Co-Borrower	
Lender Loan Number	Unassigned	Casefile ID	1093388120
Submission Date	10/12/2012 08:38PM	Submitted By	121rutrk
Submission Number	1	DU Version	8.3

Mortgage Information

LTV/CLTV/HCLTV	79.00% / 79.00% / 79.00%	Note Rate	4.000%
Housing Expense Ratio	9.99%	Loan Type	Conventional
Total Expense Ratio	10.08%	Loan Term	360
Total Loan Amount	\$625500.00	Amortization Type	Fixed Rate
Sales Price	\$800000.00	Loan Purpose	Purchase
Appraised Value	\$0.00	Refi Purpose	

Property Information

Address	3345 1/2 ROWENA AVENUE Los Angeles, CA 90027	Property Type	Detached
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SPECIAL NOTICE

- 1 This report was created through the Preliminary Findings feature in Desktop Originator (DO) and is provided for informational purposes only.
- 2 To complete the processing of this loan, you must submit it to a DO sponsoring lender. The loan is not eligible for the Fannie Mae limited waiver of underwriting representations and warranties (as described in the Fannie Mae Selling Guide) until it is submitted to a sponsoring lender.
- 3 Depending on the underwriting rules and requirements of your sponsoring lender, the recommendation and findings may change upon submission.

PRELIMINARY RISK/ELIGIBILITY

- 4 The risk profile of this loan casefile appears to meet Fannie Mae's

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guidelines.

- 5 This loan casefile appears to meet Fannie Mae's eligibility requirements.

PRELIMINARY FINDINGS

- 6 The following risk factors represent strengths in the borrower's loan application:
Loan Purpose
Total Expense Ratio

PRELIMINARY VERIFICATION MESSAGES/APPROVAL CONDITIONS

- 7 This loan is also subject to all other lender specified conditions and must comply with all applicable federal, state, and local laws and regulations.
- 8 Based on the credit report obtained through Desktop Underwriter, this loan casefile must close on or before 01/10/2013. All credit documents must be dated within 90 days of the closing date. For new construction, the credit documents must be dated within 120 days of the closing date. For guidelines on the age of the appraisal or property inspection report, refer to the Fannie Mae Selling Guide.
- 9 If there is a home equity line of credit secured against the subject property the maximum allowable HCLTV is 90 percent and the terms of the home equity line of credit must be verified for compliance with the Fannie Mae Selling Guide. The HCLTV calculation is based on the maximum credit limit of the equity line.
- 10 The Adverse Market Delivery Charge will be applied when this mortgage loan is delivered to Fannie Mae, along with any applicable loan-level price adjustments. Refer to the Selling Guide and Loan-level Price Adjustment (LLPA) Matrix and Adverse Market Delivery Charge (AMDC) Information on efanniemae.com for specific details.

Preliminary Employment and Income

- 11 SKYLAR WELLS's self-employed income must be supported by two years' signed personal tax returns if it will be used for qualifying purposes. Provide all tax schedules, and written permission to request tax returns from the IRS. A minimum of 6 months self-employment income must be reported on the latest tax returns. Refer to the Selling Guide for additional information.
- 12 Perform and document a verbal verification of employment for each borrower within 10 business days prior to the note date for all borrowers not using self-employment income for qualifying, and within 30 calendar days prior to the note date for all borrowers using self-employment income for qualifying. For borrowers with military income, a military Leave and Earnings Statement (LES) dated within

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30 calendar days prior to the note date is acceptable in lieu of a verbal verification of employment.

- 13 Obtain a completed and signed Form 4506-T for all borrowers at both application and closing. Form 4506 or Form 8821 may be used in lieu of Form 4506-T.

Preliminary Assets

- 14 Assets totaling \$174500 must be verified. From the liquid assets listed on the 1003, at a minimum verify those accounts that are needed to satisfy this amount.
- 15 If depository assets are needed to support the amount of funds required for reserves, verify these assets with a verification of deposit or bank statements covering a one-month period. A satisfactory explanation and documentation should be provided for large deposits.

Preliminary Property and Appraisal Information

- 16 Desktop Underwriter returned the following standardized address and census tract for the subject property: 3345 1/2 ROWENA AVE, LOS ANGELES, CA 90027-2913, 188200. This is the address that Desktop Underwriter used in its property valuation and fieldwork recommendation. Regardless of the property fieldwork required by Desktop Underwriter, if this address is not valid for the subject property, an appraisal based on an interior and exterior property inspection reported on Form 1004 is required for this transaction. If the subject property is located in a condominium project, the appraisal must be reported on Form 1073.
- 17 An appraisal based on an exterior-only property inspection reported on Form 2055 is required for this transaction.
- 18 This loan casefile was underwritten according to the guidelines outlined for high-balance mortgage loans and must meet all the terms and conditions specified in the Selling Guide. Based on the subject property data entered, DU determined that the subject address is located within the county of LOS ANGELES COUNTY and used the corresponding high-cost area loan limit of \$625500.00.
- 19 Regardless of the level of property fieldwork required by DU, or any waiver of property fieldwork offered by DU, if this purchase transaction is the result of the sale of an REO property, or the last transaction on the subject property was a foreclosure, an appraisal based on an interior and exterior property inspection is required. An appraisal reported on Form 1004 is required for one-unit properties; Form 1073 is required for units in condominium projects; Form 2090 is required for units in cooperative projects.
- 20 Form 1004MC must be completed for any transaction on which an appraisal is obtained. Refer to the Fannie Mae Selling Guide for

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additional information.

PRELIMINARY OBSERVATIONS

- 21 This case was submitted to Desktop Underwriter version 8.3 by ---. The following information is associated with this loan: Casefile ID is 1093388120 and Submission number is 1. If the loan is delivered to Fannie Mae, the Casefile ID must be provided at delivery.
- 22 The following list of special feature codes is provided to assist you in determining which codes may be associated with this loan. Other codes may be required. Refer to the Fannie Mae Selling Guide for a comprehensive list.

Special Feature Code	Description
127/214	Desktop Underwriter loan
808	High-Balance Mortgage Loan

- 23 Based on the data entered, this loan casefile has been identified as a First Time Homebuyer case. The First Time Homebuyer indicator must be completed at delivery. Refer to the Fannie Mae Selling Guide for additional information.
- 24 The following Credit Report information is associated with this submission:

Borrower Name	Credit Agency	Credit Report ID	Credit Report Date
SKYLAR WELLS	Corelogic Credco	110082438500000	10/12/2012

- 25 The following credit scores were obtained by the credit agency selected by the user and are included in the credit report:

Borrower	Credit Scores
SKYLAR WELLS	683 700 701

- 26 The following sources of income were used in the underwriting analysis:

Borrower	Income Type	Amount
SKYLAR WELLS	Base employment income	40000.00

- 27 The following assets were counted towards available funds. With the exception of cash on hand, all available funds greater than the amount required to close have been added to cash reserves.

Borrower	Asset Type	Institution Name	Amount
SKYLAR	Savings	TD	

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WELLS	Account	AMERITRADE	480093.22
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TRADEMARK

28 Desktop Originator is a registered trademark of Fannie Mae. DO is a trademark of Fannie Mae.

Underwriting Analysis Report

Preliminary Recommendation	Approve/Eligible		
Primary Borrower	SKYLAR WELLS	Co-Borrower	
Lender Loan Number	Unassigned	Casefile ID	1093388120
Submission Date	10/12/2012 08:38PM	Submitted By	121rutrk

PROPERTY INFORMATION

Property Address	3345 1/2 ROWENA AVENUE Los Angeles, CA 90027	Number of Units	1
Property Type	Detached	Occupancy Status	Primary Residence

MORTGAGE INFORMATION

Loan Type	Conventional	LTV/CLTV/HCLTV	79.00% / 79.00% / 79.00%
Amortization Type	Fixed Rate	Loan Amount	\$625500.00
Balloon	No	Financed MI Amount	\$0.00
Community Lending	No	Total Loan Amount	\$625500.00
Payment Frequency	Monthly	Sales Price	\$800000.00
Lien Type	First Mortgage	Appraised Value	\$0.00
Amt. Subordinate Fin.	\$0.00	P&I	\$2986.23
Loan Purpose	Purchase	Note Rate	4.000%
Refi Purpose		Qualifying Rate	4.000%
Owner Existing Mtg.		Bought Down Rate	0.00%
Buydown	No	Term (Months)	360

INCOME

Base	\$40000.00
Commission	\$0.00
Bonus	\$0.00
Overtime	\$0.00
Other	

QUALIFYING RATIOS

Housing Expense	9.99%
Total Expense	10.08%

EXPENSE RATIOS
Including ≤ 10 Mos.

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	\$0.00		10.08%
Positive Net Rental	\$0.00	With Undisclosed Debt	10.08%
Subj. Pos. Cash Flow	\$0.00		
Total	\$40000.00		

PROPOSED MONTHLY PAYMENT

First P&I (Qualifying)	\$2986.23	Negative Net Rental	\$0.00
Second P&I	\$0.00	Subj. Neg. Cash Flow	\$0.00
Hazard Insurance	\$177.23	All Other Payments	\$37.00
Taxes	\$833.33	Total Expense Payment	\$4033.79
Mortgage Insurance	\$0.00		
HOA Fees	\$0.00	Present Housing Payment	\$1000.00
Other	\$0.00		
Total Housing Payment	\$3996.79		

FUNDS

Required	\$174500.00	Net Cash Back	\$0.00
Available	\$480093.22	Reserves	\$305593.22
Cash Back	\$0.00	Months Reserves	76

The Preliminary Recommendation for this case is: Approve/Eligible

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REF:1-10082-43850-0000 10/12/2012 TID:1-10082-43850 10/12/2012 17:30:47
Advisory Acct: 4150036
Prepared for: CENTEK CAPITAL GROUP Notes: 120760
Requested: EFX, XPN, TUC - I Delivered: EFX, XPN, TUC

App: WELLS, SKYLAR Dob: 04/10/74 Ssn: 549-31-8689
Curr Addr: 1450 5TH STREET 301, SANTA MONICA, CA 90401

ANTHEM NON-TRADITIONAL CREDIT ALERT

Attention: The Applicant/Co-applicant has no credit history on file at the national credit bureau(s), lacks sufficient credit history to generate a credit score, or includes a credit score based on limited credit history. The Applicant/Co-applicant may qualify as a Non-Traditional Credit Consumer.

An ANTHEM Report, which can document and verify the Applicant/Co-applicant's non-traditional credit history, is available from CREDCO. For more information or to order an Anthem Report, go online at CREDCO.com or call 800 523 0233.

Exhibit B

00397

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Date: 10/25/2012

Escrow Officer: Ellen Bebo

Escrow #: _____

JOINT PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

INITIAL DEPOSIT RECEIVED THIS DATE: \$ 24,400

BALANCE OF DOWN PAYMENT: \$ 62,300

NEW DEED OF TRUST TOTAL FINANCING: \$ 780,300

TOTAL PURCHASE PRICE: \$ 867,000

SELLER: **OPEN HOUSE REALTY & INVESTMENTS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY**
P.O. BOX 1065, BURBANK, CA 91507

BUYER(S): Skylar Wells
1450 5th Street #301, Santa Monica, CA 90401

VESTING: A single male

If not provided above, Buyer shall advise Escrow Holder within FIVE (5) days after the date hereof how they wish to hold title. The Seller, Escrow Holder and Agents are not qualified or permitted by law to advise Buyer on how to take title to the Property. If the Buyer has any questions regarding this matter, those questions must be directed to a licensed attorney or tax consultant of Buyer's choice.

HOME PHONE: Not Applicable WORK PHONE: Not Applicable

CELL PHONE: (310) 260-8520 E MAIL: skylar@skysuiteinc.com

MAILING ADDRESS: 1450 5th Street #301
Santa Monica, CA 90401

Buyer will hand you or cause to be handed you the above referenced funds prior to the close of escrow and will deliver to you any and all instruments which this escrow requires, executed by Buyer, all of which you are instructed to use provided on or before the close of escrow you hold a policy of title insurance with the usual title company exceptions, with liability in the amount of the purchase price covering:

Complete legal description shall be provided prior to the close of escrow for approval by all parties. In no case shall legal description contain any oil or mineral reservations of record.

(Memorandum: Property Address: 3345-1/2 Rowena Ave., Los Angeles, California 90027)

Free from encumbrances except [as applicable]:

1. All General and Special Taxes for the fiscal year 2011-2012, including personal property taxes, if any, assessed against the former owner.
2. Covenants, conditions, restrictions, rights, rights of way, and easements of record, if any.
3. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California.
4. New First Deed of Trust to record in the amount as set forth above (see Paragraph Entitled FINANCING of these instructions for additional terms and conditions of this lien.)

EACH PARTY SIGNING THESE INSTRUCTIONS HAS READ THE ADDITIONAL ESCROW CONDITIONS & INSTRUCTIONS ON THE FOLLOWING PAGE HEREOF AND APPROVES, ACCEPTS, AND AGREES TO BE BOUND THEREBY AS THOUGH THEY APPEARED OVER THEIR SIGNATURES. ESCROW OF THE WEST IS LICENSED BY THE DEPARTMENT OF CORPORATIONS, STATE OF CALIFORNIA, LICENSE # 963-2166.

See Pages 2 through 38 attached hereto and made a part hereof for additional terms and conditions.

5900 Canoga Avenue, Suite 100, Woodland Hills, CA 91367

818-963-4900 • 818-963-4901

Escrow Instructions Continued On Page Number 2

Seller's Initials ([Signature])

Buyer's Initials ([Signature])

Last Modified
12/22/2011

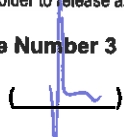
Escrow Instructions Continued From Page Number 1

Escrow Officer: Ellen Bebo

ADDITIONAL ESCROW INSTRUCTIONS AND GENERAL PROVISIONS

1. **COMMENCEMENT:** Your duty as Escrow Holder shall not commence until you receive the Residential Purchase Agreement and Joint Escrow Instructions (RPA) signed by all parties. You shall sign Supplemental Escrow Instructions and these General Provisions in addition to any initial Escrow Instructions you may sign in conjunction with the RPA or otherwise. The deposit of funds with you shall be subject to disbursement pursuant to written Escrow Instructions, which you shall jointly deliver if Escrow Instructions have been jointly signed.
2. **COUNTERPART:** These Escrow Instructions and general provision may be executed in counterparts, each of which shall be deemed an original regardless of the date of this execution and delivery. All such counterparts inclusive shall constitute one and same document.
3. **WRITTEN INSTRUCTIONS:** Any and all further Escrow Instructions, including Amended, Supplemental and general provision instructions, shall be governed by the terms and conditions of these Escrow Instructions, and may be modified from time-to-time by the written mutual agreement of the parties and Escrow Holder. If the date by which a party's performance is due differs from Escrow Holder's regular business day, such performance shall be due on Escrow Holder's next business day.
4. **VERIFICATION OF IDENTITY:** Notwithstanding any provisions otherwise contained in these Escrow Instructions or any amendments or supplements thereto, Escrow Holder shall not be responsible or liable in any manner for the sufficiency or correctness as to form, manner of execution or validity of any documents(s) deposited into Escrow, nor as to the identity, authority or rights of any person executing the same, or for verifying signatures, or determining whether there is a false impersonation, forgery, fraud, or the scope of any agents' authority either as to documents of record or those handled in this Escrow. If the Parties or Lender(s) desire that Escrow Holder verify any signature(s) on instructions, check, loan documents or other items received by you, separate written Escrow Instructions must be entered into and expressly approved by Escrow Holder that specifically evidences Escrow Holders agreement to undertake such responsibility upon the payment of an additional fee. Escrow Holder shall not be liable or responsible for any loss that may occur because of forgeries, fraud or false representations made or involving the principals to this Escrow, any third parties, the principals' agent(s) or broker(s) or any other person or entity.
5. **OUTSIDE OF ESCROW:** Signatures on any documents and instructions or the performance of any act "outside of Escrow", Escrow Holder shall have no responsibility for, shall not be concerned therewith, and is specifically relieved of any obligation or liability relative thereto.
6. **DUTIES:** Your duties hereunder shall be limited to the safe keeping of such money and documents received by you as Escrow Holder and for the disposition and/or disbursement of same in accordance with the written instructions accepted by you in this Escrow. Escrow Holder shall not be liable for any damages, losses, costs or expenses incurred by any party in the handling and processing of Escrow as a result of any act or failure to act made or omitted in good faith or for any action taken that Escrow Holder shall in good faith believe to be genuine. Escrow Holder may consult with legal counsel during the course of this Escrow and Escrow Holder shall be protected in any act taken in good faith based upon advice of counsel.
- (A) **DISBURSEMENT OF FUNDS AND DELIVERY OF DOCUMENTS:** All disbursements are to be made by the Escrow Holder's trust account check unless instructed otherwise in writing. Escrow Holder will not indemnify any payee or guarantee signatures of any person or entity at any financial institution. Any funds disbursed during or at the close of Escrow will be issued jointly to the parties designated as payee unless you are instructed otherwise in writing by all designated payees. The funds representing loan and/or sale proceeds will be disbursed jointly to all persons who were the record owners of the subject real property. All disbursements of funds and/or delivery of other documents or instruments concerning this Escrow will be mailed to the entitled party by regular first-class mail, postage prepaid, at his respective address shown on the file. However, at your discretion, you may send funds and/or other instruments or documents by certified or registered mail, overnight delivery, messenger or facsimile machine, in which case the party for whom the delivery was made agrees to pay the costs.
- (B) The provisions of this paragraph include, but are not limited to: requests for demand statements, requests for beneficiary statements, bank wire charges or any other requests as you may deem necessary for the timely closing of this issuance of the required title insurance policy or closing of this Escrow. You are to instruct the County Recorder to mail recorded documents to the entitled party at his respective address. You are to instruct the title Escrow Holder to mail the title policy(ies) to the Lender(s) or Buyer(s) as appropriate. You are directed to charge Buyer(s) and Buyer(s) agree to pay all incoming and outgoing wire bank charges incurred on Buyer's behalf whether received or sent to a lender, title Escrow Holder, the Buyer(s) or any other party.
7. **DEPOSIT OF FUNDS:** Escrow Holder is authorized and directed to deposit all funds received by it with any state or national bank in a trust account in the name of Escrow Holder, without liability for the payment of interest. The funds may be withdrawn by you and disbursed in accordance with the written instructions of these parties. All deposits made by personal check, cashier's check or certified check are subject to clearance and payment by the financial institution on which drawn and will be identified as collected funds when Escrow Holder's financial institutions confirms the funds are available for disbursement. Escrow Holder does not accept money orders, cash, official checks, foreign currency or Automatic Clearing House transactions for deposit. If any check deposited is dishonored upon presentment for payment, Escrow Holder is authorized to notify all parties to the Escrow, the real estate broker(s), real estate agent(s) and any other person or entity Escrow Holder deems necessary in its sole discretion. On any dishonored check, party presenting it shall reimburse Escrow Holder for all costs and expenses incurred by it.
- (A) All Escrow and sub-Escrow funds received by the Escrow Holder will be deposited with other funds in one or more non-interest bearing Escrow account of the Escrow Holder in a financial institution selected by Escrow Holder. Escrow Holder and/or its parent Escrow Holder may receive certain direct or indirect benefits from the financial institution by reason of the deposit of such funds or the maintenance of such accounts with the financial institution, and Escrow Holder shall have no obligation to account to the depositing party in any manner for the value of, or to pay such party, any benefit received by Escrow Holder and/or its parent Escrow Holder. Those benefits may include, without limitation, accounting, reporting and other services and products of such financial institution. Such benefits shall be deemed additional compensation of Escrow Holder for its services in connection with the Escrow or sub-Escrow. Funds deposited to Escrow Holder are insured only to the limit provided by the FDIC.
- (B) Escrow Holder shall not be responsible for any delay in closing this Escrow if funds received by Escrow Holder are not "good funds" deemed available for immediate withdrawal. Funds deposited by wire transfer or electronic payments are generally available for immediate withdrawal when received by Escrow Holder's bank. Cashier, certified or teller's checks may be available for disbursement on the business day following the business day of deposit; however, other forms of deposit may cause extended delays in closing the Escrow.
- (C) **Wiring of funds:**
 - (1) Should any Principal herein elect to wire funds into the Escrow, it is acknowledged and agreed that such wired funds shall not be considered "good funds" received until such time that Escrow Holder receives notification from Escrow Holder's receiving bank that the wired funds are received and available for immediate withdrawal.
 - (2) At close of the Escrow, should any Principal herein instruct Escrow Holder to wire funds from the Escrow to an entity of Principal's choice, it is acknowledged and agreed that Escrow Holder will not assure nor be responsible in any way for the length of time the wiring process requires from the point in time of sending the wire to receipt notification of Principal's receiving entity.
 - (3) At close of the Escrow, funds may not be disbursed after confirmation of recording for up to 24-48 hours due to wire transfer cut-off times. Escrow Holder must be in receipt of funds prior to disbursement.
- (D) All funds and documents sent from the Escrow will be mailed regular first-class mail; however, Escrow Holder has the option, at Escrow Holder's sole discretion, to send same certified, registered, overnight or by messenger, and charge the account of the benefitting Principal the actual cost of same.
- (E) In the event Escrow Holder disburses more money to, or for the benefit of, any Principal herein than they are entitled to receive, said Principal does agree to reimburse and/or repay to Escrow Holder the amount of said overpayment within five (5) days after demand is made by Escrow Holder. After five (5) days, interest shall be paid to Escrow Holder at the rate of ten percent (10%) per annum. In the event legal proceedings are necessary to collect said money, said Principal agrees to pay all charges, court costs and attorney's fees incurred thereby. If Escrow has not closed at the time of the subject disbursement, Escrow Holder shall have the right to offset the amount wrongfully disbursed from the amounts due to the subject Principal at the close of the Escrow.
- (F) Escrow Holder is authorized to accept and deposit in Escrow, funds and/or documents delivered to Escrow Holder by a Principal, broker, agent or other third party, on behalf of any Principal herein. Escrow Holder shall not be held liable for the sufficiency or correctness as to form, authenticity, manner, execution or validity of any document deposited in this Escrow, and Escrow Holder's duties shall be limited to the safekeeping and disposition of same pursuant to Escrow Holder's Escrow instructions.
- (G) Any instruction to Escrow Holder instructing Escrow Holder to release any funds held in the Escrow, prior to close of Escrow, MUST be executed before a Notary Public.

Escrow Instructions Continued On Page Number 3

Seller's Initials Buyer's Initials  

Escrow Instructions Continued From Page Number 2**Escrow Officer: Ellen Bebo**

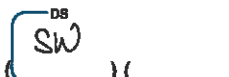
- (H) In the event that Escrow Holder is handed any invoice from any Principal or Principal's Agent with regard to any repair bills for correctional work to the subject property or invoices for disclosure reports, Escrow Holder is authorized and instructed, at the close of the Escrow, to pay those bills from that Principal's proceeds or funds deposited with Escrow Holder without any further written authorization from that Principal.
8. **SUB-ESCROW DEPOSITS:** If necessary, proper or convenient for the closing of this Escrow, you are authorized to deposit any documents and/or funds handed to you under this Escrow with any duly authorized sub-Escrow agent, including, but not limited to, any bank, trust Escrow Holder, title insurance Escrow Holder, underwritten title Escrow Holder, savings and loan association or licensed Escrow agent, subject to your order on or before the close of Escrow. Any such deposit shall be deemed a deposit within the meaning of these Escrow Instructions.
9. **PERSONAL PROPERTY TAXES:** You are not to be held responsible in any way whatsoever for any personal property tax which may be assessed against any former or present owner of the subject property described in these Escrow Instructions, nor for the corporation or license tax of any corporation as a former or present owner.
10. **TIME IS OF THE ESSENCE:** Time is of the essence in these instructions. In the event that the conditions of this Escrow have not been complied with at the expiration of the time provided for herein, or any extension thereof, Escrow Holder is instructed to complete the same at the earliest possible date thereafter, unless written demand upon you for the return of the money and/or instruments deposited by the Principals' herein or to cancel this Escrow. In such event you may withhold and stop all further proceedings in this Escrow, without liability upon your part for interest on funds held or for damages until mutual cancellation instructions signed by all parties shall have been deposited in this Escrow. Whereupon you are then instructed to disburse Escrowed funds and instruments accordingly, less your deduction for Escrow charges, expenses and fees per your current fee schedule, or as incurred by the respective parties hereto whereupon this Escrow will, without further notice be considered terminated.
11. **AGENCY DISCLOSURE:** Your Agency as Escrow Holder shall terminate six (6) months following the date last set for close of Escrow and shall be subject to earlier termination by receipt by you of mutually executed cancellation instructions. If this Escrow was not closed or cancelled within the described six (6) month period, you shall have no further obligations as Escrow Holder except to disburse funds and documents pursuant to written Escrow Instructions and to interplead or otherwise dispose of funds and documents in accordance with a validly issued and validly served order from a court of competent jurisdiction or as otherwise provided under the law.
12. **FURNISHING OF DOCUMENTS:** Escrow Holder without liability may furnish a copy of these instructions, amendments, notice of cancellation and closing statements to any lender or real estate broker referenced in this Escrow. Upon receipt of written instructions from the parties copies of said documents may also be furnished to parties, designated attorneys and accountants. Further, Escrow Holder's delivery of any document or information to a party's broker, agent, or designated agent in this Escrow shall constitute delivery of same to that party.
13. **TITLE:** Escrow Holder shall order title insurance from a title insurance Escrow Holder or underwritten title Escrow Holder in the condition identified in the Escrow Instructions signed by the parties. If requested in writing by the mutual instructions of the parties or upon the request of any lender, Escrow Holder shall provide copies of the preliminary report of title to them without liability as to its contents.
- (A) Escrow Holder is authorized to use the selected title Escrow Holder as a "sub-Escrow" agent for the handling of funds and documents in this Escrow. Escrow Holder is to comply with all "sub-Escrow" agent's instructions and requirements, and Escrow Holder is authorized to deliver funds or documents to said "sub-Escrow agent" at any time during the course of the Escrow, or after the close of Escrow, that Escrow Holder deems appropriate. The Principals agree to pay the fee for such "sub-Escrow service" as charged by the title insurance Escrow Holder.
- (B) On credit lines, a freeze letter may be required by the lender and title Escrow Holder in order to freeze the account. If a signed freeze and close letter is not deposited in the Escrow in a timely manner, the title insurance Escrow Holder may, at the time of recording and close of the Escrow, hold additional funds or proceeds until verification that the line of credit is closed, which may delay delivery of final funds.
- (C) Pursuant to paragraph 12 of the California Residential Purchase Agreement and Joint Escrow Instructions, entitled "Title and Vesting", if applicable, Principals acknowledge that the CLTA/ALTA Homeowner's Policy of Title Insurance, or any other title insurance requested by Principals, to be issued by the insuring title Escrow Holder, shall be delivered directly from the designated title Escrow Holder to the appropriate party after the close of the Escrow. Principals agree that matters regarding that title insurance are between the insuring title Escrow Holder and the designated Principal and not Escrow Holder.
14. **CONDUCT NO SEARCH:** You shall conduct no lien or title search of personal property regarding the sale or transfer of any personal property through this Escrow. Should the parties desire that you conduct a lien or title search of personal property, the parties or lender requesting the same shall enter into a separate and specific written agreement which evidences Escrow Holder's agreement to undertake such responsibility upon the payment of additional fees.
15. **RECORDATION:** The parties authorize the recordation of any instrument delivered through this Escrow if necessary or proper for the issuance of the required policy of title insurance or for the closing of this Escrow. Funds, instructions or instruments received in this Escrow may be delivered to, or deposited with any title insurance Escrow Holder or title Escrow Holder to comply with the terms and conditions of this Escrow. Recording fees shall be charged to the account of the benefited party.
16. **BENEFICIARY DEMANDS/STATEMENTS:** Escrow Holder is not responsible for the contents or accuracy of any beneficiary demand or beneficiary statement delivered to it by the existing lien holder(s). Escrow Holder is not required to submit any beneficiary demand or beneficiary statement to any party for approval before the close of Escrow. Should any party wish to pre-approve any such beneficiary statement or beneficiary demand, such party shall deliver separate and specific written Escrow Instructions to Escrow Holder prior to the close of Escrow.
17. **LOAN:** You are not to be responsible or concerned with the terms of any new loan or the contents of any loan documents obtained by any party in this Escrow except to order loan documents in to the Escrow file, transmit the loan documents to the Buyer (Borrower) for execution and transmit the executed loan documents to the lender. Buyer (Borrower) acknowledges that a sub-agent, including, but not limited to, a notary public or documents sign-up service, may temporarily take possession of the loan documents and various Escrow documents to facilitate the signing of the loan documents for which Escrow Holder shall incur no liability. The parties understand and agree that Escrow Holder is not involved or concerned with the approval or processing of any loan or the contents and effect of any loan documents prepared by a lender. Escrow Holder shall not be responsible for nor is it concerned with any questions of usury in any loan, whether new or of record, in this Escrow. Escrow Holder is not responsible for any lender's instructions which require Escrow Holder to perform obligation or duties beyond those required under California Law or which requires Escrow Holder to assume liability for the lender's regulatory duties and responsibilities.
18. **FEES.** Escrow, title and recording costs are to be charged to the Principals' respective accounts, as Escrow Holder deems are customary in this County, unless Escrow Holder is instructed to do otherwise in writing.
- Buyer and Seller are aware that Escrow Holder may incur certain expenses during the course of processing this Escrow which must be paid prior to the close of Escrow or at the close of Escrow. Such costs may include, but are not limited to: demand request fees, notary fees, wire fees, outside sign-up service fees, overnight mail service, mandatory property disclosure report fees, government agency reports, email documents and copying of loan documents, if applicable.
- Escrow Holder is authorized and instructed to release funds for payment of such costs, if necessary prior to the close of Escrow, from funds deposited into Escrow per the agreement of Principals. Principals acknowledge and accept that said costs are non refundable, whether this Escrow closes or cancels. At the close of Escrow, Escrow Holder is authorized to charge the appropriate Principal for costs incurred and is released from any and all liability in connection with complying with this instruction.
19. **ELECTRONIC DOCUMENT CHARGE:** Buyer hereby understands and acknowledges that it is the responsibility of their lender to provide Escrow Holder with hard copies of their loan documents by overnight mail, courier, Federal Express or other delivery method no less than five (5) business days prior to the close of Escrow. In the event that the lender is unable to produce these documents by any of the above methods in a timely manner, Buyer is aware that they will be charged an electronic document fee for each set of loan documents that will be due this Escrow Holder. The purpose of this charge includes the acceptance of these loan documents over the internet and the preparation and duplication of same on your behalf, which is traditionally the responsibility and expense of the lender.
20. **RIGHTS AND LIABILITY:** All parties agree that your rights and liability in this transaction are as an Escrow Holder and no other legal relation only on the within express terms, and you shall have no responsibility of notifying me or any other party to this Escrow of any sale, resale, loan, exchange or other transaction involving any property herein described or of any profit realized by any person, firm or corporation (broker, agent) and parties to this and/or any other Escrow included, in connection therewith, regardless of the fact that such transaction(s) may be handled by you in this Escrow or in another Escrow. Escrow shall not be required to take any action in connection with the collection, maturity or apparent outlaw of any obligations deposited in this Escrow, unless otherwise instructed.

Escrow Instructions Continued On Page Number 4

Seller's Initials



Buyer's Initials



Escrow Instructions Continued From Page Number 3**Escrow Officer: Ellen Bebo**

21. INSURANCE: Where the assignment of any insurance policy from Seller to Buyer is concerned, Seller represents and warrants, and you shall be fully protected in assuming that, as to any insurance policy handed you, such policy is in force, has not been hypothecated, and all necessary premiums therefore have been paid. You will transmit for assignment any insurance policy handed you for use in this Escrow, but you shall not be responsible for verifying the acceptance of the assignment and policy by the insurance Escrow Holder. ESCROW HOLDER WILL MAKE NO ATTEMPT TO VERIFY THE RECEIPT OF THE REQUEST FOR ASSIGNMENT BY THE ISSUING ESCROW HOLDER. YOU ARE HEREBY PLACED ON NOTICE THAT IF THE INSURANCE ESCROW HOLDER SHOULD FAIL TO RECEIVE SAID ASSIGNMENT; THE ISSUING ESCROW HOLDER MAY DENY COVERAGE FOR ANY LOSS SUFFERED BY BUYER. IT IS THE OBLIGATION OF THE BUYER OR HIS REPRESENTATIVE TO VERIFY THE ACCEPTANCE OF THE ASSIGNMENT OF THE POLICY BY THE ISSUING ESCROW HOLDER.

22. TRANSFER TAXES: In addition to the County Documentary Transfer Tax currently charged to the Buyer, Escrow Holder is authorized and instructed to debit the account of the Buyer for any transfer tax that may be imposed by the City in which the subject property of this Escrow is located.

23. STANDARDIZED FORMS: You are to use your usual document forms or the usual forms of any title insurance Escrow Holder or title Escrow Holder and in our instructions insert dates and terms on the instruments if incomplete when executed.

(A) Escrow Holder is authorized to use any standardized, preprinted form in order to comply with these instructions. Escrow Holder is authorized to use Escrow Holder's own form or any form produced by any reliable forms Escrow Holder or any title Escrow Holder. Excepting Escrow Holder's own form, Escrow Holder shall not be liable for the correctness or sufficiency of such standardized preprinted forms.

24. AMENDMENTS: NO NOTICE, DEMAND, CHANGE IN INSTRUCTION, AMENDMENT, SUPPLEMENT OR MODIFICATION OF THESE ESCROW INSTRUCTIONS SHALL BE OF ANY EFFECT IN THIS ESCROW UNTIL DELIVERED IN WRITING BY ALL PARTIES AFFECTED THEREBY. If conflicting demands are made upon you or notice is served upon you of any controversy or legal action between the parties or third person(s) in connection with this Escrow, you shall not be required to determine the same or take any action, but shall have the absolute right to withhold and stop all further proceedings in and performance of this Escrow without liability until a mutual writing evidencing resolution of the controversy or order of a court of competent jurisdiction, in form satisfactory to you is deposited into Escrow. You may also, at your sole discretion, bring an action in inter-pleader or declaratory relief, and are instructed and authorized to deposit any documents or funds with the court pursuant to any such action, less your Escrow fees and costs incurred to date.

25. CANCELLATION: The parties, jointly and severally, agree that if this Escrow cancels or is otherwise terminated and not closed, the parties shall pay for any costs and expenses which you have incurred or have become obligated for under these Escrow Instructions, including, but not limited to, courier fees, attorneys' fees and costs, third-party vender fees for services performed for this Escrow, and Escrow fees set forth in your current fee schedule for the services rendered by you. The parties agree that such costs and expenses shall be paid from funds already on deposit or deposited in Escrow before any cancellation or other termination of this Escrow is effective. The parties agree that said charges for expenses, costs and fees may be apportioned between Buyer and Seller in a manner which, in your sole discretion, you consider equitable, and that your decision will be binding and conclusive upon the parties. Upon receipt of mutual cancellation instructions or a final order or judgment of a court of competent jurisdiction with accompanying writs of execution, levies or garnishments in form satisfactory to you, you are instructed to disburse the Escrow funds and instruments in accordance with such cancellation instruction, order or judgment and accompanying writ and this Escrow shall, without further notice be considered terminated and cancelled.

(A) Any Principal requesting Escrow Holder to cancel this Escrow shall file notice of demand to cancel (a "Cancellation Demand") with Escrow Holder in writing. Upon receipt of a Cancellation Demand, Escrow Holder may suspend performance of its Escrow duties and issue written cancellation instructions, by mail, to all Principals ("Cancellation Notice"). Upon Escrow Holder's receipt of original executed cancellation instructions from all Principals, Escrow Holder shall disburse funds and documents pursuant thereto and this Escrow shall be canceled.

(B) If, after a Cancellation Notice has been sent, cancellation instructions executed by all Principals are not received by Escrow Holder, Escrow Holder is authorized to comply with the Cancellation Demand, cancel the Escrow and distribute any money held in the Escrow, less any fees and charges as provided herein, pursuant to the Cancellation Demand. Notwithstanding anything to the contrary provided herein, Escrow Holder shall not distribute any money held in the Escrow if written objection is received from the Principal not making the Cancellation Demand within fifteen (15) calendar days of the mailing of a Cancellation Notice. In the event written objection is received in a timely manner, Escrow Holder may refuse to take any further action in the Escrow and may file an action in Interpleader, pursuant to paragraph 24.

(C) If this Escrow does not close by the Close of Escrow date set forth herein, either Principal may file with Escrow Holder a written demand ("Demand to Perform") that the other Principal perform. Escrow Holder shall immediately mail the Demand to Perform to the other Principal, and if the Escrow is not closed within 5 days of the mailing of the Demand to Perform, a Cancellation Demand may be sent to Escrow Holder, which Demand may be complied with at the discretion of Escrow Holder. Should the Escrow be cancelled pursuant to this paragraph, Escrow Holder shall distribute any monies held in the Escrow, less any fees and charges as provided herein, pursuant to the Cancellation Demand.

(D) If there is no written activity by a Principal for any twelve-month period after the Close of Escrow date set forth above, Escrow Holder may, at its option, terminate its agency relationship with Principals and cancel this Escrow, returning all documents, monies or other items held to the respective parties who deposited those documents, monies or other items in the Escrow, less any fees and charges as provided herein.

26. LEGAL ACTION/INTERPLEADER: IF ANY LEGAL ACTION OR OTHER PROCEEDING, INCLUDING MEDIATION OR ATTENDANCE AT ARBITRATION PROCEEDINGS INVOLVING THE PARTIES AND/OR OTHER PERSONS OR ENTITIES, ARE BROUGHT FOR THE ENFORCEMENT OR INTERPRETATION OF THESE ESCROW INSTRUCTIONS, OR IF YOU ARE REQUIRED TO RESPOND TO ANY LEGAL SUMMONS OR PROCEEDING, OR IF ANY ACTION INTERPLEADER OR DECLATORY RELIEF IS BROUGHT BY OR AGAINST YOU, THE PARTIES, JOINTLY AND SEVERALLY, SHALL PAY ALL COSTS, EXPENSES AND/OR ATTORNEYS' FEES EXPENDED OR INCURRED BY ESCROW HOLDER INCLUDING, BUT NOT LIMITED TO, A FEE FOR ESCROW SERVICES RENDERED, EXPENSES TO THE LAWSUIT, COSTS TO APPEAR AT MEDIATION OR ARBITRATION PROCEEDINGS, EXPENSES ON APPEAL OF ANY JUDGMENT AWARDED TO IT AND IN THE COLLECTION OF ANY JUDGMENT ENTERED FOR ESCROW HOLDER ("ESCROW HOLDER'S COSTS"). SHOULD ESCROW HOLDER DISBURSE MORE FUNDS TO OR FOR THE BENEFIT OF ANY PARTY THAN SUCH PARTY IS ENTITLED TO RECEIVE OR THE ESCROW HAS A SHORTAGE TO OR FOR THE BENEFIT OF ANY PARTY, THE RECEIVING OR BENEFITTING PARTY SHALL REPAY ESCROW HOLDER THE AMOUNT OF THE OVERPAYMENT OR SHORTAGE UPON DEMAND, AFTER WHICH INTEREST SHALL ACCRUE AT 10% PER ANNUM ON THE SUM THEN DUE. THE ESCROW HOLDER'S COSTS SHALL BE PAID FROM THE RESPONSIBLE PARTY'S FUNDS HELD BY ESCROW HOLDER BEFORE ANY OTHER DISBURSEMENTS ARE MADE. A LIEN IS HEREBY CREATED IN ESCROW HOLDER'S FAVOR TO COVER ALL SUCH ESCROW HOLDER'S COSTS. WE AGREE TO SAVE YOU HARMLESS AS ESCROW HOLDER UNDER THIS ESCROW FROM ALL ESCROW HOLDER'S COSTS INCURRED BY REASON OF ANY ACTION, LEGAL OR OTHERWISE, WHICH MAY ARISE, DIRECTLY OR INDIRECTLY, OUT OF THIS ESCROW WHETHER BEFORE OR AFTER CLOSING, CANCELLATION OR OTHERWISE, NOTWITHSTANDING ANY OTHER PROVISION OF THIS ESCROW.

Principals herein acknowledge that Escrow Holder has an absolute legal right to file a court action in interpleader. In the event such an action is filed, Principals herein jointly and severally agree to pay Escrow fees and title fees, court costs and litigation expenses, including attorney's fees, incurred in connection therewith. Upon filing of such action, Escrow Holder is fully released and discharged from any further performance of duties under the terms of this Escrow.

27. DISCLOSURES/WARRANTIES: The Buyer and Seller acknowledge that depending on the type (Commercial or Residential) and location (City) of real property involved in this Escrow, there may be disclosure(s) as well as civil ordinance requirement(s) that would affect the transfer of the real property. Escrow Holder urges both the Buyer and the Seller to seek appropriate counsel from an attorney or licensed broker to ascertain what disclosures and/or civil ordinances, if any, need to be complied with prior to the close of Escrow, outside of the Escrow as between the Buyer and Seller. The Buyers and Sellers' signature upon these instructions shall be deemed evidence to the Escrow Holder that the Buyer and Seller have obtained independent counsel, are aware of any disclosures/civil ordinance requirements and will comply with same outside of this Escrow. Unless otherwise instructed in writing to the contrary within the body of the Escrow Instructions, Escrow Holder shall have no responsibility or liability in connection herewith and is released from liability in connection with the compliance of any such disclosure.

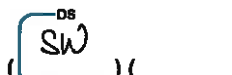
(A) You are not to be responsible or liable for the validity, regularity or sufficiency of municipal residential property reports, or retrofit standards to be complied with upon the transfer of real property. You are instructed to forward request for Residential Property Report or Certificate of Compliance as handed to you to the appropriate governmental agency. You are to

Escrow Instructions Continued On Page Number 3

Seller's Initials



Buyer's Initials



Escrow Instructions Continued From Page Number 4**Escrow Officer: Ellen Bebo**

charge Seller with any fee to file such document. You are not to be responsible or liable for the validity, regularity or sufficiency of any of this documentation nor liable or responsible for the timeliness of the response of any governmental agency or for timeliness for filing any such documents.

(B) You are not to be concerned with the giving of any disclosures except as expressly required by Federal or State law to be given by an Escrow agent, neither are you to be concerned with the effect of zoning ordinances, land division regulations, or building restrictions which may pertain to or affect the land or improvements that are the subject of this Escrow. The parties to this Escrow have satisfied themselves outside of Escrow that the transaction covered by this Escrow is not in violation of the Subdivision Map Act or any other law regulating land division, and you as Escrow Holder are relieved of all responsibility and/or liability in connection therewith, and are not to be concerned with the enforcement of said law. Your signatures to this instruction shall be deemed evidence that each of you, respectively, are aware of any such requirements and Escrow Holder is released from liability in connection with the compliance of any such disclosure.

28. NO INSPECTION: Escrow Holder shall not make any physical examination or inspection of any real and/or personal property described in these instructions or in any instrument or document deposited herewith. The parties to this Escrow hereby, expressly acknowledge that you are not to be responsible nor liable for the sufficiency, validity, or content of any disclosures between the parties to this Escrow regarding the physical condition of any real and/or personal property and that you make no warranties or representations, in any manner whatsoever, regarding the habitability or physical condition of any real and/or personal property. Further, Escrow Holder is not to be concerned with any environmental issue, mold (fungus) disclosure or water intrusion in connection with any real and/or personal property involved in this Escrow, whatsoever, and Escrow Holder is released of liability and responsibility and is indemnified and held harmless in connection herewith.

29. ASSIGNMENT OF FUNDS: If a party to this Escrow unilaterally assigns or orders such party's proceeds to be paid to a person or entity other than the original parties to this Escrow, such order or assignment shall be subordinate to the expenses of this Escrow, liens of record on the subject property and payments directed to be made by the original parties. If the assignment or order leaves the Escrow without sufficient funds to close, then Escrow Holder is directed to close nevertheless, and to pay such assignments or orders from the net proceeds and pay them in the order in which the assignments or orders were received by Escrow Holder. Escrow Holder is not to be concerned with the balance remaining unpaid, if any there may be. If there are insufficient proceeds to pay such assignments or orders in full, or if the assignment or order is revoked, Escrow Holder shall have no responsibility or liability for providing such information to the assignee. In the event of any assignment or order, or of any transfer of interest by operation of law, with or without the approval of consent of any or all of the parties to this Escrow, Escrow Holder shall retain the right to deduct all Escrow costs, fees and expenses it incurs as otherwise set forth in these Escrow Instructions including its Escrow fees.

30. STATUTE OF LIMITATIONS: These instructions are to be construed and interpreted according to California Law. NO ACTION SHALL LIE AGAINST ESCROW HOLDER FOR ANY CLAIM, LOSS, LIABILITY OR ALLEGED CAUSE OF ACTION OF ANY KIND OR NATURE WHATSOEVER, HOWEVER CAUSED OR OCCURRED, UNDER THIS ESCROW OR IN CONNECTION WITH THE HANDLING OR PROCESSING OF THIS ESCROW, UNLESS BROUGHT WITHIN TWELVE (12) MONTHS AFTER THE CLOSE OF ESCROW OR ANY CANCELLATION OR TERMINATION OF ESCROW FOR ANY REASON WHATSOEVER.

31. RESIGNATION OF ESCROW HOLDER: At any time prior to the close of Escrow, Escrow Holder, as its sole and absolute discretion and without liability to the parties to this Escrow, may withdraw and resign from acting as Escrow Holder providing five days prior written notice to the parties to their last known addresses. In such event, Escrow Holder shall be entitled to reasonable compensation for its Escrow services performed and for all costs and expenses incurred in the resignation, including, but not limited to, attorneys' fees. Upon resignation, Escrow Holder shall return to the parties who deposited the same the balance of any funds it holds along with any property or documents in its possession. Alternatively, at the mutual instruction of the parties, Escrow Holder shall deliver the funds, property and documents to a new Escrow agent.

33. CONTEXT: In these Escrow Instructions, wherever the context so requires, the masculine gender includes the feminine and/or neuter and the singular number includes the plural. Further, the terms "you", "Escrow", and "Escrow Holder" shall mean Escrow of the West.

34. DOCUMENT RETENTION: The parties to these Escrow Instructions authorize you to destroy these instructions and all other instructions and records in this Escrow at any time after five (5) years from the close of Escrow, cancellation, or date of the last activity without liability and without further notice to the parties.

35. NO LEGAL/FINANCIAL ADVICE: THE PARTIES ACKNOWLEDGE AND UNDERSTAND THAT YOU, AS ESCROW HOLDER, ARE NOT AUTHORIZED TO PRACTICE LAW NOR DO YOU GIVE FINANCIAL ADVICE. THE PARTIES ARE ADVISED TO SEEK LEGAL AND FINANCIAL COUNSEL AND ADVICE CONCERNING THE EFFECT OF THESE ESCROW INSTRUCTIONS, ANY LOAN DOCUMENTS, OR FINANCIAL TAX DOCUMENTS. THE PARTIES ACKNOWLEDGE THAT NO REPRESENTATIONS ARE MADE BY YOU ABOUT THE LEGAL SUFFICIENCY, LEGAL CONSEQUENCES, FINANCIAL EFFECTS OR TAX CONSEQUENCES OF THE WITHIN ESCROW TRANSACTION.

36. HOLD OPEN FEE: Notwithstanding any other provision of these Escrow Instructions, the parties agree and acknowledge that where a postponement or cancellation of this Escrow result from acts or omissions of the parties, Escrow Holder shall be entitled to a charge for administering an Escrow where the postponement is for at least two months from the most recent closing date agreed upon in writing by the parties in this Escrow or if the Escrow is canceled. The Parties agree that Escrow Holder is authorized and in its sole discretion, and without further instructions, to deduct and pay to Escrow Holder a hold open administration fee of \$50 per month from the funds on deposit with Escrow Holder. On demand, the parties, jointly and severally, agree to deposit such additional funds as may be necessary to cover Escrow Holder's hold open administration fee if the same is necessary.

37. PRIVACY NOTICE: This notification is in compliance with our obligations to comply with federal and state law to safeguard your nonpublic personal information. We collect nonpublic personal information about you from the following sources:

(A) Information we receive from you on applications or other forms;

(B) Information about your transactions with us, our affiliates, or others involved in the processing of your transaction; and

(C) Information we receive from a consumer-reporting agency.

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law. We restrict access to nonpublic information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic and procedural safeguards that comply with federal and state regulations to guard your nonpublic personal information.

38. GROSS NEGLIGENCE/WILLFUL MISCONDUCT: Except for acts of gross negligence or willful misconduct, all parties herein agree to indemnify and hold harmless the Escrow Holder for any errors or omissions resulting from the processing of this transaction.

39. BULK SALE/MOBILE HOME. If this Escrow concerns a "bulk sale" or a "mobile home", Escrow Holder is authorized and instructed to strictly conform to all state and federal laws as they pertain to Escrow Holders, regardless of any conflicting instructions given to Escrow Holder by the Principals herein.

40. I. R. C. 1099: Principals herein agree to cooperate fully, and to execute and complete all necessary documents submitted to them by Escrow Holder to allow Escrow Holder to comply with the income and property tax reporting required pursuant to Internal Revenue Code Section 1099. Escrow Holder is to follow the requirements of federal law and regulations as they pertain to Escrow Holders only, and shall not give consultation or advice as to these laws.

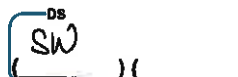
41. PRIVACY POLICY: Escrow Holder's business is to process Escrow transactions. To process this Escrow, we collect information about Principals, such as Principals' names, addresses, telephone numbers, social security numbers and other information about Principals' transaction including the identity of the real property that Buyer is buying or financing. We obtain a copy of various documents, including, but not limited to, deeds, notes and trust deeds involved in Principals' transaction. This information may be obtained from Principals or other entities Principals have selected, such as Principals' attorneys, lenders, title insurance companies, real estate agents and/or brokers, homeowner's associations or insurance agents. The title insurance Escrow Holder associated with Principals' transaction will request a Statement of Information from Principals, and from that completed form it will obtain information from the public records about Principals and the real property that is the subject of Principals' transaction; much of that information is given to Escrow by the title insurance Escrow Holder in the form of a preliminary title report or other documents. During the course of Escrow we may receive additional information from various third parties including appraisals, credit reports, land surveys, credit card statements and bank account numbers. THIS ESCROW HOLDER DOES NOT SHARE ANY OF THIS INFORMATION WITH ANY OTHER ENTITY, PERSON OR ESCROW HOLDER FOR MARKETING PURPOSES. The privacy laws do permit some sharing internally and with nonaffiliated third parties in order to carry out and service Principals' transaction, for institutional risk control, and to provide information to governmental, judicial and law enforcement agencies that have provided appropriate legal documentation. We restrict access to nonpublic personal information about Principals to those employees who need the information to process and complete Principals' transaction.

Escrow Instructions Continued On Page Number 6

Seller's Initials

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Buyer's Initials



Escrow Instructions Continued From Page Number 5**Escrow Officer: Ellen Bebo**

- We maintain physical, electronic and procedural safeguards that comply with law to guard Principals' nonpublic personal information. We reinforce Escrow Holder's privacy policy with our employees.
42. **FORGERIES:** Escrow Holder shall not be liable or responsible for any loss that may occur by reason of forgeries or false representations made by or involving third parties or Principals to this Escrow. Escrow Holder will not verify the authenticity of any signatures in this Escrow, and Escrow Holder shall not be liable or responsible for making any determination as to the legal competency of any Principals executing Escrow documents.
43. **CLOSING:** If this Escrow is not in a position to close upon the closing date set forth herein, and demand is NOT made by any principal to cancel, Escrow Holder is to continue processing to close this Escrow when all the conditions of this Escrow have been complied with. But, if on the closing date, or any date thereafter, written demand is made by any principal to cancel this Escrow, Escrow Holder is to act in accordance with the terms of the parties' contract and/or paragraph 10, above.
44. **FEE DISCOUNTS.** PRINCIPALS HEREBY ACKNOWLEDGE AND AGREE THAT IN SOME SITUATIONS, ONE OR MORE PARTIES TO THIS ESCROW MAY RECEIVE A DISCOUNT ON THE ESCROW FEE.
45. **SIGNATURES:** A Principal's signature on any document or instruction drawn or delivered into the Escrow shall indicate and evidence such Principal's full understanding of and unconditional approval of same, and shall further indicate that they have received a true copy of same.
46. **MATTERS OF MEMO:** Escrow Holder is expressly instructed not to act upon or be concerned with or liable for (i) those items designated in Principals' Escrow instructions as "matters of memo" or "memoranda" between the Principals, nor (ii) any other agreement between the Principals not expressly addressed to Escrow Holder in the form of an Escrow instruction for Escrow Holder's performance.
47. **USURY/ENCUMBRANCES:** Escrow Holder is not to be concerned with any question of usury in any loan or encumbrance involved in the processing of this Escrow and Escrow Holder is hereby released from any responsibility or liability therefore.
48. **SHORT PAY:** If a Principal in this Escrow should negotiate a "short pay" demand with a lender holding an encumbrance against the subject property, Escrow Holder shall not in any way be liable for or concerned with any legal or tax consequences that the Principal may incur as a result of that short pay. Escrow Holder is to pay the lender's beneficiary's demand as presented to Escrow Holder.
49. **CONFLICTING INSTRUCTIONS:** If Escrow Holder receives unilateral or conflicting instructions from Principals, oral or written, Escrow Holder is no longer obligated to continue performance of Escrow Holder's duties. Escrow Holder may withhold documents and funds held in Escrow, until concurring mutual instructions are received from Principals, or Escrow Holder receives a final order from a court of competent jurisdiction.
50. **EXTRAORDINARY SERVICES/FEEs:** Escrow Holder may charge the Principal benefited, an additional fee(s) over and above Escrow Holder's customary Escrow fee, for Escrow services rendered that Escrow Holder considers extraordinary or unusual or not within the range of Escrow Holder's customary Escrow processing. Said fee(s) shall be disclosed to the Principal(s) to be charged prior to the close of the Escrow.
51. **SEVERABILITY:** In the event any instruction in this Escrow is held invalid by judicial proceedings, the remaining shall continue to be operative and enforceable.
52. **REFINANCE:** If this is a refinance Escrow with an institutional lender, the borrower herein acknowledges that only the borrower shall sign these instructions and that the lender will submit Escrow instructions on its own form, which Escrow Holder is instructed to fully comply with.
53. **OTHER TRANSACTIONS:** Escrow Holder has no duty to notify any Principal hereto as to any sale, resale, loan, exchange, or other transaction involving any property that is the subject of this Escrow, or of any profit realized by any person or entity in connection therewith, regardless of the fact that such transaction may be handled by Escrow Holder, or another, in this Escrow or in any other Escrow. Furthermore, the Principals herein agree that Escrow Holder's duty to them is limited to Escrow Holder's performance of the instructions to Escrow Holder and that Escrow Holder has no responsibility to notify any Principal to this Escrow of any other transaction of which Escrow Holder might have knowledge and which concerns the subject property herein, or any profit realized by any Principal or third person in connection therewith.
54. **LANGUAGE:** This Escrow will be processed in the English language. Should any Principal elect to use a language translator to assist them in understanding the Escrow process, or any documentation that is a part of this Escrow, that language translator will be selected and provided by the Principal in need of such assistance. Escrow Holder will not provide language translation services and will not be liable or responsible for the correctness of any language translator's interpretation of the Escrow process or of any documentation that is a part of this Escrow.
55. **ESCROW DUTIES:** THE PRINCIPALS HERETO ACKNOWLEDGE AND UNDERSTAND THAT THE PARTIES HERETO ACKNOWLEDGE THAT ESCROW HOLDER IS A NEUTRAL THIRD PARTY AGENT, AND ESCROW HOLDER'S RESPONSIBILITIES AND DUTIES TO PRINCIPALS ARE LIMITED TO FULLY EXECUTED MUTUAL ESCROW INSTRUCTIONS, AND ANY FULLY EXECUTED MUTUAL SUPPLEMENTS OR AMENDMENTS THERETO.
56. **SUMMARY STATEMENT:** The foregoing terms, provisions, conditions, and instructions, and these "Additional Escrow Instructions and General Provisions" contained herein are hereby approved and accepted in their entirety and concurred in by both parties to this escrow. Seller(s) will hand you necessary documents called for on his/her/their part to cause title to be shown as above which you are authorized to deliver when you hold for Seller's account the sums set forth in this Escrow within the time as above provided, pay your Escrow charges, costs and expenses, recording fees, charges for evidence of title as called for, whether or not this Escrow is consummated, except those Buyer agrees to pay. Escrow Holder is hereby authorized to pay bonds, assessments, taxes and any other liens of record to show title as called for, and affix documentary tax on deed as required, without further instructions.

EACH PARTY SIGNING THESE INSTRUCTIONS HAS READ THE ADDITIONAL ESCROW INSTRUCTIONS AND GENERAL PROVISIONS CONTAINED HEREIN AND APPROVES, ACCEPTS AND AGREES TO BE BOUND THEREBY. ALL PARTIES SIGNING THIS AGREEMENT HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THESE INSTRUCTIONS.

INSTRUCTIONS

- A) **FINANCING:** Buyer to obtain a New First and Second Deed of Trust Loan [as applicable] in favor of **W.J. Bradley Mortgage Capital - W.J. Bradley Mortgage Capital (specifically located at 43620 Ridge Park Drive, Suite 210, Temecula, CA 92590, at phone number 951-795-4768 with the loan officer of Ron Thompson, herein referred to as W.J. Bradley Mortgage Capital) -OR-** a Lender of Seller's Choice to be obtained at Buyer's sole expense, given to secure a note in the principal amount(s) as set forth in Page 1 hereof, per its terms. In the event that Buyer is unable to qualify for a Fixed Rate Mortgage, Buyer shall accept an Adjustable Rate Mortgage (provided he can qualify for same). Buyer's execution of the loan documents shall evidence their full approval of the terms and conditions contained therein.

IF ON THE SAME DATE THAT BUYER SIGNED THIS AGREEMENT, BUYER APPLIES FOR THE NEW FIRST AND SECOND TRUST DEED LOAN [AS APPLICABLE] FROM **W.J. BRADLEY MORTGAGE CAPITAL -OR-** A LENDER OF SELLER'S CHOICE, BUYER'S OBLIGATION TO CONSUMMATE THIS TRANSACTION SHALL BE CONTINGENT UPON BUYER'S ABILITY TO SECURE FINANCING OF THE PROPERTY FROM SAID LENDER. BUYER FURTHER ACKNOWLEDGES THAT THE CONSUMMATION OF THIS ESCROW MAY BE SUBJECT TO AND CONTINGENT UPON THE 'PRE-SALE' REQUIREMENTS OF LENDER, IF ANY.

Escrow Instructions Continued On Page Number 7

Seller's Initials

(h)

Buyer's Initials

Escrow Instructions Continued From Page Number 6

Escrow Officer: Ellen Bebo

BUYER COVENANTS TO PROVIDE SUCH PERSONAL FINANCIAL STATEMENTS OR OTHER CREDIT INFORMATION REQUIRED BY **W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE** WITHIN THREE (3) DAYS FROM THE DATE HEREOF. IF THROUGH NO FAULT OF BUYER, BUYER IS UNABLE TO OBTAIN SUCH A LOAN FROM **W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE**, THEN THIS ESCROW SHALL TERMINATE. ESCROW HOLDER SHALL RETURN TO BUYER ANY DEPOSIT GIVEN BY BUYER TO ESCROW HOLDER, LESS DOCUMENT AND PROCESSING FEES, IF ANY, TOWARD THE PURCHASE OF THE PROPERTY. UPON ESCROW HOLDER'S RECEIPT OF SIGNED MUTUAL CANCELLATION INSTRUCTIONS, BUYER AND SELLER SHALL BE RELIEVED OF ANY FURTHER LIABILITY AND/OR OBLIGATION TO THE OTHER UNDER THIS AGREEMENT.

THE ABOVE REFERENCED FINANCING CONTINGENCY SHALL BE DEEMED APPROVED UNLESS ESCROW HOLDER HAS RECEIVED WRITTEN NOTIFICATION OF ANY DISAPPROVAL FROM W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE.

FINANCING FROM THIRD PARTY LENDERS: IF BUYER ELECTS TO APPLY FOR THIRD PARTY FINANCING (FINANCING OTHER THAN WITH W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE), THEN BUYER IS OBLIGATED TO CONSUMMATE FINANCING AND ESCROW WILL NOT BE CONTINGENT UPON FINANCING, NOR WILL ESCROW BE EXTENDED FOR THAT PURPOSE. BUYER(S) WHO FAIL TO QUALIFY FOR OR RECEIVE THIRD PARTY FINANCING AND THEN FAIL TO CLOSE ESCROW FOR THAT REASON WILL FORFEIT THE AMOUNT OF DEPOSIT AS LIQUIDATED DAMAGES, (AS MORE SPECIFICALLY SET FORTH AND PURSUANT TO THE TERMS AND CONDITIONS OF THAT CERTAIN PARAGRAPH ENTITLED "LIQUIDATED DAMAGES/ARBITRATION" CONTAINED HEREIN).

ESCROW HOLDER IS HEREBY SPECIFICALLY AUTHORIZED AND INSTRUCTED NOT TO FORWARD ANY DOCUMENTS TO ANY THIRD PARTY LENDER, INCLUDING, BUT NOT LIMITED TO: THIS 'JOINT PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS', A COPY OF BUYER'S EARNEST MONEY DEPOSIT AND/OR RECEIPT, OR THE PRELIMINARY TITLE REPORT AND/OR ANY OTHER DOCUMENTS WITHOUT THE EXPRESS WRITTEN CONSENT OF THE SELLER HEREIN. IN ADDITION, BUYER HEREBY AUTHORIZES AND INSTRUCTS THIRD PARTY LENDER, IF ANY, TO FULLY DISCUSS EVERY ASPECT OF BUYER'S LOAN, INCLUDING BUT NOT LIMITED TO: THE TERMS, CONDITIONS, AND STATUS OF THE NEW LOAN WITH SELLER, ESCROW HOLDER, W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE AND/OR STRATEGIC REALTY. FAILURE OF SAID THIRD PARTY LENDER TO COOPERATE WITH THIS INSTRUCTION SHALL GIVE THE SELLER THE RIGHT, BUT NOT THE OBLIGATION, TO CANCEL THIS TRANSACTION.

A BUYER WHO CHOOSES TO APPLY FOR THIRD PARTY FINANCING MUST NOTIFY STRATEGIC REALTY AND W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE IN WRITING WITHIN FORTY EIGHT (48) HOURS OF SELLER'S ACCEPTANCE OF THIS AGREEMENT, AND MUST OBTAIN A WRITTEN UNCONDITIONAL LENDING COMMITMENT FROM THE THIRD PARTY LENDER WITHIN TWENTY (20) DAYS AFTER THE DATE HEREOF. IF BUYER DOES NOT NOTIFY STRATEGIC REALTY AND NOTIFY W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE IN WRITING WITHIN FORTY EIGHT (48) HOURS OF THE DATE HEREOF OR IF BUYER FAILS TO OBTAIN THE LOAN COMMITMENT AS DESCRIBED IN THIS SUBPARAGRAPH, THEN WITHOUT ANY REQUIREMENT OF FURTHER NOTICE OR OTHERWISE: BUYER SHALL BE DEEMED TO BE IN DEFAULT UNDER THIS AGREEMENT AND WILL FORFEIT THE AMOUNT OF THE DEPOSIT AS LIQUIDATED DAMAGES (AS MORE SPECIFICALLY SET FORTH AND PURSUANT TO THE TERMS AND CONDITIONS OF THAT CERTAIN PARAGRAPH ENTITLED "LIQUIDATED DAMAGES/ARBITRATION" CONTAINED HEREIN) TO SELLER AND THIS AGREEMENT SHALL BE TERMINATED AT SELLER'S UNILATERAL OPTION.

Buyer's Initials (SW) ()

IT IS UNDERSTOOD AND AGREED THAT THE OBTAINING OF ANY FINANCING WHATSOEVER, IN ANY EVENT, IS AND SHALL REMAIN THE BUYER'S AND NOT SELLER'S OBLIGATION. MOREOVER, THE SELLER DOES NOT GUARANTEE ANY LOAN FROM ANY LENDER.

ESCROW IS AUTHORIZED AND INSTRUCTED TO FOLLOW THE DIRECTION OF **W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE** IN CONNECTION WITH SAID LOAN AND TO DELIVER A COPY OF THIS AGREEMENT AND ANY AMENDMENTS THERETO TO **W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE.**

Escrow Instructions Continued On Page Number 8

Seller's Initials ()Buyer's Initials (DS) (SW)

Escrow Instructions Continued From Page Number 7**Escrow Officer: Ellen Bebo**

THIS TRANSACTION IS NOT CONTINGENT UPON BUYER'S ABILITY TO RETAIN THE INTEREST RATE (FIXED OR ADJUSTABLE), AND/OR OTHER LOAN TERMS INCLUDING BUT NOT LIMITED TO LOAN ORIGATION FEES QUOTED AT THE TIME OF LOAN APPROVAL, AND BUYER WILL BE REQUIRED TO PAY THE INTEREST RATE CHARGED BY THE FINANCING ENTITY AT THE CLOSE OF ESCROW.

ONCE BUYER HAS DEPOSITED INTO ESCROW THE 'LOAN COMMITMENT' PREVIOUSLY DESCRIBED HEREIN, BUYER SHALL NOT BE ENTITLED TO APPLY FOR OR OBTAIN ANY MODIFIED, ADDITIONAL AND/OR NEW LOAN COMMITMENT FROM ANY OTHER FINANCING ENTITY OR OTHER SOURCE, IF THE APPLICATION OR FUNDING OF THE NEW LOAN WOULD, IN SELLER'S SOLE JUDGMENT, DELAY THE CLOSE OF ESCROW.

IN THE EVENT THAT BUYER OBTAINS A LOAN FROM A THIRD PARTY LENDER, BUYER WILL PROVIDE A COPY OF ALL CREDIT AND APPRAISAL DOCUMENTS TO **W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE** WITHIN TEN (10) DAYS AFTER THE DATE HEREOF.

Seller warrants and represents that he has no equity interest in **W.J. Bradley Mortgage Capital -OR- any other Lender of Seller's Choice.**

- B) FINAL FUNDS:** Please be advised that Escrow Holder will require deposit of Buyer's final funds **FIVE (5) business days prior to the close of escrow**, if funds are deposited in the form of a **Cashier's Check**; or Escrow Holder will require deposit of final funds **TWO (2) business days prior to the close of escrow**, if Buyer's funds are deposited by **Wire Transfer**. Final funds should be obtained from Buyer's Bank or Savings and Loan Association in either of the two following forms:

- 1. CASHIER'S CHECK:** Cashier's checks must be issued by a Bank which is located in the State of California, issues their Cashiers Checks in the State of California, made payable to **ESCROW OF THE WEST** in the amount requested by Escrow Holder.

Parties herein acknowledge that the following types of checks are NOT considered good funds and will be subject to check clearance (approximately 3 to 7 business days): Out of State Cashier's Checks, Drafts, Credit Union Checks, or Stock Brokerage Checks. (Personal checks are not acceptable for use by Escrow Holder as final funds at the close of escrow.)

-OR-

- 2. WIRE TRANSFER:** Wires must be directed to:
CITY NATIONAL BANK
555 South Flower Street
Los Angeles, CA 90071
ATTN: WIRE DEPARTMENT
Routing Number: **122016066**
Credit To: **Escrow of the West**
Trust Account Number: **555-054807**
Reference the Escrow Number
Attention: **Ellen Bebo**

Pursuant to Assembly Bill 512 (AB 512) known as the "Good Funds" legislation, which became effective January 1, 1990, the parties hereto are made aware that closing funds to be deposited by the Buyer and/or lender must be **CLEARED** funds prior to recordation (close of escrow). This law places some very specific constraints upon the time frames in which title companies may make funds available for disbursements. Buyer should ascertain from the lender the type of funding instrument that will be used to fund the new loan as the standard practice in this area is for the new lender to fund directly to the title company via wire transfer.

If the new lender is using a funding instrument which requires a hold, then the time period between funding and recording could be delayed up to Seven (7) Business Days.

Escrow Holder's requirements for funds to close this escrow may be different from those of the title company. Escrow of the West's specific requirements for funds to close this transaction are set forth above.

Buyer is aware that interest on any new loan funded in connection with this escrow shall accrue from the date of Lender's funding and that there may be a delay between the funding date and recording date due to the above "Good Funds" legislation.

- C) PROPERTY TAX PRORATION:** All parties acknowledge that they are aware of the following:

Escrow Instructions Continued On Page Number 9

Seller's Initials ()

Buyer's Initials (DS SW) ()

Escrow Instructions Continued From Page Number 8

Escrow Officer: Ellen Bebo

1. Escrow Holder will, at close of escrow, prorate real property taxes based upon the latest available tax figures as furnished by the insuring title company or based on 1.25% (.0125) of the purchase price if the taxes on the property are not currently segregated by the county tax assessor, from close of escrow to following July 1st (debit the Buyer and credit the Seller), Seller shall be responsible for payment of regular and/or supplemental property taxes during this tax year to be timely paid by Seller **outside of escrow**;
2. The Tax Collector may issue supplemental tax bills for more than the amount so used for proration purposes, or in the event there has been an overpayment, the overpayment amount may not be refunded but may instead be held for the subsequent credit against the payment of future taxes on the subject property. In addition to acknowledging their awareness of the foregoing, all parties hereby agree that, any instruction in this escrow to the contrary notwithstanding, any overpayment or underpayment of taxes accruing because of the amount used by Escrow Holder for proration purposes at close of escrow shall be adjusted by and between the parties **outside of escrow**. Escrow Holder is hereby released from responsibility and/or liability of any kind in connection with any such overpayment or underpayment.

D) SUPPLEMENTAL TAXES: NOTICE OF SUPPLEMENTAL PROPERTY TAX BILL. California property tax law requires the Assessor to revalue real property at the time the ownership of the property changes. Because of the law, you may receive one (1) or two (2) supplemental tax bills, depending on when your loan closes. The supplemental tax bills are not mailed to your lender. If you have arranged for your property tax payments to be paid through an impound account, the supplemental tax bills will not be paid by your lender. It is your responsibility to pay these supplemental bills directly to the Tax Collector. If you have any questions concerning this matter, please call your local Tax Collector's office.

E) FEDERAL TAX WITHHOLDING - FIRPTA: The sale of a U.S. real property interest by a foreign person is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding. FIRPTA authorizes the United States to tax foreign persons on the sale of U.S. real property interests. Persons purchasing U.S. real property interests from foreign persons, certain purchasers' agents, and settlement officers are required to withhold 10 percent of the amount realized. Withholding is intended to ensure U.S. taxation of gains realized on disposition of such interests. The Buyer is the withholding agent. The Buyer must find out if the Seller is a foreign person. If the Seller is a foreign person and the Buyer fails to withhold, the Buyer may be held liable for the tax.

Seller and Buyer agree to execute and deliver to Escrow Holder any instrument, affidavit and statement or to perform any act reasonably necessary to carry out the provisions of FIRPTA and regulations promulgated thereunder. Seller herein certifies under penalty of perjury, that the information provided on said form is true, correct and complete.

F) STATE TAX WITHHOLDING: When California real estate is sold, 3 1/3% of the total sales price must be withheld from the Seller and sent to the California Franchise Tax Board (California Revenue and Taxation Code Section 18662). Withholding of 3 1/3% is not required if:

1. The total sales price is \$100,000 or less;
2. If the property qualifies and the Seller's principal residence as defined by Internal Revenue Code Section 121;
3. If the Seller last used the property as their principal residence as defined by Internal Revenue Code Section 121;
4. If the Seller will have a loss or zero gain for California income tax purposes on this sale;
5. If the Seller is a corporation (or an LLC classified as a corporation for federal and California income tax purposes) that is either qualified through the California Secretary of State or has a permanent place of business in California;
6. If the Seller is a partnership (or an LLC that is not a disregarded single member LLC and is classified as a partnership for federal and California income tax purposes) with recorded title to the property in the name of the partnership or LLC;
7. Or for any other reason acceptable to the California Franchise Tax Board.

If none of the above exemptions apply, Escrow Holder is instructed to withhold an amount equal to 3 1/3% of the total sales price and to forward the funds to the Franchise Tax Board at the close of escrow. Buyer and Seller hereby agree to hold Escrow Holder harmless regarding compliance with this instruction.

G) TAX REPORTING/1099: Seller herein acknowledges their awareness of the fact that Escrow Holder must provide information pertaining to this Escrow to the Internal Revenue Service as required by the Tax Reform Act, Internal Revenue Service Code Section 6045(e). Concurrently with the execution hereof, Seller herein will provide Escrow

Escrow Instructions Continued On Page Number 10

Seller's Initials

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Buyer's Initials

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Escrow Instructions Continued From Page Number 9**Escrow Officer: Ellen Bebo**

Holder information necessary to produce a 1099 Tax Reporting Form in compliance with Internal Revenue Service Code Section 6045(e). Seller herein certifies under penalty of perjury, that the information provided on said form is true, correct and complete.

- H) DOCUMENTARY TRANSFER TAX:** In addition to the County Documentary Transfer Tax currently charged to the Buyer, Escrow Holder is authorized and instructed to debit the account of the Buyer for any transfer tax that may be imposed by the City in which the subject property of this escrow is located.
- I) FACSIMILE TRANSMISSIONS (FAX):** In the event that Buyer and/or Seller transmit signed documents by FAX in this transaction, Buyer and/or Seller and/or each of them, agrees to accept and instructs Escrow Holder to accept such transmitted documents for all purposes the same as if it were signed original documents. Buyer and/or Seller agree to deliver, or cause to be delivered to Escrow Holder the signed originals of each FAXED document within SEVENTY-TWO (72) hours following the FAXING thereof. FAXED, non-original documents are not acceptable by the County Recorder for recordation. Failure to provide Escrow Holder with signed original recording documents will prevent this escrow from closing.
- J) PRELIMINARY CHANGE OF OWNERSHIP:** Section 480.3 of the Revenue and Taxation Code requires that a "Preliminary Change of Ownership Report" be completed and certified by Buyer and filed concurrently with the Deed or other documents that reflect a change of ownership in real property. The Buyer herein agrees to complete and sign said report and deliver same to Escrow Holder for filing concurrently with Buyer's execution of these Escrow instructions. Escrow Holder shall forward same to the Title Insurance Company for submission to the recorder's office at the close of escrow. Buyer understands and acknowledges that the County Recorder's Office will charge an additional non-refundable fee of TWENTY DOLLARS (\$20.00) should the fully completed/certified report not accompany the conveyance document. In addition to this fee, there may be additional expenses incurred by Buyer outside of escrow or after the close of escrow as a result of Buyer's failure to file the fully completed/certified report. Buyer further understands and authorizes Escrow Holder to debit the Buyer's account for said TWENTY DOLLAR (\$20.00) at the close of escrow in the event the change of ownership statement is not deposited with Escrow Holder as provided for herein. Buyer herein certifies under penalty of perjury, that the information provided on said form is true, correct and complete.
- K) HOLD-OPEN FEES:** In the event of the non-completion of this escrow for any reason whatsoever, including without limitation the cancellation or purported cancellation of the escrow by either party and notwithstanding the concurrence or non-concurrence by the other party with such cancellation, and the resultant obligation or advisability of the Escrow Holder to continue to hold undistributed the funds then on deposit in said escrow, then the Escrow Holder may, at its option, withdraw from said funds so held and pay itself a holding fee of \$25.00 for each calendar month, or fraction thereof, that said funds are retained in escrow, not exceeding, however, the whole of such withheld funds.
- L) INSURANCE PRORATION:** Escrow Holder is hereby authorized and instructed to prorate Insurance premiums from the close of escrow to the date of expiration of the policy based upon an amount of 1/6th of the actual annual premium for this Lot. It is understood that Seller has prepaid insurance premiums covering this for one year in advance. It is further understood by Buyer that such policy does not cover the contents of the individual Lots. In the event Buyer desires personal property, contents (fire or liability), etc., Buyer shall be responsible to obtain same outside of escrow.
- M) HOMEOWNER'S INSURANCE:** Buyer is aware that Buyer will need to obtain and secure Buyer's own Homeowner's Policy of Fire and Liability Insurance. At the close of escrow, Escrow Holder is hereby authorized and instructed to obtain said policy of Insurance from All State Insurance Company - Bob Souza Agency unless Escrow Holder has been otherwise instructed by Buyer in writing, prior to the close of escrow. At the close of escrow, Escrow Holder is hereby authorized and instructed to debit the account of the Buyer for the First Annual Premium of Fire Insurance as provided for herein.
- N) OPENING OF ESCROW:** Escrow shall be 'Open' when Escrow Holder is in receipt of these instructions executed by Buyer and Seller herein, Escrow Holder is in receipt of Buyer's 'Initial Deposit' and Buyer's 'Initial Deposit' has been 'Cleared'. Seller's Sales Representatives are not authorized to accept this offer. Receipt and deposit of Buyer's Funds shall not constitute an acceptance of this offer by Seller.
- O) EXISTING BLANKET MONETARY ENCUMBRANCE:** Buyer hereby acknowledges their awareness of the fact that it is possible that Seller's existing Institutional Holder of the Existing Blanket Monetary Encumbrance, if any, may require the concurrent closing of two or more Escrows for the sale of the lots in this project, as a condition to release the encumbrance. Seller may instruct Escrow Holder that no escrow may close within the project, including this

Escrow Instructions Continued On Page Number 11Seller's Initials ()Buyer's Initials () ()

Escrow Instructions Continued From Page Number 10**Escrow Officer: Ellen Bebo**

transaction, until that number of lots being sold by Seller is equal to the percentile that the lender requires to close simultaneously. Seller's unilateral instruction shall automatically extend the close of escrow on all escrows until the minimum closing requirements are met.

- P) BUYER'S EXPENSES:** Buyer shall pay, in cash, all costs of the following, including but not limited to: credit reports, loan fees, loan points, lender's title insurance charges, Buyer's customary escrow fees and charges, tax service fees, recordation fees for Grant Deed and any Deed(s) of Trust, Buyer's prorated portion of property taxes for the applicable tax year, **county and, if applicable, city documentary transfer tax**, and other closing costs of Buyer.
- Q) RECEIPT OF PROJECT DOCUMENTS:** Buyer acknowledges receipt of all of the following items concurrently with the execution hereof and shall have **THREE (3) Calendar Days** after the date hereof to notify Seller, in writing, of any particular item(s) for which Buyer disapprove(s):
- A copy the Preliminary Title Report;
 - Tract Map;
 - Current Budget;
 - The Declaration of Covenants, Conditions and Restrictions, covering the subject property;
 - 'Natural Hazard Disclosure Report' (covering the subject property); and
 - SB 800 Notice.

In the event that Buyer fails to notify Seller in writing within said THREE (3) Calendar Days after the Date hereof of any disapproval(s), Buyer hereby warrants and represents to Seller, Broker(s) and Escrow Holder that Buyer has approved and are completely satisfied with said items in their entirety.

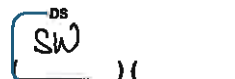
- R) CANCELLATION:** If the Agreement is terminated, (i) This 'Joint Purchase Agreement and Escrow Instructions' shall be automatically cancelled and the parties shall execute cancellation instructions requested by Escrow Holder; as a formality, for benefit of Escrow Holder. Upon Escrow Holder's receipt of these signed cancellation instructions Seller shall be completely released from their obligation to sell and Buyer shall be released from their obligation to buy, (ii) within ten (10) days after such termination Buyer shall deliver to Seller all documents delivered by Seller to Buyer hereunder outside of escrow, (iii) Buyer shall have no further right or interest in the Property, and (iv) Buyer's indemnity of Seller under Paragraph entitled "Possession" shall survive the termination.
- S) REAL ESTATE COMMISSION:** AT CLOSE OF ESCROW, ESCROW HOLDER IS HEREBY AUTHORIZED AND INSTRUCTED BY SELLER TO PAY THE COMMISSION AND/OR OTHER COMPENSATION TO **STRATEGIC REALTY**, AS PER THE LISTING/MARKETING AGREEMENT FROM SELLERS PROCEEDS. NO COMMISSION SHALL BE PAID TO BROKER AND SHALL NOT BE CONSIDERED EARNED AND PAYABLE UNLESS THE SALE OF THE PROPERTY IS CONSUMMATED. BROKER COMMISSION SHALL BE PAID ON THE NET SALES PRICE (TOTAL PURCHASE PRICE AS SET FORTH ON PAGE 1 HEREOF, AS ADJUSTED/REDUCED BY ANY SELLER CLOSING COSTS CREDIT TO BUYER).
- T) CLOSE OF ESCROW:** THE ACTUAL DATE OF THE CLOSE OF ESCROW SHALL TAKE PLACE (A) ON OR BEFORE **THIRTY (30) DAYS** AFTER THE DATE HEREOF OR (B) FIVE (5) DAYS AFTER ESCROW HOLDER HAS BEEN PROVIDED WITH WRITTEN PROOF THAT THE SUBJECT PROPERTY HAS BEEN APPROVED FOR OCCUPANCY BY THE APPROPRIATE CITY AND/OR COUNTY AGENCY IN WHICH THE PROPERTY IS LOCATED, WHICHEVER OCCURS LATER.
- U) BUYER'S EXTENSION:** IN CERTAIN CASES, THE SELLER WILL GRANT A FIFTEEN (15) DAY EXTENSION OF THE CLOSING DATE FOR AN EXTENSION FEE OF ONE-HALF (1/2) OF ONE (1) PERCENT OF THE PURCHASE PRICE OR \$1500.00, **WHICHEVER IS MORE**. THIS FEE WILL BE INCLUDED IN LIQUIDATED DAMAGES. REQUESTS FOR EXTENSIONS MUST BE MADE AT LEAST FIVE (5) DAYS PRIOR TO THE CLOSING DATE. ALL EXTENSION REQUESTS ARE EVALUATED BY THE SELLER ON A CASE-BY-CASE BASIS AND ARE SOLELY AT SELLER'S DISCRETION. IN THE EVENT THAT SELLER GRANTS ONE (1) OR MORE OF THESE EXTENSION(S), BUYER AND SELLER HEREBY AUTHORIZE AND INSTRUCT ESCROW HOLDER TO INCREASE THE TOTAL CONSIDERATION (PURCHASE PRICE) HEREIN BY THE AMOUNT OF SAID EXTENSION FEE(S) WITHOUT ANY ADDITIONAL INSTRUCTIONS AND/OR AUTHORIZATIONS FROM THE BUYER AND/OR SELLER.
- V) PREVIOUS TRANSACTION:** In the event that there was an escrow previously opened at Escrow of the West covering the sale of the within described property ('Previous Escrow'), the consummation of this escrow is subject to and contingent upon Seller's ability to successfully cancel said 'Previous Escrow', if any, prior to or concurrently with the close of this escrow. This contingency shall be deemed approved when Escrow Holder is in possession of a copy of signed Cancellation Instructions from Buyer and Seller in the 'Previous Escrow'.

Escrow Instructions Continued On Page Number 12

Seller's Initials

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Buyer's Initials



Escrow Instructions Continued From Page Number 11

Escrow Officer: Ellen Bebo

- W) HOME PROTECTION PLAN:** Escrow Holder is hereby authorized and instructed to obtain an "EXTENDED WARRANTY PLAN" for appliances for the Benefit of the Buyer from **2-10 Home Buyer's Warranty Corporation**, which will provide coverage to the Buyer from Close of Escrow until the First Year's Anniversary following the Close of Escrow [ONE (1) Year Policy]. At the Close of Escrow, Escrow Holder is authorized and instructed to debit the Seller in the event Buyer obtains Buyer's New Financing through Seller's Preferred Lender or debit the Buyer in the event that Buyer obtains Buyer's New Financing through a Lender other than Seller's Preferred Lender in the amount of **\$395** and forward said sum to **2-10 Home Buyer's Warranty Corporation**. This amount shall represent the first annual premium covering the **Extended Warranty Plan** for the benefit of Buyer. Buyer shall look directly to said policy for specific coverage and is not relying on any warranty and/or representation from the Seller, Broker(s) or Escrow Holder and in the event that Buyer should have any questions relative to said **Extended Warranty Plan**, Buyer shall contact **2-10 Home Buyer's Warranty Corporation** directly at **(800) 775-4736**. Buyer further releases and relieves Seller, Broker(s) and Escrow Holder from **any and all past, present and/or future responsibility and/or liability in connection herewith and shall look only to 2-10 Home Buyer's Warranty Corporation for any questions and/or problems** related to the Extended Warranty Plan. **Escrow Holder's only responsibility shall be to disburse the funds as called for herein.**
- X) BUYER'S DEPOSIT OF DOCUMENTS:** Upon acceptance hereof by Seller and upon demand by Seller and/or Escrow Holder, Buyer will furnish any information, execute all documents and perform any other acts necessary to consummate this sale in accordance with the terms hereof.
- Y) INTENT TO OCCUPY AND NON-ASSIGNMENT OF RIGHTS:** Buyer warrants that the purchase this property is for the intent of occupying the property as buyer's primary residence. This agreement and the escrow established pursuant hereto may not be assigned or transferred voluntarily or by operation by law by Buyer without written consent of Seller and any attempt to do so shall be void and of no effect. Escrow Holder is hereby instructed by Seller not to assist in any way in such assignment or transfer including without limitation, the consummation of so-called "double escrows". This agreement shall be binding upon the heirs, executors, administrators, successor and assigns of the Seller and of the Buyer and each of them, and as to the Buyer, the Agreement herein shall be joint and several if more than one Buyer.
- Z) BUYER'S PERFORMANCE:** At any time following opening of Escrow, this agreement can be unilaterally terminated by Seller upon notice to Buyer of the occurrence of any of the following:
1. Buyer defaults in any payment required hereunder or in the timely performance or otherwise.
 2. Buyer's failure to execute or deliver any escrow instructions and any other documents in accordance with this Agreement and/or any Lender's Loan Documents.
 3. If in the reasonable good faith judgment of Seller, Buyer has violated any representations or warranties contained herein, or any addendum of this Agreement, including, but not limited to Buyer's representation that Buyer has a bona fide intention to reside in the property as Buyer's principal place of residence.
 4. Neither this Agreement nor any of the Buyer's rights hereunder may be assigned by Buyer. Any such purported assignment shall be governed by **INTENT TO OCCUPY AND NON-ASSIGNMENT OF RIGHTS** above.
 5. If for any reason whatsoever, Buyer is unable to present Seller with written Confirmation from the Lender that Buyer has obtained an approved loan as provided for herein, Seller's obligation to sell the Property to Buyer shall be terminated.

In the event of any such default or breach by Buyer, it is agreed by Buyer and Seller and contrary to Escrow Holder's 'General Provisions' that Seller may unilaterally instruct the Escrow Holder to cancel this Escrow and, subject to the liquidated damages that Seller is entitled to retain, all funds deposited by Buyer, shall be returned to Buyer, less Escrow Holder's cancellation charges, if any.

In addition, in the event that Seller seeks to exercise this unilateral right, both Buyer and Seller hereby release, relieve and indemnify Escrow Holder from any risk of any monetary loss and/or legal fees and further release and relieve Escrow Holder from any and all past, present and/or future liability and/or responsibility for Escrow Holder's compliance with this instruction and/or the disbursement of any funds as provided herein.

AA) FEDERAL HOUSING ADMINISTRATION (FHA) ESCAPE CLAUSE: It is expressly agreed that notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the mortgagee has delivered to the purchaser a written statement issued by the Federal Housing Commissioner or a Direct

Escrow Instructions Continued On Page Number 13

Seller's Initials (*EB*)Buyer's Initials (*DS*) (*SW*)

Escrow Instructions Continued From Page Number 12

Escrow Officer: Ellen Bebo

Endorsement lender setting forth the appraised value of the property (excluding closing costs) of not less than the amount as set forth on Page 1 hereof which statement the mortgagee hereby agrees to deliver to the purchaser promptly after such appraised value statement is made available to the mortgagee. The purchaser shall, however, have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the property. The purchaser should satisfy himself/herself that the price and condition of the property are acceptable.

BB) ADDITIONAL DOCUMENTS: The foregoing terms, provisions, conditions and instructions, and those on Pages 2 through 38 hereof are approved and accepted in their entirety and concurred in by all parties. Seller will hand you necessary documents required to cause title to be shown as above, which Escrow Holder authorized to deliver when Buyer has caused funds to be delivered to Escrow Holder as set forth herein within the time as above provided. Seller shall pay the charges for evidence of title as called for, Seller's customary fees except those the Buyer agreed to pay, from Seller's proceeds. The items shall include bonds, assessments, taxes, and any liens of record, including prepayment penalties, if any, to show title as called for and required. **All parties signing this agreement hereby acknowledge a receipt of a copy of this agreement.**

CC) THE FOLLOWING ITEMS ARE MEMORANDUM AGREEMENTS BETWEEN THE BUYER AND SELLER, WITH WHICH ESCROW HOLDER IS SPECIFICALLY INSTRUCTED NOT TO BE CONCERNED, NOR SHALL ESCROW HOLDER HAVE ANY RESPONSIBILITY OR LIABILITY WHATSOEVER WITH REFERENCE TO THESE ITEMS:

- 1) **CAPTIONS:** The captions in this Agreement are for convenience of reference only and are not intended to be part of this Agreement.
- 2) **BINDING CONTRACT:** THIS IS MORE THAN A RECEIPT FOR MONEY. WHEN SIGNED BY BUYER AND SELLER, THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. NEITHER PARTY SHOULD SIGN UNTIL THE CONTRACT HAS BEEN THOROUGHLY READ AND UNTIL EACH PROVISION IS UNDERSTOOD.
- 3) **OTHER AGREEMENTS:** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN BUYER AND SELLER. ALL NEGOTIATIONS ARE MERGED INTO THIS AGREEMENT. THERE ARE NO ORAL OR OTHER WRITTEN AGREEMENTS OR INDUCEMENTS BETWEEN BUYER AND SELLER. THIS AGREEMENT SHALL NOT BE MODIFIED OR AMENDED EXCEPT BY AN INSTRUMENT IN WRITING SIGNED BY BUYER AND SELLER. NO ORAL PROMISES, REPRESENTATIONS (EXPRESSED OR IMPLIED), INDUCEMENTS, WARRANTIES OR AGREEMENTS MADE BY THE SELLER AND/OR BROKER SHALL BE DEEMED VALID OR BINDING UPON THE SELLER UNLESS EXPRESSLY INCLUDED IN THIS AGREEMENT. NO TERMITE EXAMINATION OR REPORT SHALL BE REQUIRED FROM SELLER. BUYER ACKNOWLEDGES THAT BUYER (OR THE AGENT OR REPRESENTATIVE OF THE BUYER) HAS EXAMINED THE SUBJECT PROPERTY IN ITS ENTIRETY AND FINDS THE SAME TO BE IN GOOD CONDITION AND REPAIR. BUYER REPRESENTS AND WARRANTS THAT BUYER IS RELYING SOLELY UPON BUYER'S OWN INDEPENDENT INVESTIGATION AND ANALYSIS OF THE SUBJECT PROPERTY IN ENTERING INTO THIS AGREEMENT. SELLER IS NOT IMPROVING THE SUBJECT PROPERTY SPECIFICALLY FOR THE BUYER, NOR TO THE PRECISE SPECIFICATIONS OR DESIGN OF ANY MODEL (OR APPURTENANCES, IF ANY) DISPLAYED TO OR VISITED BY BUYER, BUT SELLER IS IMPROVING THE RESIDENCE AS ONE UNIT OF THE PROJECT. ANY MODEL, APPURTENANCES AND FURNISHINGS SHOWN TO BUYER ARE DISPLAYED ONLY FOR ILLUSTRATIONS AND SHALL NOT BE DEEMED TO BE AN AGREEMENT OR COMMITMENT BY SELLER TO DELIVER THE RESIDENCE IN EXACT ACCORDANCE WITH SUCH MODEL. IT IS UNDERSTOOD AND AGREED THAT SELLER HAS NOT BUILT THE SUBJECT PROPERTY TO THE PRECISE SPECIFICATIONS OR DESIGNS OF ANY MODEL THEREOF OR THE SPECIFICATIONS OF ANY BUYER. NONE OF THE ITEMS, APPURTENANCES AND FURNISHINGS SHOWN IN ANY MODEL IS INCLUDED IN THE PURCHASE PRICE UNLESS SELLER AGREES IN WRITING TO DELIVER THE SAME AS PART OF THE PURCHASE PRICE, OR AS OPTIONAL ITEMS.
- 4) **DATABASE REGARDING REGISTERED SEX OFFENDERS:** Notice: Pursuant to Section 290.46 of the California Penal Code, information about specific 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. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residences and ZIP Code in which he or she resides.
- 5) **BUYER'S INSPECTION:** Prior to the execution of this **Joint Purchase Agreement and Escrow Instructions** Buyer represents that Buyer has conducted and hereby approves a physical inspection of the subject property and Buyer further represents that Buyer is relying only on their own physical inspection of the subject property. Buyer further

Escrow Instructions Continued On Page Number 14

Seller's Initials



Buyer's Initials



Escrow Instructions Continued From Page Number 13

Escrow Officer: Ellen Bebo

acknowledges that Buyer is aware of all zoning regulations, other governmental requirements, site and physical conditions, and other matters affecting the use, condition and ownership of the subject property.

- 6) **WALK THROUGH:** Within SEVEN (7) Days of opening escrow, Buyer and Seller shall conduct a preliminary walk-through of the Subject Property. Buyer shall provide Seller with a written list of Buyer's requested repairs, to be completed prior to close of escrow. Seller shall approve or disapprove such list in writing within SEVEN (7) Days of receipt of same. Should Buyer and Seller be unable to come to mutual agreement on said repair list, both parties shall execute escrow cancellation instructions, and full deposit shall be released from the obligation to purchase subject property, and Seller shall be released from the obligation to sell subject property to Buyer herein.

Final Walk Through – Not less than THREE (3) days before the close of escrow, Buyer shall have a final walk through, which shall **NOT BE A CONTINGENCY TO THE CLOSING OF THIS ESCROW**, but only to verify that all items approved by Seller on Buyer's initial walk through have been completed.

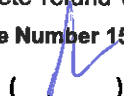
- 7) **INDEPENDENT VERIFICATION:** Buyer's deposit of final funds shall act as an independent verification from Buyer to Escrow Holder that the improvements have been satisfactorily completed.
- 8) **MATERIAL CHANGES:** Prior to close of escrow, Seller, in its sole and absolute discretion, may make material changes in (i) the legal management documents described herein, (ii) the overall development of the Project, (iii) the manner or content of any offering of residence in the Project or any phase of development thereof, or (iv) any aspect of the subject property or the entire project. In such case, Seller shall provide Buyer with written notice of such material change and Buyer's sole remedy at that time shall be to terminate this Agreement, request cancellation of escrow and receive a refund of all amounts deposited hereunder. Failure of Buyer to deliver to Seller written notice of termination within FIVE (5) days of receipt of the written notice of material change from Seller shall constitute a waiver of Buyer's right to terminate this Agreement and cancel escrow with respect to such change.

Notwithstanding anything contained herein to the contrary, including any general instructions hereto, if after submitting all documentation required pursuant to Paragraph Entitled 'Financing', Buyer does not secure loan commitment and approvals described herein, and deposit written verification of the unconditional commitment and approval into escrow within the time specified herein, Seller may, at its election, unilaterally terminate this Agreement and all funds in escrow shall be released to Buyer, provided, however, that if Buyer does not obtain loan approval because of Buyer's failure to sell Buyer's current residence or any other property owned by Buyer, such failure by Buyer shall be considered a default hereunder and Seller shall be entitled to terminate this Agreement, cancel escrow and proceed in accordance with Paragraph Entitled 'Liquidated Damages'.

In addition to other rights of Seller to terminate this Agreement, Seller can cancel escrow if Seller's ability to construct or deliver the Residence to Buyer is materially interfered with as a result of (i) the action of any foreign, federal, state or local governmental authority or utility, (ii) the availability or promptness of delivery of materials, labor, water, sewer or other utility services to the Property or Project, or (iii) changes in weather or Acts of God. In such event, Seller may unilaterally terminate this Agreement, cancel escrow, and upon returning to Buyer its full deposit hereunder, Seller thereafter shall be released from all obligations hereunder.

- 9) **POSSESSION:** Possession and occupancy shall be delivered to Buyer upon the close of escrow. Buyer's right to possession, use and occupancy of the Subject Property shall commence at the close of escrow. Prior to close of escrow, neither Buyer nor their agents shall place any signs or personal property on or about the subject property or the development or commence any improvements, alterations, modifications or changes to the subject property in any manner. Buyer shall not occupy Subject Property in any manner or form prior to close of escrow.
- 10) **WARRANTIES AND REPRESENTATIONS:** Buyer specifically acknowledges that no representations or warranties by Seller or Seller's broker or any agent, employee or representative of them or any other person have been made to or relied upon by Buyer in connection with the within transaction, and that there are and shall be no terms, conditions, representations, warranties or agreements in connection with the within transaction other than specifically stated herein.
- 11) **MULTIPLE LISTING SERVICE:** If Broker is a Participant of an Association/Board multiple listing service ("MLS"), the Broker is authorized to report the sale, its price, terms, and financing for the publication, dissemination, information, and use of the authorized Board members, MLS Participants and Subscribers, only with the (separate) express written consent of the Seller.
- 12) **BUYER'S FUNDS:** If, through no fault of Buyer, this escrow is not closed on the date set forth herein as the "closing date" (or some later date of closing mutually agreed upon by Buyer and Seller) or ONE (1) Year after the date hereof, then Buyer is entitled to a complete refund of all deposit monies, without deductions, such funds to be returned to

Escrow Instructions Continued On Page Number 15

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

Escrow Instructions Continued From Page Number 14**Escrow Officer: Ellen Bebo**

Buyer within FIFTEEN (15) Days after said "Closing date" (or some later date of closing mutually agreed upon by Buyer and Seller).

- 13) ATTORNEY'S FEES:** In any action, proceeding or arbitration between Buyer and Seller arising out of this agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.
- 14) VIEW:** Seller has made no representations or warranties that there is any "view" from the Property or that any existing view will not in the future be obstructed.
- 15) OPTIONAL ITEMS:** If Buyer has the ability to make color and optional item selections from the choice provided by Seller Buyer shall do so within FIVE (5) Calendar Days following written request for such selection by Seller or Seller's Agent. Buyer's selections shall be in writing and final. If Buyer fails to make such selections within the specified time, Seller shall have the unilateral right to make the selections and Buyer hereby accepts same.
- 16) COMPLETION OF CONSTRUCTION:** With the exception of delays caused by circumstances beyond the reasonable control of Seller, Seller shall complete the construction of the residence no later than ONE (1) YEAR from the date set forth as the closing date herein.
- 17) SELLER DISCLOSURES:** As a material inducement to Seller to sell the Property to Buyer, Buyer hereby agrees, understands and acknowledges as follows:
- A. **FUTURE AND ADJACENT DEVELOPMENT:** Seller is not obligated to construct any future common improvements within the Project or in any later phases or development of the project, if applicable. Seller has provided no oral and/or written representations, warranties or promises to Buyer respecting landscaping or improvements that may be constructed elsewhere within the Project or adjacent thereto. The depiction of buildings, facilities or improvements on any plan, model, topographic map, drawing or map does not constitute a representation, warranty or covenant by Seller that such buildings, facilities or improvements will be constructed or that natural or landscaped areas will remain unchanged or undeveloped.
 - B. **SCHOOL INFORMATION:** Seller has made no representations, warranties or assurances to Buyer that the property will be included within any particular school district. Buyer is responsible for determining the availability of schools and the same are subject to change by the applicable school district.
 - C. **CHANGES IN PRICE, SIZE AND DESIGN:** Seller has made no promises, representations or assurances to Buyer regarding the pricing, size, design, configuration and architectural style of any further residences or improvements constructed or to be constructed in the Project or in other phases of development or otherwise, and Buyer acknowledges that as market conditions or other facts change, such matters may be subject to change including, without limitation, increase and/or reduction in prices of other residences to be built or sold in the Project and/or sales incentives offered in connection therewith and changes in size, design or product type of homes to be built or sold in the Project.
 - D. **VIEW AND PRIVACY IMPAIRMENT:** Neither Seller, nor any of its authorized agents, representatives or employees has made any oral and/or written representations, warranties or promises concerning any view, present or future, that may be enjoyed from all or any portion of a residence or the Property. The view from the Property may change, be affected or obstructed by (i) construction or installation of improvements, structures, fences, walls and/or landscaping by Seller or other owners of Property within or outside the Project and/or (ii) the growth of trees, landscaping and/or vegetation within or outside the project. The Declaration does not contain any provisions intended to protect the view from any residence or any other portion of the project. Because of the nature of the terrain and slope and because neighboring homes have view, differing elevations, orientations to the lot and otherwise, architectural design and/or overall layout from the immediately adjoining or in a close proximity and may or may not have the ability to observe the interior and/or exterior of the subject property, neither Seller, nor any of its authorized agents warranties or promises complete privacy on any part, lot or home. Buyer shall satisfy themselves as to these 'View & Privacy Items' and Seller and/or Broker shall have no liability and/or responsibility in connection therewith.
 - E. **TAX AND INSURANCE ESTIMATES:** Any sum estimated for taxes or insurance affecting the property may increase or decrease depending upon fluctuation of real property taxes or insurance rates. Buyer is strongly encouraged to verify these amounts with their own independent investigations including but not limited to verification with their own accountant and/or insurance agent.
- 18) SQUARE FOOTAGE:** Square footages are approximations and have not been and will not be independently verified by Broker and/or Seller. Should exact square footage be required by Buyer, Broker and Seller recommend Buyer

Escrow Instructions Continued On Page Number 16

Seller's Initials

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Buyer's Initials


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Escrow Instructions Continued From Page Number 15**Escrow Officer: Ellen Bebo**

conduct Buyer's own investigation with appropriate independent professionals. Buyer shall indemnify and hold Seller free of any liens regarding such independent professionals on subject property.

- 19) LAND USE/NEIGHBORHOOD CONDITIONS:** Buyer is aware that the subject property may be affected by future development of property in the neighborhood or surrounding areas, including without limitation, view, noise, traffic, local services and safety. Buyer agrees that Seller and Broker make no representation as to the preservation of existing/future views, and that present/future views may be affected by future development or construction/alteration of neighboring properties. Buyer further acknowledges awareness of existing nearby commercial properties/structures and the inherent traffic, noise and other situations relating to same. Buyer understands this project and other surrounding projects are currently and may be under future development. As a result of this fact, there may be noise, dirt, construction trucks, parking, construction workers, outhouses, and deliveries until all projects in the area are completed, all of which may or may not be under Seller's control.
- 20) WAIVER OF LIS PENDENS:** As a material part of the consideration to be received by Seller under this Agreement, Buyer waives all rights to file and maintain an action against Seller for specific performance and to record a Lis Pendens against the Property is not unique in that Buyer can be adequately compensated solely by receiving a refund of Buyer's deposit if Seller breaches this agreement.
- 21) MANUFACTURED PRODUCTS:** Buyer acknowledges and understands that:
- A. There are certain appliances and other equipment included in or exclusively benefiting the Subject Property which are manufactured by Third Parties (e.g. the dishwasher, heating, ventilation and air conditioning equipment, etc.);
 - B. The only warranties for such manufactures products are those provided by the manufacturer; and
 - C. Buyer shall be responsible for activating specific manufacturer's warranties, including, without limitation, by completing and submitting to the applicable manufacturers any registration cards included with the manufacturer's materials.
- 22) WATER RIGHTS:** If this property is adjacent to or contiguous to any water surface, the Buyer acknowledges and understands that Seller reserves any and all water, water rights and privileges, riparian rights and water easements and points belonging or any way appurtenant to the described real property.
- 23) EXISTING LANDSCAPING/OAK TREE(S):** If any oak tree or other species of tree is situated on the property, Buyer acknowledges that Seller makes no representation or warranty, express or implied, with respect to the condition of any such tree, and Buyer acknowledges that no such representation or warranty has been made or given. Buyer acknowledges that Buyer will make or rely upon his own tests and investigation to ascertain the condition of any such oak tree, or any other species of tree and the required care thereof, and the Seller is not responsible for the same. Buyer, his successors and assigns (if any and if approved by Seller), shall hold Seller, its affiliates, agents and employees, or their successors and assigns, entirely free and harmless from any and all damage, liability or costs of any kind to any person (including Buyer) or property (including Seller's and Buyer's); and Buyer, for himself, his successors and assigns, hereby waives any and all claims against Seller, its affiliates, agents and employees, which may or could affect the price as a result of the condition, maintenance or loss of any such oak tree, or any other species of tree.
- 24) ZONING DISCLOSURE:** Buyer is aware that the Seller and his agents and any representatives have no control over the zoning or development of the surrounding areas and makes no guarantees or representations as to its development.
- 25) PERIMETER EASEMENT AND LOT FENCING:** The placement, set-backs, height, length, width and materials pertaining to any and all fencing, including, but not limited to wood, block wall, slump stone, wrought iron and chain link fencing which may appear on the tract maps and plans are proposed in advance of construction and completion of the new home. The above-mentioned proposals will be finally determined by the appropriate governing agencies. Final approvals and inspections are made by the Planning Department, Building and Safety, Public Works, and Police and Fire emergency services. It is incumbent upon the builder to comply with the final decisions of the governing agencies as prescribed by ordinances. No changes will be made by the Builder which conflict with the aforementioned regulations. Changes made as a result of those requirements will be made without prior notice.
- 26) MODEL:** It is understood and agreed that Seller is not building the subject property specifically for the Buyer, nor to the precise specifications or design of any model or rendering displayed to or visited by Buyer. Buyer acknowledges that models, floor plans, plot maps, measurements and/or dimensions may be used by Seller or Seller's employees, Sales Agents or Sales Agent's employee (s) or representative (s) in the course of offering said property for sale, and

Escrow Instructions Continued On Page Number 17Seller's Initials Buyer's Initials

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Escrow Instructions Continued From Page Number 16**Escrow Officer: Ellen Bebo**

of Buyer agreeing to purchase said property, it is not to be construed as exact and may vary either plus or minus. Seller reserves and shall have the right to make any changes, modifications, deletions, additions, changes in specification or substitution Seller deems necessary or desirable at any time without notice to Buyer in the construction, materials, fixtures, hardware, method of construction or other integral or in any portion or feature of the property. Buyer understands that any model, fixtures, or furnishings displayed to or visited by the Buyer are for illustration purposes only and shall not be deemed a representation, agreement or commitment by Seller to deliver the property or any portion or feature thereof in accordance with any such model, fixtures or furnishings. Seller has made no representations to Buyer as to the square footage of the Property or residence located thereon. Square footages that may be quoted in brochures vary according to many actors. They are quoted as a convenience to a potential Buyer and are not meant to be exact. Sales prices are not determined based on square footages. Buyer also understands and acknowledges that certain promotional materials used by Seller (including artist's rendering of the Project and certain exterior design features) may not depict exactly the manner in which the Property will be constructed.

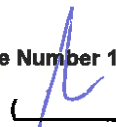
27) CONSTRUCTION CHANGES: It is understood between Buyer and Seller that Seller WILL NOT accept any construction changes for approval later than TEN (10) Calendar Days after the date hereof. Buyer to deposit funds into escrow as determined by Seller, for all construction changes in advance of the start of stated construction changes. Buyer understands that there will be NO CONSTRUCTION CHANGES OTHER THAN THOSE SPECIFICALLY OFFERED ON THE CONSTRUCTION OPTION SHEET. If for any reason Buyer does not proceed to close of escrow on the subject property, Buyer agrees that these amounts will be retained by the Seller as consideration for the construction changes ordered by the Buyer.

28) PLAN MODIFICATIONS: Seller hereby reserves the right, without prior written notice to Buyer, to modify or alter any aspect of the proposed plans and specifications for completion of the residence purchased under the terms of this Agreement including, without limitation, the location and types of kitchen appliances, household fixtures, electrical outlets and switches, hardware, wall surfaces, paint and/or change such improvements, provided, said modifications or alterations shall not result in a product of lesser quality or value than agreed to herein. Buyer expressly agrees that Seller shall have the right to make such modifications and alterations without adjustment in purchase price.

29) COMPLETION: It is agreed by the Buyer that the various steps of construction shall be deemed to have been satisfactorily and fully performed when approved by the appropriate city or county department and shall be deemed to be completed and in full compliance with the terms of the Agreement when a Notice of Completion has been filed, and when the appropriate city or county department has issued a certificate (or the like document) permitting occupancy of the property. Seller agrees that it will diligently commence and pursue to complete the construction of the residence on the property and deliver same to Buyer at close of escrow. Depending upon the nature of the Residence, the number, type and design of improvements or additions thereto, Seller will require anywhere from SIX (6) months to ONE (1) year to construct the residence and, accordingly, the Residence shall be substantially completed and shall have been approved for occupancy by the appropriate government agency between SIX (6) months and ONE (1) year from the date hereof (if residence is not already completed). Should Seller be delayed in completing the residence by reason of Buyer's acts or omissions or any causes beyond Seller's control, including but not limited to governmental action, acts of god, stormy weather, strikes, boycotts, unavailability of materials, labor shortages or delays in receiving materials, the time of such delay shall be added to the time for completion, herein, provided, however, that in the event, though no fault of Buyer, this escrow has not closed within TWELVE (12) months from the date hereof, Buyer shall have the right to cancel this escrow and within FIFTEEN (15) days Seller shall order all money remitted, to be refunded to Buyer. Buyer is purchasing a completed residence.

Seller is not acting as a contractor for Buyer in the construction of said residence. Buyer shall have no right, title or interest in nor any right to possession of nor any right of entry on the subject property until actual close of escrow. Buyer understands and agrees there shall be no liability of any kind whatsoever on the part of the Seller, Seller's employees, Lending institution, Lender's employees, Sales Agents or Sales Agent's employees or representatives as a result of any damages that may be caused by the aforementioned delays. Seller, its agents and representatives, make absolutely no other representation or promises, oral or written, with respect to the construction of said residence except as set forth above. If the Buyer is a 'Non-Defaulting Buyer', then all funds shall be returned per Reg. 2791.

30) OCCUPANCY: It is agreed that occupancy of the subject property by Buyer may not be had under this Agreement prior to recordation of the deed to the Buyer and the recordation of the deeds of trust or mortgage procuring the loan or loans to be made on the subject property. Buyer represents to Seller that Buyer has a bona fide intention of residing in the property as Buyer's principal place of residence.

Escrow Instructions Continued On Page Number 18Seller's Initials Buyer's Initials 

Escrow Instructions Continued From Page Number 17

Escrow Officer: Ellen Bebo

- 31) PROXIMITY WARNING:** Seller makes no representations regarding the community or location of the property. Buyer acknowledges that he is responsible to educate himself as to the proximity of schools, hospitals, factories, heavily traveled streets, air corridors, off-site power sources, parks and other sources of significant noise or pollution adjacent to or in the vicinity of the property and the location of other desirable or undesirable facilities, including but not limited to the seismic activity in the area. Seller makes no representations about the relative safety of the community or vicinity in which subject property is located. Areas near subject property may be zoned, among other things, for residential use, commercial use, industrial use or some combination thereof. It is the duty of Buyer to evaluate the zoning and past use of nearby property to determine whether past, present, or future uses of nearby property may interfere with Buyer's intended use of subject property. Buyer agrees to make his own investigation and signifies his agreement that Seller need not locate or identify for Buyer known or suspected hazards, environmental or otherwise, which do not arise on the subject property and which do not physically affect the subject property at the time of purchase. Buyer agrees further that Seller does not have actual knowledge at the time Seller executes the Agreement, nor does Buyer rely on Seller except as Seller or its agents have made written representations.
- 32) NATURAL WOOD DISCLAIMER:** Natural wood products may be used in the manufacturing of the cabinets, entry doors, stair rails, windows, floors and exteriors. Wood, by nature, is not uniform in regards to color or grain and may have significant color variations. Every piece of wood will accept stains differently depending on its color, porosity and graining. Therefore, Seller makes no representation that the wood used in or on the home will be the same as the model homes or any samples, or that the coloring on subject lot will not vary. Certain wood floors may sliver. Exterior finished wood surfaces, such as siding, doors, railings and eaves, will require maintenance and repainting. The frequency and extent of the maintenance required of Buyer is dependent upon exposure to direct sun, moisture, smog or particulates in the air. Seller has painted the exterior wood surfaces with materials as is customary in the industry and makes no representations other than Seller's standard limited warranty. Buyer further acknowledges that wood products are subject to color variations as they age and/or depending on the exposure to sunlight.
- 33) STUCCO DISCLOSURE:** Concrete, plaster, drywall, masonry and other rigid materials are subject to cracking due to normal shrinkage, settlement, expansion and contraction. Seller is only responsible to repair such materials in the event that such cracks exceed industry standards.
- 34) PAINT DISCLAIMER:** Paints and stains will be installed pursuant to the manufacturer's instructions. Seller makes no warranty beyond the manufacturer's standard limited warranty for such materials.
- 35) SOUND TRANSMISSION:** Seller does not in any manner guarantee or warrant that the property will be soundproof or insulated to any particular degree from noise or sound emanating from within or without the Subject Property, including noise or sound emanating from other units, heating, ventilation air conditioning systems, plumbing, stereo systems, 'Surround Sound Systems', Garages, and any and all Flooring, including, but not limited to: Tile, Hardwood and/or any type of Stone.
- 36) FUTURE VALUE:** Seller makes no representations or warranty, express or implied, as to the price or value of any of the dwellings. It is understood, acknowledged and agreed that: the dwelling being purchased may appreciate or depreciate in value and price; other dwellings in the project may be sold for a higher or lower prices than that paid for the dwelling being purchased by Buyer; incentives, promotions or other concessions not offered to Buyer may be offered to others; and Seller reserves the right, in its sole discretion, and without notice to the Buyer, to increase or decrease the price of dwellings in the project at any time. Buyer shall have no rights to participate in incentives, promotions or concessions offered to others, if any, nor shall they have the right to modify or rescind the terms of this agreement or their purchase of the subject property by reason of same.
- 37) MOLD:** Mold is a type of fungus. It occurs naturally in the environment and it is necessary for the natural decomposition of plants and other organic material. It spreads by means of microscopic spores born on the wind, and is found everywhere life can be supported. Residential home construction is not, and cannot be, designed to exclude mold spores. If the growing conditions are right, mold can grow in the residence. Most homeowners are familiar with mold growth in the form of bread mold, and mold that may grow on bathroom tile.

In order to grow, mold requires a food source. This might be supplied by items found in the home, such as fabric, carpet or even wallpaper, or by building materials, such as drywall, wood and insulation, to name a few. Also, mold growth requires temperate climate. The best growth occurs at temperatures between 40 Degrees and 100 Degrees Fahrenheit. Finally, mold growth requires moisture. Moisture is the only mold growth factor that can be controlled in a residential setting. By minimizing moisture, a homeowner can reduce or eliminate mold growth.

Moisture in the home can have many causes. Spills, leaks, overflows, condensation, and high humidity are common sources of home moisture. Good housekeeping and home maintenance practices are essential in the effort to prevent

Escrow Instructions Continued On Page Number 19

Seller's Initials ()

Buyer's Initials ()

Escrow Instructions Continued From Page Number 18

Escrow Officer: Ellen Bebo

or eliminate mold growth. If moisture is allowed to remain on the growth medium, mold can develop within 24 to 48 hours.

All mold is not necessarily harmful, but certain strains of mold have been shown to have adverse health effects in susceptible persons. The most common effects are allergic reactions, including skin irritations, watery eyes, runny nose, coughing, sneezing, congestion, sore throat and headache. Individuals with suppressed immune systems may risk infections. Some experts contend that mold causes serious symptoms and diseases which may even be life threatening. However, experts disagree about the level of mold exposure that may cause health problems, and about the exact nature and extent of health problems that may be caused by mold. The center for Disease Control states that a causal link between the presence of toxic mold and serious health conditions has not been proven.

Whether or not Buyer, as a homeowner, experiences mold growth depends largely on how one manages and maintains the home. The Seller's responsibility as a homeowner must be limited to things one can control. Buyer will need to take actions after the Close of Escrow to prevent conditions which cause the growth of mold or mildew. This is part of the responsibility of home ownership. Buyer agrees to assume responsibility for following the recommendations in the Mold Information Sheet. Buyer further acknowledges that if there is any water damage or water intrusion to Buyer's residence, Buyer will take immediate action to prevent conditions which cause mold or mildew to develop.

Buyer acknowledges and agrees that Seller will not be liable for any actual, special, incidental or consequential damages based on any legal theory whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory with respect to the presence and/or existence of molds, mildew and/or microscopic spores unless caused by the sole negligence or willful misconduct of Seller. Buyer, on behalf of itself and its family members, tenants, invitees and licensees, hereby releases Seller and Seller's officers, directors, partners, members, successors and assigns from and against any and all claims, actions, damages, causes of actions, liabilities and expenses (including without limitation, attorneys fees and costs including enforcing this indemnity) for property damage, injury or death resulting from the exposure to microscopic spores, mold and/or mildew from any loss of resale value due to the presence and/or existence of mold, mildew and/or microscopic spores, provided, however, that in no event is Buyer releasing Seller as a result of the presence and/or existence of mold, mildew and/or microscopic spores if caused by the sole negligence or willful misconduct of Seller.

38) SMOKE DETECTORS: California Law requires that every single-family dwelling housing unit sold on or after January 1, 1986, must have an operable smoke detector, approved and listed by State Fire Marshall, installed in accordance with the State Fire Marshall's regulations. (Health and Safety Code #13113.8.) Smoke detectors must be centrally located outside each sleeping area and in each bedroom. Smoke detectors must be hard wired with a battery backup. **For more detailed information about smoke detector requirements please contact the local building department.**

39) WATER HEATER BRACING: California law requires that all new, replacement, and existing water heaters be braced, anchored, or strapped to resist falling or horizontal displacement due to earthquake motion. (Health and Safety Code #19211). Seller represents that the Property is in compliance, at the time of Close of Escrow, with BOTH California Health and Safety Codes # 13113.8 and # 19211.

40) ALTERATIONS PRIOR TO CLOSING: Until the Close of Escrow, all portions of the Property and materials located on the Property are the property of the Seller or persons other than the Buyer. Buyer has no right to enter the Property without the Seller's prior written consent and under Seller's supervision. Buyer has no right to make any additions or modifications to the Property or any part thereof or to utilize in any way such materials located upon the Property without Seller's specific written permission and Seller supervision, which permission may be withheld at Seller's sole and absolute discretion. Seller's agents, contractors and their employees are specifically not authorized to grant such permission.

If any such changes are made by Buyer at Buyer's request without such written permission of Seller, Buyer agrees that the following should apply:

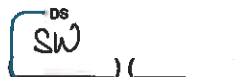
- A. Seller may, at its option, elect not to warrant such changes or the entire system altered by such changes such as the electrical system, plumbing system, etc.
- B. Seller may, at its sole option without notice to Buyer, remove any or all of any additions to the Property made by or at the request of Buyer or may reconstruct all or any portion of the residence which has been changed as a result of any modifications made by or at the request of Buyer, it being acknowledged by Buyer that until the Close of Escrow, the residence and all parts thereof and additions thereto, no matter by whom made, are the

Escrow Instructions Continued On Page Number 20

Seller's Initials



Buyer's Initials



Escrow Instructions Continued From Page Number 19

Escrow Officer: Ellen Bebo

property of Seller. All costs incurred by Seller to remove any additions made by Buyer shall be charged back to Buyer plus a 20% management fee.

- C. With respect to any modifications or additions to the residence made by or at the request of Buyer which are wither known or not known to Seller, but which are allowed by Seller to remain, Buyer hereby waives any claim against Seller, its agents, employees, members, independent contractors, arising as a result of such modifications or additions and agrees to indemnify and save harmless Seller, its agents, employees, members, and independent contractors, from and against all liability, loss, claims, or damages arising as a result of such modifications or additions, whether or not Seller, or any of its agents, employees, members, or independent contractors may have been negligent in connection with such modifications or additions.

41) **EQUAL HOUSING OPPORTUNITIES:** This property is sold in compliance with federal, state and local anti-discrimination laws.

42) **CONSTRUCTION DEFECT CLAIMS RESOLUTION PROCEDURE:**

- A. NOTICE OF CONSTRUCTION CLAIMS STATUTE. California Civil Code Section 895 et seq., as hereafter amended ("Construction Claims Statute"), delineates standards for how various components of the Property should be constructed and function, limits the time frames for bringing various claims against Seller to anywhere from one year to ten years (as listed in the Construction Claims Statute) from the Close of Escrow for the Property, imposes an obligation on Buyer to follow the Seller's maintenance recommendations and schedules, or other applicable maintenance guidelines, and establishes a non-adversarial claims resolution procedure that must be followed by Buyer before Buyer can initiate an adversarial claim and proceed to alternate dispute resolution as described in the Paragraph Entitled **ALTERNATIVE DISPUTE RESOLUTION** herein. A Copy of the Construction Claims has been given directly from Seller to Buyer. BY INITIALING BELOW, BUYER ACKNOWLEDGES THAT SELLER HAS PROVIDED BUYER WITH A COPY OF THE CONSTRUCTION CLAIMS STATUTE AND THAT SELLER HAS ADVISED BUYER THAT THE CONSTRUCTION CLAIMS STATUTE AFFECTS BUYER'S LEGAL RIGHTS. BUYER IS ADVISED TO READ THE STATUTE CAREFULLY AND SEEK LEGAL ADVICE IF BUYER HAS ANY QUESTIONS REGARDING ITS AFFECT ON BUYER'S LEGAL RIGHTS.

Seller's Initials (AL) Buyer's Initials (SW) ()

- B. ELECTION TO USE SELLER'S NON-ADVERSARIAL CONTRACTUAL PROCEDURES FOR HANDLING CONSTRUCTION CLAIMS. The Construction Claims Statute permits Seller to elect to use alternate contractual non-adversarial claims handling procedures for the resolution of construction defect claims in lieu of the statutory procedures contained in Sections 910 through 938 of the Construction Claims Statute. By initialing below, Buyer acknowledges that Seller has elected to use the non-adversarial process described in the Paragraph Entitled **NOTICE AND OPPORTUNITY TO CURE CLAIMED DEFECTS** contained herein in lieu of the non-adversarial process set forth in the Construction Claims Statute. Buyer also acknowledges that Buyer is aware that a copy of Seller's non-adversarial claims procedures contained in said Paragraph Entitled **NOTICE AND OPPORTUNITY TO CURE CLAIMED DEFECTS** will be recorded on the title to the Property to impart notice upon and bind Buyer's successors in interest to said claims procedures.

Seller's Initials (AL) Buyer's Initials (SW) ()

- C. NOTICE AND OPPORTUNITY TO CURE CLAIMED DEFECTS. Prior to the commencement of any legal proceeding by Buyer against Seller based upon a claim for defects in the design or construction of the Property, or any improvements thereon, Buyer must first comply with the provisions of this Paragraph. If at any time during the TEN (10) years after the Close of Escrow, as such period may be extended by any applicable tolling statute or provision, or any shorter period as provided by applicable law, Buyer, or Buyer's successors or assigns (Collectively, "Owner") believes Seller has violated any of the standards set forth in the Construction Claims Statute ("Claimed Defect"), which such Owner feels may be the responsibility of Seller, such owner shall promptly notify Seller in writing at Seller's address for service of process registered with the California Secretary of State, which is currently set forth in Page 1 herein. Such notice shall be deemed a notice of intention to commence a legal proceeding and shall include: (a) a detailed description of the Claimed Defect, (b) the date upon which the Claimed Defect was first discovered, and (c) dates and times when Owner or Owner's agent will be available during ordinary business hours, for service calls or inspections by Seller. Seller shall, in its sole discretion, be entitled to inspect the property regarding the reported Claimed Defect and, within its sole discretion, shall be entitled to cure such Claimed Defect. Nothing contained in this Paragraph shall obligate Seller to perform any such inspection or repair, nor shall this Paragraph be deemed to increase Seller's legal obligations to Owner. Owner's written notice delivered to Seller shall be a condition precedent to Owner's right to institute any legal

Escrow Instructions Continued On Page Number 21

Seller's Initials (AL) Buyer's Initials (SW) ()

Escrow Instructions Continued From Page Number 20

Escrow Officer: Ellen Bebo

proceeding and to proceed to alternate dispute resolution as set forth in the Paragraph Entitled **ALTERNATE DISPUTE RESOLUTION** herein, and Owner shall not pursue any other remedies available to it, at law or otherwise, including the initiation of any legal proceeding or action, until Seller has reasonable opportunity to inspect and cure the Claimed Defect. During the term of any written Limited Warranty provided to the original Owner of the Property by Seller, any conflict between the provisions of this Paragraph and the Limited Warranty shall be resolved in favor of the Limited Warranty. Seller shall not be liable for any general, special or consequential damage, cost, diminution in value or other loss which Owner may suffer as a result of any claimed Defect in the Property, which might have been avoided had Owner given the Seller the timely notice and opportunity to cure as described herein. Except as otherwise provided in the written Limited Warranty, if any, provided to owner, nothing contained herein shall establish any contractual duty or obligation on the part of the Seller to repair, replace or cure any Claimed Defect. If Owner sells or otherwise transfers ownership of the property to any other person during the effective period of this Paragraph, Owner covenants and agrees to give such person written notice of these procedures by personal delivery. Owner's continuing obligation under this covenant shall be binding upon Owner and Owner's successors and assigns and shall survive Close of Escrow.

D. **RECEIPT OF PURCHASE DOCUMENTS.** Buyer will be provided with certain documents through Escrow in conjunction with the purchase of the Property, including maintenance recommendations for manufactured products or appliances included with the Property, claim forms, and other documentation relating to the Construction Claims Statute. Buyer and Buyer's successors in interest, are required by the Construction Claims Statute to retain these documents and provide copies of the documents to such Buyer's successors in interest upon the sale or transfer of their Property.

E. **OBLIGATION TO FOLLOW MAINTENANCE RECOMMENDATIONS.** All owners are obligated by Section 907 of the Construction Claims Statute to follow Seller's maintenance recommendations and schedules, including the maintenance recommendations and schedules for manufactured products and appliances provided with the property, as well as all commonly accepted maintenance practices (collectively, "Maintenance Recommendations"). Per Section 945.5 of the Construction Claims Statute, failure to follow the Maintenance Recommendations may reduce or preclude Owner's right to recover damages relating to such Owner's Property, which could have been prevented or mitigated had the Maintenance Recommendations been followed.

43) ALTERNATE DISPUTE RESOLUTION:

A. **JUDICIAL REFERENCE.** If, either before or after the Close of Escrow, any claims, disputes or controversies (other than in the Paragraph Entitled 'Liquidated Damages-Arbitration') arise between the parties with respect to this Purchase Agreement or the Property, including, without limitation, any claims based upon alleged latent or patent construction defects, and any party commences a legal proceeding based upon such claims, all such matters shall be determined by judicial reference provided for in this Paragraph. If either party to this Purchase Agreement commences a legal proceeding for a dispute arising under this Purchase Agreement, or relating to the property, or the conditions, design or construction of any portion of the Property, all the issues in such action, whether of fact or law, shall be resolved by judicial reference pursuant to the provisions of California Code of Civil Procedure Sections 638 through 645.1. Buyer and Seller should cooperate with good faith to ensure that all necessary and appropriate parties are included in the judicial referenced proceeding. In the event a litigation is filed based on any such dispute, the following shall apply:

1. The proceeding shall be brought and held in the County in which the Project is located, unless the parties agree to an alternative venue.
2. The parties shall use the procedures adopted by JAMS for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties).
3. The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters.
4. The parties to the litigation shall agree upon a single referee who shall have the power to try any and all of the issues raised, whether of fact or of law, which may be pertinent to the matters in dispute, and to issue a statement of decision thereon to the court. Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction in accordance with California Code of Civil Procedure Sections 638 and 640.
5. The referee shall be authorized to provide all remedies available in law or equity appropriate under the circumstances of the controversy

Escrow Instructions Continued On Page Number 22

Seller's Initials ()

Buyer's Initials ()

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Escrow Instructions Continued From Page Number 21

Escrow Officer: Ellen Bebo

6. The referee may require one or more pre-hearing conferences.
7. The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.
8. The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.
9. The referee shall have the authority to rule on all post hearing motions in the same manner as a trial judge.
10. The parties shall promptly and diligently cooperate with each other and the referee and perform such acts, as may be necessary for an expeditious resolution of the dispute.
11. Except as otherwise agreed by the parties or as required by applicable law, the Owner shall not be required to pay any fee of the judicial reference proceeding except to the extent of the cost that would be imposed upon the Owner if the dispute has been resolved as a dispute in court. The referee may not award against the Owner any expenses in excess of those that would be recoverable as costs if the dispute had been litigated to final judgment in court. Each party to the judicial reference proceeding shall bear its own attorney fees and costs in connection with such proceeding.
12. The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is not clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. The provision shall in no way be construed to limit any valid cause of action that may be brought by any of the parties. Declarant and Owners, by accepting a deed within described Real property within the Project, acknowledge and accept that they are waiving their right to a jury trial.

B. **BINDING ARBITRATION OF DISPUTES.** If for any reason the judicial reference procedures referenced above (a) are legally unavailable at the time a dispute would otherwise be referred to judicial reference, then such dispute shall be submitted to binding arbitration. Any dispute submitted to binding arbitration shall be administered by the AAA in accordance with the AAA's Construction Industry Arbitration Rules in effect on the date of the submission. If such entity is not in existence, then the dispute shall be submitted to JAMS, and administered in accordance with either the Streamlined Arbitration Rules and Procedures, or (if applicable) the Comprehensive Arbitration Rules of JAMS.

C. **FEDERAL ARBITRATION ACT.** The binding arbitration procedures contained herein are implemented in accordance with the philosophy and intent of the Federal Arbitration Act (9 U. S. C. Section 1 et seq.) ("FAA"), which were designed to encourage the use of alternative methods of dispute resolution and avoid costly and potentially lengthy traditional court proceedings. The binding arbitration procedures in said Paragraph are to be interpreted and enforced as authorized by the FAA. Parties interpreting the "Binding Arbitration of Disputes" shall follow the federal court rulings, which provide among other things that: (1) the FAA is a congressional declaration of liberal federal policy favoring alternative dispute resolution notwithstanding substantive or procedural state policies or laws to the contrary, (2) alternate dispute resolution agreements are to be rigorously enforced by state courts; and (3) the scope of the issues subject to alternate dispute resolution are to be interpreted in favor of alternate dispute resolution.

44) LIQUIDATED DAMAGES/ARBITRATION: IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY BECAUSE OF A DEFAULT BY BUYER, SELLER MAY PURSUE ANY REMEDY IN LAW OR EQUITY THAT IT MAY HAVE AGAINST BUYER ON ACCOUNT OF THE DEFAULT; PROVIDED, HOWEVER, THAT, BY PLACING THEIR INITIALS HERE

Seller's Initials (*LS*) Buyer's Initials (*DS SW*) ()

IF INITIALED ABOVE BY ALL PARTIES, BUYER AND SELLER AGREE THAT:

- A. **THE AMOUNT EQUAL TO BUYER'S PURCHASE MONEY DEPOSIT SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO SELLER IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY BECAUSE OF A DEFAULT BY BUYER. THE VALIDITY AND REASONABLENESS OF THE AMOUNT OF LIQUIDATED DAMAGES SHALL BE DETERMINED IN ACCORDANCE WITH CALIFORNIA CIVIL CODE SECTIONS 1675 THROUGH 1678.**
- B. **THE PAYMENT OF SUCH LIQUIDATED DAMAGES TO SELLER SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF SELLER ON ACCOUNT OF ANY DEFAULT BY BUYER.**
- C. **LIQUIDATED DAMAGES SHALL BE PAYABLE TO SELLER OUT OF BUYER'S PURCHASE MONEY DEPOSIT ACCORDING TO THE FOLLOWING PROCEDURES:**

Escrow Instructions Continued On Page Number 23

Seller's Initials (*LS*) Buyer's Initials (*DS SW*) ()

Escrow Instructions Continued From Page Number 22

Escrow Officer: Ellen Bebo

1. THE SELLER SHALL GIVE WRITTEN NOTICE ("SELLER'S NOTICE AND DEMAND"), IN THE MANNER PRESCRIBED BY SECTION 116.640 OF THE CODE OF CIVIL PROCEDURE FOR SERVICE IN A SMALL CLAIMS ACTION, TO ESCROW HOLDER AND TO BUYER, THAT BUYER IS IN DEFAULT UNDER THIS AGREEMENT AND THAT SELLER IS DEMANDING THAT ESCROW HOLDER REMIT THE PURCHASE MONEY DEPOSIT TO SELLER AS LIQUIDATED DAMAGES UNLESS, WITHIN TWENTY (20) DAYS BUYER GIVES ESCROW HOLDER BUYER'S WRITTEN OBJECTION TO DISBURSEMENT OF THE PURCHASE MONEY AS LIQUIDATED DAMAGES ("BUYER'S OBJECTION"). BUYER'S OBJECTION MUST ALSO AFFIRMATIVELY STATE THAT BUYER IS READY, WILLING AND ABLE TO CLOSE ESCROW AS PROVIDED FOR IN THIS AGREEMENT. BUYER'S FAILURE TO SO SPECIFICALLY STATE THAT THEY ARE PREPARED TO PROCEED WITH THE CLOSE OF ESCROW FOR THE PURCHASE OF THE PROPERTY WILL IMMEDIATELY TERMINATE BUYER'S RIGHT TO PURCHASE THE PROPERTY AND ANY SUCH RIGHTS SHALL THEREUPON BECOME NULL AND VOID. SELLER SHALL, IMMEDIATELY UPON GIVING THE SELLER'S NOTICE AND DEMAND, DELIVER TO ESCROW HOLDER ALL PURCHASE MONEY FUNDS OF BUYER HELD BY SELLER OUTSIDE OF ESCROW, IF ANY.
2. BUYER SHALL HAVE A PERIOD OF TWENTY (20) DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND IN WHICH TO GIVE ESCROW HOLDER BUYER'S OBJECTION.
3. IF BUYER FAILS TO GIVE ESCROW HOLDER BUYER'S OBJECTION WITHIN TWENTY (20) DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND: (A) ESCROW HOLDER SHALL PROMPTLY REMIT THE AMOUNT DEMANDED TO SELLER; AND (B) SELLER IS RELEASED FROM ANY OBLIGATION TO SELL THE PROPERTY TO BUYER.
4. IF BUYER GIVES ESCROW HOLDER BUYER'S OBJECTION WITHIN TWENTY (20) DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND, THEN THE CONTROVERSY SHALL BE DETERMINED BY SUBMISSION TO BINDING ARBITRATION AS PROVIDED IN THE PARAGRAPH ENTITLED 'ARBITRATION OF DISPUTES' HEREIN.

SHOULD BUYER NOT AGREE TO THE FOREGOING LIQUIDATED DAMAGES PROVISION, THE AMOUNT SPECIFIED ABOVE SHALL NOT BE CONSIDERED A LIMITATION ON THE AMOUNT OF DAMAGES SELLER MIGHT RECOVER AS A RESULT OF BUYER'S DEFAULT. SELLER AGREES TO INDEMNIFY AND HOLD ESCROW HOLDER HARMLESS FROM ANY CLAIM ARISING OUT OF ANY DISTRIBUTIONS MADE BY ESCROW HOLDER IN ACCORDANCE WITH AND PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH.

D. ARBITRATION OF DISPUTES: ANY BINDING ARBITRATION REQUIRED PURSUANT TO THE FOREGOING PARAGRAPH ENTITLED 'LIQUIDATED DAMAGES' HEREIN MAY INCLUDE A DETERMINATION OF THE REASONABLENESS OF THE AMOUNT TO BE PAID AS LIQUIDATED DAMAGES, THE VALIDITY OF THE FOREGOING LIQUIDATED DAMAGES PROVISION, AND THE DISPOSITION OF THE FUNDS DEPOSITED INTO ESCROW BY BUYER, AND SUCH ARBITRATION SHALL INCLUDE EVERY CAUSE OF ACTION THAT HAS ARISEN BETWEEN BUYER AND SELLER UNDER THIS AGREEMENT AND SHALL BE CONDUCTED AS PROVIDED HEREIN.

IF AFTER THE CLOSE OF ESCROW ANY OTHER CLAIMS, DISPUTES OR CONTROVERSIES ARISE BETWEEN THE PARTIES WITH RESPECT TO THIS AGREEMENT OR THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS BASED UPON ALLEGED LATENT OR PATENT CONSTRUCTION DEFECTS, ALL SUCH MATTER SHALL BE DETERMINED BY ALTERNATIVE DISPUTE RESOLUTION PROCEDURES AS PROVIDED BELOW.

THE RULES AND PROCEDURES FOR BINDING ARBITRATION SHALL BE SUBJECT TO THE FOLLOWING:

- A. THE ARBITRATION SHALL BE CONDUCTED BY JAMS, IF SUCH ENTITY IS THEN IN EXISTENCE, AND, IF NOT, THEN BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA"), AT A LOCATION SELECTED BY THE ARBITRATOR IN THE COUNTY WHERE THE PROPERTY IS LOCATED (OR SUCH OTHER LOCATION AS THE PARTIES MAY AGREE UPON). JAMS OR AAA, AS THE CASE MAY BE, ARE REFERRED TO HEREIN AS THE "ARBITRATION SERVICE". THE ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE RULES AND PROCEDURES OF THE ARBITRATION SERVICE THEN IN EFFECT, EITHER THE STREAMLINED ARBITRATION RULES AND PROCEDURES, OR (IF APPLICABLE) THE COMPREHENSIVE ARBITRATION RULES OF JAMS, OR THE COMMERCIAL ARBITRATION RULES OF THE AAA.

Escrow Instructions Continued On Page Number 24

Seller's Initials ()

Buyer's Initials ()

DS
SW

Escrow Instructions Continued From Page Number 23

Escrow Officer: Ellen Bebo

- B. THE ARBITRATION SHALL BE COMMENCED UPON DELIVERY BY EITHER PARTY TO THE OTHER AND TO THE ARBITRATION SERVICE (AND, IF ESCROW IS STILL OPEN, TO ESCROW HOLDER) OF A WRITTEN DEMAND FOR ARBITRATION, WHICH SHALL SET FORTH WITH SPECIFICITY THE PARTICULARS OF SUCH PARTY'S CLAIM (S), THE ISSUES TO BE SUBMITTED TO ARBITRATION AND THE RELIEF SOUGHT.
- C. SELLER SHALL ADVANCE THE FEES NECESSARY TO INITIATE ARBITRATION, WITH THE COSTS AND FEES, INCLUDING ONGOING COSTS AND FEES TO BE PAID AS AGREED BY THE PARTIES, OR, IF THE PARTIES CANNOT AGREE UPON THE PAYMENT OF THE ONGOING COSTS AND FEES, THEN AS DETERMINED BY THE ARBITRATOR, WITH THE OVERALL COSTS AND FEES OF THE ARBITRATION TO BE ULTIMATELY BORNE AS DETERMINED BY THE ARBITRATOR.
- D. THE ARBITRATION SHALL BE CONDUCTED BY ONE NEUTRAL AND IMPARTIAL ARBITRATOR WHO SHALL BE SELECTED JOINTLY BY THE PARTIES WITHIN FIFTEEN (15) CALENDAR DAYS, AND IN NO EVENT MORE THAN SIXTY (60) DAYS, FOLLOWING DELIVERY OF THE DEMAND FOR ARBITRATION, FROM THE LIST OF THE AVAILABLE ARBITRATORS OF THE ARBITRATION SERVICE WHO ARE RETIRED JUDGES OF THE SUPERIOR COURT. UNLESS SUCH FIFTEEN (15) DAY PERIOD IS EXTENDED BY MUTUAL AGREEMENT OF THE PARTIES, IF THE PARTIES HAVE FAILED TO AGREE UPON AN ARBITRATOR WITHIN SUCH PERIOD, THE ARBITRATION SERVICE SHALL SELECT A RETIRED JUDGE OF THE SUPERIOR COURT FROM ITS LIST AS THE ARBITRATOR TO CONDUCT THE ARBITRATION. IN SELECTING THE ARBITRATOR, THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1297.121 SHALL APPLY AND AN ARBITRATOR MAY BE CHALLENGED FOR ANY OF THE GROUNDS SET FORTH THEREIN, OR IN SECTION 1297.124.
- E. THE ARBITRATION SHALL COMMENCE IN A PROMPT AND TIMELY MANNER ON THE DATE ESTABLISHED (i) IN ACCORDANCE WITH THE RULES OF THE ARBITRATION SERVICE, OR IF THE ARBITRATION SERVICE'S RULES DO NOT SPECIFY A DATE BY WHICH THE ARBITRATION MUST COMMENCE, THEN (ii) BY AGREEMENT OF THE PARTIES, OR IF THEY CANNOT AGREE, THEN (iii) BY THE ARBITRATOR. THE ARBITRATION SHALL BE CONDUCTED BY THE ARBITRATOR IN SUCH A MANNER SO AS TO OBTAIN A PROMPT AND TIMELY CONCLUSION OF THE MATTER.
- F. BUYER AND SELLER SHALL EACH HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL.
- G. THE PARTIES MAY CONDUCT DISCOVERY AS IF THE MATTER WERE PENDING BEFORE A CALIFORNIA COURT AND THE ARBITRATOR SHALL HAVE THE POWER TO ISSUE AND ENFORCE SUBPOENAS AND TO AWARD SANCTIONS; PROVIDED, HOWEVER, THAT THE PARTIES MAY APPLY TO EITHER THE ARBITRATOR OR THE COURTS OF THE STATE OF CALIFORNIA FOR PROTECTIVE ORDERS WITH RESPECT TO SUCH DISCOVERY.
- H. THE ARBITRATOR SHALL BE AUTHORIZED TO PROVIDE ANY REMEDIES OR RELIEF IN LAW OR IN EQUITY, OTHER THAN PUNITIVE DAMAGES, WHICH THE COURTS OF THE STATE OF CALIFORNIA COULD ISSUE BASED UPON THE SAME CLAIMS, FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF THE ARBITRATION. THE ARBITRATOR SHALL FOLLOW THE STANDARDS FOR ISSUING SUCH RELIEF AS DEFINED UNDER CALIFORNIA LAW. THE ARBITRATOR'S JUDGMENT WITH RESPECT TO THE AMOUNT TO BE PAID AS LIQUIDATED DAMAGES, THE VALIDITY OF THE FOREGOING LIQUIDATED DAMAGES PROVISION, AND THE DISPOSITION OF THE FUNDS DEPOSITED INTO ESCROW BY BUYER, AND MATTER RELATED THERETO, SHALL BE FINAL AND BINDING UPON THE PARTIES, SHALL CONSTITUTE MUTUAL WRITTEN ESCROW INSTRUCTIONS TO ESCROW HOLDER, AND MAY BE ENTERED IN ANY COURT OF THE STATE OF CALIFORNIA HAVING JURISDICTION THEREOF. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR WITH RESPECT TO ANY OTHER MATTER IN DISPUTE NOT RELATED TO THE FOREGOING LIQUIDATED DAMAGES PROVISIONS MAY BE ENTERED IN ANY COURT OF THE STATE OF CALIFORNIA HAVING JURISDICTION THEREOF, BUT SUCH JUDGMENT SHALL BE APPEALABLE IN THE SAME MANNER AND SUBJECT TO THE SAME RULES AS APPLY TO THE APPEALS OF JUDGMENTS OF THE COURT IN WHICH SUCH JUDGMENT IS ENTERED. HOWEVER, (OTHER THAN WITH RESPECT TO LIQUIDATED DAMAGES MATTERS), THE FOREGOING SHALL NOT LIMIT THE SCOPE OF REVIEW WHICH WOULD OTHERWISE BE APPLICABLE TO THE ARBITRATION AWARD UNDER CALIFORNIA LAW OF THE RULES OF THE ARBITRATION SERVICE.

NOTICE: BY INITIALING IN THE SPACE BELOW, THE PARTIES ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS ARBITRATION OF DISPUTES PROVISION, AND IN THE

Escrow Instructions Continued On Page Number 25

Seller's Initials (*JS*)Buyer's Initials (*DS*
SW) ()

Escrow Instructions Continued From Page Number 24

Escrow Officer: Ellen Bebo

ARBITRATION OF DISPUTES PROVISION CONTAINED IN THE PARAGRAPH ENTITLED 'ALTERNATE DISPUTE RESOLUTION' HEREIN, DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND THE PARTIES ARE GIVING UP ANY RIGHTS THE PARTIES MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, THE PARTIES ARE GIVING UP THEIR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARBITRATION OF DISPUTES PROVISION. IF THE PARTIES REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, THE PARTIES MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. 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.

Seller's Initials

Buyer's Initials

- 45) This notification is in compliance with the obligations to comply with federal (and state) law to safeguard the parties' non-public, personal information.

We collect nonpublic personal information about the parties from the following sources:

1. Information received from the parties on applications or other forms; and
2. Information about the transaction with us, our affiliates, or other involved in the processing of the transaction; and
3. Information we receive from a consumer reporting agency.

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law and/or as may be necessary in the processing of this transaction.

We restrict access to nonpublic information about the parties to those employees who need to know that information to provide products or services to the parties. We maintain physical, electronic and procedural safeguards that comply with federal and state regulations to guard the parties' non-public, personal information.

- 46) **ENTIRE AGREEMENT:** This Agreement constitutes the sole Agreement between the parties. There are no collateral understandings or representations or agreements other than those contained herein. No salesperson, employee or agent of Seller has authority to modify its terms. All prior agreements, whether oral or written, are hereby superseded.
- 47) **BROKER DISCLOSURE:** The within Buyer hereby acknowledges their awareness of the fact that a Member of the Seller is a California Real Estate Licensed Real Estate Broker, who is acting as a principal in this transaction. In addition said Member is the Broker of record for the Listing Broker, Strategic Realty, wherein Strategic Realty is receiving commission/compensation from Seller.

Escrow Instructions Continued On Page Number 26

Seller's Initials

Buyer's Initials

Escrow Instructions Continued From Page Number 25

Escrow Officer: Ellen Bebo

48) AGENCY CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:

Listing Agent: STRATEGIC REALTY is the agent of the Seller exclusively;

Selling Agent: IREalty Professionals is the agent of the Buyer exclusively.

Real Estate Brokers are not parties to the Agreement between Buyer and Seller.

DD)REAL ESTATE COMMISSION: AT THE CLOSE OF ESCROW PAY COMMISSION TO THE FOLLOWING LICENSED REAL ESTATE BROKER AS A SELLING (BUYER'S) BROKER'S COMMISSION FOR SERVICES RENDERED, WHICH AMOUNT YOU ARE AUTHORIZED TO DEDUCT FROM FUNDS DUE SELLER UNDER THE ABOVE NUMBERED ESCROW. **BROKER COMMISSION SHALL BE PAID ON THE NET SALES PRICE (TOTAL PURCHASE PRICE AS SET FORTH ON PAGE 1 HEREOF, AS ADJUSTED/REDUCED BY ANY SELLER CLOSING COSTS CREDIT TO BUYER).**

Pay commission to: Company: IREalty Professionals % 2.5%

Address: 70 S. Lake Ave. 10th Floor

Pasadena, CA 91101

Agents Name: Lynette Williams

Agent's Phone: (323) 251-6011

Agent's Fax: (866) 892-6168

49) ADDITIONAL TERMS: Addendum #1 is attached and incorporated by reference.

SELLER:

Open House Realty and Investments, LLC
a California limited liability company

_____, Authorized Signer

BUYER:

DocuSigned by:
Skylar Wells
Skylar Wells
A08728AE8B244EF...

Escrow Instructions Continued On Page Number 27

Seller's Initials (SW)

Buyer's Initials (SW) ()



CALIFORNIA
ASSOCIATION
OF REALTORS®

ADDENDUM
(C.A.R. Form ADM, Revised 4/12)

No. ONE

The following terms and conditions are hereby incorporated in and made a part of the: ☒ Residential Purchase Agreement, ☐ Manufactured Home Purchase Agreement, ☐ Business Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Vacant Land Purchase Agreement, ☐ Residential Income Property Purchase Agreement, ☐ Commercial Property Purchase Agreement, ☐ Other _____

dated October 25, 2012, on property known as 3345 1/2 Rowena Ave.

in which Skylar Wells is referred to as ("Buyer/Tenant")
and Open House Realty & Investment is referred to as ("Seller/Landlord").

1. Seller agrees to credit Buyer \$10,000 at close of escrow for Buyer Upgrades.
2. Seller to install reflective mirror tinting on glass panels and glass door of lower bedroom located on ground level.
3. Seller to install reflective mirror tinting on glass door at front entryway.*
4. Seller to install reflective mirror tinting on glass doors located off of balcony in living room.
5. Seller to install reflective mirror tinting on glass doors located off of balcony in stairwell off of upper bedroom.
6. Seller to provide a high gloss polyurethane coat to concrete flooring throughout.
7. Purchase to include Refrigerator.
8. Seller agrees to credit buyer 3% of purchase price to be applied to buyer's recurring and non-recurring closing costs for Buyer obtaining a loan through W.J. Bradley Mortgage Capital, LLC.

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

Date 10/27/2012

Date 10/29/12

DocuSigned by:
Buyer/Tenant Skylar Wells
Skylar Wells
A05728AEB0244EF...

Seller/Landlord Open House Realty & Investment

Buyer/Tenant _____

Seller/Landlord _____

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Published and Distributed by:
REAL ESTATE BUSINESS SERVICES, INC.
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525 South Virgil Avenue, Los Angeles, California 90020

ADM REVISED 4/12 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)

Reviewed by _____ Date _____



Agent: Lynette Williams

Phone: 800-588-0021

Fax: 866-892-6168

Prepared using zipForm® software

Broker: IREalty Professionals 70 S. Lake Avenue, 10th Floor Pasadena, CA 91101

Document received by the CA 2nd District Court of Appeal.

00424

CONSTRUCTION CLAIMS STATUTE – EXCERPT FROM CALIFORNIA CIVIL CODE**TITLE 7 - REQUIREMENTS FOR ACTIONS FOR CONSTRUCTION DEFECTS
CHAPTER 1 - DEFINITIONS**

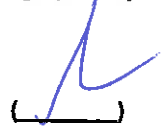
895. (a) "Structure" means any residential dwelling, other building, or improvement located upon a lot or within a common area.
- (b) "Designed moisture barrier" means an installed moisture barrier specified in the plans and specifications, contract documents, or manufacturer's recommendations.
- (c) "Actual moisture barrier" means any component or material, actually installed, that serves to any degree as a barrier against moisture, whether or not intended as such.
- (d) "Unintended water" means water that passes beyond, around, or through a component or the material that is designed to prevent that passage.
- (e) "Close of escrow" means the date of the close of escrow between the builder and the original homeowner. With respect to claims by an association, as defined in subdivision (a) of Section 1351, "close of escrow" means the date of substantial completion, as defined in Section 337.15 of the Code of Civil Procedure, or the date the builder relinquishes control over the association's ability to decide whether to initiate a claim under this title, whichever is later.
- (f) "Claimant" or "homeowner" includes the individual owners of single-family homes, individual unit owners of attached dwellings and, in the case of a common interest development, any association as defined in subdivision (a) of Section 1351.

CHAPTER 2 - ACTIONABLE DEFECTS

896. In any action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, a builder, and to the extent set forth in Chapter 4 (commencing with Section 910), a general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, shall, except as specifically set forth in this title, be liable for, and the claimant's claims or causes of action shall be limited to violation of, the following standards, except as specifically set forth in this title. This title applies to original construction intended to be sold as an individual dwelling unit. As to condominium conversions, this title does not apply to or does not supersede any other statutory or common law.

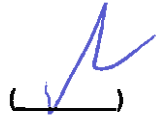
(A) With respect to water issues:

- (1) A door shall not allow unintended water to pass beyond, around, or through the door or its designed or actual moisture barriers, if any.
- (2) Windows, patio doors, deck doors, and their systems shall not allow water to pass beyond, around, or through the window, patio door, or deck door or its designed or actual moisture barriers, including, without limitation, internal barriers within the systems themselves. For purposes of this paragraph, "systems" include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.
- (3) Windows, patio doors, deck doors, and their systems shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.
- (4) Roofs, roofing systems, chimney caps, and ventilation components shall not allow water to enter the structure or to pass beyond, around, or through the designed or actual moisture barriers, including, without limitation, internal barriers located within the systems themselves. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, and sheathing, if any.
- (5) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow water to pass into the adjacent structure. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashing, and sheathing, if any.
- (6) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow unintended water to pass within the systems themselves and cause damage to the systems. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashing, and sheathing, if any.

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

Escrow Instructions Continued From Page Number 27**Escrow Officer: Ellen Bebo**

- (7) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to cause damage to another building component.
 - (8) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to limit the installation of the type of flooring materials typically used for the particular application.
 - (9) Hardscape, including paths and patios, irrigation systems, landscaping systems, and drainage systems, that are installed as part of the original construction, shall not be installed in such a way as to cause water or soil erosion to enter into or come in contact with the structure so as to cause damage to another building component.
 - (10) Stucco, exterior siding, exterior walls, including, without limitation, exterior framing, and other exterior wall finishes and fixtures and the systems of those components and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall be installed in such a way so as not to allow unintended water to pass into the structure or to pass beyond, around, or through the designed or actual moisture barriers of the system, including any internal barriers located within the system itself. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.
 - (11) Stucco, exterior siding, and exterior walls shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.
 - (12) Retaining and site walls and their associated drainage systems shall not allow unintended water to pass beyond, around, or through its designed or actual moisture barriers including, without limitation, any internal barriers, so as to cause damage. This standard does not apply to those portions of any wall or drainage system that are designed to have water flow beyond, around, or through them.
 - (13) Retaining walls and site walls, and their associated drainage systems, shall only allow water to flow beyond, around, or through the areas designated by design.
 - (14) The lines and components of the plumbing system, sewer system, and utility systems shall not leak.
 - (15) Plumbing lines, sewer lines, and utility lines shall not corrode so as to impede the useful life of the systems.
 - (16) Sewer systems shall be installed in such a way as to allow the designated amount of sewage to flow through the system.
 - (17) Shower and bath enclosures shall not leak water into the interior of walls, flooring systems, or the interior of other components.
 - (18) Ceramic tile and tile countertops shall not allow water into the interior of walls, flooring systems, or other components so as to cause damage.
- (B) With respect to structural issues:
- (1) Foundations, load bearing components, and slabs, shall not contain significant cracks or significant vertical displacement.
 - (2) Foundations, load bearing components, and slabs shall not cause the structure, in whole or in part, to be structurally unsafe.
 - (3) Foundations, load bearing components, and slabs, and underlying soils shall be constructed so as to materially comply with the design criteria set by applicable government building codes, regulations, and ordinances for chemical deterioration or corrosion resistance in effect at the time of original construction.
 - (4) A structure shall be constructed so as to materially comply with the design criteria for earthquake and wind load resistance, as set forth in the applicable government building codes, regulations, and ordinances in effect at the time of original construction.
- (C) With respect to soil issues:
- (1) Soils and engineered retaining walls shall not cause, in whole or in part, damage to the structure built upon the soil or engineered retaining wall.
 - (2) Soils and engineered retaining walls shall not cause, in whole or in part, the structure to be structurally unsafe.

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

Escrow Instructions Continued From Page Number 28**Escrow Officer: Ellen Bebo**

- (3) Soils shall not cause, in whole or in part, the land upon which no structure is built to become unusable for the purpose represented at the time of original sale by the builder or for the purpose for which that land is commonly used.

(D) With respect to fire protection issues:

- (1) A structure shall be constructed so as to materially comply with the design criteria of the applicable government building codes, regulations, and ordinances for fire protection of the occupants in effect at the time of the original construction.
- (2) Fireplaces, chimneys, chimney structures, and chimney termination caps shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire outside the fireplace enclosure or chimney.
- (3) Electrical and mechanical systems shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire.

(E) With respect to plumbing and sewer issues:

Plumbing and sewer systems shall be installed to operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action may be brought for a violation of this subdivision more than four years after close of escrow.

(F) With respect to electrical system issues:

Electrical systems shall operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action shall be brought pursuant to this subdivision more than four years from close of escrow.

(G) With respect to issues regarding other areas of construction:

- (1) Exterior pathways, driveways, hardscape, sidewalls, sidewalks, and patios installed by the original builder shall not contain cracks that display significant vertical displacement or that are excessive. However, no action shall be brought upon a violation of this paragraph more than four years from close of escrow.
- (2) Stucco, exterior siding, and other exterior wall finishes and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall not contain significant cracks or separations.
- (3) (a) To the extent not otherwise covered by these standards, manufactured products, including, but not limited to, windows, doors, roofs, plumbing products and fixtures, fireplaces, electrical fixtures, HVAC units, countertops, cabinets, paint, and appliances shall be installed so as not to interfere with the products' useful life, if any.
- (b) For purposes of this paragraph, "useful life" means a representation of how long a product is warranted or represented, through its limited warranty or any written representations, to last by its manufacturer, including recommended or required maintenance. If there is no representation by a manufacturer, a builder shall install manufactured products so as not to interfere with the product's utility.
- (c) For purposes of this paragraph, "manufactured product" means a product that is completely manufactured offsite.
- (d) If no useful life representation is made, or if the representation is less than one year, the period shall be no less than one year. If a manufactured product is damaged as a result of a violation of these standards, damage to the product is a recoverable element of damages. This subparagraph does not limit recovery if there has been damage to another building component caused by a manufactured product during the manufactured product's useful life.
- (e) This title does not apply in any action seeking recovery solely for a defect in a manufactured product located within or adjacent to a structure.
- (4) Heating, if any, shall be installed so as to be capable of maintaining a room temperature of 70 degrees Fahrenheit at a point three feet above the floor in any living space.
- (5) Living space air-conditioning, if any, shall be provided in a manner consistent with the size and efficiency design criteria specified in Title 24 of the California Code of Regulations or its successor.
- (6) Attached structures shall be constructed to comply with inter unit noise transmission standards set by the applicable government building codes, ordinances, or regulations in effect at the time of the original

Seller's Initials ()

Buyer's Initials ()

Escrow Instructions Continued From Page Number 29**Escrow Officer: Ellen Bebo**

construction. If there is no applicable code, ordinance, or regulation, this paragraph does not apply. However, no action shall be brought pursuant to this paragraph more than one year from the original occupancy of the adjacent unit.

- (7) Irrigation systems and drainage shall operate properly so as not to damage landscaping or other external improvements. However, no action shall be brought pursuant to this paragraph more than one year from close of escrow.
- (8) Untreated wood posts shall not be installed in contact with soil so as to cause unreasonable decay to the wood based upon the finish grade at the time of original construction. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.
- (9) Untreated steel fences and adjacent components shall be installed so as to prevent unreasonable corrosion. However, no action shall be brought pursuant to this paragraph more than four years from close of escrow.
- (10) Paint and stains shall be applied in such a manner so as not to cause deterioration of the building surfaces for the length of time specified by the paint or stain manufacturers' representations, if any. However, no action shall be brought pursuant to this paragraph more than five years from close of escrow.
- (11) Roofing materials shall be installed so as to avoid materials falling from the roof.
- (12) The landscaping systems shall be installed in such a manner so as to survive for not less than one year. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.
- (13) Ceramic tile and tile backing shall be installed in such a manner that the tile does not detach.
- (14) Dryer ducts shall be installed and terminated pursuant to manufacturer installation requirements. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.
- (15) Structures shall be constructed in such a manner so as not to impair the occupants' safety because they contain public health hazards as determined by a duly authorized public health official, health agency, or governmental entity having jurisdiction. This paragraph does not limit recovery for any damages caused by a violation of any other paragraph of this section on the grounds that the damages do not constitute a health hazard.

897. The standards set forth in this chapter are intended to address every function or component of a structure. To the extent that a function or component of a structure is not addressed by these standards, it shall be actionable if it causes damage.

CHAPTER 3 - OBLIGATIONS

900. As to fit and finish items, a builder shall provide a homebuyer with a minimum one-year express written limited warranty covering the fit and finish of the following building components. Except as otherwise provided by the standards specified in Chapter 2 (commencing with Section 896), this warranty shall cover the fit and finish of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim, but shall not apply to damage to those components caused by defects in other components governed by the other provisions of this title. Any fit and finish matters covered by this warranty are not subject to the provisions of this title. If a builder fails to provide the express warranty required by this section, the warranty for these items shall be for a period of one year.
901. A builder may, but is not required to, offer greater protection or protection for longer time periods in its express contract with the homeowner than that set forth in Chapter 2 (commencing with Section 896). A builder may not limit the application of Chapter 2 (commencing with Section 896) or lower its protection through the express contract with the homeowner. This type of express contract constitutes an "enhanced protection agreement."
902. If a builder offers an enhanced protection agreement, the builder may choose to be subject to its own express contractual provisions in place of the provisions set forth in Chapter 2 (commencing with Section 896). If an enhanced protection agreement is in place, Chapter 2 (commencing with Section 896) no longer applies other than to set forth minimum provisions by which to judge the enforceability of the particular provisions of the enhanced protection agreement.
903. If a builder offers an enhanced protection agreement in place of the provisions set forth in Chapter 2 (commencing with Section 896), the election to do so shall be made in writing with the homeowner no later than

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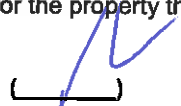
Escrow Instructions Continued From Page Number 30**Escrow Officer: Ellen Bebo**

the close of escrow. The builder shall provide the homeowner with a complete copy of Chapter 2 (commencing with Section 896) and advise the homeowner that the builder has elected not to be subject to its provisions. If any provision of an enhanced protection agreement is later found to be unenforceable as not meeting the minimum standards of Chapter 2 (commencing with Section 896), a builder may use this chapter in lieu of those provisions found to be unenforceable.

904. If a builder has elected to use an enhanced protection agreement, and a homeowner disputes that the particular provision or time periods of the enhanced protection agreement are not greater than, or equal to, the provisions of Chapter 2 (commencing with Section 896) as they apply to the particular deficiency alleged by the homeowner, the homeowner may seek to enforce the application of the standards set forth in this chapter as to those claimed deficiencies. If a homeowner seeks to enforce a particular standard in lieu of a provision of the enhanced protection agreement, the homeowner shall give the builder written notice of that intent at the time the homeowner files a notice of claim pursuant to Chapter 4 (commencing with Section 910).
905. If a homeowner seeks to enforce Chapter 2 (commencing with Section 896), in lieu of the enhanced protection agreement in a subsequent litigation or other legal action, the builder shall have the right to have the matter bifurcated, and to have an immediately binding determination of his or her responsive pleading within 60 days after the filing of that pleading, but in no event after the commencement of discovery, as to the application of either Chapter 2 (commencing with Section 896) or the enhanced protection agreement as to the deficiencies claimed by the homeowner. If the builder fails to seek that determination in the timeframe specified, the builder waives the right to do so and the standards set forth in this title shall apply. As to any non-original homeowner, that homeowner shall be deemed in privity for purposes of an enhanced protection agreement only to the extent that the builder has recorded the enhanced protection agreement on title or provided actual notice to the non-original homeowner of the enhanced protection agreement. If the enhanced protection agreement is not recorded on title or no actual notice has been provided, the standards set forth in this title apply to any non-original homeowners' claims.
906. A builder's election to use an enhanced protection agreement addresses only the issues set forth in Chapter 2 (commencing with Section 896) and does not constitute an election to use or not use the provisions of Chapter 4 (commencing with Section 910). The decision to use or not use Chapter 4 (commencing with Section 910) is governed by the provisions of that chapter.
907. A homeowner is obligated to follow all reasonable maintenance obligations and schedules communicated in writing to the homeowner by the builder and product manufacturers, as well as commonly accepted maintenance practices. A failure by a homeowner to follow these obligations, schedules, and practices may subject the homeowner to the affirmative defenses contained in Section 944.

CHAPTER 4 - PRELITIGATION PROCEDURE

910. Prior to filing an action against any party alleged to have contributed to a violation of the standards set forth in Chapter 2 (commencing with Section 896), the claimant shall initiate the following pre-litigation procedures:
- (a) The claimant or his or her legal representative shall provide written notice via certified mail, overnight mail, or personal delivery to the builder, in the manner prescribed in this section, of the claimant's claim that the construction of his or her residence violates any of the standards set forth in Chapter 2 (commencing with Section 896). That notice shall provide the claimant's name, address, and preferred method of contact, and shall state that the claimant alleges a violation pursuant to this part against the builder, and shall describe the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation. In the case of a group of homeowners or an association, the notice may identify the claimants solely by address or other description sufficient to apprise the builder of the locations of the subject residences. That document shall have the same force and effect as a notice of commencement of a legal proceeding.
 - (b) The notice requirements of this section do not preclude a homeowner from seeking redress through any applicable normal customer service procedure as set forth in any contractual, warranty, or other builder-generated document; and, if a homeowner seeks to do so, that request shall not satisfy the notice requirements of this section.
911. (a) For purposes of this title, except as provided in subdivision (b), "builder" means any entity or individual, including, but not limited to a builder, developer, general contractor, contractor, or original seller, who, at the time of sale, was also in the business of selling residential units to the public for the property that is the subject of the homeowner's claim or was in the business of building, developing, or constructing residential units for public purchase for the property that is the subject of the homeowner's claim.

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Escrow Instructions Continued From Page Number 31**Escrow Officer: Ellen Bebo**

- (b) For the purposes of this title, "builder" does not include any entity or individual whose involvement with a residential unit that is the subject of the homeowner's claim is limited to his or her capacity as general contractor or contractor and who is not a partner, member of, subsidiary of, or otherwise similarly affiliated with the builder. For purposes of this title, these nonaffiliated general contractors and nonaffiliated contractors shall be treated the same as subcontractors, material suppliers, individual product manufacturers, and design professionals.

912. A builder shall do all of the following:

- (a) Within 30 days of a written request by a homeowner or his or her legal representative, the builder shall provide copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations, that pertain to a homeowner's residence specifically or as part of a larger development tract. The request shall be honored if it states that it is made relative to structural, fire safety, or soils provisions of this title. However, a builder is not obligated to provide a copying service, and reasonable copying costs shall be borne by the requesting party. A builder may require that the documents be copied onsite by the requesting party, except that the homeowner may, at his or her option, use his or her own copying service, which may include an offsite copy facility that is bonded and insured. If a builder can show that the builder maintained the documents, but that they later became unavailable due to loss or destruction that was not the fault of the builder, the builder may be excused from the requirements of this subdivision, in which case the builder shall act with reasonable diligence to assist the homeowner in obtaining those documents from any applicable government authority or from the source that generated the document. However, in that case, the time limits specified by this section do not apply.
- (b) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, the builder shall provide to the homeowner or his or her legal representative copies of all maintenance and preventative maintenance recommendations that pertain to his or her residence within 30 days of service of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.
- (c) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all manufactured products maintenance, preventive maintenance, and limited warranty information within 30 days of a written request for those documents. These documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.
- (d) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all of the builder's limited contractual warranties in accordance with this part in effect at the time of the original sale of the residence within 30 days of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.
- (e) A builder shall maintain the name and address of an agent for notice pursuant to this chapter with the Secretary of State or, alternatively, elect to use a third party for that notice if the builder has notified the homeowner in writing of the third party's name and address, to whom claims and requests for information under this section may be mailed. The name and address of the agent for notice or third party shall be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative. This subdivision applies to instances in which a builder contracts with a third party to accept claims and act on the builder's behalf. A builder shall give actual notice to the homeowner that the builder has made such an election, and shall include the name and address of the third party.
- (f) A builder shall record on title a notice of the existence of these procedures and a notice that these procedures impact the legal rights of the homeowner. This information shall also be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.
- (g) A builder shall provide, with the original sales documentation, a written copy of this title, which shall be initialed and acknowledged by the purchaser and the builder's sales representative.
- (h) As to any documents provided in conjunction with the original sale, the builder shall instruct the original purchaser to provide those documents to any subsequent purchaser.

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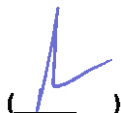
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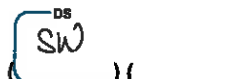
Escrow Instructions Continued From Page Number 32**Escrow Officer: Ellen Bebo**

- (i) Any builder who fails to comply with any of these requirements within the time specified is not entitled to the protection of this chapter, and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action, in which case the remaining chapters of this part shall continue to apply to the action.
913. A builder or his or her representative shall acknowledge, in writing, receipt of the notice of the claim within 14 days after receipt of the notice of the claim. If the notice of the claim is served by the claimant's legal representative, or if the builder receives a written representation letter from a homeowner's attorney, the builder shall include the attorney in all subsequent substantive communications, including, without limitation, all written communications occurring pursuant to this chapter, and all substantive and procedural communications, including all written communications, following the commencement of any subsequent complaint or other legal action, except that if the builder has retained or involved legal counsel to assist the builder in this process, all communications by the builder's counsel shall only be with the claimant's legal representative, if any.
914. (a) This chapter establishes a non-adversarial procedure, including the remedies available under this chapter which, if the procedure does not resolve the dispute between the parties, may result in a subsequent action to enforce the other chapters of this title. A builder may attempt to commence non-adversarial contractual provisions other than the non-adversarial procedures and remedies set forth in this chapter, but may not, in addition to its own non-adversarial contractual provisions, require adherence to the non-adversarial procedures and remedies set forth in this chapter, regardless of whether the builder's own alternative non-adversarial contractual provisions are successful in resolving the dispute or ultimately deemed enforceable.
- At the time the sales agreement is executed, the builder shall notify the homeowner whether the builder intends to engage in the non-adversarial procedure of this section or attempt to enforce alternative non-adversarial contractual provisions. If the builder elects to use alternative non-adversarial contractual provisions in lieu of this chapter, the election is binding, regardless of whether the builder's alternative non-adversarial contractual provisions are successful in resolving the ultimate dispute or are ultimately deemed enforceable.
- (b) Nothing in this title is intended to affect existing statutory or decisional law pertaining to the applicability, viability, or enforceability of alternative dispute resolution methods, alternative remedies, or contractual arbitration, judicial reference, or similar procedures requiring a binding resolution to enforce the other chapters of this title or any other disputes between homeowners and builders. Nothing in this title is intended to affect the applicability, viability, or enforceability, if any, of contractual arbitration or judicial reference after a non-adversarial procedure or provision has been completed.
915. If a builder fails to acknowledge receipt of the notice of a claim within the time specified, elects not to go through the process set forth in this chapter, or fails to request an inspection within the time specified, or at the conclusion or cessation of an alternative non adversarial proceeding, this chapter does not apply and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.
916. (a) If a builder elects to inspect the claimed unmet standards, the builder shall complete the initial inspection and testing within 14 days after acknowledgment of receipt of the notice of the claim, at a mutually convenient date and time. If the homeowner has retained legal representation, the inspection shall be scheduled with the legal representative's office at a mutually convenient date and time, unless the legal representative is unavailable during the relevant time periods. All costs of builder inspection and testing, including any damage caused by the builder inspection, shall be borne by the builder. The builder shall also provide written proof that the builder has liability insurance to cover any damages or injuries occurring during inspection and testing. The builder shall restore the property to its pre-testing condition within 48 hours of the testing. The builder shall, upon request, allow the inspections to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative.
- (b) Nothing that occurs during a builder's or claimant's inspection or testing may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.
- (c) If a builder deems a second inspection or testing reasonably necessary, and specifies the reasons therefore in writing within three days following the initial inspection, the builder may conduct a second inspection or testing. A second inspection or testing shall be completed within 40 days of the initial inspection or testing. All requirements concerning the initial inspection or testing shall also apply to the second inspection or testing.

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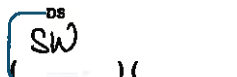
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- (d) If the builder fails to inspect or test the property within the time specified, the claimant is released from the requirements of this section and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.
- (e) If a builder intends to hold a subcontractor, design professional, individual product manufacturer, or material supplier, including an insurance carrier, warranty company, or service company, responsible for its contribution to the unmet standard, the builder shall provide notice to that person or entity sufficiently in advance to allow them to attend the initial, or if requested, second inspection of any alleged unmet standard and to participate in the repair process. The claimant and his or her legal representative, if any, shall be advised in a reasonable time prior to the inspection as to the identity of all persons or entities invited to attend. This subdivision does not apply to the builder's insurance company. Except with respect to any claims involving a repair actually conducted under this chapter, nothing in this subdivision shall be construed to relieve a subcontractor, design professional, individual product manufacturer, or material supplier of any liability under an action brought by a claimant.
917. Within 30 days of the initial or, if requested, second inspection or testing, the builder may offer in writing to repair the violation. The offer to repair shall also compensate the homeowner for all applicable damages recoverable under Section 944, within the timeframe for the repair set forth in this chapter. Any such offer shall be accompanied by a detailed, specific, step-by-step statement identifying the particular violation that is being repaired, explaining the nature, scope, and location of the repair, and setting a reasonable completion date for the repair. The offer shall also include the names, addresses, telephone numbers, and license numbers of the contractors whom the builder intends to have perform the repair. Those contractors shall be fully insured for, and shall be responsible for, all damages or injuries that they may cause to occur during the repair, and evidence of that insurance shall be provided to the homeowner upon request. Upon written request by the homeowner or his or her legal representative, and within the timeframes set forth in this chapter, the builder shall also provide any available technical documentation, including, without limitation, plans and specifications, pertaining to the claimed violation within the particular home or development tract. The offer shall also advise the homeowner in writing of his or her right to request up to three additional contractors from which to select to do the repair pursuant to this chapter.
918. Upon receipt of the offer to repair, the homeowner shall have 30 days to authorize the builder to proceed with the repair. The homeowner may alternatively request, at the homeowner's sole option and discretion, that the builder provide the names, addresses, telephone numbers, and license numbers for up to three alternative contractors who are not owned or financially controlled by the builder and who regularly conduct business in the county where the structure is located. If the homeowner so elects, the builder is entitled to an additional noninvasive inspection, to occur at a mutually convenient date and time within 20 days of the election, so as to permit the other proposed contractors to review the proposed site of the repair. Within 35 days after the request of the homeowner for alternative contractors, the builder shall present the homeowner with a choice of contractors. Within 20 days after that presentation, the homeowner shall authorize the builder or one of the alternative contractors to perform the repair.
919. The offer to repair shall also be accompanied by an offer to mediate the dispute if the homeowner so chooses. The mediation shall be limited to a four hour mediation, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator, and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation occurs within 15 days after the request to mediate is received and occurs at a mutually convenient location within the county where the action is pending. If a builder has made an offer to repair a violation, and the mediation has failed to resolve the dispute, the homeowner shall allow the repair to be performed either by the builder, its contractor, or the selected contractor.
920. If the builder fails to make an offer to repair or otherwise strictly comply with this chapter within the times specified, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If the contractor performing the repair does not complete the repair in the time or manner specified, the claimant may file an action. If this occurs, the standards set forth in the other chapters of this part shall continue to apply to the action.
921. (a) In the event that a resolution under this chapter involves a repair by the builder, the builder shall make an appointment with the claimant, make all appropriate arrangements to effectuate a repair of the claimed unmet standards, and compensate the homeowner for all damages resulting therefrom free of charge to the claimant. The repair shall be scheduled through the claimant's legal representative, if any, unless he or she is unavailable during the relevant time periods. The repair shall be commenced on a mutually convenient date

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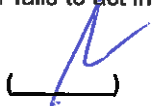


Escrow Instructions Continued From Page Number 34

Escrow Officer: Ellen Bebo

within 14 days of acceptance or, if an alternative contractor is selected by the homeowner, within 14 days of the selection, or, if a mediation occurs, within seven days of the mediation, or within five days after a permit is obtained if one is required. The builder shall act with reasonable diligence in obtaining any such permit.

- (b) The builder shall ensure that work done on the repairs is done with the utmost diligence, and that the repairs are completed as soon as reasonably possible, subject to the nature of the repair or some unforeseen event not caused by the builder or the contractor performing the repair. Every effort shall be made to complete the repair within 120 days.
922. The builder shall, upon request, allow the repair to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative. Nothing that occurs during the repair process may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.
923. The builder shall provide the homeowner or his or her legal representative, upon request, with copies of all correspondence, photographs, and other materials pertaining or relating in any manner to the repairs.
924. If the builder elects to repair some, but not all of, the claimed unmet standards, the builder shall, at the same time it makes its offer, set forth with particularity in writing the reasons, and the support for those reasons, for not repairing all claimed unmet standards.
925. If the builder fails to complete the repair within the time specified in the repair plan, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If this occurs, the standards set forth in the other chapters of this title shall continue to apply to the action.
926. The builder may not obtain a release or waiver of any kind in exchange for the repair work mandated by this chapter. At the conclusion of the repair, the claimant may proceed with filing an action for violation of the applicable standard or for a claim of inadequate repair, or both, including all applicable damages available under Section 944.
927. If the applicable statute of limitations has otherwise run during this process, the time period for filing a complaint or other legal remedies for violation of any provision of this title, or for a claim of inadequate repair, is extended from the time of the original claim by the claimant to 100 days after the repair is completed, whether or not the particular violation is the one being repaired. If the builder fails to acknowledge the claim within the time specified, elects not to go through this statutory process, or fails to request an inspection within the time specified, the time period for filing a complaint or other legal remedies for violation of any provision of this title is extended from the time of the original claim by the claimant to 45 days after the time for responding to the notice of claim has expired. If the builder elects to attempt to enforce its own non-adversarial procedure in lieu of the procedure set forth in this chapter, the time period for filing a complaint or other legal remedies for violation of any provision of this part is extended from the time of the original claim by the claimant to 100 days after either the completion of the builder's alternative non-adversarial procedure, or 100 days after the builder's alternative non-adversarial procedure is deemed unenforceable, whichever is later.
928. If the builder has invoked this chapter and completed a repair, prior to filing an action, if there has been no previous mediation between the parties, the homeowner or his or her legal representative shall request mediation in writing. The mediation shall be limited to four hours, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation will occur within 15 days after the request for mediation is received and shall occur at a mutually convenient location within the county where the action is pending. In the event that a mediation is used at this point, any applicable statutes of limitations shall be tolled from the date of the request to mediate until the next court day after the mediation is completed, or the 100-day period, whichever is later.
929. (a) Nothing in this chapter prohibits the builder from making only a cash offer and no repair. In this situation, the homeowner is free to accept the offer, or he or she may reject the offer and proceed with the filing of an action. If the latter occurs, the standards of the other chapters of this title shall continue to apply to the action.
- (b) The builder may obtain a reasonable release in exchange for the cash payment. The builder may negotiate the terms and conditions of any reasonable release in terms of scope and consideration in conjunction with a cash payment under this chapter.
930. (a) The time periods and all other requirements in this chapter are to be strictly construed, and, unless extended by the mutual agreement of the parties in accordance with this chapter, shall govern the rights and obligations under this title. If a builder fails to act in accordance with this section within the timeframes mandated, unless

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Escrow Instructions Continued From Page Number 35

Escrow Officer: Ellen Bebo

extended by the mutual agreement of the parties as evidenced by a post claim written confirmation by the affected homeowner demonstrating that he or she has knowingly and voluntarily extended the statutory timeframe, the claimant may proceed with filing an action. If this occurs, the standards of the other chapters of this title shall continue to apply to the action.

- (b) If the claimant does not conform with the requirements of this chapter, the builder may bring a motion to stay any subsequent court action or other proceeding until the requirements of this chapter have been satisfied. The court, in its discretion, may award the prevailing party on such a motion, his or her attorney's fees and costs in bringing or opposing the motion.
931. If a claim combines causes of action or damages not covered by this part, including, without limitation, personal injuries, class actions, other statutory remedies, or fraud-based claims, the claimed unmet standards shall be administered according to this part, although evidence of the property in its unrepaired condition may be introduced to support the respective elements of any such cause of action. As to any fraud-based claim, if the fact that the property has been repaired under this chapter is deemed admissible, the trier of fact shall be informed that the repair was not voluntarily accepted by the homeowner. As to any class action claims that address solely the incorporation of a defective component into a residence, the named and unnamed class members need not comply with this chapter.
932. Subsequently discovered claims of unmet standards shall be administered separately under this chapter, unless otherwise agreed to by the parties. However, in the case of a detached single family residence, in the same home, if the subsequently discovered claim is for a violation of the same standard as that which has already been initiated by the same claimant and the subject of a currently pending action, the claimant need not reinstate the process as to the same standard. In the case of an attached project, if the subsequently discovered claim is for a violation of the same standard for a connected component system in the same building as has already been initiated by the same claimant, and the subject of a currently pending action, the claimant need not reinstate this process as to that standard.
933. If any enforcement of these standards is commenced, the fact that a repair effort was made may be introduced to the trier of fact. However, the claimant may use the condition of the property prior to the repair as the basis for contending that the repair work was inappropriate, inadequate, or incomplete, or that the violation still exists. The claimant need not show that the repair work resulted in further damage nor that damage has continued to occur as a result of the violation.
934. Evidence of both parties' conduct during this process may be introduced during a subsequent enforcement action, if any, with the exception of any mediation. Any repair efforts undertaken by the builder, shall not be considered settlement communications or offers of settlement and are not inadmissible in evidence on such a basis.
935. To the extent that provisions of this chapter are enforced and those provisions are substantially similar to provisions in Section 1375 of the Civil Code, but an action is subsequently commenced under Section 1375 of the Civil Code, the parties are excused from performing the substantially similar requirements under Section 1375 of the Civil Code.
936. Each and every provision of the other chapters of this title apply to general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals to the extent that the general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals caused, in whole or in part, a violation of a particular standard as the result of a negligent act or omission or a breach of contract. In addition to the affirmative defenses set forth in Section 945.5, a general contractor, subcontractor, material supplier, design professional, individual product manufacturer, or other entity may also offer common law and contractual defenses as applicable to any claimed violation of a standard. All actions by a claimant or builder to enforce an express contract, or any provision thereof, against a general contractor, subcontractor, material supplier, individual product manufacturer, or design professional is preserved. Nothing in this title modifies the law pertaining to joint and several liability for builders, general contractors, subcontractors, material suppliers, individual product manufacturer, and design professionals that contribute to any specific violation of this title. However, the negligence standard in this section does not apply to any general contractor, subcontractor, material supplier, individual product manufacturer, or design professional with respect to claims for which strict liability would apply.
937. Nothing in this title shall be interpreted to eliminate or abrogate the requirement to comply with Section 411.35 of the Code of Civil Procedure or to affect the liability of design professionals, including architects and architectural firms, for claims and damages not covered by this title.

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Escrow Instructions Continued From Page Number 36**Escrow Officer: Ellen Bebo**

938. This title applies only to new residential units where the purchase agreement with the buyer was signed by the seller on or after January 1, 2003.

CHAPTER 5 - PROCEDURE

941. (a) Except as specifically set forth in this title, no action may be brought to recover under this title more than 10 years after substantial completion of the improvement but not later than the date of recordation of a valid notice of completion.
- (b) As used in this section, "action" includes an action for indemnity brought against a person arising out of that person's performance or furnishing of services or materials referred to in this title, except that a cross-complaint for indemnity may be filed pursuant to subdivision (b) of Section 428.10 of the Code of Civil Procedure in an action which has been brought within the time period set forth in subdivision (a).
- (c) The limitation prescribed by this section may not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to make a claim or bring an action.
- (d) Sections 337.15 and 337.1 of the Code of Civil Procedure do not apply to actions under this title.
- (e) Existing statutory and decisional law regarding tolling of the statute of limitations shall apply to the time periods for filing an action or making a claim under this title, except that repairs made pursuant to Chapter 4 (commencing with Section 910), with the exception of the tolling provision contained in Section 927, do not extend the period for filing an action, or restart the time limitations contained in subdivision (a) or (b) of Section 7091 of the Business and Professions Code. If a builder arranges for a contractor to perform a repair pursuant to Chapter 4 (commencing with Section 910), as to the builder the time period for calculating the statute of limitation in subdivision (a) or (b) of Section 7091 of the Business and Professions Code shall pertain to the substantial completion of the original construction and not to the date of repairs under this title. The time limitations established by this title do not apply to any action by a claimant for a contract or express contractual provision.
- Causes of action and damages to which this chapter does not apply are not limited by this section.
942. In order to make a claim for violation of the standards set forth in Chapter 2 (commencing with Section 896), a homeowner need only demonstrate, in accordance with the applicable evidentiary standard, that the home does not meet the applicable standard, subject to the affirmative defenses set forth in Section 945.5. No further showing of causation or damages is required to meet the burden of proof regarding a violation of a standard set forth in Chapter 2 (commencing with Section 896), provided that the violation arises out of, pertains to, or is related to, the original construction.
943. (a) Except as provided in this title, no other cause of action for a claim covered by this title or for damages recoverable under Section 944 is allowed. In addition to the rights under this title, this title does not apply to any action by a claimant to enforce a contract or express contractual provision, or any action for fraud, personal injury, or violation of a statute. Damages awarded for the items set forth in Section 944 in such other cause of action shall be reduced by the amounts recovered pursuant to Section 944 for violation of the standards set forth in this title.
- (b) As to any claims involving a detached single-family home, the homeowner's right to the reasonable value of repairing any nonconformity is limited to the repair costs, or the diminution in current value of the home caused by the nonconformity, whichever is less, subject to the personal use exception as developed under common law.
944. If a claim for damages is made under this title, the homeowner is only entitled to damages for the reasonable value of repairing any violation of the standards set forth in this title, the reasonable cost of repairing any damages caused by the repair efforts, the reasonable cost of repairing and rectifying any damages resulting from the failure of the home to meet the standards, the reasonable cost of removing and replacing any improper repair by the builder, reasonable relocation and storage expenses, lost business income if the home was used as a principal place of a business licensed to be operated from the home, reasonable investigative costs for each established violation, and all other costs or fees recoverable by contract or statute.
945. The provisions, standards, rights, and obligations set forth in this title are binding upon all original purchasers and their successors-in-interest. For purposes of this title, associations and others having the rights set forth in

Seller's Initials Buyer's Initials  ()

Escrow Instructions Continued From Page Number 37**Escrow Officer: Ellen Bebo**

Section 383 of the Code of Civil Procedure shall be considered to be original purchasers and shall have standing to enforce the provisions, standards, rights, and obligations set forth in this title.

945.5 A builder, general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, under the principles of comparative fault pertaining to affirmative defenses, may be excused, in whole or in part, from any obligation, damage, loss, or liability if the builder, general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, can demonstrate any of the following affirmative defenses in response to a claimed violation:

- (a) To the extent it is caused by an unforeseen act of nature which caused the structure not to meet the standard. For purposes of this section an "unforeseen act of nature" means a weather condition, earthquake, or manmade event such as war, terrorism, or vandalism, in excess of the design criteria expressed by the applicable building codes, regulations, and ordinances in effect at the time of original construction.
- (b) To the extent it is caused by a homeowner's unreasonable failure to minimize or prevent those damages in a timely manner, including the failure of the homeowner to allow reasonable and timely access for inspections and repairs under this title. This includes the failure to give timely notice to the builder after discovery of a violation, but does not include damages due to the untimely or inadequate response of a builder to the homeowner's claim.
- (c) To the extent it is caused by the homeowner or his or her agent, employee, general contractor, subcontractor, independent contractor, or consultant by virtue of their failure to follow the builder's or manufacturer's recommendations, or commonly accepted homeowner maintenance obligations. In order to rely upon this defense as it relates to a builder's recommended maintenance schedule, the builder shall show that the homeowner had written notice of these schedules and recommendations and that the recommendations and schedules were reasonable at the time they were issued.
- (d) To the extent it is caused by the homeowner or his or her agent's or an independent third party's alterations, ordinary wear and tear, misuse, abuse, or neglect, or by the structure's use for something other than its intended purpose.
- (e) To the extent that the time period for filing actions bars the claimed violation.
- (f) As to a particular violation for which the builder has obtained a valid release.
- (g) To the extent that the builder's repair was successful in correcting the particular violation of the applicable standard.
- (h) As to any causes of action to which this statute does not apply, all applicable affirmative defenses are preserved.

BY INITIALING BELOW BUYER ACKNOWLEDGES THAT THIS COPY OF THE CONSTRUCTION CLAIMS STATUTE WAS PROVIDED WITH AND MADE A PART OF THE JOINT PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS.

Seller's Initials



Buyer's Initials

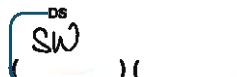


Exhibit C

00437

Document received by the CA 2nd District Court of Appeal.

Uniform Residential Appraisal Report

SUBJECT

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

Property Address	3345 1/2 Rowena Avenue	City	Los Angeles	State	CA	Zip Code	90027
Borrower	Skylar Wells/Marilyn & David Schiamburg		Owner of Public Record	Openhouse Realty & Investments LLC	County	Los Angeles	
Legal Description	Lot 1, Tract 63131, M.B. 1360-39-41						
Assessor's Parcel #	5434-005-010	Tax Year	2012	R.E. Taxes \$	1,629		
Neighborhood Name	None	Map Reference	594 B3	Census Tract	1882.01		
Occupant	☐ Owner	☐ Tenant	☒ Vacant	Special Assessments \$	0	☒ PUD	HOA \$ 199 ☐ per year ☒ per month
Property Rights Appraised	☒ Fee Simple ☐ Leasehold ☐ Other (describe)						
Assignment Type	☒ Purchase Transaction ☐ Refinance Transaction ☐ Other (describe)						
Lender/Client	W.J. Bradley Mortgage Capital, LLC Address 100 W Towne Ridge Parkway #300, Sandy, UT 84070						
Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? ☒ Yes ☐ No							
Report data source(s) used, offerings price(s), and date(s). DOM 325;Subject property was offered for sale.;Original Price \$879,000;Original Date 12/09/2011;MLS#F11158805							

CONTRACT

I ☒ did ☐ did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed. Arms length sale;The subject is currently under the contract for sale. Sales Contract terms deemed to be standard with no personal property or concessions included.

Contract Price \$ 857,000 Date of Contract 10/29/2012 Is the property seller the owner of public record? ☒ Yes ☐ No Data Source(s) NDC/RealQuest

Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? ☒ Yes ☐ No

If Yes, report the total dollar amount and describe the items to be paid. \$25710;;Seller is paying toward buyer's closing cost.

NEIGHBORHOOD

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood Characteristics			One-Unit Housing Trends			One-Unit Housing		Present Land Use %			
Location	☐ Urban	☒ Suburban	☐ Rural	Property Values	☐ Increasing	☒ Stable	☐ Declining	PRICE	AGE	One-Unit	95 %
Built-Up	☒ Over 75%	☐ 25-75%	☐ Under 25%	Demand/Supply	☐ Shortage	☒ In Balance	☐ Over Supply	\$ (000)	(yrs)	2-4 Unit	%
Growth	☐ Rapid	☒ Stable	☐ Slow	Marketing Time	☐ Under 3 mths	☒ 3-6 mths	☐ Over 6 mths	400	Low	0	Multi-Family %
Neighborhood Boundaries Area is located SE of Los Feliz Blvd., NW of Hyperion Ave., north of Sunset Dr. and east of Hillhurst Avenue.								1,200	High	105	Commercial %
								860	Pred.	60	Other VAC. %
Neighborhood Description The subject property is located in a mature and established neighborhood consisting primarily of SFRs that are considered to be in overall average to good condition and market appeal. Subject is located within close proximity of shopping, retail stores and freeway access. Employment is typical for the area. Major business center is within 5-10 miles from subject. Schools are within a reasonable distance from subject.											
Market Conditions (including support for the above conclusions) Conventional and FHA financing are readily available at rates purchasers consider attractive and sellers need not negotiate a sale on financing related concessions. Marketing time appears to be typical for a reasonably priced home and is supported by recent sale. Property value appears to have stabilized at present time, see market conditions addendum											

SITE

Dimensions	See Site Map for Area Calculation	Area	2465 sf	Shape	Irregular	View	B;City Scene
Specific Zoning Classification	RD1.5	Zoning Description	Single Family Residential				
Zoning Compliance	☒ Legal ☐ Legal Nonconforming (Grandfathered Use) ☐ No Zoning ☐ Illegal (describe)						
Is the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use? ☒ Yes ☐ No If No, describe.							

Utilities	Public	Other (describe)	Public	Other (describe)	Off-site Improvements--Type		Public	Private	
Electricity	☒	☐	Water	☒	☐	Street	Asphalt	☒	☐
Gas	☒	☐	Sanitary Sewer	☒	☐	Alley	Asphalt	☒	☐

FEMA Special Flood Hazard Area ☒ Yes ☐ No FEMA Flood Zone "X" FEMA Map # 060137-1610F FEMA Map Date 09/26/2008

Are the utilities and/or off-site improvements typical for the market area? ☒ Yes ☐ No If No, describe.

Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? ☐ Yes ☒ No If Yes, describe.

None apparent or disclosed to appraiser at time of inspection. No legal, environmental or title documents provided to appraiser. Typical utility easement exist.

IMPROVEMENTS

General Description		Foundation		Exterior Description		materials/condition		Interior		materials/condition	
Units	☒ One ☐ One with Accessory Unit	☒ Concrete Slab ☐ Crawl Space		Foundation Walls	Concrete/Good			Floors	Wood/Concrete/Good		
# of Stories	3.0	☐ Full Basement ☐ Partial Basement		Exterior Walls	Wood/Stucco/Good			Walls	Drywall/Good		
Type	☒ Det. ☐ Att. ☐ S-Det./End Unit	Basement Area	0 sq. ft.	Roof Surface	Built-Up/Good			Trim/Finish	Wood/Good		
☒ Existing ☐ Proposed ☐ Under Const.		Basement Finish	0 %	Gutters & Downspouts	None/Avg			Bath Floor	Tile/Good		
Design (Style)	Convent.	☐ Outside Entry/Exit ☐ Sump Pump		Window Type	Aluminium/Good			Bath Wainscot	Tile/Good		
Year Built	2012	Evidence of ☐ Infestation	None	Storm Sash/Insulated	None/Avg			Car Storage	☐ None		
Effective Age (Yrs)	0	☐ Dampness ☐ Settlement		Screens	Aluminium/Good		☒	Driveway	# of Cars		
Attic	☒ None	Heating	☒ FWA ☐ HWBB ☐ Radiant	Amenities	☐ Woodstove(s) #	0		Driveway Surface	Concrete		
☐ Drop Stair	☐ Stairs	☐ Other	Fuel Gas	☐ Fireplace(s) #	0	☒	Fence	Blk/Wood	☒	Garage # of Cars 2	
☐ Floor	☐ Scuttle	Cooling	☒ Central Air Conditioning	☒ Patio/Deck	Slab	☒	Porch	Slab	☐	Carport # of Cars 0	
☐ Finished	☐ Heated	☐ Individual	☐ Other	☐ Pool	None	☐	Other	None	☐	Att. ☐ Det. ☒ Built-in	
Appliances ☐ Refrigerator ☒ Range/Oven ☒ Dishwasher ☒ Disposal ☒ Microwave ☐ Washer/Dryer ☒ Other (describe) Fan/Hood											
Finished area above grade contains: 5 Rooms 2 Bedrooms 2.1 Bath(s) 1,681 Square Feet of Gross Living Area Above Grade											
Additional features (special energy efficient items, etc.) Energy Efficient dual glazed aluminum windows with low E-glass.											
Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.). C1;Kitchen-updated-less than one year ago;Bathrooms-updated-less than one year ago; Subject's features includes: Hardwood and polished concrete floors throughout; Formal living room; Kitchen with caesar stone counter tops and built-in stainless steel appliances; Baths with caesar stone and tiles; High ceilings; Recess lights Baseboard moulding; French doors; Security alarm; Patio and porch; Attached two car garage; City view. The subject property is considered to be in good condition with many upgrades. No external or functional inadequacies were observed. All utilities on and operational. Smoke and carbon monoxide detectors were installed and functional.											
Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? ☐ Yes ☒ No If Yes, describe											
None Apparent or disclosed to appraiser. I have not been provided with any documentation revealing any physical deficiencies and have reported only apparent adverse conditions. Borrower may not rely on this report for structural conditions that may exist and is encouraged to obtain a home inspection by a professional home inspector to determine if problems exist. See Limiting Condition #5.											
Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? ☒ Yes ☐ No If No, describe											

Uniform Residential Appraisal Report

SALES COMPARISON ANALYSIS

There are 20 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ 749,000 to \$ 895,000 .				There are 25 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ 400,000 to \$ 1,200,000 .					
FEATURE		SUBJECT		COMPARABLE SALE # 1		COMPARABLE SALE # 2		COMPARABLE SALE # 3	
Address 3345 1/2 Rowena Avenue Los Angeles, CA 90027				4327 Ambrose Avenue Los Angeles, CA 90027		4144 Tracy Street Los Angeles, CA 90027		4421 Finley Avenue Los Angeles, CA 90027	
Proximity to Subject				0.33 miles W		0.27 miles SW		0.49 miles SW	
Sale Price		\$ 857,000		\$ 835,000		\$ 875,000		\$ 895,000	
Sale Price/Gross Liv. Area		\$ 509.82 sq. ft.		\$ 445.33 sq. ft.		\$ 643.38 sq. ft.		\$ 599.87 sq. ft.	
Data Source(s)				NDC/RealQuest/MLS;DOM 43		NDC/RealQuest/MLS;DOM 11		NDC/RealQuest/MLS;DOM 7	
Verification Source(s)				Doc.#1748298/MLS#F12121424		Doc.#1602567/MLS#12623403		Doc.#1596927/MLS#12623121	
VALUE ADJUSTMENTS		DESCRIPTION		DESCRIPTION +(-) \$ Adjustment		DESCRIPTION +(-) \$ Adjustment		DESCRIPTION +(-) \$ Adjustment	
Sale or Financing				ArmLth		ArmLth		ArmLth	
Concessions				Conv;0 -13,000		Conv;0 -13,000		Conv;0 -13,000	
Date of Sale/Time				s11/12;c10/12		s10/12;c09/12		s10/12;c09/12	
Location		N;Res;		N;Res;		N;Res;		N;Res;	
Leasehold/Fee Simple		Fee Simple		Fee Simple		Fee Simple		Fee Simple	
Site		2465 sf		5950 sf -10,500		5154 sf -8,100		6817 sf -13,100	
View		B;City Scene;		N;Res; +30,000		N;Res; +30,000		N;Res; +30,000	
Design (Style)		Convent.		Convent.		Convent.		Convent.	
Quality of Construction		Q3		Q3		Q3		Q3	
Actual Age		0		64 +10,000		77 +10,000		102 +10,000	
Condition		C1		C2 +20,000		C2 +20,000		C2 +20,000	
Above Grade		Total	Bdrms. Baths	Total	Bdrms. Baths	Total	Bdrms. Baths	Total	Bdrms. Baths
Room Count		5	2 2.1	6	3 2.0	6	3 2.0	6	3 2.0
Gross Living Area		1,681 sq. ft.		1,875 sq. ft.		1,360 sq. ft.		1,492 sq. ft.	
Basement & Finished Rooms Below Grade		0sf		0sf		0sf		0sf	
Functional Utility		Average		Average		Average		Average	
Heating/Cooling		FAU/Central		FAU/Central		FAU/Central		Floor/None +2,000	
Energy Efficient Items		Typical		Typical		Typical		Typical	
Garage/Carport		2 Car Garage		2 Car Garage		2 Car Garage		2 Car Garage	
Porch/Patio/Deck		Patio		Patio		Patio		Patio	
Fireplaces		None		1 Fireplace -2,000		1 Fireplace -2,000		1 Fireplace -2,000	
Amenities		Fence		Fence		Fence		Fence	
AP#		5434-005-010		5591-008-005 0		5591-012-009 0		5590-009-018	
Net Adjustment (Total)				[X] + [] - \$ 19,900		[X] + [] - \$ 53,200		[X] + [] - \$ 42,000	
Adjusted Sale Price of Comparables				Net Adj: 2% Gross Adj : 13% \$ 854,900		Net Adj: 6% Gross Adj: 13% \$ 928,200		Net Adj: 5% Gross Adj: 13% \$ 937,200	

I ☒ did ☐ did not research the sale or transfer history of the subject property and comparable sales. If not, explain

My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data source(s) NDC/RealQuest/MLS

My research ☐ did ☒ did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.

Data source(s) NDC/RealQuest/MLS

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3)

ITEM	SUBJECT	COMPARABLE SALE # 1	COMPARABLE SALE # 2	COMPARABLE SALE # 3
Date of Prior Sale/Transfer				
Price of Prior Sale/Transfer				
Data Source(s)	NDC/RealQuest	NDC/RealQuest	NDC/RealQuest	NDC/RealQuest
Effective Date of Data Source(s)	11/27/2012	11/27/2012	11/27/2012	11/27/2012

Analysis of prior sale or transfer history of the subject property and comparable sales Subject has not been sold within last 36 months. In compliance with USPAP and the Ethics Rule, I have performed no other services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.

Summary of Sales Comparison Approach Comparables were selected based on overall similar condition and location. Each is deemed to be a reasonable alternative to the subject property with similar neighborhood influences, unless otherwise noted. Other active listings are noted within the market area, however the ones chosen are most similar to the subject property in overall size and condition and offer the best alternative to the subject property. Comparables utilized were best available at time of the inspection. Comparables #1-#4 required age and condition adjustments for subject being new construction with superior condition. All comparables except comparables #3 & #4 required view adjustment for subject having city scene. Living area adjustment of \$60/sf and lot size adjustment of \$3/sf are extracted from the subject's market place. All the comparables were considered in arriving at the final estimated market value. A reasonable exposure time for the subject property at the opinion of value indicated is estimated to be 90-120 days and was derived using market conditions addendum and local MLS datas.

Indicated Value by Sales Comparison Approach \$ 857,000

RECONCILIATION

Indicated Value by: Sales Comparison Approach \$ 857,000 Cost Approach (if developed) \$ 857,235 Income Approach (if developed) \$

The Cost Approach supports the more reliable Sales Comparison Approach with the latter given more weight. Due to lack of sufficient data, Income Approach was not considered. THIS APPRAISAL REPORT IS INTENDED FOR USE IN A MORTGAGE FINANCE TRANSACTION ONLY. THIS REPORT IS NOT INTENDED FOR ANY OTHER USE.

This appraisal is made ☒ "as is," ☐ subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, ☐ subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or ☐ subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair: The Subject property meets all FHA/HUD minimum guidelines as outlined by Handbooks 4150.2 and 4905.1, and all applicable mortgagee letters.

Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ 857,000 , as of 11/27/2012 , which is the date of inspection and the effective date of this appraisal.

Document received by the CA 2nd District Court of Appeals

Uniform Residential Appraisal Report

ADDITIONAL COMMENTS

Extraordinary Assumption: An assumption, directly related to a specific assignment, as of the effective date of the assignment result, which, if found to be false, could alter the appraiser's opinions or conclusions.

The buyers reliance on this appraisal is limited to utilization for making a decision to place a loan on the subject property if they receive a copy of the appraisal prior to the recording of the loan. The appraiser assumes that there are no hidden or unapparent conditions of the property, subsoil or structures which would render if more or less valuable. The appraiser assumes no responsibility for such conditions or for engineering which might be required to discover such factors. If the client or borrower have any questions regarding these items, it is ther responsibility to order the appropriate inspections by a licensed contractor or home inspector. This report is not a home inspection and the appraiser assumes no responsbility for these items. No party may rely on this document without possessing the complete 6 pages of the report plus all exhibits. The scope of work completed was appropriate for the named client and any intended uses, but may not be appropriate for other third party users, such as the borrowers or property owners. The client may use this appraisal for a single determination only (1 time use).

The Intended User of the appraisal report is the Lender/Client. The Intended Use is to evaluate the property that is the subject of this appraisal for a mortgage finance transaction, subject to the stated Scope of Work, purpose of the appraisal, reporting requirements of the this appraisal report form, and Definition of Market Value. No additional Intended Users are identified by the appraiser.

No employee, director, office, or agent of the lender, or any other third party acting as a joint venture partner, independent contractor, appraisal management company or partner of behalf of the lender has influenced or attempted to influence the development, reporting, result, or review of this assignment through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery or in any other matter.

FOR FHA:

Lead-based paint treatment per 24 CFR, park 35: All chipping, flaking or peeling paint on a structure built before 1978 must be removed only by hand sanding or hand scraping; a drop cloth must be used to collect all the particles of paint; all particles must be disposed of outside the possbility of ingestion by humans and the affected area must be repainted with two (2) coasts of non-lend based paint to closely match in color. The areas of affected are: None.

Condition of A/C: Functional
Condition of Water Heater: Functional

Repair Requirements: None noted.

This appraiser certified that head/shoulders inspection of attic & crawl space was conducted and all utilities on and operational, and smoke/carbon monoxide detectors were in working order.

This appraisal was completed to be used in an FHA loan transaction. The Intened users are the lender and HUD/FHA only.

The subject property meets minimum property requirements per HUD handbooks 4905.1 & 4150.2.

COST APPROACH

COST APPROACH TO VALUE (not required by Fannie Mae.)									
Provide adequate information for the lender/client to replicate your cost figures and calculations.									
Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value) Land value in excess of 60% of total value is typical in the area. The land value is determined by the extraction method, due to the lack of available and buildable land for sales.									
ESTIMATED ☐	REPRODUCTION OR ☒	REPLACEMENT COST NEW	OPINION OF SITE VALUE						
Source of cost data	Marshall & Swift Cost Handbook		Dwelling	1,681	Sq. Ft. @ \$	110.00	= \$	184,980	
Quality rating from cost service	75%	Effective date of cost data	11/27/2012		Sq. Ft. @ \$		= \$		
Comments on Cost Approach (gross living area calculations, depreciation, etc.)			Patio					3,000	
Conclusions as to construction quality and materials were based on observations made during the inspection of the property.			Garage/Carport	373	Sq. Ft. @ \$	25.00	= \$	9,322.50	
Effective age was based on the condition of the property at the time of inspection. The land value is determined by the extraction method, due to lack of land sales. The building sketch is intended to assist the reader, and is not an engineer draft effort.			Total Estimate of Cost-new				= \$	197,282.50	
			Less	Physical	0	Functional	0	External	0
			Depreciation		0	0	0	= \$ (	0
			Depreciated Cost of Improvements				= \$	197,282.50	
			"As-is" Value of Site Improvements				= \$	100,000.00	
Estimated Remaining Economic Life (HUD and VA only)			60	Years	Indicated Value By Cost Approach		= \$	857,282.50	

INCOME

INCOME APPROACH TO VALUE (not required by Fannie Mae.)			
Estimated Monthly Market Rent \$	X Gross Multiplier	= \$	Indicated Value by Income Approach
Summary of Income Approach (including support for market rent and GRM)			

PUD INFORMATION

PROJECT INFORMATION FOR PUDs (if applicable)			
Is the developer/builder in control of the Homeowner's Association (HOA)? ☐ Yes ☒ No Unit type(s) ☒ Detached ☐ Attached			
Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.			
Legal Name of Project			
Total number of phases	Total number of units	Total number of units sold	
Total number of units rented	Total number of units for sale	Data source(s)	
Was the project created by the conversion of existing building(s) into a PUD? ☐ Yes ☐ No If Yes, date of conversion.			
Does the project contain any multi-dwelling units? ☐ Yes ☐ No Data source.			
Are the units, common elements, and recreation facilities complete? ☐ Yes ☐ No If No, describe the status of completion.			
Are the common elements leased to or by the Homeowner's Association? ☐ Yes ☐ No If Yes, describe the rental terms and options.			
Describe common elements and recreational facilities.			

Uniform Residential Appraisal Report

This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit; including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

SCOPE OF WORK: The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the interior and exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal report is the lender/client.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has provided a sketch in this appraisal report to show the approximate dimensions of the improvements. The sketch is included only to assist the reader in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
5. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing this appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
6. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

Document received by the CA 2nd District Court of Appeal.

APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a complete visual inspection of the interior and exterior areas of the subject property. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.
20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.

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Uniform Residential Appraisal Report

21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

- 1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
- 2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
- 3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
- 4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
- 5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER

Signature 
Name Joseph Y. Kwon
Company Name Tri-Star Appraisal, Inc.
Company Address 3932 Wilshire Blvd., #211
Los Angeles, CA 90010
Telephone Number (213) 365-9321
Email Address tristarappraisal@yahoo.com
Date of Signature and Report 11/28/2012
Effective Date of Appraisal 11/27/2012
State Certification # AR 019672
or State License # _____
or Other (describe) _____ State # _____
State CA
Expiration Date of Certification or License 07/11/2014

ADDRESS OF PROPERTY APPRAISED
3345 1/2 Rowena Avenue
Los Angeles, CA 90027

APPRAISED VALUE OF SUBJECT PROPERTY \$ 857,000
LENDER/CLIENT
Name W.J.B. Mortgage Services, LLC
Company Name W.J. Bradley Mortgage Capital, LLC
Company Address 100 W Towne Ridge Parkway #300
Sandy, UT 84070
Email Address _____

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature _____
Name _____
Company Name _____
Company Address _____
Telephone Number _____
Email Address _____
Date of Signature _____
State Certification # _____
or State License # _____
State _____
Expiration Date of Certification or License _____

SUBJECT PROPERTY

☐ Did not inspect subject property
☐ Did inspect exterior of subject property from street
Date of Inspection _____
☐ Did inspect interior and exterior of subject property
Date of Inspection _____

COMPARABLE SALES

☐ Did not inspect exterior of comparable sales from street
☐ Did inspect exterior of comparable sales from street
Date of Inspection _____

Document received by the CA 2nd District Court of Appeal.

File No. 1112-064/Order#96852
FHA CASE#197-6247233

Borrower Skylar Wells/Marilyn & David Schiamberg							
Property Address 3345 1/2 Rowena Avenue							
City	Los Angeles	County	Los Angeles	State	CA	Zip Code	90027
Lender/Client	W.J. Bradley Mortgage Capital, LLC			Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070		

FEATURE		SUBJECT		COMPARABLE SALE # 4			COMPARABLE SALE # 5			COMPARABLE SALE # 6					
Address		3345 1/2 Rowena Avenue Los Angeles, CA 90027		2154 Talmadge Street Los Angeles, CA 90027			3807 Sunset Drive Los Angeles, CA 90027			3341 Rowena Avenue Los Angeles, CA 90027					
Proximity to Subject				0.29 miles SW			0.91 miles S			0.02 miles N					
Sale Price		\$ 857,000		\$ 879,000			\$ 890,000			\$ 805,000					
Sale Price/Gross Liv. Area		\$ 509.82 sq. ft.		\$ 521.35 sq. ft.			\$ 490.09 sq. ft.			\$ 487.00 sq. ft.					
Data Source(s)				NDC/RealQuest/MLS;DOM 7			NDC/RealQuest/MLS;DOM 81			NDC/RealQuest/MLS;DOM 329					
Verification Source(s)				Doc.#1265895/MLS#22166507			Doc.#1016061/MLS#12595425			MLS#F12007001-Pending/Standard					
VALUE ADJUSTMENTS		DESCRIPTION		DESCRIPTION		+(-) \$ Adjustment	DESCRIPTION		+(-) \$ Adjustment		DESCRIPTION		+(-) \$ Adjustment		
Sale or Financing				ArmLth			ArmLth				Listing				
Concessions				Conv;0		-13,000	Conv;0		-13,000		Conv;24200		0		
Date of Sale/Time				s08/12;c07/12			s07/12;c05/12				c01/12				
Location		N;Res;		N;Res;			N;Res;				N;Res;				
Leasehold/Fee Simple		Fee Simple		Fee Simple			Fee Simple				Fee Simple				
Site		2465 sf		4790 sf		-7,000	3221 sf		0		1220 sf		+3,700		
View		B;City Scene;		B;City Scene;			B;City Scene;				B;Partial View;		+15,000		
Design (Style)		Convent.		Convent.			Convent.				Convent.				
Quality of Construction		Q3		Q3			Q3				Q3				
Actual Age		0		81		+10,000	17		0		0				
Condition		C1		C2		+20,000	C2		+20,000		C1				
Above Grade		Total	Bdrms.	Baths	Total	Bdrms.	Baths	Total	Bdrms.	Baths	Total	Bdrms.	Baths		
Room Count		5	2	2.1	5	2	2.0	+5,000	6	3	2.0	+5,000	5	2	2.1
Gross Living Area		1,681 sq. ft.		1,686 sq. ft.		0	1,816 sq. ft.		-8,100		1,652 sq. ft.				
Basement & Finished Rooms Below Grade		0sf		0sf			0sf				0sf				
Functional Utility		Average		Average			Average				Average				
Heating/Cooling		FAU/Central		FAU/Central			FAU/Central				FAU/Central				
Energy Efficient Items		Typical		Typical			Typical				Typical				
Garage/Carport		2 Car Garage		2 Car Garage			2 Car Garage				2 Car Garage				
Porch/Patio/Deck		Patio		Patio			Patio				Patio				
Fireplaces		None		1 Fireplace		-2,000	2 Fireplaces		-4,000		None				
Amenities		Fence		Fence			Fence				Fence				
AP#		5434-005-010		5591-010-013		0	5430-016-023		0		5434-005-015				
Net Adjustment (Total)				[X] + [] -		\$ 13,000	[] + [X] -		\$ -8,100		[X] + [] -		\$ 18,200		
Adjusted Sale Price of Comparables				Net Adj: 1%			Net Adj: -1%				Net Adj: 2%				
				Gross Adj : 6%		\$ 892,000	Gross Adj: 7%		\$ 881,900		Gross Adj: 2%		\$ 829,000		

the CA 2nd District Court of Appeal.

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales

ITEM	SUBJECT	COMPARABLE SALE # 4	COMPARABLE SALE # 5	COMPARABLE SALE # 6
Date of Prior Sale/Transfer				
Price of Prior Sale/Transfer				
Data Source(s)	NDC/RealQuest	NDC/RealQuest	NDC/RealQuest	NDC/RealQuest
Effective Date of Data Source(s)	11/27/2012	11/27/2012	11/27/2012	11/27/2012

Analysis of prior sale or transfer history of the subject property and comparable sales

Summary of Sales Comparison Approach

File No. 1112-064/Order#96852
FHA CASE#197-6247233

Borrower Skylar Wells/Marilyn & David Schiamburg							
Property Address 3345 1/2 Rowena Avenue							
City	Los Angeles	County	Los Angeles	State	CA	Zip Code	90027
Lender/Client	W.J. Bradley Mortgage Capital, LLC			Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070		

FEATURE		SUBJECT		COMPARABLE SALE # 7			COMPARABLE SALE # 8			COMPARABLE SALE # 9			
Address		3345 1/2 Rowena Avenue Los Angeles, CA 90027		3345 Rowena Avenue Los Angeles, CA 90027									
Proximity to Subject				0.00 miles									
Sale Price		\$ 857,000		\$ 799,900			\$			\$			
Sale Price/Gross Liv. Area		\$ 509.82 sq. ft.		\$ 494.99 sq. ft.			\$ sq. ft.			\$ sq. ft.			
Data Source(s)				NDC/RealQuest/MLS;DOM 347									
Verification Source(s)				MLS#F11161287-Active/Standard									
VALUE ADJUSTMENTS		DESCRIPTION		DESCRIPTION		+(-) \$ Adjustment	DESCRIPTION		+(-) \$ Adjustment	DESCRIPTION		+(-) \$ Adjustment	
Sale or Financing				Listing									
Concessions				None;0									
Date of Sale/Time				Active		-24,000							
Location		N;Res;		N;Res;									
Leasehold/Fee Simple		Fee Simple		Fee Simple									
Site		2465 sf		1200 sf		+3,800							
View		B;City Scene;		N;Res;		+30,000							
Design (Style)		Convent.		Convent.									
Quality of Construction		Q3		Q3									
Actual Age		0		0									
Condition		C1		C1									
Above Grade		Total	Bdrms.	Baths	Total	Bdrms.	Baths	Total	Bdrms.	Baths	Total	Bdrms.	Baths
Room Count		5	2	2.1	5	2	2.1						
Gross Living Area		1,681 sq. ft.		1,616 sq. ft.		0	sq. ft.		sq. ft.		sq. ft.		
Basement & Finished Rooms Below Grade		0sf		0sf									
Functional Utility		Average		Average									
Heating/Cooling		FAU/Central		FAU/Central									
Energy Efficient Items		Typical		Typical									
Garage/Carport		2 Car Garage		2 Car Garage									
Porch/Patio/Deck		Patio		Patio									
Fireplaces		None		None									
Amenities		Fence		Fence									
AP#		5434-005-010		5434-005-011		0							
Net Adjustment (Total)				[X] + [] -		\$ 9,800	[] + [] -		\$ 0		[] + [] -		\$
Adjusted Sale Price of Comparables				Net Adj: 1%			Net Adj: 0%				Net Adj: 0%		
				Gross Adj : 7%		\$ 809,700	Gross Adj: 0%		\$ 0		Gross Adj: 0%		\$

the CA 2nd District Court of Appeal.

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales				
ITEM	SUBJECT	COMPARABLE SALE # 7	COMPARABLE SALE # 8	COMPARABLE SALE # 9
Date of Prior Sale/Transfer				
Price of Prior Sale/Transfer				
Data Source(s)	NDC/RealQuest	NDC/RealQuest		
Effective Date of Data Source(s)	11/27/2012	11/27/2012		

Analysis of prior sale or transfer history of the subject property and comparable sales

Summary of Sales Comparison Approach

Market Conditions Addendum to the Appraisal Report

The purpose of this addendum is to provide the lender/client with a clear and accurate understanding of the market trends and conditions prevalent in the subject neighborhood. This is a required addendum for all appraisal reports with an effective date on or after April 1, 2009.

Property Address 3345 1/2 Rowena Avenue City Los Angeles State CA ZIP Code 90027

Borrower Skylar Wells/Marilyn & David Schiamburg

Instructions: The appraiser must use the information required on this form as the basis for his/her conclusions and must provide support for those conclusions, regarding housing trends and overall market conditions as reported in the Neighborhood section of the appraisal report form. The appraiser must fill in all the information to the extent it is available and reliable and must provide analysis as indicated below. If any required data is unavailable or is considered unreliable, the appraiser must provide an explanation. It is recognized that not all data sources will be able to provide data for the shaded areas below; if it is available, however, the appraiser must include that data in the analysis. If data sources provide all the required information as an average instead of the median, the appraiser should report the available figure and identify it as an average. Sales and listings must be properties that compete with the subject property, determined by applying the criteria that would be used by a prospective buyer of the subject property. The appraiser must explain any anomalies in the data, such as seasonal markets, new construction, foreclosures, etc.

Inventory Analysis	Prior 7-12 Months	Prior 4-6 Months	Current - 3 Months	Overall Trend					
Total # of Comparable Sales (Settled)	8	8	9	☐	Increasing	☒	Stable	☐	Declining
Absorption Rate (Total Sales/Months)	1.33	2.67	3.00	☒	Increasing	☐	Stable	☐	Declining
Total # of Comparable Active Listings	16	17	20	☐	Declining	☒	Stable	☐	Increasing
Months of Housing Supply (Total Listings/Ab. Rate)	12.03	6.37	6.67	☒	Declining	☐	Stable	☐	Increasing
Median Sales & List Price, DOM, Sale/List %	Prior 7-12 Months	Prior 4-6 Months	Current - 3 Months	Overall Trend					
Median Comparable Sales Price	818,500	801,800	795,500	☐	Increasing	☒	Stable	☐	Declining
Median Comparable Sales Days on Market	65	72	81	☐	Declining	☒	Stable	☐	Increasing
Median Comparable List Price	889,135	879,500	854,355	☐	Increasing	☒	Stable	☐	Declining
Median Comparable Listing Days on Market	115	125	108	☐	Declining	☒	Stable	☐	Increasing
Median Sale Price as % of List Price	0.92	0.91	0.93	☐	Increasing	☒	Stable	☐	Declining
Seller-(developer, builder, etc.) paid financial assistance prevalent?	☐ Yes	☒ No		☐	Declining	☒	Stable	☐	Increasing

Explain in detail seller concessions trends for the past 12 months (e.g. seller contributions increased from 3% to 5%, increasing use of buydowns, closing costs condo fees, options, etc.)

Seller concessions appear to remain stable, under 1%, and consist primarily of payment toward non-recurring closing costs. The market at this time does not appear to be experiencing any motivation toward greater contributions by sellers. Overall supply and demand appear to be more in balance at this time, compared to 6 to 12 months ago, with no significant amount of interest buydowns, loan discounts or other concessions.

Are foreclosure sales (REO sales) a factor in the market? ☐ Yes ☒ No If yes, explain (including the trends in listings and sales of foreclosed properties).

At this time, there is not a significant amount of REO activity, due to the usually long terms of ownership in this community. Although, there are some short sales and foreclosures, they do not appear to be a strong impact on subjects current market trend.

Cite data sources for above information.

Local MLS, NAR, Dataquick, RealQuest & NDC. The data search was neighborhood boundary specific.

Summarize the above information as support for your conclusions in the Neighborhood section of the appraisal report form. If you used any additional information, such as an analysis of pending sales, and/or expired and withdrawn listings, to formulate your conclusions, provide both an explanation and support for your conclusions.

This appraisal is the result of extensive research into the local and regional market. Current and historical data included listings, pendencies, closed, expired and withdrawn listings. Summaries are exhibited in the market conditions form as the main appraisal form. Market activity has slowed considerably over the past year and in some cases areas have declined. This is evidence by listing remaining on the market for longer periods of time. However, it appears that this rate of decline is slowdown to a stabilization state. This may be due to a mixture of factors, such as affordability, mortgage rate and financing availability.

If the subject is a unit in a condominium or cooperative project, complete the following: Project Name:

Subject Project Data	Prior 7-12 Months	Prior 4-6 Months	Current - 3 Months	Overall Trend					
Total # of Comparable Sales (Settled)				☐	Increasing	☐	Stable	☐	Declining
Absorption Rate (Total Sales/Months)				☐	Increasing	☐	Stable	☐	Declining
Total # of Active Comparable Listings				☐	Declining	☐	Stable	☐	Increasing
Months of Unit Supply (Total Listings/Ab. Rate)				☐	Declining	☐	Stable	☐	Increasing

Are foreclosures sales (REO sales) a factor in the project? ☐ Yes ☐ No If yes, indicate the number of REO listings and explain the trends in listings and sales of foreclosed properties.

Summarize the above trends and address the impact on the subject unit and project.

Signature
Appraiser Name Joseph Y. Kwon
Company Name Tri-Star Appraisal, Inc.
Company Address 3932 Wilshire Blvd. #211, Los Angeles, CA 90010
State License/Certification # AR 019672 State CA
Email Address tristarappraisal@yahoo.com

Signature
Supervisor Name
Company Name
Company Address
State License/Certification #
Email Address

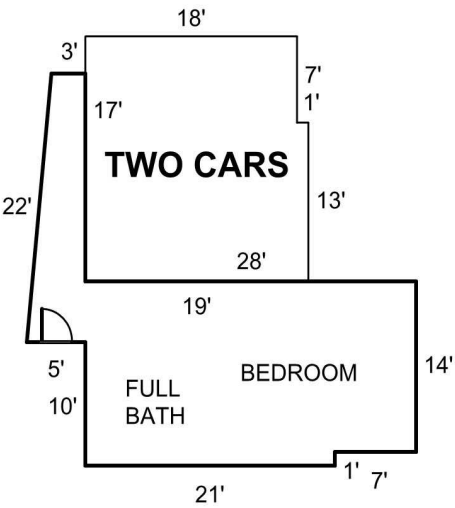
MARKET RESEARCH & ANALYSIS

CONDO/CO-OP PROJECTS

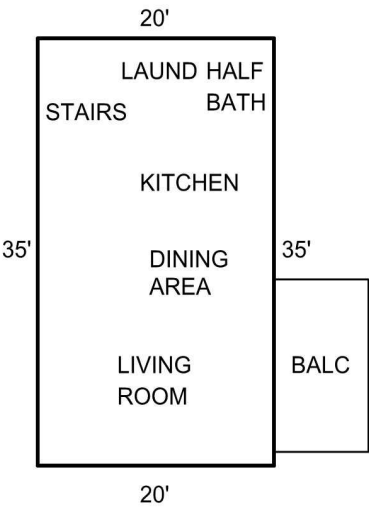
APPRAISER

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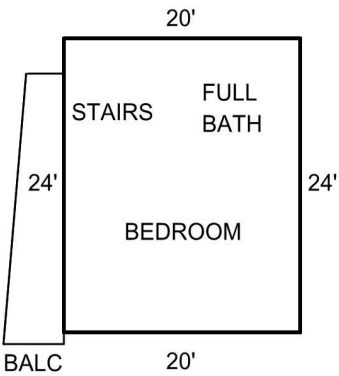
Borrower	Skylar Wells/Marilyn & David Schiamberg				
Property Address	3345 1/2 Rowena Avenue				
City	Los Angeles	County	Los Angeles	State	CA
				Zip Code	90027
Lender/Client	W.J. Bradley Mortgage Capital, LLC		Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070	



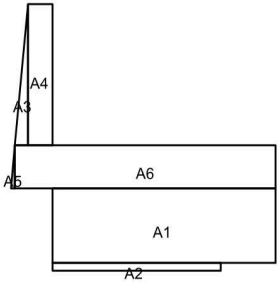
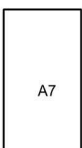
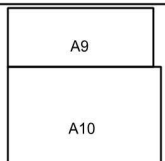
FIRST LEVEL



SECOND LEVEL



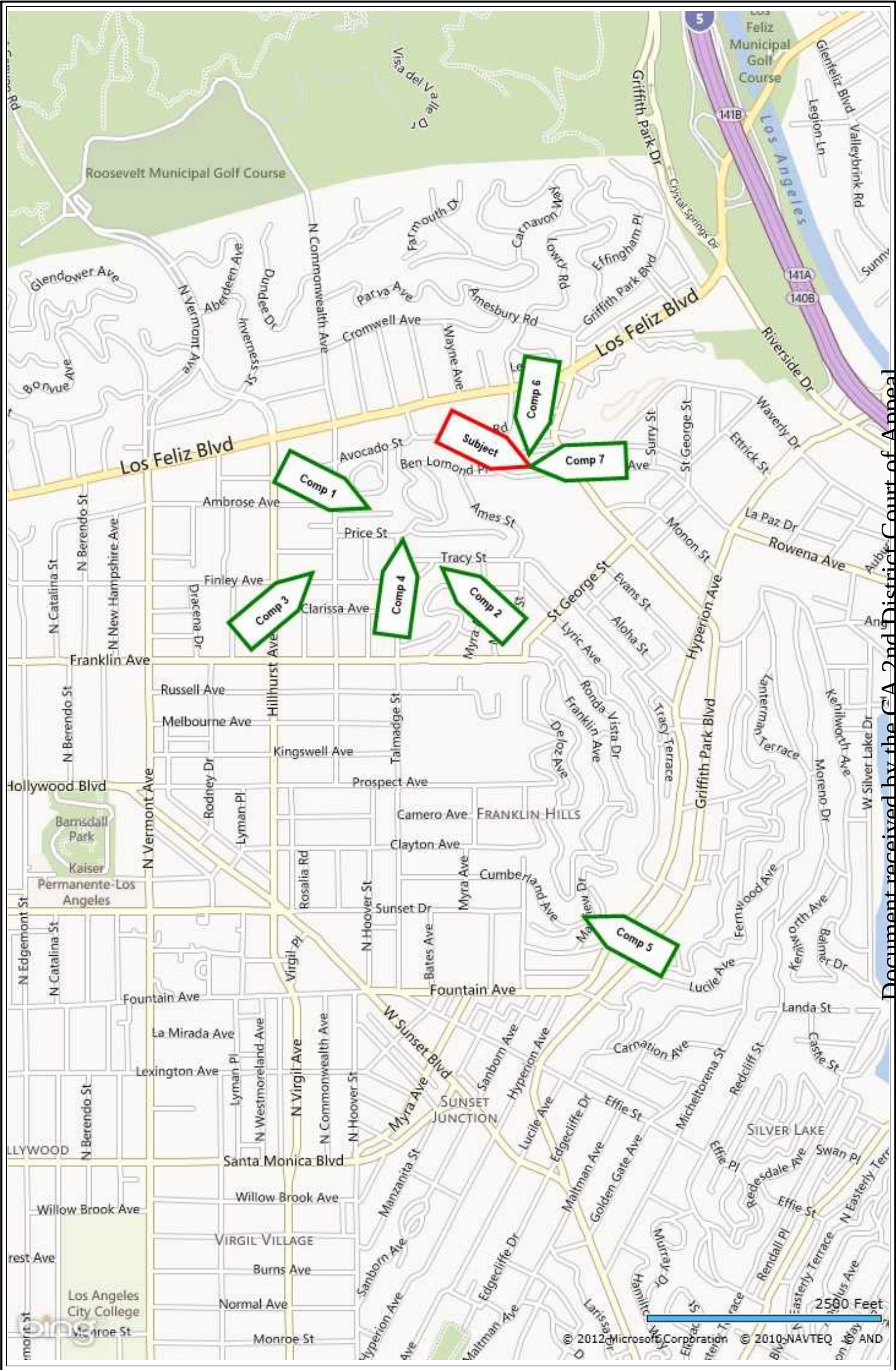
THIRD LEVEL

SKETCH CALCULATIONS		Perimeter	Area
	A1 : 28.0 x 9.0 =		252.0
	A2 : 21.0 x 1.0 =		21.0
	A3 : 0.5 x 1.5x17.0 =		13.1
	A4 : 3.0 x 17.0 =		51.0
	A5 : 0.5 x 0.5x5.0 =		1.1
	A6 : 32.5 x 5.0 =		162.7
	First Floor		500.9
	A7 : 20.0 x 35.0 =		700.0
	Second Floor		700.0
	A8 : 20.0 x 24.0 =		480.0
	Third Floor		480.0
Total Living Area			1680.9
	A9 : 18.0 x 7.0 =		126.0
	A10 : 19.0 x 13.0 =		247.0
	Attached Garage		373.0
Total Garage Area			373.0

Tri-Star Appraisal, Inc.
LOCATION MAP ADDENDUM

File No. 1112-064/Order#96852
FHA CASE#197-6247233

Borrower	Skylar Wells/Marilyn & David Schiamberg				
Property Address	3345 1/2 Rowena Avenue				
City	Los Angeles	County	Los Angeles	State	CA
Zip Code	90027				
Lender/Client	W.J. Bradley Mortgage Capital, LLC				
Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070				



Document received by the CA 2nd District Court of Appeal.

Borrower Skylar Wells/Marilyn & David Schiamberg							
Property Address 3345 1/2 Rowena Avenue							
City	Los Angeles	County	Los Angeles	State	CA	Zip Code	90027
Lender/Client	W.J. Bradley Mortgage Capital, LLC			Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070		

Property Detail Report

For Property Located At



3345 1/2 ROWENA AVE, LOS ANGELES, CA 90027

Owner Information:

Owner Name: OPENHOUSE REALTY & INVESTMENTS LLC

Mailing Address: PO BOX 1065, BURBANK CA 91507-1065 B001

Phone Number: Vesting Codes: // CO

Location Information:

Legal Description: TR=63131 LOT 1

County: LOS ANGELES, CA

Census Tract / Block: 1882.01 / 3

Township-Range-Sect: APN: 5434-005-010

Legal Book/Page: Subdivision: / 594-B3

Legal Lot: 1 Tract #: 63131

Legal Block: School District: LOS ANGELES

Market Area: Munic/Township:

Neighbor Code:

Owner Transfer Information:

Recording/Sale Date: 01/26/2011 / 11/19/2010

Sale Price: 143772

Document #: 143772

Last Market Sale Information:

Recording/Sale Date: /

Sale Price:

Sale Type:

Document #:

Deed Type:

Transfer Document #:

New Construction:

Title Company:

Lender:

Seller Name:

Prior Sale Information:

Prior Rec/Sale Date: /

Prior Sale Price:

Prior Doc Number:

Prior Deed Type:

Property Characteristics:

Gross Area:

Living Area:

Tot Adj Area:

Above Grade:

Total Rooms:

Bedrooms:

Bath(F/H): /

Year Built / Eff: /

Fireplace: /

of Stories:

Other Improvements:

Site Information:

Zoning: LARD1.5

Lot Area: 2,465

Land Use: SFR

Site Influence:

Acres: 0.06

Lot Width/Depth: x

Res/Comm Units: /

County Use: SINGLE FAMILY RESID (0100)

State Use:

Water Type:

Sewer Type:

Tax Information:

Total Value: \$128,470

Land Value: \$80,457

Improvement Value: \$48,013

Total Taxable Value: \$128,470

Assessed Year: 2012

Improved %: 37%

Tax Year: 2011

Property Tax: \$1,628.94

Tax Area: 13

Tax Exemption:

For Sale

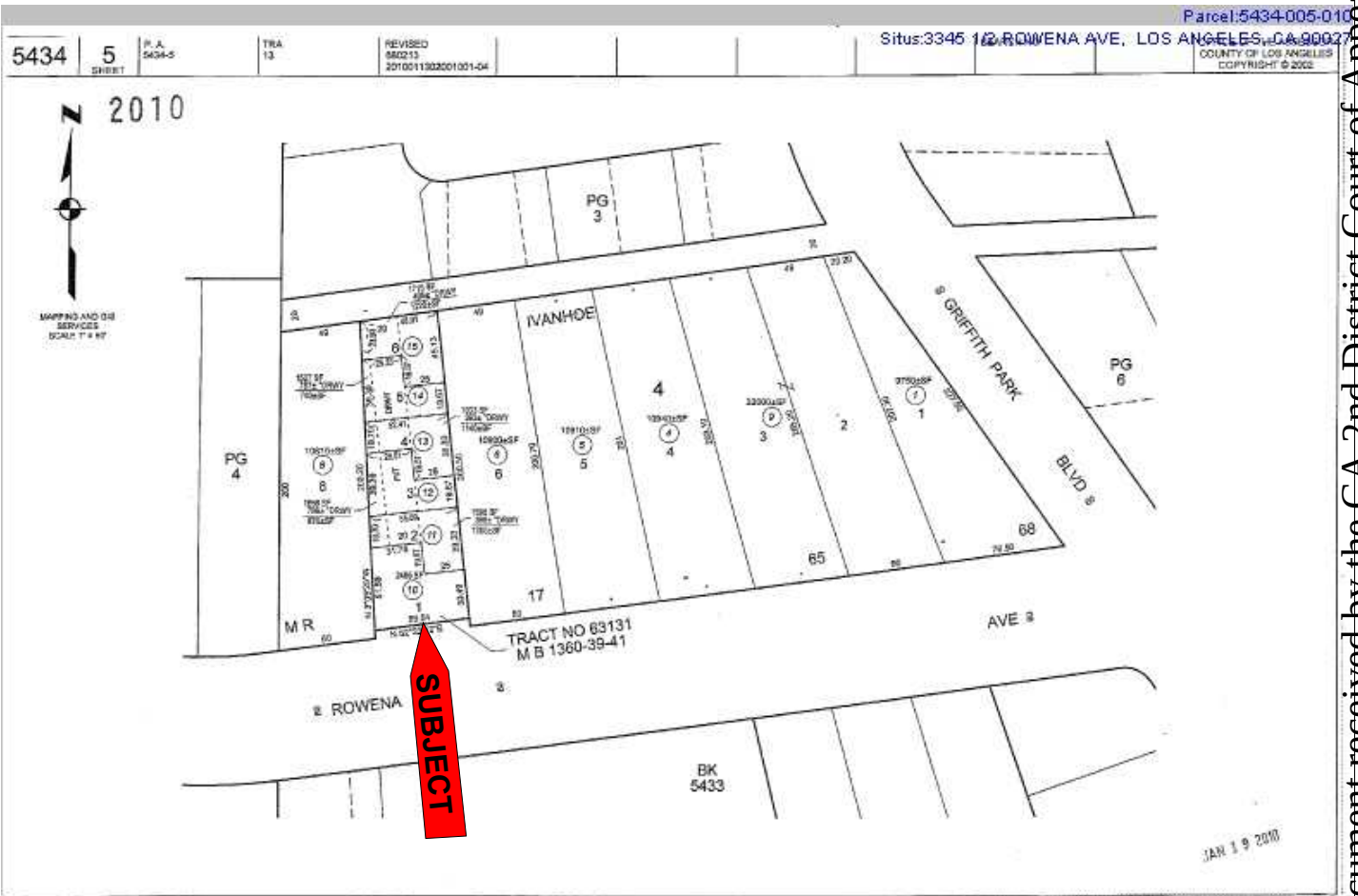
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00449

UAD Version 9/2011 Produced by ClickFORMS Software 800-622-8727 Page 12 of 28

Document received by the CA 2nd District Court of Appeal.

Borrower	Skylar Wells/Marilyn & David Schiamberg				
Property Address	3345 1/2 Rowena Avenue				
City	Los Angeles	County	Los Angeles	State	CA
Zip Code	90027				
Lender/Client	W.J. Bradley Mortgage Capital, LLC				
Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070				



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Borrower	Skylar Wells/Marilyn & David Schiamberg						
Property Address	3345 1/2 Rowena Avenue						
City	Los Angeles	County	Los Angeles	State	CA	Zip Code	90027
Lender/Client	W.J. Bradley Mortgage Capital, LLC			Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070		

RealQuest.com ® - Report

Page 1 of 1

Flood Map Report
For Property Located At
3345 1/2 ROWENA AVE, LOS ANGELES, CA 90027
Report Date: 11/27/2012
County: LOS ANGELES, CA

Flood Zone Code

X

Special Flood Hazard Area (SFHA)

Out

Flood Zone Panel

060137 - 1610F

Within 250 ft. of multiple flood zones?

No

Panel Date

09/26/2008

Community Name

LOS ANGELES

CoreLogic®

RealQuest Professional

Flood Zone Description:

Zone X-An area that is determined to be outside the 100- and 500-year floodplains.

Disclaimer of Use

This map/report was produced using multiple sources. It is provided for informational purposes only. This map/report should not be relied upon by any third parties. It is not intended to satisfy any regulatory guidelines and should not be used for this or any other purpose.

<http://pro.realquest.com/jsp/report.jsp?&client=&action=confirm&type=getreport&record...> 11/27/2012

Document received by the CA 2nd District Court of Appeal.

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Page 14 of 28
00451

Tri-Star Appraisal, Inc.
SUBJECT PHOTO ADDENDUM

File No. 1112-064/Order#96852
FHA CASE#197-6247233

Borrower	Skylar Wells/Marilyn & David Schiamberg						
Property Address	3345 1/2 Rowena Avenue						
City	Los Angeles	County	Los Angeles	State	CA	Zip Code	90027
Lender/Client	W.J. Bradley Mortgage Capital, LLC			Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070		



**FRONT OF
SUBJECT PROPERTY**
3345 1/2 Rowena Avenue
Los Angeles, CA 90027



**REAR OF
SUBJECT PROPERTY**



STREET SCENE

Document received by the CA 2nd District Court of Appeal.

Tri-Star Appraisal, Inc.
SUBJECT PHOTO ADDENDUM

File No. 1112-064/Order#96852
FHA CASE#197-6247233

Borrower	Skylar Wells/Marilyn & David Schiamberg						
Property Address	3345 1/2 Rowena Avenue						
City	Los Angeles	County	Los Angeles	State	CA	Zip Code	90027
Lender/Client	W.J. Bradley Mortgage Capital, LLC			Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070		



SUBJECT-SIDE



SUBJECT-SIDE



SUBJECT-LIVING ROOM

Document received by the CA 2nd District Court of Appeal.

Tri-Star Appraisal, Inc.
SUBJECT PHOTO ADDENDUM

File No. 1112-064/Order#96852
FHA CASE#197-6247233

Borrower	Skylar Wells/Marilyn & David Schiamberg						
Property Address	3345 1/2 Rowena Avenue						
City	Los Angeles	County	Los Angeles	State	CA	Zip Code	90027
Lender/Client	W.J. Bradley Mortgage Capital, LLC			Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070		



SUBJECT-KITCHEN



SUBJECT-BEDROOM



SUBJECT-BEDROOM

Document received by the CA 2nd District Court of Appeal.

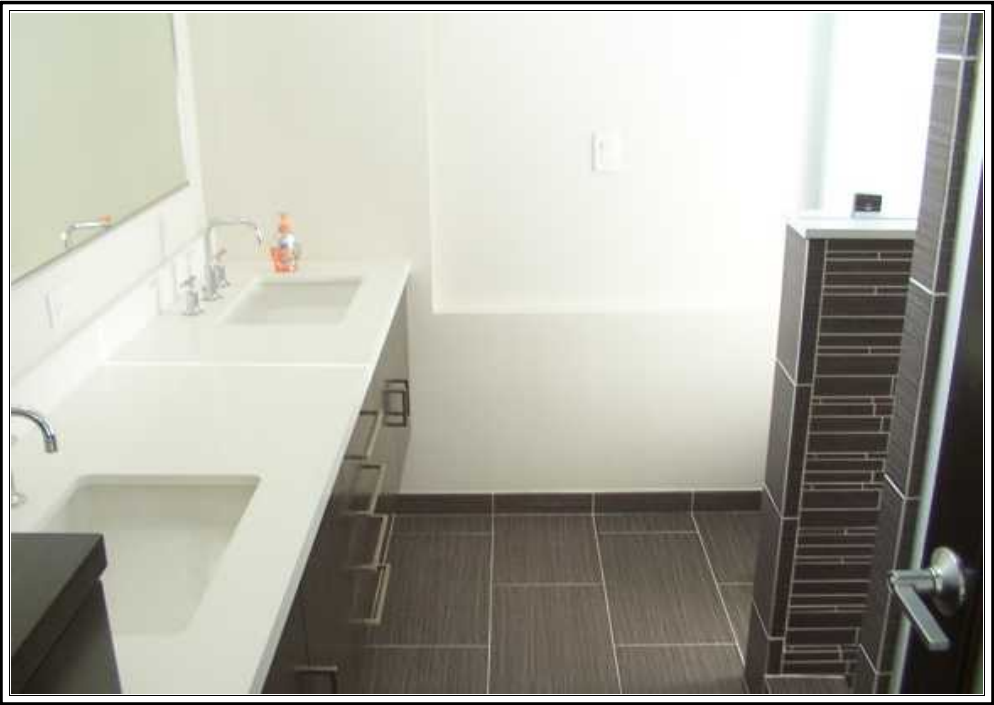
Tri-Star Appraisal, Inc.
SUBJECT PHOTO ADDENDUM

File No. 1112-064/Order#96852
FHA CASE#197-6247233

Borrower	Skylar Wells/Marilyn & David Schiamberg						
Property Address	3345 1/2 Rowena Avenue						
City	Los Angeles	County	Los Angeles	State	CA	Zip Code	90027
Lender/Client	W.J. Bradley Mortgage Capital, LLC			Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070		



SUBJECT-BATHROOM



SUBJECT-BATHROOM



SUBJECT-BATHROOM

Document received by the CA 2nd District Court of Appeal.

Tri-Star Appraisal, Inc.
SUBJECT PHOTO ADDENDUM

File No. 1112-064/Order#96852
FHA CASE#197-6247233

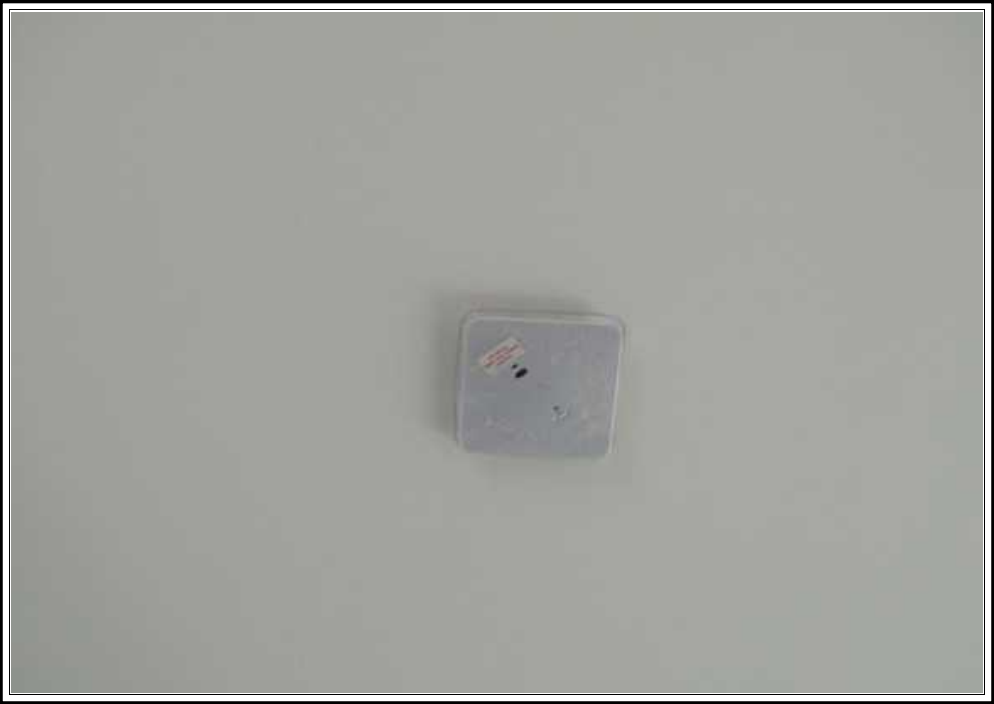
Borrower	Skylar Wells/Marilyn & David Schiamberg						
Property Address	3345 1/2 Rowena Avenue						
City	Los Angeles	County	Los Angeles	State	CA	Zip Code	90027
Lender/Client	W.J. Bradley Mortgage Capital, LLC			Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070		



SUBJECT-VIEW



SUBJECT-VIEW



SMOKE & CARBON MONOXIDE

Document received by the CA 2nd District Court of Appeal.

Borrower	Skylar Wells/Marilyn & David Schiamberg						
Property Address	3345 1/2 Rowena Avenue						
City	Los Angeles	County	Los Angeles	State	CA	Zip Code	90027
Lender/Client	W.J. Bradley Mortgage Capital, LLC			Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070		



COMPARABLE SALE # 1
4327 Ambrose Avenue
Los Angeles, CA 90027



COMPARABLE SALE # 2
4144 Tracy Street
Los Angeles, CA 90027



COMPARABLE SALE # 3
4421 Finley Avenue
Los Angeles, CA 90027

Document received by the CA 2nd District Court of Appeal.

Borrower	Skylar Wells/Marilyn & David Schiamberg						
Property Address	3345 1/2 Rowena Avenue						
City	Los Angeles	County	Los Angeles	State	CA	Zip Code	90027
Lender/Client	W.J. Bradley Mortgage Capital, LLC			Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070		



COMPARABLE SALE # 4
2154 Talmadge Street
Los Angeles, CA 90027



COMPARABLE SALE # 5
3807 Sunset Drive
Los Angeles, CA 90027



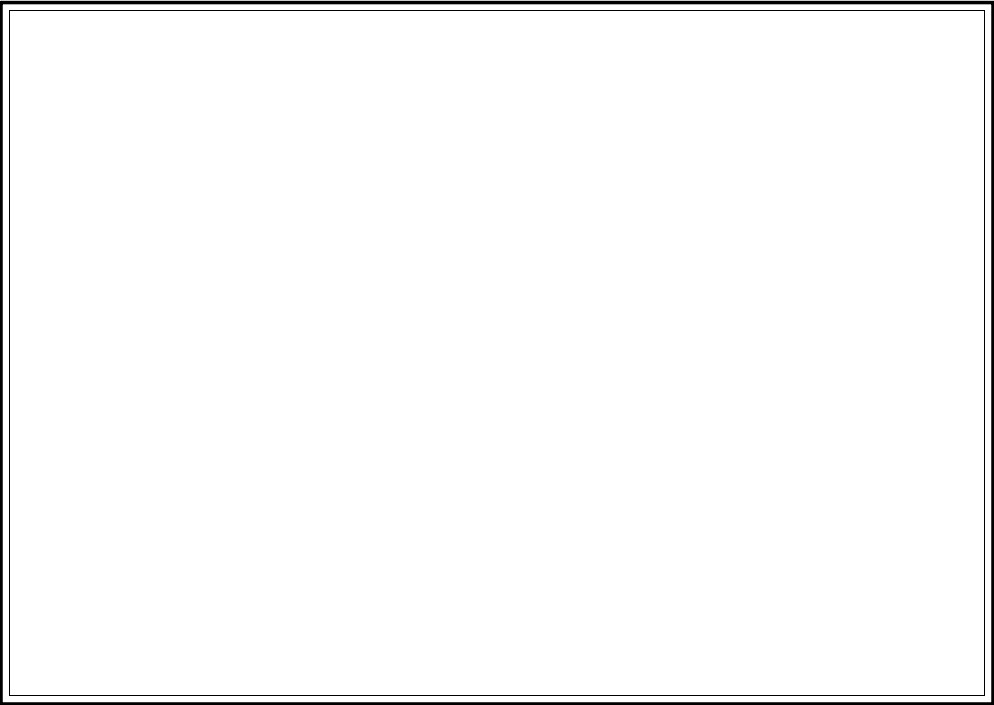
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3341 Rowena Avenue
Los Angeles, CA 90027

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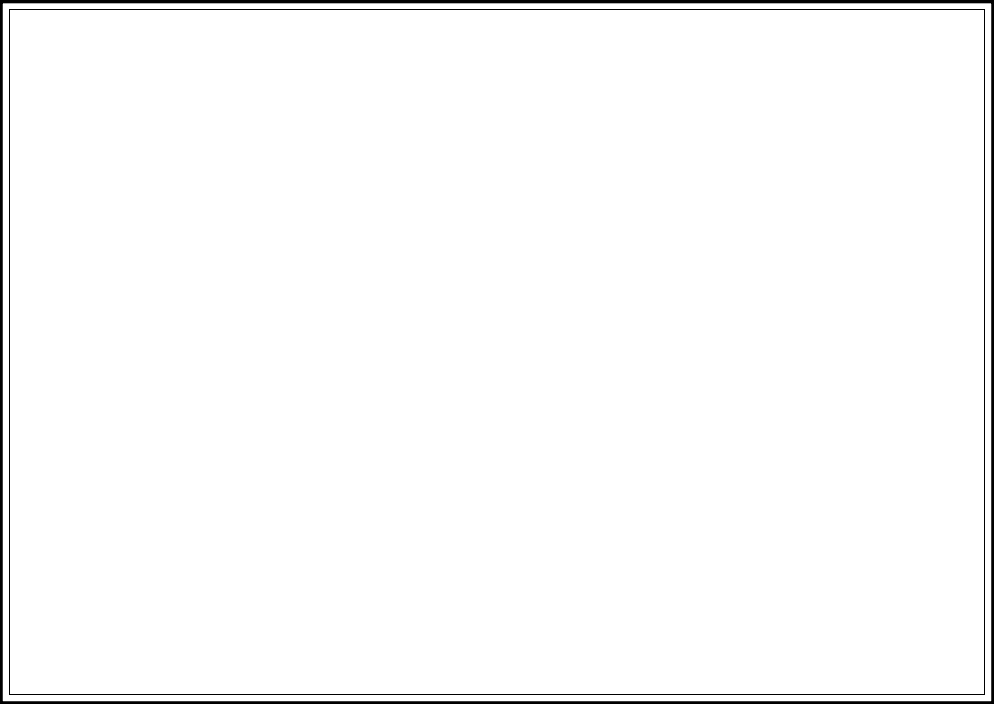
Borrower	Skylar Wells/Marilyn & David Schiamberg						
Property Address	3345 1/2 Rowena Avenue						
City	Los Angeles	County	Los Angeles	State	CA	Zip Code	90027
Lender/Client	W.J. Bradley Mortgage Capital, LLC			Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070		



COMPARABLE SALE # 7
3345 Rowena Avenue
Los Angeles, CA 90027



COMPARABLE SALE # 8



COMPARABLE SALE # 9

Document received by the CA 2nd District Court of Appeal.

Appraiser License Certificate

File No. 1112-064/Order#96852
FHA CASE#197-6247233

Document received by the CA 2nd District Court of Appeal.

	
STATE OF CALIFORNIA	
Business, Transportation & Housing Agency	
OFFICE OF REAL ESTATE APPRAISERS	
REAL ESTATE APPRAISER LICENSE	
JOSEPH Y. KWON	
has successfully met the requirements for a license as a residential real estate appraiser in the State of California and is, therefore, entitled to use the title "Certified Residential Real Estate Appraiser".	
This license has been issued in accordance with the provisions of the Real Estate Appraisers' Licensing and Certification Law.	
OREA APPRAISER IDENTIFICATION NUMBER	AR019672
Date Issued:	July 12, 2012
Date Expires:	July 11, 2014
	
Director, OREA	
Audit No.	
THIS DOCUMENT CONTAINS A TRUE WATERMARK - HOLD UP TO LIGHT TO SEE "CHAIN LINK"	

Borrower Skylar Wells/Marilyn & David Schiamberg
Property Address 3345 1/2 Rowena Avenue
City Los Angeles County Los Angeles State CA Zip Code 90027
Lender/Client W.J. Bradley Mortgage Capital, LLC Address 100 W Towne Ridge Parkway #300, Sandy, UT 84070

Real Estate Appraisers Professional Liability



Date Issued	Policy Number	Previous Policy Number
08/03/2012	LIU004662-011	LIU004662-010

LIBERTY INSURANCE UNDERWRITERS, INC.

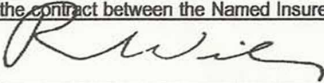
(A Stock Insurance Company, hereinafter the "Company")
55 Water Street, 18th Floor
New York, NY 10041

THIS IS A CLAIMS MADE AND REPORTED POLICY. PLEASE READ IT CAREFULLY.

Item DECLARATIONS

1. Customer ID: 145607 Named Insured: TRI-STAR APPRAISAL, INC. Joseph Y. Kwon 3932 Wilshire Blvd., #211 Los Angeles, CA 90010	
2. Policy Period: From: 09/10/2012 To: 09/10/2013 12:01 A.M. Standard Time at the address stated in Item 1.	
3. Deductible: \$1,000 Each Claim	
4. Retroactive Date: 09/10/1997	
5. Inception Date: 09/10/2002	
6. Limits of Liability: A. \$1,000,000 Each Claim B. \$1,000,000 Aggregate	The Limit of Liability for Each Claim and in the Aggregate is reduced by Damages and Claims Expenses as defined in the Policy.
7. Mail All Notices to Agent:	LIA Administrators & Insurance Services 1600 Anacapa Street Santa Barbara, California 93101 (805) 963-6624; Fax: (805) 962-0652
8. Annual Premium: \$995.00	
9. Number of Appraisers: 1	
10. Forms attached at issue: LIA002 (10/11) LIA009 (08/11) LIA012 (08/11) OFAC (08/09)	

This Declarations Page together with the completed and signed Policy Application including all attachments and exhibits thereto, and the Real Estate Appraisers Professional Liability Insurance Policy shall constitute the contract between the Named Insured and the Company.

By 
Authorized Signature

LIA001 (04/10)

Document received by the CA 2nd District Court of Appeal.

DIGITAL SIGNATURE AUTHENTICATION

Borrower Skylar Wells/Marilyn & David Schiamberg							
Property Address 3345 1/2 Rowena Avenue							
City	Los Angeles	County	Los Angeles	State	CA	Zip Code	90027
Lender/Client W.J. Bradley Mortgage Capital, LLC		Address 100 W Towne Ridge Parkway #300, Sandy, UT 84070					

This report contains an electronic digital signature(s) affixed by the appraiser(s). This advanced technology has been authorized by the Appraisal Standards Board of the Appraisal Foundation as compliant under specific reporting guidelines of the Uniform Standards of Professional Appraisal Practice (USPAP). The process not only acknowledges the authenticity of a printed paper copy of the report but also the file in its state of electronic storage.

The technology encompasses transmission integrity, signature security, and record keeping for each individual appraiser that affixes the signature. The appraiser has sole personal control of affixing a signature certifying its authenticity and accepting responsibility for content analysis, and conclusions in the report.

COMMENT ON PHOTO ADDENDA
=====

The original photos provided in the report are in color.

Signature 
Joseph Y. Kwon

Date 11/28/2012

Document received by the CA 2nd District Court of Appeal.

UNIFORM APPRAISAL DATASET (UAD)
Property Condition and Quality Rating Definitions

File No. 1112-064/Order#96852
FHA CASE# 197-6247233

Requirements - Condition and Quality Ratings Usage

Appraisers must utilize the following standardized conditions and quality ratings within the appraisal report.

Condition Ratings and Definitions

- C1
The improvements have been very recently constructed and have not previously been occupied. The entire structure and all components are new and the dwelling features no physical depreciation.
- Note:** *Newly constructed improvements that feature recycled or previously used materials and/or components can be considered new dwellings provided that the dwelling is placed on a 100 percent new foundation and recycled materials and the recycled components have been rehabilitated/remanufactured into like-new condition. Improvements that have not been previously occupied are not considered "new" if they have significant physical depreciation (that is, newly constructed dwellings that have been vacant for an extended period of time without adequate maintenance or upkeep).*
- C2
The improvements feature no deferred maintenance, little or no physical depreciation, and require no repairs. Virtually all building components are new or have been recently repaired, refinished, or rehabilitated. All outdated components and finishes have been updated and/or replaced with components that meet current standards. Dwellings in this category either are almost new or have been recently completely renovated and are similar in condition to new construction.
- Note:** *The improvements represent a relatively new property that is well maintained with no deferred maintenance and little or no physical depreciation, or an older property that has been recently completely renovated.*
- C3
The improvements are well maintained and feature limited physical depreciation due to normal wear and tear. Some components, but not every major building component, may be updated or recently rehabilitated. The structure has been well maintained.
- Note:** *The improvement is in its first-cycle of replacing short-lived building components (appliances, floor coverings, HVAC, etc.) and is being well maintained. Its estimated effective age is less than its actual age. It also may reflect a property in which the majority of short-lived building components have been replaced but not to the level of complete renovation.*
- C4
The improvements feature some minor deferred maintenance and physical deterioration due to normal wear and tear. The dwelling has been adequately maintained and requires only minimal repairs to building components/mechanical systems and cosmetic repairs. All major building components have been adequately maintained and are functionally adequate.
- Note:** *The estimated effective age may be close to or equal to its actual age. It reflects a property in which some of the short-lived building components have been replaced, and some short-lived components are at or near the end of their physical life expectancy; however, they still function adequately. Most minor repairs have been addressed on an ongoing basis resulting in an adequately maintained property.*
- C5
The improvements feature obvious deferred maintenance and are in need of some significant repairs. Some building components need repairs, rehabilitation, or updating. The functional utility and overall livability is somewhat diminished due to condition, but the dwelling remains useable and functional as a residence.
- Note:** *Some significant repairs are needed to the improvements due to the lack of adequate maintenance. It reflects a property in which many of its short-lived building components are at the end of or have exceeded their physical life expectancy but remain functional.*
- C6
The improvements have substantial damage or deferred maintenance with deficiencies or defects that are severe enough to affect the safety, soundness, or structural integrity of the improvements. The improvements are in need of substantial repairs and rehabilitation, including many or most major components.
- Note:** *Substantial repairs are needed to the improvements due to the lack of adequate maintenance or property damage. It reflects a property with condition severe enough to affect the safety, soundness, or structural integrity of the improvements.*

Document received by the CA 2nd District Court of Appeal.

UNIFORM APPRAISAL DATASET (UAD)
Property Condition and Quality Rating Definitions

File No. 1112-064/Order#96852
FHA CASE# 197-6247233

Quality Ratings and Definitions

- Q1
Dwellings with this quality rating are usually unique structures that are individually designed by an architect for a specified use. Such residences typically are constructed from detailed architectural plans and specifications and feature an exceptionally high level of workmanship and exceptionally high-grade materials throughout the interior and exterior of the structure. The design features exceptionally high-quality exterior refinements and ornamentation, and exceptionally high-quality interior refinements. The workmanship, materials, and finishes throughout the dwelling are exceptionally high quality.
- Q2
Dwellings with this quality rating are often custom designed for construction on an individual property owner's site. However, dwellings in this quality grade are also found in high-quality tract developments featuring residences constructed from individual plans or from highly modified or upgraded plans. The design features detailed, high-quality exterior ornamentation, high-quality interior refinements, and detail. The workmanship, materials, and finishes throughout the dwelling are generally of high or very high-quality.
- Q3
Dwellings with this quality rating are residences of higher quality built from individual or readily available designer plans in above-standard residential tract developments or on an individual property owner's site. The design includes significant exterior ornamentation and interiors that are well finished. The workmanship exceeds acceptable standards and many materials and finishes throughout the dwelling have been upgraded from "stock" standards.
- Q4
Dwellings with this quality rating meet or exceed the requirements of applicable building codes. Standard or modified standard building plans are utilized and the design includes adequate fenestration and some exterior ornamentation and interior refinements. Materials, workmanship, finish, and equipment are of stock or builder grade and may feature some upgrades.
- Q5
Dwellings with this quality rating feature economy of construction and basic functionality as main considerations. Such dwellings feature a plain design using readily available or basic floor plans featuring minimal fenestration and basic finishes with minimal exterior ornamentation and limited interior detail. These dwellings meet minimum building codes and are constructed with inexpensive, stock materials with limited refinements and upgrades.
- Q6
Dwellings with this quality rating are of basic quality and lower cost; some may not be suitable for year-round occupancy. Such dwellings are often built with simple plans or without plans, often utilizing the lowest quality building materials. Such dwellings are often built or expanded by persons who are professionally unskilled or possess only minimal construction skills. Electrical, plumbing, and other mechanical systems and equipment may be minimal or non-existent. Older dwellings may feature one or more substantial non-conforming additions to the original structure.

Requirements - Definition of Not Updated, Updated and Remodeled

Not Updated

Little or no updating or modernization. This description includes, but is not limited to, new homes.

Residential properties of fifteen years of age or less often reflect an original condition with no updating, if no major components have been replaced or updated. Those over fifteen years of age are also considered not updated if the appliances, fixtures, and finishes are predominately dated. An area that is 'Not Updated' may still be well maintained and fully functional, and this rating does not necessarily imply deferred maintenance or physical/functional deterioration.

Updated

The area of the home has been modified to meet current market expectation. These modifications are limited in terms of both scope and cost.

An updated area of the home should have an improved look and feel, or functional utility. Changes that constitute updates include refurbishment and/or replacing to meet existing market expectations. Updates do not include significant alterations to the existing structure.

Remodeled

Significant finish and/or structural changes have been made that increase utility and appeal through complete replacement and/or expansion.

A remodeled area reflects fundamental changes that include multiple alterations. These alterations may include some or all of the following: replacement of a major component (cabinet(s), bathtub, or bathroom tile), relocation of plumbing/gas fixtures/appliances, significant structural alterations (relocating walls, and/or the addition of square footage). This would include a complete gutting and rebuild.

Document received by the CA 2nd District Court of Appeal.

UNIFORM APPRAISAL DATASET (UAD)
Property Description Abbreviations Used in This Report

File No. 1112-064/Order#96852
FHA CASE# 197-6247233

Abbreviation	Full Name	May Appear in These Fields
ac	Acres	Area, Site
AdjPrk	Adjacent to Park	Location
AdjPwr	Adjacent to Power Lines	Location
A	Adverse	Location & View
ArmLth	Arms Length Sale	Sale or Financing Concessions
ba	Bathroom(s)	Basement & Finished Rooms Below Grade
br	Bedroom	Basement & Finished Rooms Below Grade
B	Beneficial	Location & View
Cash	Cash	Sale or Financing Concessions
CtySky	City View Skyline View	View
CtyStr	City Street View	View
Comm	Commercial Influence	Location
c	Contracted Date	Date of Sale/Time
Conv	Conventional	Sale or Financing Concession
CrtOrd	Court Ordered Sale	Sale or Financing Concession
DOM	Days On Market	Data Sources
e	Expiration Date	Date of Sale/Time
Estate	Estate Sale	Sale or Financing Concessions
FHA	Federal Housing Administration	Sale or Financing Concessions
GlfCse	Golf Course	Location
Glfw	Golf Course View	View
Ind	Industrial	Location & View
in	Interior Only Stairs	Basement & Finished Rooms Below Grade
Lndfl	Landfill	Location
LtdSght	Limited Sight	View
Listing	Listing	Sale or Financing Concessions
Mtn	Mountain View	View
N	Neutral	Location & View
NonArm	Non-Arms Length Sale	Sale or Financing Concessions
BsyRd	Busy Road	Location
o	Other	Basement & Finished Rooms Below Grade
Prk	Park View	View
Pstrl	Pastoral View	View
PwrLn	Power Lines	View
PubTrn	Public Transportation	Location
rr	Recreational (Rec) Room	Basement & Finished Rooms Below Grade
Relo	Relocation Sale	Sale or Financing Concessions
REO	REO Sale	Sale or Financing Concessions
Res	Residential	Location & View
RH	USDA - Rural Housing	Sale or Financing Concessions
s	Settlement Date	Date of Sale/Time
Short	Short Sale	Sales or Financing Concessions
sf	Square Feet	Area, Site, Basement
Unk	Unknown	Date of Sale/Time
VA	Veterans Administration	Sale or Financing Concessions
w	Withdraw Date	Date of Sale/Time
wo	Walk Out Basement	Basement & Finished Rooms Below Grade
wu	Walk Up Basement	Basement & Finished Rooms Below Grade
WtrFr	Water Frontage	Location
Wtr	Water View	View
Woods	Woods View	View

ABBREVIATED ENTRY	VIEW FACTOR
Wtr	Water View
Pstrl	Pastoral View
Woods	Woods View
Prk	Park View
Glfw	Golf Course View
CtySky	City Skyline View
Mtn	Mountain View
Res	Residential View
CtyStr	City Street View
Ind	Industrial View
PwnLn	Power Lines
LtdSght	Limited Sight
See Instruction Below	Other - Appraiser to enter a description of the view*

ABBREVIATED ENTRY	OVERALL VIEW RATING
N	Neutral
B	Beneficial
A	Adverse

* Other: If a view factor not on this list materially affects the value of the subject property, the appraiser must enter a description of the view associated with the property. The description entered must allow a reader of the appraisal report to understand what the view associated with the property actually is. Descriptors such as 'None', 'N/A', 'Typical', 'Average', etc., are unacceptable. Descriptions should be entered carefully because the same text will be represented in both the Site section and the comparable sales grid for the subject property. The text must fit in the allowable space.

Document received by the CA 2nd District Court of Appeal.

Exhibit D

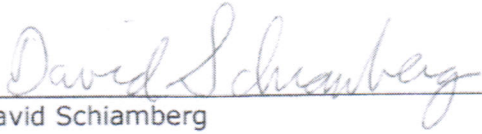
00466

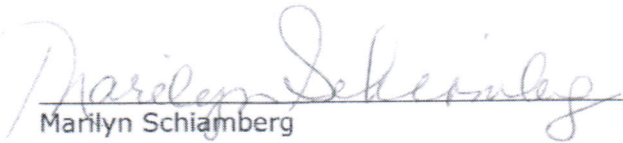
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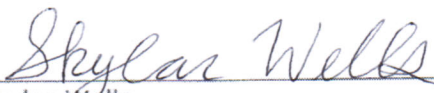
May 21, 2013

Property: 3345 1/2 Rowena Avenue, Los Angeles, CA 90027

I, David Schiamberg and I, Marilyn Schiamberg, understand and agree that we have co-signed the loan for this property as an accommodation and that Skylar Wells is the 100% owner of this property. We will at all times cooperate with any needs Skylar Wells may have in connection with the fact we are on title to this property. Including but not limited to, refinance of this property and sale of this property.


David Schiamberg


Marilyn Schiamberg


Skylar Wells

Document received by the CA 2nd District Court of Appeal.

00467

Exhibit E

00468

Document received by the CA 2nd District Court of Appeal.

Sevan Gobel (SBN: 221768)
sgobel@lbbklaw.com
Artin Avetisove (SBN: 258777)
aavetisove@lbbklaw.com
LAGASSE BRANCH BELL + KINKEAD LLP
626 Wilshire Blvd., Suite 1000
Los Angeles, CA 90017
Telephone: (213) 817-9152
Facsimile: (213) 817-9154

Attorneys for Defendants
Cameron Hopkins and Jay Dyckman

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SKYLER WELLS,

Plaintiff,

vs.

CAMERON HOPKINS, an individual; and JAY
DYCKMAN, an individual,

Defendants.

CASE NO. 22STCV05843

**DEFENDANT CAMERON HOPKINS
AND JAY DYCKMAN'S RESPONSE TO
PLAINTIFF SKYLER WELLS'
REQUEST FOR PRODUCTION OF
DOCUMENTS, SET ONE**

Judge: Hon. Wendy Chang
Dept.: 36

Complaint filed: 02/16/2022
First Amended Complaint filed: 03/29/2022
Second Amended Complaint filed: 12/09/2022
Third Amended Complaint filed: 12/26/2023
Fourth Amended Complaint filed: 06/09/2023
Trial date: 01/10/2025

CAMERON HOPKINS, an individual,

Cross-Complainant,

vs.

SKYLER WELLS aka SKYLAR WELLS, an
individual; DAVID SCHIAMBERG, an
individual; MARILYN SCHIAMBERG, an
individual, and ROES 1-20

Cross-Defendants.

PROPOUNDING PARTY: Plaintiff SKYLER WELLS

RESPONDING PARTY: Defendants CAMERON HOPKINS and JAY DYCKMAN

SET NO.: One (1)

Defendants CAMERON HOPKINS and JAY DYCKMAN (Responding Party or Defendants) responds to Plaintiff SKYLER WELLS Request for Production of Documents, Set One, as follows:

RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS

Defendants' responds to Propounding Party's Request for Production of Documents, Set One as follows.

REQUEST FOR PRODUCTION NO. 1:

All DOCUMENTS RELATING to a request for individual notice from the ASSOCIATION provided by the owners of the SUBJECT PROPERTY to YOU prior to August 2019 pursuant to California Civil Code § 4040.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information and documents that are protected by the attorney-client privilege, attorney work-product rule, and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and subject thereto, Responding Party responds as follows to the extent it is able to understand this Request: After a reasonable search and diligent inquiry, Responding Party is not in possession of any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 2:

All DOCUMENTS RELATING to a request for individual notice from the ASSOCIATION provided by the owners of the OTHER PROPERTIES to YOU prior to August 2019 pursuant to California Civil Code § 4040.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information and documents that are protected by the attorney-client privilege, attorney work-product rule, and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and subject thereto, Responding Party responds as follows to the extent it is able to understand this Request: After a reasonable search and diligent inquiry, Responding Party is not in possession of any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 3:

All DOCUMENTS RELATING to a written notice to the ASSOCIATION of the preferred delivery method for receiving notices from the ASSOCIATION by the owners of the SUBJECT PROPERTY provided to YOU prior to August 2019 pursuant to California Civil Code § 4041.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information and documents that are protected by the attorney-client privilege, attorney work-product rule, and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and subject thereto, Responding Party responds as follows to the extent it is able to understand this Request: After a reasonable search and diligent inquiry, Responding Party is not in possession of any documents responsive to this request.

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REQUEST FOR PRODUCTION NO. 4:

All DOCUMENTS RELATING to a written notice to the ASSOCIATION of the preferred delivery method for receiving notices from the ASSOCIATION by the owners of the OTHER PROPERTIES provided to YOU prior to August 2019 pursuant to California Civil Code § 4041.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information and documents that are protected by the attorney-client privilege, attorney work-product rule, and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and subject thereto, Responding Party responds as follows to the extent it is able to understand this Request: After a reasonable search and diligent inquiry, Responding Party is not in possession of any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 5:

All DOCUMENTS RELATING to the text of the proposed amendment to the CC&Rs with the ballot provided by YOU to the owners of the SUBJECT PROPERTY between August 2019 and December 2019 pursuant to California Civil Code § 5115(c) and (g).

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information and documents that are protected by the attorney-client privilege, attorney work-product rule, and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and

1 subject thereto, Responding Party responds as follows to the extent it is able to understand this
2 Request: After a reasonable search and diligent inquiry, Responding Party is not in possession
3 of any documents responsive to this request.

4 **REQUEST FOR PRODUCTION NO. 6:**

5 All DOCUMENTS RELATING to the text of the proposed amendment to the CC&Rs
6 with the ballot provided by YOU to the owners of the OTHER PROPERTIES between August
7 2019 and December 2019 pursuant to California Civil Code § 5115(c) and (g).

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

9 Objection. This Request is improper because it fails to designate documents by
10 specifically describing each individual item or by reasonably particularizing each category of
11 item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and
12 ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of
13 admissible evidence. Responding Party also objects to the extent the Request seeks information
14 and documents that are protected by the attorney-client privilege, attorney work-product rule,
15 and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and
16 subject thereto, Responding Party responds as follows to the extent it is able to understand this
17 Request: After a reasonable search and diligent inquiry, Responding Party is not in possession
18 of any documents responsive to this request. Upon information and belief, any documents
19 responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of
20 Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA
21 91367.

22 **REQUEST FOR PRODUCTION NO. 7:**

23 All DOCUMENTS EVIDENCING that the text of the proposed amendment to the
24 CC&Rs with the ballot provided by YOU to the owners of the SUBJECT PROPERTY between
25 August 2019 and December 2019 pursuant to California Civil Code § 5115(c) and (g) was sent
26 via first-class mail, registered or certified mail, express mail, or overnight delivery by an express
27 service carrier addressed to the owners of the SUBJECT PROPERTY at the address last shown
28 on the books of the ASSOCIATION pursuant to California Civil Code § 4040.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information and documents that are protected by the attorney-client privilege, attorney work-product rule, and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and subject thereto, Responding Party responds as follows to the extent it is able to understand this Request: After a reasonable search and diligent inquiry, Responding Party is not in possession of any documents responsive to this request. Upon information and belief, any documents responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA 91367.

REQUEST FOR PRODUCTION NO. 8:

All DOCUMENTS EVIDENCING that the text of the proposed amendment to the CC&Rs with the ballot provided by YOU to the owners of the OTHER PROPERTIES between August 2019 and December 2019 pursuant to California Civil Code § 5115(c) and (g) was sent via first-class mail, registered or certified mail, express mail, or overnight delivery by an express service carrier addressed to the owners of the OTHER PROPERTIES at the addresses last shown on the books of the ASSOCIATION pursuant to California Civil Code § 4040.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information and documents that are protected by the attorney-client privilege, attorney work-product rule,

and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and subject thereto, Responding Party responds as follows to the extent it is able to understand this Request: After a reasonable search and diligent inquiry, Responding Party is not in possession of any documents responsive to this request. Upon information and belief, any documents responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA 91367.

REQUEST FOR PRODUCTION NO. 9:

All DOCUMENTS EVIDENCING that the text of the proposed amendment to the CC&Rs with the ballot provided by YOU to the owners of the SUBJECT PROPERTY between August 2019 and December 2019 pursuant to California Civil Code § 5115(c) and (g) was sent via a valid email address, which did not result in a bounce or other error notification indicating failure of the email message, pursuant to California Civil Code § 4041.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information and documents that are protected by the attorney-client privilege, attorney work-product rule, and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and subject thereto, Responding Party responds as follows to the extent it is able to understand this Request: After a reasonable search and diligent inquiry, Responding Party is not in possession of any documents responsive to this request. Upon information and belief, any documents responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA 91367.

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REQUEST FOR PRODUCTION NO. 10:

All DOCUMENTS EVIDENCING that the text of the proposed amendment to the CC&Rs with the ballot provided by YOU to the owners of the OTHER PROPERTIES between August 2019 and December 2019 pursuant to California Civil Code § 5115(c) and (g) was sent via valid email addresses, which did not result in a bounce or other error notification indicating failure of the email message, pursuant to California Civil Code § 4041.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information and documents that are protected by the attorney-client privilege, attorney work-product rule, and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and subject thereto, Responding Party responds as follows to the extent it is able to understand this Request: After a reasonable search and diligent inquiry, Responding Party is not in possession of any documents responsive to this request. Upon information and belief, any documents responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA 91367.

REQUEST FOR PRODUCTION NO. 11:

All DOCUMENTS RELATING to the ballot and a copy of election operation rules for the proposed amendment to the CC&Rs provided by YOU to the owners of the SUBJECT PROPERTY between August 2019 and December 2019 pursuant to California Civil Code § 5105(h)(4).

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of

1 item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and
2 ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of
3 admissible evidence. Responding Party also objects to the extent the Request seeks information
4 and documents that are protected by the attorney-client privilege, attorney work-product rule,
5 and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and
6 subject thereto, Responding Party responds as follows to the extent it is able to understand this
7 Request: Responding Party will comply with this Request.

8 **REQUEST FOR PRODUCTION NO. 12:**

9 All DOCUMENTS RELATING to the ballot and a copy of election operation rules for
10 the proposed amendment to the CC&Rs provided by YOU to the owners of the OTHER
11 PROPERTIES between August 2019 and December 2019 pursuant to California Civil Code §
12 5105(h)(4).

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

14 Objection. This Request is improper because it fails to designate documents by
15 specifically describing each individual item or by reasonably particularizing each category of
16 item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and
17 ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of
18 admissible evidence. Responding Party also objects to the extent the Request seeks information
19 and documents that are protected by the attorney-client privilege, attorney work-product rule,
20 and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and
21 subject thereto, Responding Party responds as follows to the extent it is able to understand this
22 Request: After a reasonable search and diligent inquiry, Responding Party is not in possession
23 of any documents responsive to this request. Upon information and belief, any documents
24 responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of
25 Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA
26 91367.

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REQUEST FOR PRODUCTION NO. 13:

All DOCUMENTS EVIDENCING that the ballot and a copy of election operation rules for the proposed amendment to the CC&Rs provided by YOU to the owners of the SUBJECT PROPERTY between August 2019 and December 2019 pursuant to California Civil Code § 5105(h)(4) was sent via first-class mail, registered or certified mail, express mail, or overnight delivery by an express service carrier addressed to the owners of the SUBJECT PROPERTY at the address last shown on the books of the ASSOCIATION pursuant to California Civil Code § 4040.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information and documents that are protected by the attorney-client privilege, attorney work-product rule, and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and subject thereto, Responding Party responds as follows to the extent it is able to understand this Request: After a reasonable search and diligent inquiry, Responding Party is not in possession of any documents responsive to this request. Upon information and belief, any documents responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA 91367.

REQUEST FOR PRODUCTION NO. 14:

All DOCUMENTS EVIDENCING that the ballot and a copy of election operation rules for the proposed amendment to the CC&Rs provided by YOU to the owners of the OTHER PROPERTIES between August 2019 and December 2019 pursuant to California Civil Code § 5105(h)(4) was sent via first-class mail, registered or certified mail, express mail, or overnight delivery by an express service carrier addressed to the owners of the OTHER PROPERTIES at

the addresses last shown on the books of the ASSOCIATION pursuant to California Civil Code § 4040.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information and documents that are protected by the attorney-client privilege, attorney work-product rule, and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and subject thereto, Responding Party responds as follows to the extent it is able to understand this Request: After a reasonable search and diligent inquiry, Responding Party is not in possession of any documents responsive to this request. Upon information and belief, any documents responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA 91367.

REQUEST FOR PRODUCTION NO. 15:

All DOCUMENTS EVIDENCING that the ballot and a copy of election operation rules for the proposed amendment to the CC&Rs provided by YOU to the owners of the SUBJECT PROPERTY between August 2019 and December 2019 pursuant to California Civil Code § 5105(h)(4) was sent via a valid email address, which did not result in a bounce or other error notification indicating failure of the email message, pursuant to California Civil Code § 4041.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information

1 and documents that are protected by the attorney-client privilege, attorney work-product rule,
2 and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and
3 subject thereto, Responding Party responds as follows to the extent it is able to understand this
4 Request: After a reasonable search and diligent inquiry, Responding Party is not in possession
5 of any documents responsive to this request. Upon information and belief, any documents
6 responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of
7 Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA
8 91367.

9 **REQUEST FOR PRODUCTION NO. 16:**

10 All DOCUMENTS EVIDENCING that the ballot and a copy of election operation rules
11 for the proposed amendment to the CC&Rs provided by YOU to the owners of the OTHER
12 PROPERTIES between August 2019 and December 2019 pursuant to California Civil Code §
13 5105(h)(4) was sent via valid email addresses, which did not result in a bounce or other error
14 notification indicating failure of the email message, pursuant to California Civil Code § 4041.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

16 Objection. This Request is improper because it fails to designate documents by
17 specifically describing each individual item or by reasonably particularizing each category of
18 item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and
19 ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of
20 admissible evidence. Responding Party also objects to the extent the Request seeks information
21 and documents that are protected by the attorney-client privilege, attorney work-product rule,
22 and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and
23 subject thereto, Responding Party responds as follows to the extent it is able to understand this
24 Request: After a reasonable search and diligent inquiry, Responding Party is not in possession
25 of any documents responsive to this request. Upon information and belief, any documents
26 responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of
27 Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA
28 91367.

REQUEST FOR PRODUCTION NO. 17:

All DOCUMENTS RELATING to the tabulated results for the proposed amendment to the CC&Rs provided by YOU to the owners of the SUBJECT PROPERTY between August 2019 and January 2020 pursuant to California Civil Code § 5120(b).

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information and documents that are protected by the attorney-client privilege, attorney work-product rule, and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and subject thereto, Responding Party responds as follows to the extent it is able to understand this Request: After a reasonable search and diligent inquiry, Responding Party is not in possession of any documents responsive to this request. Upon information and belief, any documents responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA 91367.

REQUEST FOR PRODUCTION NO. 18:

All DOCUMENTS RELATING to the tabulated results for the proposed amendment to the CC&Rs provided by YOU to the owners of the OTHER PROPERTIES between August 2019 and January 2020 pursuant to California Civil Code § 5120(b).

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information

1 and documents that are protected by the attorney-client privilege, attorney work-product rule,
2 and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and
3 subject thereto, Responding Party responds as follows to the extent it is able to understand this
4 Request: After a reasonable search and diligent inquiry, Responding Party is not in possession
5 of any documents responsive to this request. Upon information and belief, any documents
6 responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of
7 Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA
8 91367.

9 **REQUEST FOR PRODUCTION NO. 19:**

10 All DOCUMENTS EVIDENCING that the tabulated results for the proposed amendment
11 to the CC&Rs provided by YOU to the owners of the SUBJECT PROPERTY between August
12 2019 and January 2020 pursuant to California Civil Code § 5120(b) was sent via first-class mail,
13 registered or certified mail, express mail, or overnight delivery by an express service carrier
14 addressed to the owners of the SUBJECT PROPERTY at the address last shown on the books of
15 the ASSOCIATION pursuant to California Civil Code § 4040.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

17 Objection. This Request is improper because it fails to designate documents by
18 specifically describing each individual item or by reasonably particularizing each category of
19 item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and
20 ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of
21 admissible evidence. Responding Party also objects to the extent the Request seeks information
22 and documents that are protected by the attorney-client privilege, attorney work-product rule,
23 and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and
24 subject thereto, Responding Party responds as follows to the extent it is able to understand this
25 Request: After a reasonable search and diligent inquiry, Responding Party is not in possession
26 of any documents responsive to this request. Upon information and belief, any documents
27 responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of
28

Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA 91367.

REQUEST FOR PRODUCTION NO. 20:

All DOCUMENTS EVIDENCING that the tabulated results for the proposed amendment to the CC&Rs provided by YOU to the owners of the OTHER PROPERTIES between August 2019 and January 2020 pursuant to California Civil Code § 5120(b) was sent via first-class mail, registered or certified mail, express mail, or overnight delivery by an express service carrier addressed to the owners of the OTHER PROPERTIES at the addresses last shown on the books of the ASSOCIATION pursuant to California Civil Code § 4040.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information and documents that are protected by the attorney-client privilege, attorney work-product rule, and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and subject thereto, Responding Party responds as follows to the extent it is able to understand this Request: After a reasonable search and diligent inquiry, Responding Party is not in possession of any documents responsive to this request. Upon information and belief, any documents responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA 91367.

REQUEST FOR PRODUCTION NO. 21:

All DOCUMENTS EVIDENCING that the tabulated results for the proposed amendment to the CC&Rs provided by YOU to the owners of the SUBJECT PROPERTY between August 2019 and January 2020 pursuant to California Civil Code § 5120(b) was sent via a valid email

address, which did not result in a bounce or other error notification indicating failure of the email message, pursuant to California Civil Code § 4041.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information and documents that are protected by the attorney-client privilege, attorney work-product rule, and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and subject thereto, Responding Party responds as follows to the extent it is able to understand this Request: After a reasonable search and diligent inquiry, Responding Party is not in possession of any documents responsive to this request. Upon information and belief, any documents responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA 91367.

REQUEST FOR PRODUCTION NO. 22:

All DOCUMENTS EVIDENCING that the tabulated results for the proposed amendment to the CC&Rs provided by YOU to the owners of the OTHER PROPERTIES between August 2019 and January 2020 pursuant to California Civil Code § 5120(b) was sent via valid email addresses, which did not result in a bounce or other error notification indicating failure of the email message, pursuant to California Civil Code § 4041.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information

and documents that are protected by the attorney-client privilege, attorney work-product rule, and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and subject thereto, Responding Party responds as follows to the extent it is able to understand this Request: After a reasonable search and diligent inquiry, Responding Party is not in possession of any documents responsive to this request. Upon information and belief, any documents responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA 91367.

REQUEST FOR PRODUCTION NO. 23:

All DOCUMENTS that reflect COMMUNICATIONS between YOU and any PERSON, between August 2019 and January 2020, RELATING to the proposed amendment to the CC&Rs.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Objection. This Request is improper because it fails to designate documents by specifically describing each individual item or by reasonably particularizing each category of item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Responding Party also objects to the extent the Request seeks information and documents that are protected by the attorney-client privilege, attorney work-product rule, and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and subject thereto, Responding Party responds as follows to the extent it is able to understand this Request: After a reasonable search and diligent inquiry, Responding Party is not in possession of any documents responsive to this request. Upon information and belief, any documents responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA 91367.

REQUEST FOR PRODUCTION NO. 24:

All DOCUMENTS that reflect COMMUNICATIONS between YOU and any PERSON

1 between August 2019 and January 2020, RELATING to the voting on the proposed amendment
2 to the CC&Rs.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

4 Objection. This Request is improper because it fails to designate documents by
5 specifically describing each individual item or by reasonably particularizing each category of
6 item in contravention of *Code of Civil Procedure* § 2031.030(c)(1). This Request is vague and
7 ambiguous as phrased. This Request is not reasonably calculated to lead to the discovery of
8 admissible evidence. Responding Party also objects to the extent the Request seeks information
9 and documents that are protected by the attorney-client privilege, attorney work-product rule,
10 and/or were prepared in anticipation of litigation. Without waiving the foregoing objections and
11 subject thereto, Responding Party responds as follows to the extent it is able to understand this
12 Request: After a reasonable search and diligent inquiry, Responding Party is not in possession
13 of any documents responsive to this request. Upon information and belief, any documents
14 responsive to this Request (if any) may be in the possession of Robert D. Hillshafer, Esq. of
15 Loewenthal, Hillshafer & Carter, LLP, 5700 Canoga Ave., Suite 160, Woodland Hills, CA
16 91367.

17
18 Dated: July 15, 2024

LAGASSE BRANCH BELL + KINKEAD LLP

19
20 By: 
21 Sevan Gobel
22 Artin Avetisove
23 Attorneys for Defendants
24 Cameron Hopkins and Jay Dyckman
25
26
27
28

Case: Skyler Wells v. Cameron Hopkins, et al.
Case No.: 22STCV05843

VERIFICATION

I, Cameron Hopkins, declare:

I am the Defendant in the above-entitled action. I have read the foregoing
**DEFENDANT CAMERON HOPKINS AND JAY DYCKMAN'S RESPONSE TO
PLAINTIFF SKYLER WELLS' REQUEST FOR PRODUCTION OF DOCUMENTS,
SET ONE**, on file herein and know the contents thereof. To the extent I have personal
knowledge of the matters set forth herein, the same are true and correct. Insofar as said
matters are a composite of the information of many individuals, I do not have personal
knowledge concerning all of the information contained in said Response, but I am informed
and believe that the information set forth therein for which I lack personal knowledge is true
and correct.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed in VENTURA, California on July 10, 2024.


Cameron Hopkins

Case: Skyler Wells v. Cameron Hopkins, et al.
Case No.: 22STCV05843

VERIFICATION

I, Jay Dyckman, declare:

I am the Defendant in the above-entitled action. I have read the foregoing
**DEFENDANT CAMERON HOPKINS AND JAY DYCKMAN'S RESPONSE TO
PLAINTIFF SKYLER WELLS' REQUEST FOR PRODUCTION OF DOCUMENTS, SET
ONE**, on file herein and know the contents thereof. To the extent I have personal knowledge of
the matters set forth herein, the same are true and correct. Insofar as said matters are a composite
of the information of many individuals, I do not have personal knowledge concerning all of the
information contained in said Response, but I am informed and believe that the information set
forth therein for which I lack personal knowledge is true and correct.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed in Los Angeles, California on July 11, 2024.


Jay Dyckman

Case: Skyler Wells v. Cameron Hopkins, et al.

SUPERIOR COURT OF CALIFORNIA LOS ANGELES COUNTY	COURT USE ONLY
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): TELEPHONE NO.: Sevan Gobel (SBN : 221768) Tel: (213) 817-9152 sgobel@lbbklaw.com Artin Avetisove (SBN: 258777) aavetisove@lbbklaw.com LAGASSE BRANCH BELL + KINKEAD LLP 626 Wilshire Blvd. Suite 1000 Los Angeles, CA 90017	
SHORT CASE TITLE Skyler Wells v. Cameron Hopkins, et al.	Judge: Hon. Wendy Chang Dept.: 36
ATTORNEY FOR DEFENDANTS: CAMERON HOPKINS AND JAY DYCKMAN	CASE NUMBER: 22STCV05843

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 626 Wilshire Blvd, Suite 1000, Los Angeles, CA 90017.

On **July 15, 2024**, I caused to be served the within document(s):

- 1. DEFENDANT CAMERON HOPKINS AND JAY DYCKMAN'S RESPONSE TO PLAINTIFF SKYLER WELLS' REQUEST FOR ADMISSIONS, SET ONE**
- 2. DEFENDANT CAMERON HOPKINS AND JAY DYCKMAN'S RESPONSE TO PLAINTIFF SKYLER WELLS' REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE**
- 3. DEFENDANT CAMERON HOPKINS AND JAY DYCKMAN'S DOCUMENT PRODUCTION BATES STAMPED DEFENDANTS_000001-000015**

for each addressee named hereafter and addressed as follows:

James C. Diefenbach
DIEFENBACH LAW GROUP
11835 Carmel Mountain Rd., Suite 1304-313
San Diego CA 92128
Telephone: (858) 524-4950
james@diefenbachlawgroup.com
diefenbachlga@gmail.com
Attorneys for Plaintiff Skyler Wells

Emma D. Enriquez
CAMERON A. HOPKINS, APC
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Los Angeles, California 90017
Telephone: (213) 892-9957
Facsimile: (833) 830-1240
cyberlaw12@gmail.com
*Attorneys for Defendant/Cross-Complainant,
Cameron Hopkins, an Individual*

Jason B. Edlinger
EZER WILLIAMSON LAW
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Torrance, CA 90503
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Facsimile: (310) 277-2576
JBE@ezerwilliamsonlaw.com
rew@ezerwilliamsonlaw.com
*Attorneys for Cross-Defendants David
Schiamberg and Marilyn Schiamberg*

- (X) **ONLY BY ELECTRONIC TRANSMISSION.** Only by e-mailing the document(s) to the persons at the e-mail address(es) listed pursuant to Code of Civil Procedure section 1010.6. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

Document received by the CA 2nd District Court of Appeal.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 15, 2024, at San Diego, California.



Lisa Rodriguez

Document received by the CA 2nd District Court of Appeal.

James C. Diefenbach (SBN 286177)
DIEFENBACH LAW GROUP
11835 Carmel Mountain Road, Ste. 1304-313
San Diego, CA 92128
Phone: (858) 524-4950
Fax: (866) 606-4703
Email: james@diefenbachlawgroup.com

Electronically FILED by
Superior Court of California,
County of Los Angeles
9/30/2024 12:00 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By K. Hung, Deputy Clerk

Attorney for Cross-Defendant
SKYLER WELLS

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL JUDICIAL DISTRICT

SKYLER WELLS

Plaintiff.

vs.

CAMERON HOPKINS, and JAY DYCKMAN

Defendants.

CAMERON HOPKINS

Cross-Complainant.

vs.

SKYLER WELLS, DAVID SCHIAMBERG,
MARILYN SCHIAMBERG, and ROES 1-20

Cross-Defendants.

) Case No. 22STCV05843

) [Unlimited Civil Action]

) **COMPENDIUM OF EXHIBITS IN**
) **SUPPORT OF CROSS-DEFENDANT**
) **SKYLER WELLS MOTION FOR**
) **SUMMARY ADJUDICATION OF ISSUES**

) *[Filed Concurrently with Motion for Summary*
) *Adjudication of Issues, Declaration of Skyler*
) *Wells, Request for Judicial Notice, Separate*
) *Statement, and Proposed Order]*

) **DEPT:** 36

) **JUDGE:** Hon. Wendy Chang

) **DATE:** January 23, 2025

) **TIME:** 8:30 am

) **RESERVATION ID:** 867108915190

1 **TO THE COURT, CROSS-COMPLAINANT AND HIS ATTORNEY OF RECORD:**

2 **PLEASE TAKE NOTICE** that Cross-Defendant Skyler Wells, hereby submits this
3 Compendium of Exhibits in support of his Motion for Summary Adjudication of Issues, as follows:
4

EXHIBIT NO.	DESCRIPTION	PAGE NO.
01	Rowena Lofts Community Tract Map filed in Los Angeles County	3-6
02	Rowena Lofts Community Declaration of Covenants, Conditions, and Restrictions filed in Los Angeles County on February 7, 2012	7-44
03	Lot 1 Pre-Loan Approval Confirmation on October 12, 2012	45-53
04	Lot 1 Purchase Agreement signed on October 29, 2012	54-93
05	Lot 1 Property Uniform Residential Appraisal Report on November 27, 2012	94-122
06	Lot 1 Loan Note and Security Instrument filed in Los Angeles County on December 28, 2012	123-140
07	Lot 1 Ownership Agreement signed on May 21, 2012	141-142
08	Rowena Lofts Community 2019 Amendment to the CC&Rs filed in Los Angeles County on December 23, 2019	143-150
09	Defendant Cameron Hopkins and Jay Dyckman's Response To Plaintiff Skyler Wells' Request For Production of Documents, Set One on July 15, 2024	151-173
10	Los Angeles Superior Court Case No. BS162671 Judgment and Confirmation of Arbitration Award filed on September 30, 2016	174-181

21 DATED: September 25, 2024

22 Respectfully submitted,

23 DIEFENBACH LAW GROUP

24 

25 _____
26 James C. Diefenbach
27 Attorney for Cross-Defendant
28 SKYLER WELLS

Exhibit 01

00493

Document received by the CA 2nd District Court of Appeal.

SCALE: 1"=20'

TRACT NO. 63131

SHEET 1 OF 3 SHEETS

IN THE CITY OF LOS ANGELES
STATE OF CALIFORNIA
FOR SUBDIVISION PURPOSESFILED
AT REQUEST OF OWNER
 12/22/2009
 10 MIN PAST 3PM
 IN BOOK 1360
 AT PAGE 39-41
 OF MAPS
 LOS ANGELES COUNTY, CA

 Registrar-Recorder/County Clerk
 Maria Reyes

 DOWRY
 OFF 14

DA 43

 BEING A SUBDIVISION OF LOTS 7, IN BLOCK 4 OF THE MAP OF
 IVANHOE, AS PER MAP RECORDED IN BOOK 17 PAGES 65 TO 68
 INCLUSIVE OF MISCELLANEOUS RECORDS, RECORDS OF
 LOS ANGELES COUNTY

OWNER'S STATEMENT:

WE HEREBY STATE THAT WE ARE THE OWNERS OF THE LAND INCLUDED WITHIN THE SUBDIVISION SHOWN ON THIS MAP WITHIN THE DISTINCTIVE BORDER LINES, AND WE CONSENT TO THE PREPARATION AND FILING OF SAID MAP AND SUBDIVISION, AND WE HEREBY DEDICATE FOR PUBLIC USE THE STREETS, HIGHWAYS, AND OTHER PUBLIC WAYS, SHOWN ON SAID MAP AND SUBDIVISION, AND WE HEREBY GRANT AND DEDICATE TO THE CITY OF LOS ANGELES EASEMENTS FOR ~~PUBLIC UTILITY PURPOSES~~ ~~THE~~ PUBLIC UTILITY PURPOSES OVER THE STRIP OF LAND SO DESIGNATED ON SAID MAP.

COTTAGE LOFTS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, (OWNERS)

 R. Abramson
 RICHARD ABRAMSON MANAGING MEMBER

RAY KLOSTERMANN FAMILY TRUST MANAGING MEMBER

RAY KLOSTERMANN MANAGING MEMBER



ENGINEER'S STATEMENT:

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF PAUL KOURKA ON JANUARY 4, 2005, I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO CONDITIONALLY APPROVED TENTATIVE MAP; THAT I AM A REGISTERED CIVIL ENGINEER OF THE STATE OF CALIFORNIA; THAT THIS MAP CONSISTING OF 3 SHEETS CORRECTLY REPRESENTS A TRUE AND COMPLETE SURVEY MADE BY ME OR UNDER MY DIRECTION ON JANUARY 12, 2005, THAT THE MONUMENTS OF THE CHARACTER AND LOCATION SHOWN HEREON ARE SUFFICIENT TO ENABLE THE SURVEY TO BE READILY RETRACED; THAT BOTH BOUNDARY AND CENTERLINE MONUMENTS ARE IN PLACE OR WILL BE IN PLACE WITHIN 6 MONTHS AFTER BEING NOTIFIED OF THE DATE OF ACCEPTANCE OF THE STREET IMPROVEMENTS NOT TO EXCEED 24 MONTHS FOLLOWING THE FILING DATE OF THIS MAP; AND THAT REQUIRED TIE NOTES TO CENTERLINE MONUMENT SHOWN AS "TO BE SET" WILL BE ON FILE IN THE OFFICE OF THE CITY ENGINEER WITHIN THE TIME LIMITATION STATED ABOVE

 REYNALDO T. DE RAMA, R.C.E. 29108
 LICENSE EXP. DATE: 03-31-11

 09-30-09
 DATE


FIRST REGIONAL BANK, BENEFICIARY UNDER A DEED OF TRUST RECORDED APRIL 27, 2007 AS INSTRUMENT NO. 2007-1020307, OF OFFICIAL RECORDS, RECORDS OF LOS ANGELES COUNTY.

 Carolyn Nicholson, Exec. Vice Pres.
 Nelly E. Paladines, First Vice Pres.

 STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES

ON OCTOBER 15, 2009 BEFORE ME, ALLAN A. SASSOON, NOTARY PUBLIC, PERSONALLY APPEARED RICHARD ABRAMSON AND RAY KLOSTERMANN WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES) AND THAT BY HIS/HERS/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL.

 SIGNATURE: Allan A. Sassoon
 NAME OF NOTARY ALLAN A. SASSOON
 COUNTY IN WHICH COMMISSIONED LOS ANGELES
 DATE COMMISSION EXPIRES 10/22/2010
 COMMISSION NUMBER 1695694

 STATE OF CALIFORNIA
 COUNTY OF Los Angeles

ON October 1, 2009 BEFORE ME, BETSY CASTORENA, NOTARY PUBLIC, PERSONALLY APPEARED Carolyn Nicholson and Nelly E. Paladines WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES) AND THAT BY HIS/HERS/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL.

 SIGNATURE: Betsy Castorena
 NAME OF NOTARY Betsy Castorena
 COUNTY IN WHICH COMMISSIONED Los Angeles
 DATE COMMISSION EXPIRES Sep 20, 2013
 COMMISSION NUMBER 1602615


BASIS OF BEARINGS:

THE BEARING OF N. 82°22'12" E OF THE CENTERLINE OF ROWENA AVENUE, AS SHOWN ON TRACT 14886, AS RECORDED IN BOOK 348, PAGES 12 OF MAPS, RECORDS OF LOS ANGELES COUNTY, WAS TAKEN AS THE BASIS OF BEARINGS SHOWN ON THIS MAP.

SIGNATURE OMISSION NOTE:

THE SIGNATURE(S) OF SOUTHERN CALIFORNIA GAS COMPANY, A CALIFORNIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, HOLDER OF AN EASEMENT FOR GAS PIPELINES ALSO INGRESS AND EGRESS PURPOSES BY DEED RECORDED JULY 20, 2009 AS INSTRUMENT NO. 2009-109198 OF OFFICIAL RECORDS, HAS BEEN OMITTED UNDER THE PROVISIONS OF SECTION 6646 SUB-SECTION (a) 2 (C-VII) OF THE SUBDIVISION MAP ACT. THE INTEREST IS SUCH THAT IT CANNOT RISE INTO A FEE TITLE AND SAID SIGNATURES ARE NOT REQUIRED BY THE LOS ANGELES CITY COUNCIL.

I HEREBY CERTIFY THAT ALL CERTIFICATES HAVE BEEN FILED AND DEPOSITS HAVE BEEN MADE THAT ARE REQUIRED UNDER THE PROVISIONS OF SECTION 66462 AND 66493 OF THE SUBDIVISION MAP ACT.

 EXECUTIVE OFFICER, BOARD OF
 SUPERVISORS OF THE COUNTY OF
 LOS ANGELES, STATE OF CALIFORNIA

 BY: Valeryo J. Falaw
 DEPUTY

 12/21/09
 DATE


I HEREBY CERTIFY THAT SECURITY IN THE AMOUNT OF \$ HAS BEEN FILED WITH EXECUTIVE OFFICER, BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES AS SECURITY FOR THE PAYMENT OF TAXES AND SPECIAL ASSESSMENTS COLLECTED AS TAXES ON THE LAND SHOWN ON MAP NO. 63131 AS REQUIRED BY LAW.

 EXECUTIVE OFFICER, BOARD OF
 SUPERVISORS OF THE COUNTY OF
 LOS ANGELES, STATE OF CALIFORNIA

BY: DEPUTY DATE

NOTE:

THIS MAP IS BEING RECORDED AS SMALL LOT SUBDIVISION PER ORDINANCE NO. 176354.

NOTIFICATION OF STREET LIGHTING
MAINTENANCE ASSESSMENT

NOTICE IS HEREBY GIVEN THAT assessments may be levied for the costs of maintenance and energy for any street lighting facilities installed with this subdivision. The initial billing may be for a period of up to three years with subsequent bills annually. For further information call the Bureau of Street Lighting at (213) 847-1500

CERTIFICATION OF SPECIAL ASSESSMENT

I hereby certify that according to the records of the City Engineer of the City of Los Angeles none of the lines of lots or parcels of the subdivision shown in this subdivision map will divide any land subject to any special assessment which may be paid in full.

 DATE: December 11, 2009
 City Engineer: by J. R. B. B. B.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that I have examined this map and that this subdivision as shown hereon is substantially the same as it appeared on the tentative map and any approved alterations thereof and that all the provisions of Division 2 of Title 7 of the Government Code, State of California, and of all local ordinances applicable and in effect at the time of the approval of the tentative map have been complied with.

 DATE: December 17, 2009
 City Engineer: by J. R. B. B. B.

I hereby certify that I am satisfied that this map is technically correct.

 DATE: December 15, 2009
 Engineer of Surveys: by J. R. B. B. B.


CERTIFICATE OF TITLE

I HEREBY CERTIFY that there is on file in the office of the City Engineer of the City of Los Angeles, State of California a Certificate made by the STEWARD TITLE OF CALIFORNIA of said City Order No. 330254894 dated 12-9-09 certifying that it appears from the records of said City and County that COTTAGE LOFTS LLC, RAY KLOSTERMANN FAMILY TRUST, and FIRST REGIONAL BANK, are the only persons whose consents are required for the recording of this map by law.

 DATED: December 14, 2009
 City Engineer: by J. R. B. B. B.

CERTIFICATE OF ACCEPTANCE

I HEREBY CERTIFY that the City Council of the City of Los Angeles approved this map and accepted on behalf of the public all offers of dedication shown hereon unless otherwise rejected, except those marked "Future Street" "Future Alley" or "Future Easement" provided that nothing herein contained shall be construed as an acceptance of any improvements made in or upon any street, alley or easement shown on this map.

 DATE: December 17, 2009
 City Clerk
 By: S. R. B. B. B. Deputy

00494

Document received by the CA 2nd District Court of Appeal.

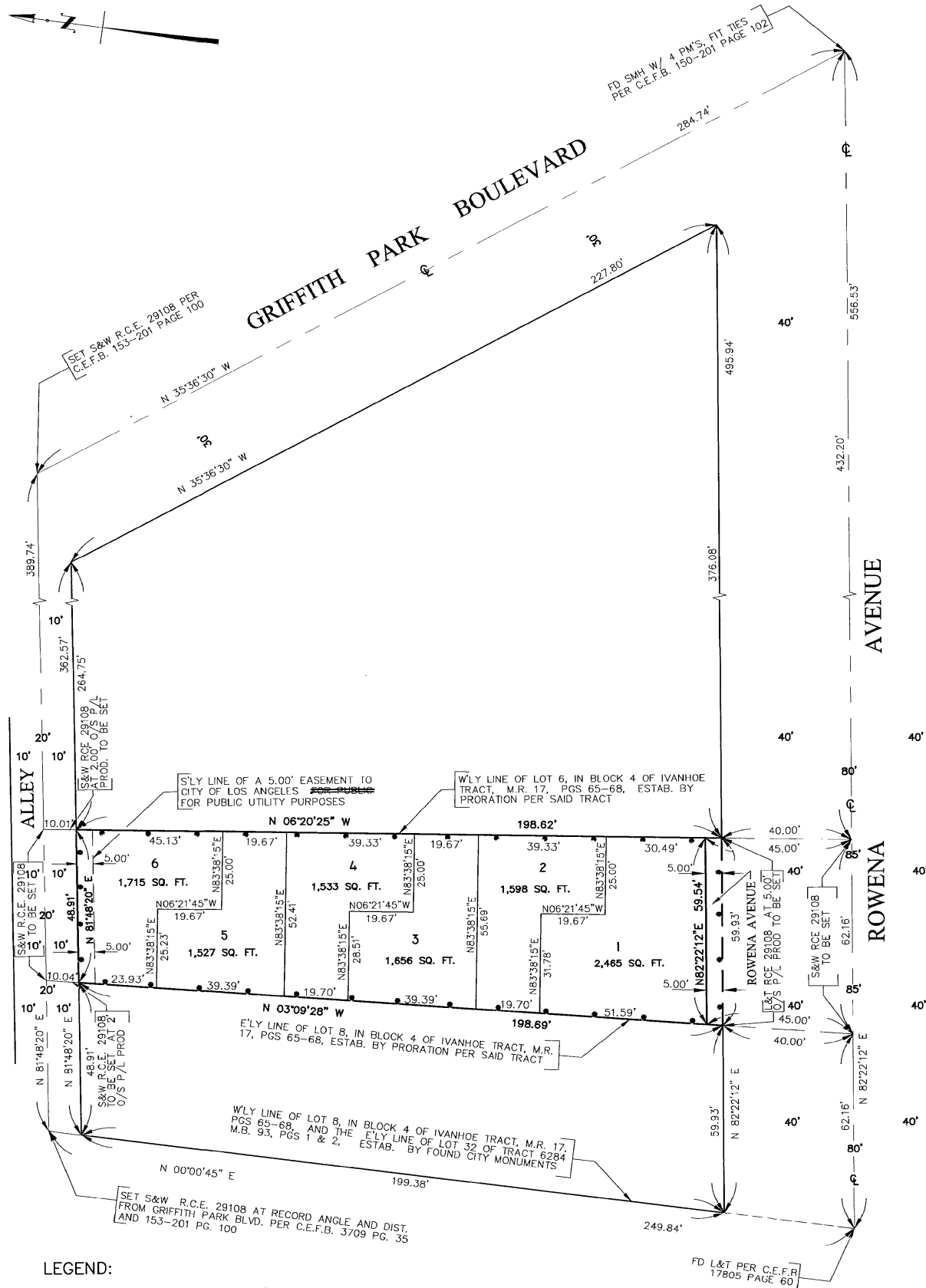
MAP / GRANT

SCALE: 1"=20'

TRACT NO. 63131

IN THE CITY OF LOS ANGELES
STATE OF CALIFORNIA

SHEET 2 OF 3 SHEETS



LEGEND:

INDICATES THE BOUNDARY OF THE LAND BEING
SUBDIVIDED BY THIS MAP

NOTE:

THIS MAP IS BEING RECORDED AS FOR SMALL
LOT SUBDIVISION PER ORDINANCE NO. 176354

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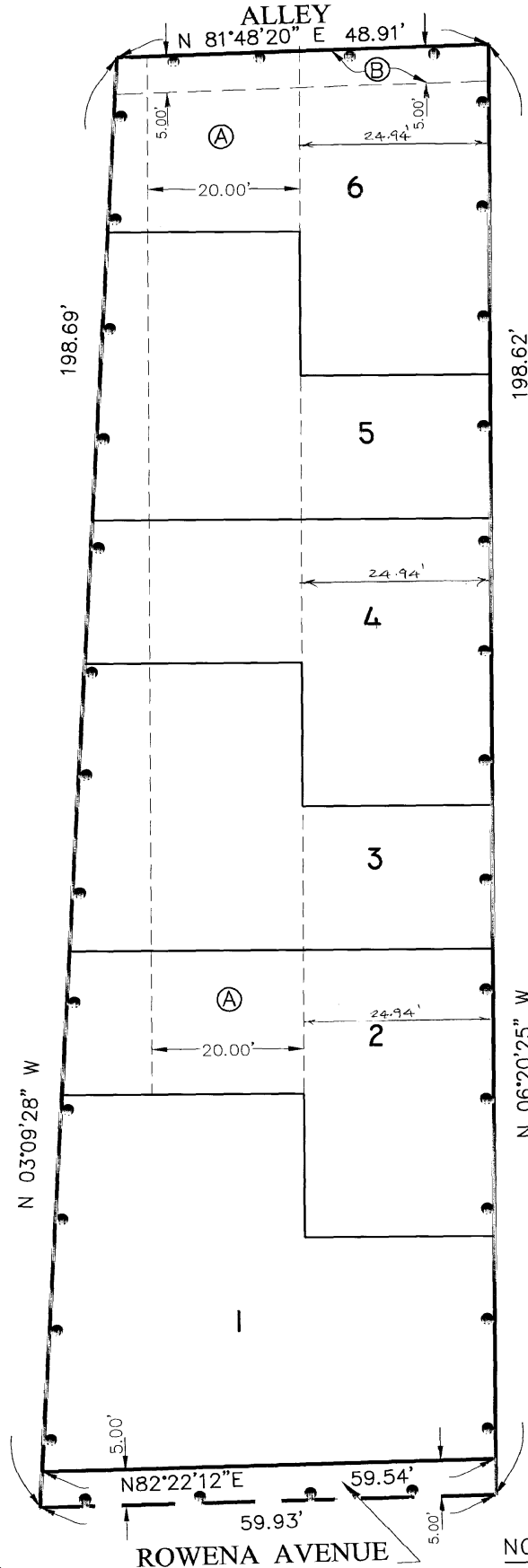
~~00495~~

SCALE: 1"=10'

TRACT NO. 63131

IN THE CITY OF LOS ANGELES
STATE OF CALIFORNIA

SHEET 3 OF 3 SHEETS



EASEMENT DETAILS:

- (A) - 20.00' COMMON ACCESS FOR THIS SUBDIVISION
- (B) - 5.00' EASEMENT TO THE CITY OF LOS ANGELES FOR PUBLIC UTILITY PURPOSES

LEGEND:

INDICATES THE BOUNDARY OF THE LAND BEING SUBDIVIDED BY THIS MAP

NOTE:

THIS MAP IS BEING RECORDED AS FOR SMALL LOT SUBDIVISION PER ORDINANCE NO. 176354

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Exhibit 02

00497

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Pages:
0037

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Recorder's Office, Los Angeles County,
California

02/07/12 AT 08:00AM

FEES:	123.00
TAXES:	0.00
OTHER:	0.00
PAID:	123.00



LEADSHEET



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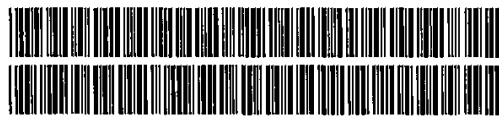
00005339679



003785421

SEQ:
18

DAR - Title Company (Hard Copy)



THIS FORM IS NOT TO BE DUPLICATED

t21

E49443

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This map should be used for reference purposes only. No liability is assumed for the accuracy of the data shown. Parcels may not comply with local subdivision or building ordinances.

2

RECORDING REQUESTED BY:

WHEN RECORDED RETURN TO:

ROBERT SMYLIE & ASSOCIATES
2029 Century Park East, Suite 1700
Los Angeles, CA 9003490067



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

AND RESERVATION OF EASEMENTS

FOR

ROWENA LOFTS

(Tract No. 63131)

A Residential Community

KTT\OPEN HOUSE\ROWENA\CC&Rs 1R
11-16-11

18F

Document received by the CA 2nd District Court of Appeal.

TABLE OF CONTENTS

	<u>PAGE</u>
ARTICLE 1 DEFINITIONS.....	1
Section 1.1. Terms	1
Section 1.2. Applicability of Definitions.	4
ARTICLE 2 EASEMENTS.....	4
Section 2.1. Easements.....	4
Section 2.2. Drainage Easements.	5
Section 2.3. Reciprocal Easements Over Easement Maintenance Areas.....	5
Section 2.4. Encroachment Easement.	7
Section 2.5. Views.....	7
Section 2.6. Fences and/or Walls.....	7
ARTICLE 3 MAINTENANCE OF EASEMENT MAINTENANCE AREAS	7
Section 3.1. Maintenance of Improvements.....	7
Section 3.2. Appointment of Responsible Owners.	8
Section 3.3. Record Keeping Requirements.....	8
Section 3.4. Financial Responsibility.....	8
Section 3.5. Damage to Improvements.....	9
Section 3.6. Insurance.....	9
ARTICLE 4 USE RESTRICTIONS AND OBLIGATIONS OF OWNERS.....	10
Section 4.1. Leasing of Lots.....	10
Section 4.2. Landscaping of Lots.	10
Section 4.3. General Maintenance of Lots.	10
Section 4.4. Use Restrictions.....	10
Section 4.5. Utility Sub-Metering.....	17
ARTICLE 5 SCOPE OF ENFORCEMENT	18
Section 5.1. Enforcement.	18
Section 5.2. Remedies.....	18
Section 5.3. Notice of Breach.....	19
Section 5.4. Disputes Relating to Enforcement of Governing Documents.....	19
ARTICLE 6 MORTGAGEE PROTECTION	19
Section 6.1. Mortgagee Protection.....	19
ARTICLE 7 AMENDMENTS	19
Section 7.1. Amendment Vote.....	19
Section 7.2. Effective Date of Amendment.....	19
Section 7.3. Declarant's Right to Amend.	20

ARTICLE 8 DISPUTE MECHANISM	20
Section 8.1. Notice of Residential Construction Legislation.....	20
Section 8.2. Construction Defect Disputes.	20
Section 8.3. Other Disputes.	22
Section 8.4. Alternate Dispute Resolution Procedures.	22
Section 8.5. Use of Damage Award Amounts.	24
Section 8.6. Miscellaneous.	24
ARTICLE 9 GENERAL PROVISIONS.....	24
Section 9.1. Term and Extension of Declaration.	24
Section 9.2. Severability.....	25
Section 9.3. Liberal Construction.	25
Section 9.4. Attorneys' Fees.	25
Section 9.5. Termination of Declarant's Obligations.	25
Section 9.6. Number, Gender.	25
Section 9.7. Non-Liability of Declarant.....	25
Section 9.8. Grantees Subject to this Declaration.	25
ARTICLE 10 COVENANTS IN FAVOR OF LOCAL JURISDICTION.....	25
Section 10.1. Local Jurisdiction.....	25
EXHIBIT "A"	29
SITE UTILITY EASEMENTS	29
EXHIBIT "B"	30
COMMON USE DRIVEWAY EASEMENT	30
EXHIBIT "C"	31
PEDESTRIAN PROMENADE EASEMENT	31
EXHIBIT "D"	32
TRASH AREA EASEMENT	32
EXHIBIT "E"	33
UTILITY ROOM EASEMENT	33

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
ROWENA LOFTS
(TRACT No. 63131)**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR ROWENA LOFTS, is made by OPEN HOUSE REALTY & INVESTMENTS, LLC, a California limited liability company, ("**Declarant**"), being the owner of that certain real property subject to this Declaration, and hereinafter more particularly described.

WITNESSETH:

WHEREAS, Declarant is the owner of the following real property located in the City of Los Angeles, County of Los Angeles, State of California ("**Project**"), more particularly described as:

Lots 1 through 6, inclusive, of Tract No. 63131, in the County of Los Angeles, State of California, as per Map filed in Book 1360, Pages 39 through 41, of Maps, in the Office of the County Recorder of said County; and

WHEREAS, it is the desire and intention of Declarant to sell and convey residential Lots within the Project to various individuals subject to certain basic protective restrictions, conditions, limitations, easements, covenants, reservations, liens and charges between it and the purchasers or users of said Project, as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the real property described above is, and shall be held, hypothecated or encumbered, sold, leased, rented, used, occupied, conveyed, and improved subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of preserving the integrity, beauty and aesthetic qualities and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the Project or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. The provisions of this Declaration shall be enforceable by any of the Owners of an interest in the real property above described, against any other Owner or Owners thereof.

**ARTICLE 1
DEFINITIONS**

Section 1.1. Terms. Whenever used in this Declaration, the following terms shall have the following meanings:

KTT\OPEN HOUSE\ROWENA\CC&Rs 2C
1-31-12

1

1.1.1 **City** shall mean and refer to the City of Los Angeles, County of Los Angeles, California.

1.1.2 **Project** shall mean the real property described in the Preamble of this Declaration, and all improvements thereon.

1.1.3 **Declarant** shall mean and refer to OPEN HOUSE REALTY & INVESTMENTS, LLC, a California limited liability company, and its successors and assigns, if such successors or assigns should acquire more than one (1) undeveloped Lot from Declarant for the purpose of development, and are designated by Declarant as the Declarant for the purpose hereof by a duly recorded written instrument. Declarant is the "builder" as defined in California Civil Code Section 911.

1.1.4 **Declaration** shall mean and refer to this enabling Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Rowena Lofts, as the same may be amended, changed or modified, from time to time.

1.1.5 **Easement Maintenance Area(s)** shall mean and refer to those portions of the Lots, and the improvements thereon, for which all Owners of Lots within the Project shall have reciprocal easements of access for maintenance, repair, use and/or enjoyment, and which the Owners collectively shall have the duty and obligation to maintain, manage, operate, repair and/or replace, for the common use and/or benefit of the Owners. The Easement Maintenance Areas shall include, but not be limited to the following:

- (a) all the utility lines, drainage and sewer lines, facilities and improvements in the area shown as "Site Utility Easements" on Exhibit "A";
- (b) the Common Use Driveway shown on Exhibit "B";
- (c) the Pedestrian Promenade shown on Exhibit "C";
- (d) the Trash Area shown on Exhibit "D";
- (e) the Utility Room, and the utilities required for the operation of the same, shown on Exhibit "E";
- (f) the common gas line terminating at the gas meter wall, with the six (6) individual gas meters, on Lot 1;
- (g) the Project perimeter fence along the westerly boundary of the Project;
- (h) the primary pedestrian security gate, if any is installed, on Lot 1, the overhead vehicular access gate from the alley on Lot 6, and the pedestrian security gate from the alley on Lot 6;
- (i) the Project identification sign and the wall to which it is affixed, on Lot 1;
- (j) the four (4) mature trees, two (2) trees in the parkway City right of way area, and low level shrubbery, located on Lot 1;
- (k) the wet standpipe (fire hydrant), located on Lot 1, and its water line and separate water meter;
- (l) the drainage system, and related improvements, located on Lot 1; and
- (m) the central water meter and the water sub-meters providing service to the wet standpipe and individual Lots; all as may be further described in Article 2 below.

1.1.5.2 **Common Use Driveway** shall mean the approximately 10'-12' common access driveway running from the alley on the north side of the Project to, but not including, the garage of Lot 1 on the south side of the Project, and may also include an electric entrance gate and telephone call box, providing access to said driveway, along with the equipment associated with the operation of such electric gate, and including all utility lines, drainage and sewer lines, facilities and improvements therein, which area is labeled "**Common Use Drive Easements**" on the Site Plan attached hereto as Exhibit "B" and incorporated herein by this reference.

1.1.5.3 **Pedestrian Promenade** shall mean and refer to the concrete pathway and wood and steel walkway providing pedestrian access to the Lots and the residences thereon, which area is labeled "**Pedestrian Promenade**" on the Site Plan attached hereto as Exhibit "C", including the pedestrian bridge, lighting (if any), and other lighting fixtures (if any) located within such area labeled "**Pedestrian Promenade Easements**", providing lighting for the use of such pathway.

1.1.5.4 **Trash Area** shall mean and refer to the area located on the north side of the Project, on Lot 6, where the common trash receptacle will be kept and maintained for regular trash pick-up, which area is labeled "**Trash Area Easements**" on the Site Plan attached hereto as Exhibit "D", including any enclosure, fencing, lockable gate, lighting and light fixtures located within such area, providing lighting for the use of such area.

1.1.5.5 **Utility Room** shall mean and refer to the electrical utility room serving the Lots in the Project and located on Lot 3 ("**Utility Room**"), which area is labeled "**Utility Room Easements**" on the Site Plan attached hereto as Exhibit "E", including all improvements, individual utility meters and equipment, and common utility meters (if any) therein.

1.1.6 **Lot** shall mean any residential lot shown on any recorded subdivision map, certificate of compliance, or parcel map of any portion of the Project (and as the boundaries of such lot may be modified by a recorded lot line adjustment or certificate of compliance).

1.1.7 **Mortgage** shall mean and refer to a deed of trust as well as a Mortgage.

1.1.8 **Mortgagee** shall mean a person or entity to which a Mortgage is made, and shall include the beneficiary of a deed of trust.

1.1.9 **Notice to the Owner** shall mean written notice sent by registered mail, return receipt requested, to the Owner at the address of the Lot, or the Owner's last known residential address if different than the Lot.

1.1.10 **Owner** shall mean and refer to the record Owners, whether one (1) or more persons or entities, of fee simple title to any Lot which is part of the Project, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

1.1.11 **Responsible Owner** shall mean and refer to the two (2) Owners elected by all Owners to serve as their agents for the preservation, operation, maintenance, management, repair and replacement of the common improvements and facilities in the Easement Maintenance Areas, and for managing the sub-metering of common utilities, on behalf of all Owners.

8

Section 1.2. Applicability of Definitions. The aforesaid definitions shall be applicable to this Declaration and to any supplements or amendments thereto (unless the context shall prohibit), recorded pursuant to the provisions of this Declaration.

ARTICLE 2 EASEMENTS

Section 2.1. Easements. The easements herein below described shall bind and inure to the benefit of Declarant's heirs, personal representatives, successors and assigns. Subject easements shall be construed as covenants running with the land, or equitable servitudes as necessary to achieve Declarant's intent.

2.1.1 Declarant hereby acknowledges that it is its express intent to subject each Lot within the Project which contains an underground utility conduit or pipe, as described herein below, to such restrictions, covenants, easements, and servitudes as are necessary to provide for the continued operation and existence of such utility conduit, pipe and utility lines.

2.1.2 Declarant hereby grants, reserves, and establishes non-exclusive easements over, under, and through each and every Lot (excluding the actual location of the dwelling unit thereon) within the Project as necessary for the installation, operation and maintenance of underground utility conduits and lines for the sole purpose of providing utilities to such Lots.

2.1.3 Easements for installation and maintenance of utilities, gas meters (on Lot 2) and gas lines, sewer pipelines, sewer laterals, access ports and related improvements and facilities, and drainage facilities over each of the Lots, and all pipelines and other facilities located and to be located in said easements, and for the Project perimeter fence along the westerly boundary of the Project, are reserved where such facilities are installed and as may be shown on the recorded maps of the Project. Within such easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of the flow of drainage channels, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or a utility, or all Owners in common, is responsible. In addition, all sewer pipelines and other sewer improvements and facilities located or to be located within public roads, streets and highways abutting each of the Lots are reserved.

2.1.4 Each Lot which obtains electrical power, or other utility service through an underground utility conduit, pipe or line located within an easement of another Lot or Lots, is hereby granted and shall have the benefit of a non-exclusive easement through and under such Lot or Lots for the installation, operation and maintenance of such conduit, pipe and the utility lines therein, subject to the restrictions hereinafter set forth.

(a) Repair and replacement of the utility lines within any such conduit shall be performed only at either end of the conduit;

(b) Excavation of any such conduit for any purpose is expressly prohibited except at either end thereof.

2.1.5 Each Lot containing an easement within which there lies an underground utility conduit, pipe and utility lines are hereby declared to be, and shall be conveyed subject to, a non-exclusive easement by reservation for the benefit of the Lot or Lots serviced by such conduit, pipe and the utility lines therein, subject to the restrictions set forth above.

2.1.6 Said easements granted and reserved shall include incidental rights of installation, maintenance, repair and access, except that repair and replacement of the utility lines within any such conduit or pipe shall be performed with as little inconvenience and interruption of the Lot as reasonably and commercially feasible.

Section 2.2. Drainage Easements. Each Owner whose Lot is served by a yard drain for surface water runoff and/or the drainage line that crosses any adjacent Lot(s) is hereby granted a nonexclusive, perpetual easement, for the benefit of such Lot, on, over, under, along, through and across such adjacent Lot(s) for the purpose of constructing, maintaining, inspecting and repairing such drainage line.

2.2.1 Declarant expressly reserves, for its benefit and the benefit of each Owner of a Lot, grants and establishes, nonexclusive easements on, over, across and through all Lots for surface water drainage and for the construction, installation, inspection, maintenance, repair and replacement of drainage lines and improvements, and subdrain lines, access ports, and the like, wherever same may be located, in accordance with the provisions of this Declaration. Such easements over such portions of each Lot shall be appurtenant to, binding upon, and shall pass with the title to, every Lot conveyed.

Section 2.3. Reciprocal Easements Over Easement Maintenance Areas. The ownership interests in all the Lots shall be subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their respective Lots, and the Declarant, and each of their respective properties, superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Lots may, but shall not be required to, set forth the easements specified in this Article or elsewhere in this Declaration.

2.3.1 **Site Utility Easements.** Declarant hereby reserves, grants, and establishes non-exclusive easements on, over, under, across and through that portion of each and every Lot, as more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference, for its use and benefit and the use and benefit of each Owner and occupant of a Lot and their respective tenants, agents, guests and invitees, for purposes of installation, maintenance, repair and replacement of utility lines, utility facility, drainage and sewer lines, and the use and benefit of each such Owner for the maintenance, repair, and replacement of such utilities, drainage and other improvements therein, and related purposes, as needed from time to time, in accordance with the provisions of this Declaration. Such easements over such portions of each Lot shall be appurtenant to, binding upon, and shall pass with the title to, every Lot conveyed.

2.3.2 Common Use Driveway Easements. Declarant hereby reserves, grants, and establishes non-exclusive easements on, over, under, across and through that portion of each and every Lot, as more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference, for its use and benefit and the use and benefit of each Owner and occupant of a Lot and their respective tenants, agents, guests and invitees, for use and enjoyment as vehicular and pedestrian ingress and egress, and the use and benefit of each such Owner for the maintenance, repair, and replacement of the driveway, lighting, drainage and other improvements therein, and related purposes, as needed from time to time, in accordance with the provisions of this Declaration. Such easements over such portions of each Lot shall be appurtenant to, binding upon, and shall pass with the title to, every Lot conveyed.

2.3.3 Pedestrian Promenade Easements. Declarant hereby reserves, grants, and establishes non-exclusive easements on, over, under, across and through that portion of each and every Lot, as more particularly described on Exhibit "C" attached hereto and incorporated herein by this reference, for its use and benefit and the use and benefit of each Owner and occupant of a Lot and their respective tenants, agents, guests and invitees, for use and enjoyment as pedestrian ingress and egress, and the use and benefit of each such Owner for the maintenance, repair, and replacement of the walkway, lighting, drainage and other improvements therein, and related purposes, as needed from time to time, in accordance with the provisions of this Declaration. Such easements over such portions of each Lot shall be appurtenant to, binding upon, and shall pass with the title to, every Lot conveyed.

2.3.4 Trash Area Easements. Declarant hereby reserves, grants, and establishes non-exclusive easements on, over, under, across and through that portion of Lot 6, as more particularly described on Exhibit "D" attached hereto and incorporated herein by this reference, for its use and benefit and the use and benefit of each Owner and occupant of a Lot, and their respective tenants, agents, guests and invitees, for use as a trash disposal and storage, and recycling area, and related purposes, and for the use and benefit of each Owner for the maintenance, repair, and replacement of the enclosure, containers, lighting and equipment therein and related thereto, and drainage and other improvements therein, and related purposes, as needed from time to time, in accordance with the provisions of this Declaration. Such easements over such portion of said Lot shall be appurtenant to, binding upon, and shall pass with the title to, every Lot conveyed.

2.3.5 Utility Room Easements. Declarant hereby reserves, grants, and establishes non-exclusive easements on, over, under, across and through that portion of Lot 3, as more particularly described on Exhibit "E" attached hereto and incorporated herein by this reference, for its use and benefit and the use and benefit of each Owner and occupant of a Lot, and their respective tenants, agents, guests and invitees, for use as an electrical utility room, and related purposes, and for the use and benefit of each Owner for the maintenance, repair, and replacement of the enclosure and equipment therein and related thereto, and lighting and other improvements therein, and related purposes, as needed from time to time, in accordance with the provisions of this Declaration. Such easement over such portion of said Lot shall be appurtenant to, binding upon, and shall pass with the title to, every Lot conveyed.

2.3.6 Emergency Access Easements. Declarant hereby reserves, grants, and establishes non-exclusive easements on, over, under, across and through each and every Lot, except the

portions thereof where the residential dwelling are located, for emergency ingress and egress for all Owners and occupants of the Project from time to time, and for emergency services, police, fire, paramedic and ambulance, and utility company use. Such easements over such portions of each Lot shall be appurtenant to, binding upon, and shall pass with the title to, every Lot conveyed.

Section 2.4. Encroachment Easement. Each Owner within the Project is hereby granted an easement over all adjoining Lots for the purpose of accommodating any minor encroachment, due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhang, architectural or other appendages for so long as any such encroachment continues to exist.

Section 2.5. Views. There are no express or implied easements whatsoever appurtenant to any Lot for view purposes, regardless of whether such Lot is owned by Declarant. In addition, no Owner shall have any right to the protection of any view that may exist at any time from such Owner's Lot across any other Lot. Notwithstanding the foregoing, no Owner shall permit such Owner's solar collector, or any vegetation on such Owner's Lot, to shade, block or interfere with the solar access of any present or future solar collector or other solar absorption device on the roof of any other Lot. Each Owner, by accepting a deed to a Lot, hereby expressly acknowledges and agrees that any view which his Lot may enjoy as of the date of purchase may be impaired or obstructed by the installation of trees, other landscaping or other types of barriers (both natural and artificial), the growth of landscaping, the construction or installation of improvements in the Project and/or any adjoining property, and each Owner hereby expressly consents to any such obstruction. Declarant makes no assurance whatsoever concerning the impact on views of any construction of improvements by anyone after completion of Declarant's original construction, whether such construction is or constructed in the Project or on property contiguous to the Project.

Section 2.6. Fences and/or Walls. Each Owner shall maintain fences and/or block walls, if any, along the perimeters of such Owner's Lot in conformance with the requirements of the City, unless otherwise indicated herein. The cost of maintenance, repair, or replacement of the fences and/or walls shall be borne by the Owner thereof, unless otherwise indicated herein, except that: (a) the cost of maintenance, repair, or replacement for fences and/or walls which straddle boundary lines of adjoining Lots shall be borne equally by such adjoining Lots as required by California Civil Code Section 841, and (b) the Project perimeter fence along the westerly boundary of the Project, and the fences and/or walls enclosing the Trash Area shall be a joint responsibility of all Owners equally.

ARTICLE 3 MAINTENANCE OF EASEMENT MAINTENANCE AREAS

Section 3.1. Maintenance of Improvements. Declarant and Declarant's successors and assigns as Owners of the Lots in the Project shall, during their respective terms of ownership thereof, be responsible for preserving, operating, maintaining, repairing, replacing, and improving, as reasonably necessary, all the improvements in the Easement Maintenance Areas in a first class condition, and the Owner of each Lot shall pay one-sixth (1/6th) of the total costs of such

12

preservation, operating, inspecting, maintaining, repairing, replacing, and/or improving of the common improvements and facilities, including the trash collection, electrical and other utility costs (e.g., main pull section or telephone board), insurance premiums, administrative costs, and other costs thereof. Such duties and obligations shall be performed by the Owners jointly through agents elected by them from among their number as provided below.

Section 3.2. Appointment of Responsible Owners. The Owners of all the Lots shall meet and confer annually and shall, by majority vote of a quorum attending such meeting in person and/or by conference telephone, jointly appoint two (2) of the Owners to serve as their agents ("**Responsible Owners**") for the preservation, operation, maintenance, management, repair and replacement of the common improvements and facilities in the Easement Maintenance Areas, and for managing the sub-metering of common utilities as provided in Section 4.5 below, on behalf of all Owners. Written minutes of such meetings shall be taken and certified in writing by the Record Keeper (defined below) designated to take such minutes. For all purposes of this Article, Owners representing sixty-six and two-thirds (66 2/3rds) of the Lots (i.e., at least four (4) Lots), shall constitute a quorum of Owners.

3.2.1 The Responsible Owners shall serve as the agents of all Owners until replaced and shall be responsible to diligently preserve, maintain, repair and replace as necessary, the common use improvements and facilities in the Easement Maintenance Areas.

Section 3.3. Record Keeping Requirements. The Owners, by a majority vote of a quorum thereof, shall designate in writing one (1) of the Responsible Owners, or another of their number, to maintain all records relative to the operation, maintenance, repair, replacement, or improvement of the Easement Maintenance Areas. The Owner to be designated by the other Owners shall be referred to as the "**Record Keeper**," who shall be designated on an annual basis, commencing on the first (1st) meeting of the Owner for purposes of this Article. All such records shall be maintained and preserved for at least ten (10) years unless otherwise agreed to by all Owners. All such records shall be made available by the Record Keeper to the other Owners for inspection and/or copying at a mutually convenient time and place within forty-eight (48) hours upon written request.

Section 3.4. Financial Responsibility. The Responsible Owners shall cause the trash collection account, insurance policy and the electrical billing account for the Easement Maintenance Areas to be placed in his or her names, and shall have charge of the financial arrangements therefor, including maintenance of a separate bank account for the Easement Maintenance Areas, payment of bills, costs and expenses, and collection of the respective shares of such costs from the Owners. Costs of collection including costs of any necessary legal action that are not recovered, shall be a common cost of the Owners. Two bank accounts shall be established, one for payment of the operating expenses, including trash collection, utility bills, periodic cleaning and maintenance and minor repairs, and another account for the accumulation of reserves for the replacement capital improvements. The signatures of two (2) Owners (either both Responsible Owners, or at least one of the Responsible Owners together with either the Record Keeper or another Owner) shall be required for any single check, expenditure or withdrawal in excess of \$250.00.

3.4.2 The Owners shall jointly establish the amount to be prepaid by each Owner on an annual or other more frequent basis to provide sufficient funds for the operation, maintenance and repair of the Easement Maintenance Areas, including common utility costs. The Owners shall also jointly establish the amount necessary for the accumulation of reserves to replace the capital improvements in the Easement Maintenance Areas, such as repaving of the Common Use Driveway, repainting or restaining of any fences and walls and bridge railing, and replacement of the common entrance gates and related equipment. Each Owner shall pay such Owner's one-sixth (1/6th) proportional share of such reserve amount to the Responsible Owners for deposit into the reserve account, on an annual or other more frequent agreed upon basis.

3.4.3 In the event there are insufficient funds in the applicable account to pay the necessary costs and expenses for the Easement Maintenance Areas, the Responsible Owners shall promptly notify the other Owners in writing, with copies of all invoices and/or proposals attached, and all Owners shall make payment of their respective shares of such costs to the Responsible Owners within thirty (30) days after receipt of written notice.

Section 3.5. Damage to Improvements. In the event the need for repair or replacement of any of the improvements in the Easement Maintenance Areas is caused through the willful or negligent acts of an Owner or an Owner's tenants, guests or invitees, such responsible Owner shall promptly cause such damaged improvement to be repaired or replaced at the responsible Owner's sole cost and expense. If such responsible Owner fails to so repair or replace such damaged Improvement within fifteen (15) days after receipt of a written notice from the Responsible Owners requesting such repairs, the Responsible Owners shall have the right, but not the obligation, to cause such repair or replacement to be made out of the common funds, and the reasonable cost thereof shall be the obligation of the Owner responsible for such damage to repay. Such Owner shall reimburse the Responsible Owners for such repair or replacement, for reimbursement of the common funds expended, within thirty (30) days after receipt of written notice, with copies of invoices attached.

Section 3.6. Insurance. A master or blanket public liability and property damage insurance policy covering the improvements in the Maintenance Easement Areas shall be purchased by the Responsible Owners as promptly as possible after the date of recordation of this Declaration, and shall be maintained in force by the Owners at all times, the premium thereon to be paid out of the common funds as a cost of maintenance of the improvements in accordance with this Article. The minimum amount of coverage shall be One Million Dollars (\$1,000,000.00) combined single limit for bodily injury to any one person, or property damage for any one occurrence; if written on the new occurrence form, coverage shall be One Million Dollars (\$1,000,000.00) in the aggregate and One Million Dollars (\$1,000,000.00) per occurrence. The policy shall name all the Owners of the Properties as insureds. The insurance shall also contain a cross-liability endorsement to cover negligent injury by one Owner to another, if reasonably available. In addition, the Owners shall maintain a fidelity bond or insurance in an amount at least equal to the maximum amount anticipated to be held in the bank accounts for the operation and reserves for the Easement Maintenance Areas during the year, which names all Owners as obligee and insures against loss by reason of acts of the Responsible Owners and any others Owners who may have access to the bank accounts, whether or not such persons are compensated for their services. The Owners shall review the insurance at least annually for the purpose of determining the sufficiency of the amount of insurance carried.

ARTICLE 4 **USE RESTRICTIONS AND OBLIGATIONS OF OWNERS**

Section 4.1. Leasing of Lots. If permitted under the terms of the Owner's purchase agreement, any Owner may lease his Lot subject to the following:

4.1.1 No Owner shall be permitted to lease his Lot for transient or hotel purposes, or for anything other than a single-family dwelling.

4.1.2 No Owner may lease less than the entire Lot or for a period of less than thirty (30) days.

4.1.3 Any lease agreement is required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, and that any failure by the lessee to comply with the terms of such documents shall constitute a default under the lease.

4.1.4 All leases are required to be in writing.

Section 4.2. Landscaping of Lots. Each Owner of a Lot shall, at the Owner's sole expense, maintain and replace as necessary the landscaping installed by Declarant in the Owner's yards or other areas designated for landscaping on such Lot, that are visible from the street.

Section 4.3. General Maintenance of Lots. Each Owner of a Lot shall cause the landscaping, including trees, grass, hedges, shrubs vines, mass plantings, and slope areas, if any, on said Lot to be maintained in a neat and attractive condition, replacing any plant material which die or are otherwise destroyed with plant material of the same type approved by the City. No weeds, rubbish, debris, objects or materials of any kind, plants or seeds infected with noxious insects or plant diseases, shall be placed, grown or permitted to accumulate on any portion of a Lot which renders such portion of the Lot unsanitary, unsightly, offensive or detrimental to any Lot in the vicinity thereof, or to the occupants of any such Lot.

Section 4.4. Use Restrictions. In addition to all other covenants contained herein, the use and enjoyment of the Project and each Lot therein shall be subject to the following:

4.4.1 **Garages.** The residence on each Lot shall include an attached garage or carport for not less than two (2) automobile size motor vehicles. No garage or carport shall be used for residential or storage purposes or any other purpose, which would restrict the parking of the maximum number of automobiles or other motor vehicles for which such garage or carport was designed. Subject to any and all applicable City ordinances, in the event that the occupant of a Lot has a number of vehicles, which exceed the maximum capacity of the garage or carport of such Lot, such excess number of vehicles may be parked on the streets, subject to compliance with the applicable parking regulations imposed by the City.

4.4.2 **Residential Use.** No part of the Project shall ever be used or caused to be used directly, or indirectly, for any business, commercial, including auctions or similar events, manufacturing, mercantile, storing, vending or other such non-residential purposes, including any activity for which the provider is compensated or receives any consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or

16

requires or does not require a license. However, Declarant, its successors or assigns, may use any Lot or Lots in the Project owned by Declarant for a model home site or sites and display and sales office until the last Lot has closed escrow. The provisions of this Section shall not preclude professional and administrative occupations, or other reasonable business activity, which have no signs, sounds, smells or other external evidence thereof within the Project, for so long as such occupations are in conformance with the provisions of this Declaration, and all applicable governmental ordinances, are consistent with the residential character for the Project. The clientele of such activities may not visit or park automobiles or other vehicles in the Project.

4.4.3 Signage. No sign or billboard of any kind shall be displayed by any Owner on any portion of the Project or Lot, except one (1) sign of reasonable size, advertising that the particular Lot is for sale or rent, or except by Declarant in connection with initial sales of the Lots, during the sales period. No provision herein shall be read or construed to prohibit the posting or displaying of noncommercial signs, posters, flags, or banners on or in an Owner's separate Lot, except as required for the protection of public health or safety, or if the posting or display would violate a local, state, or federal law, as provided by California Civil Code Section 1353.5 and 1353.6. Such signs, posters, flags, or banners may be made of paper, cardboard, cloth, plastic, or fabric, and may be posted or displayed from the yard, window, door, balcony, or outside wall of the separate Lot, but may not be made of lights, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative material or component, or include the painting of architectural surfaces. Any such signs, posters, flags, or banners shall be permitted only so long as they are in good presentable condition.

4.4.4 Nuisance. No noxious or offensive activity shall be carried on (i) in any Lot, (ii) in any part of the Project, (iii) or on any public street abutting or visible from the Project; nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way obstruct or interfere with the rights or quiet enjoyment of each of the Owners of his respective Lot or which shall in any way increase the rate of insurance. All horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a residence or vehicle and its contents, are also prohibited. Noisy, unsightly, unusually painted or smoky vehicles, large power equipment and large power tools (excluding lawn mowers and other equipment used in connection with ordinary landscape maintenance), off-road motor vehicles or items which may unreasonably interfere with television or radio reception to any Lot and objects which create or emit loud noises or noxious odors may not be located, used or placed in the Project or on any public street abutting or visible from the Project unless placed and maintained entirely within a Lot and obscured from view. No plants or seeds infected with noxious insects or plant diseases may be brought upon, grown or maintained within the Project.

4.4.5 Parking; Authorized Vehicles. Except as hereinafter provided, only authorized vehicles shall be permitted within the Project.

4.4.5.1 The following vehicles are "Authorized Vehicles": standard passenger vehicles, including automobiles, passenger vans designed to accommodate ten (10) or fewer people, and motorcycles and pickup trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Authorized Vehicles may be parked in any portion of the Project intended for the parking of motorized vehicles; however, no Owner may park a vehicle in the Common Use

Driveway, or in a manner, which either restricts or obstructs the passage of pedestrians or vehicles over garage or carport areas, driveways or walkways in the Project or extends beyond the limits of the space where the vehicle is parked. No automobile, boat or other motor vehicle repair shall be permitted within the Project except entirely within a garage or carport. Under no circumstances shall such vehicle repair be permitted on any driveway within the Project, except in the event of an emergency. No inoperative automobile shall be permitted to remain upon the Project unless placed and maintained entirely within a garage or carport and obscured from the view of the adjoining Lots and streets. The foregoing restriction shall not be deemed to prevent washing and polishing of Authorized Vehicles, together with those activities normally incident and necessary to such washing and polishing, provided, however, that washing of motor vehicles shall not be permitted within garages. Owners shall keep their garage doors closed except when in use for ingress and egress, cleaning or maintenance.

4.4.5.2 The following vehicles are "Prohibited Vehicles": (a) recreational vehicles (e.g. motor homes, travel trailers, camper vans and boats), (b) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks, and limousines), (c) buses or vans designed to accommodate more than ten (10) people, (d) vehicles having more than two (2) axles, (e) trailers, (f) inoperable vehicles or parts of vehicles, (g) aircraft, and (h) any other vehicles not classified as Authorized Vehicles. Prohibited Vehicles may not be parked, stored or kept within the Project unless placed and maintained entirely within a garage or carport and obscured from view. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle.

4.4.6 Pets and Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that an Owner may maintain a reasonable number of dogs, cats, fish, reptiles, birds or other domesticated household pets, provided they are not kept, bred or maintained for any commercial purpose, nor in unreasonable numbers or sizes. Owners may not bring into the Project or keep on any Lot any dogs which are of a breed known to be aggressive or commonly trained for fighting, such as dogs commonly referred to as "pit bulls" for example, or any dogs reasonably deemed to be vicious and/or aggressive. Notwithstanding the foregoing, no animals, livestock, birds or poultry shall be kept within the Project, which result in any annoyance or are obnoxious to residents of the Project. Each person is liable for any unreasonable noise and for damage to person or property caused by any animals brought or kept within the Project by such person. Owners keeping pets shall leash and maintain all pets under control of such Owner and be accountable to the other Owners for the acts of such pets, and should any Owner be unable to control barking or other unreasonable noise or acts of his pets which disturb his neighbors, he shall be required to remove such pet from the Project. Owners shall clean up and remove any animal waste such pet may deposit on the property of another Owner.

4.4.7 Window Coverings. Windows may only be covered by drapes, shades, curtains, blinds or shutters. Window coverings made of tin or aluminum or tin foil, newspapers, paint, reflective tint, or other unattractive window coverings, which esthetically detract from the Project, are prohibited. All window coverings shall be of a uniform neutral color harmonious with and not in conflict with the color scheme of the exterior wall surface of the dwelling. Window tinting shall be non-reflective in nature and shall not adversely affect the aesthetics of the exterior of the dwelling. Plain white sheets are acceptable as temporary window coverings

for a period of time not to exceed ninety (90) days from the close of escrow of the Owner's Lot, and pending the installation of drapes, curtains, shutters or other appropriate interior window coverings.

4.4.8 Antennas and Satellite Dishes. Owners are prohibited from installing any antenna or satellite dish on the exterior of a residence for any purpose, except for an "Authorized Antenna." Outdoor locations permitted for Authorized Antennas shall be limited to those areas of rear and side yards where the visibility thereof from other Lots is minimized, and in no event installed on the front of the residence or garage or carport. An "Authorized Antenna" means an antenna that is (a) designed to receive direct broadcast satellite service, including direct-to-home satellite service and that is one meter or less in diameter, and, (b) that is designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and that is one meter or less in diameter, or (c) an antenna that is designed to receive television broadcast signals. Each Owner may maintain individual radio or television antennae systems if located entirely within such Owner's dwelling and if such system is not visible from other Lots provided that such system does not interfere with radio and television reception of other Owners within the Project.

4.4.9 Permits for Alterations. Each Owner shall be responsible for obtaining all necessary permits and approvals from the City for the construction, installation, alteration or removal of building structures, walls, fences, patio covers and other structures and improvements on such Owner's Lot.

4.4.10 Water and Irrigation. No individual water supply, sewage disposal or water softener system is permitted in any Lot, unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of any water district having jurisdiction and all other governmental authorities with jurisdiction.

4.4.10.1 In no event shall any private wells be installed within the Project for purposes of exporting water off of the Lot where such well is located.

4.4.10.2 Each Lot contains an outdoor hose bib/water faucet, and each Owner shall install security measures to ensure that it is not subject to unauthorized use by others, or causes inadvertent flooding of neighboring properties. In addition, each Owner shall use, maintain and adjust the settings of the irrigation system for such Owner's Lot to assure that over-watering does not occur, and that no damage to neighboring Lots or slopes occurs.

4.4.10.3 No Owner shall do any act which shall contribute to the introduction of pollutants into storm drainage facilities, including, but are not limited to, soil, sand, sediment, oil, gasoline or other hydrocarbons, paint, fertilizers, and other household chemicals. For example, Owners must place sandbags around soil and sod when installing landscaping, and take measures to prevent over-watering the landscaping, in order to prevent soil, fertilizer and lawn chemicals from running into the storm drains.

4.4.11 Air Conditioners. No Owner shall install any "window style" air conditioning unit in any structure within the Project, nor shall any person install any air conditioning unit upon the roof of any structure in the Project. Air conditioning compressors shall be located at

16
ground level alongside or behind the structure being serviced by such unit, in compliance with all applicable City and County regulations, and concealed for sound attenuation purposes and in order to obscure such unit from the view from Project streets.

4.4.12 Roof Mounted Equipment. All roof mounted appurtenances, equipment (if permitted) and projections, shall be shielded from view and the sound buffered from adjacent Lots as required by the applicable City and County regulations. Such screening shall be architecturally integrated with the building design and constructed to the satisfaction of the City Planner. Details shall be included in building plans submitted to the City for approval.

4.4.13 Roofing Material. No dwelling and building and/or structures incidental to said dwellings constructed on any Lot may be constructed with roof material other than slate, concrete, tile, clay tile or equal roofing material.

4.4.14 Decks and Terraces. Except as otherwise expressly provided herein, the Owner of a Lot shall not have the right to paint, alter, remodel or enclose, any outdoor deck or terrace on such Lot, either temporarily or permanently, and then only in a manner which does not impair the uniform appearance of such deck or terrace in comparison with other decks or terraces within the Project.

4.4.14.1 The residence on each Lot includes a main living level terrace and Lots 3 and 5 also include a roof deck. Such decks and terraces may be bounded on one or more sides by the exterior wall of the residential building structure on an adjacent Lot and/or an exterior fence or wall (on the easterly side of the Project), and the Owner of such deck or terrace, and such Owner's family, tenants, guests and invitees, are strictly prohibited from painting, attaching anything to, or driving any nails, screws, bolts or other objects into the wall of such adjacent residential structure or such adjacent fence or wall. In the event that an Owner shall cause, permit or suffer anything to be done to any such wall or fence which would tend to deface, damage, alter or impair the structural integrity of such wall or fence, or cause any other damage to such wall or fence, such that any painting, maintenance or repairs are required, said responsible Owner shall pay the reasonable costs of remediation and repair of such damage and shall permit access by the neighboring Owner to the deck or terrace, and the Owner's agents and employees, as necessary and convenient to perform such remediation and repair work to be performed.

4.4.14.2 Subject to the foregoing, each Owner shall have the right to furnish such Owner's deck and terrace with attractive outdoor furniture, such as high-end resin or wicker furniture, but not including cheap white plastic patio furniture, or the like, in keeping with the architecture and ambiance of the Project and reasonable family use, and shall keep such deck and terrace in a clean and sanitary condition. Such outdoor furnishings may include, among other things, a sun shade device or umbrella, and a free standing barbecue, but not on the roof decks and terraces of Lots 3 and 5.

4.4.14.3 Owners of Lots 2, 4 and 6 are permitted to install on the main living level decks a permanent sun canopy over the indoor/outdoor kitchen counter only on the west facing walls of said Lots 2, 4 and 6 (and not on other Lots).

4.4.14.4 Owners shall be permitted to install on the main living level decks permanent outdoor kitchens with under the counter refrigerator (but not full size refrigerator) and built-in barbecue if properly vented and constructed in accordance with all applicable City building code requirements and fire code restrictions, and pursuant to City issued permits.

4.4.14.5 In no event shall bicycles, recreational equipment, stacked furniture, or other unsightly objects be placed or stored on a deck or terrace where they may be seen by other Owners and occupants of the Project from their Lots, decks and/or terraces, or by the public in general.

4.4.14.6 Heavy items such as pavers, hot tubs, spas, water features, large planters, and the like, are not permitted on the main living level decks and terraces, or on the roof level decks, which are not designed to support such weight, without review and approval by a competent structural engineer stating that the structure is capable supporting the heavy item safely. Declarant shall not be responsible for any damage or destruction of the residential improvements on a Lot caused by the placing of any such heavy items on any decks and terraces. Notwithstanding the foregoing, the Owner of Lot 1 shall be permitted to place heavy items on its grade level outdoor yard area.

4.4.14.7 Except as provided above, no major appliances, including without limitation clothes washers, clothes dryers, full size refrigerators or freezers may be kept, stored or operated on any deck, terrace or other exterior area of any Lot, structure or improvement.

4.4.14.8 Each Owner and occupant of a Lot must be sensitive to and considerate of the rights of Owners and occupants of adjacent and neighboring properties to the quiet use and enjoyment of their respective Lots. The use of the decks and/or terraces in the Project must be restricted to reasonable and quiet activities that do not disturb neighbors, and reasonable hours of use. The Owners may agree upon mutually acceptable reasonable restrictions on the use of decks and terraces to preserve the peaceful enjoyment by all Owners of their Lots.

4.4.15 Clothes Lines. No exterior clotheslines or other outside clothes drying or airing facility shall be erected or maintained on the properties in any location where the same would be visible from any street or neighboring Lot, including any decks, roof decks or terraces.

4.4.16 Holiday Decorations. Outdoor holiday decorations, or indoor holiday decorations that are visible from outside, shall be limited to a reasonable period of time prior to the date of the holiday, and shall be removed within no more than seven (7) days after such holiday.

4.4.17 Sports Equipment. No basketball standards, hoops or backboards or other fixed sports apparatus shall be attached to any residence or structure or erected on any Lot.

4.4.18 Solar Collectors. No Owner shall permit such Owner's solar collector, or any vegetation, to shade, block or interfere with the solar access of any present or future solar collector or other solar absorption device on the roof of any other Lot.

4.4.19 Trash Containers. All trash receptacles and containers, and containers for recyclable materials shall be stored only in the central Trash Area of the Project on Lot 6, and not on other Lots, and shall not be visible from the streets. Such containers may be set out at

curbside for a reasonable period of time on the day of collection, not to exceed twelve (12) hours before and after the scheduled collection hours.

4.4.20 Landscape Maintenance. Each Owner of a Lot has the responsibility and duty to maintain in a first-class condition the appearance and integrity of his Lot, including, but not limited to, all landscaping and slope areas. All structures and improvements within the Project shall at all times be maintained by their respective Owners in a clean, first-class and properly painted condition.

4.4.21 Slope Access. Each Owner of a Lot within the Project covenants for himself, his heirs, successors and assigns, that he will permit free access by Owners of adjacent or adjoining Lots, their agents and employees, to all slope areas or drainage ways located on his Lot, which affect said adjacent or adjoining Lots, which access is essential for the maintenance or permanent stabilization of said slopes, or maintenance of the drainage facilities for Lots other than the Lot on which the slope or drainage way is located.

4.4.22 Drainage. Each Owner of a Lot within the Project covenants for himself, his heirs, successors and assigns, that he will not in any way interfere with the established drainage patterns or create erosion or sliding problems over his Lot from adjoining or other Lots within the Project, and that he will make adequate provisions for proper drainage in the event it is necessary to change the established drainage over his Lot. For the purposes hereof, "established drainage" is defined as the drainage, which occurred at the time the overall grading of the Project, was completed by Declarant.

4.4.23 Outdoor Alteration and Construction. No fence, wall or other structure, landscaping or improvement (collectively "Improvement") shall be commenced, erected, placed or altered upon any Lot (including, without limitation, the replacement of any existing landscaping with anything other than substantially identical landscaping, or the repainting of any building, fence or wall in a color other than that originally used for such structure by the Declarant, shall be permitted without the prior written consent of the Owners of a majority of the other Lots. Construction, installation or alteration of any boundary line fence or wall shall require, in addition, the consent of the adjoining Owner sharing such boundary line.

4.4.24 Slope Maintenance. Each Owner of a Lot within the Project shall, in accordance with Declarant's grading plan(s) on file with the City, maintain the structural integrity of any slopes within his Lot, including watering and planting of the slopes. Within slope areas no structure, planting, or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope areas of each Lot and all improvements thereto shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Declarant shall, for a period of two (2) years following sale and deed of any particular Lot, have the right but not the obligation to enter upon said Lot and alter or maintain the slope areas. An easement of reasonable access for said purpose is hereby reserved to Declarant, and the purchaser, by the acceptance of a deed from Declarant, shall take title subject to such easement for said period of two (2) years.

4.4.25 Declarant's Reserved Rights. Conveyance of a substantial number of the Lots is essential to the establishment and welfare of said Project as a residential Project. In order that all work necessary to complete the Project and establish a substantially occupied residential Project be completed as rapidly as possible, no Owner shall and nothing in this Declaration shall be understood or construed to:

4.4.25.1 Prevent Declarant, its contractor or subcontractors, from doing work on said Project or any part thereof whenever it determines such work to be reasonably necessary or advisable in connection with the completion of the Project; or

4.4.25.2 Prevent Declarant, or its representatives from erecting, constructing and maintaining on any part or parts of said property owned or controlled by Declarant, its contractors, or subcontractors, such structures, signs, displays or monuments as may be reasonably necessary for the conduct of its business of completing said work and establishing the Project as a residential community and disposing of the same by sale, lease, or otherwise.

Section 4.5. Utility Sub-Metering. The water service to the Project may be provided through one or more water lines that may be sub-metered to the individual Lots. The Owners in common shall have the right, through the Responsible Owners from time to time, to contract, provide and pay for any such commonly metered utilities, such as water utility service, for the common use and benefit of all Owners.

4.5.1 Water Meters. Each Owner, by acceptance of a deed, acknowledges that the local water district ("**District**") provides water and sewer service to the Project and bills the Project as a whole for water service within the Project. In connection with the development of the Project, Declarant has installed one or more District water meters for the Project. One of the meters may meter the water used for the wet standpipe for fire suppression purposes, which the Owners in common are obligated to maintain. The other District water meter(s) will be used to measure water usage of all the individual Lots. The District will then prepare a bill based upon overall water usage of the Project. The Owners in common, through the Responsible Owners, will be responsible for payment of this bill to the District. Private individual sub-meters will be installed within each individual Lot, or at a central location on one Lot, that measures water usage for each of the individual Lots. Each Owner will be responsible to pay such Owner's portion of the bill in accordance with the procedures set forth below.

4.5.2 Allocation of Water Bills. In order to calculate the share attributable to each Lot for water and other charges imposed by the District, the Responsible Owners shall have the right to enter into a contract with a water-metering service company ("**Metering Company**"). The Metering Company will be responsible for (1) reading the individual sub-meters, (2) allocating the water and other charges imposed by the District for each Lot and the common wet standpipe, and (3) preparing the individual bills for delivery to each Owner. Additionally, the Metering Company will impose a service charge for their services, which will be charged to each Owner with a sub-meter. Each Owner with a sub-meter will be responsible for paying directly to the Metering Company such Owner's share of water and other charges imposed by the District and the service charge to the Metering Company prior to the due date. The Metering Company will provide to the Responsible Owners a statement of all amounts received from the Owners with a

sub-meter on a regular basis, along with such funds received. If an Owner with a sub-meter fails to pay any amounts when due, such Owner will be responsible for any penalties or delinquent amounts levied by the District and the Metering Company. Additionally, the Responsible Owners shall have the right to cure any failure by an Owner ("**Defaulting Owner**") to pay the amounts due to the District. If the Responsible Owners elect to cure such default out of the common funds, then the defaulting Owner will be responsible for paying the Responsible Owners the amount necessary for reimbursing the common funds. If the Defaulting Owner fails to reimburse the common funds expended, the Responsible Owners will be entitled to bring a small claims action in the names of the non-defaulting Owners against the Defaulting Owner to collect such amounts. The Responsible Owners shall be responsible to maintain, repair, and replace the sub-meter providing service to each Lot. Each Owner shall provide unobstructed access to the Responsible Owners and the Metering Company for any inspections and maintenance. If, in the future, there are no companies that can provide the sub-metering service, then it will be the responsibility and obligation of the Responsible Owners to allocate costs for water usage and the other charges levied by the District to the Owners in the Project.

4.5.3 **Deposits.** Upon the initial sale of a Lot to an Owner from Declarant under authority of a Public Report and any subsequent sale of a Lot by an Owner, such Owner shall be obligated to pay to the Responsible Owners a deposit to be determined by the Responsible Owners as security for such Owner's obligation to pay such Owner's water bill when due. As provided above, the Responsible Owners may apply such deposit in payment of a Defaulting Owner's water bill and such Owner shall replace the full amount of such deposit promptly upon written notice from the Responsible Owners. The Responsible Owners shall, within thirty (30) days of receiving written notice from an Owner that such Owner has conveyed such Owner's Lot (provided that the subsequent Owner has paid a replacement security deposit in the amount determined appropriate by the Responsible Owner) return to the Owner any amounts not expended by the Responsible Owners from such Owner's deposit. The Responsible Owners may increase the amount of such security deposits and require the deposit of additional amounts by the Owners, based on increases in such water bills.

ARTICLE 5 SCOPE OF ENFORCEMENT

Section 5.1. Enforcement. The limitations, restrictions, conditions and covenants set forth in this Declaration constitute a general scheme for (i) the maintenance, protection and enhancement of the aesthetic value of the Lots within the Project; and (ii) the benefit of all Owners. Said limitations, restrictions, conditions and covenants are and shall be covenants running with the land or equitable servitudes, as the case may be.

Section 5.2. Remedies. Remedies specified in this Declaration shall be deemed cumulative. Every act or omission whereby any covenant, restriction or condition in this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated by Declarant, or by the then Owner or Owners of any Lot within the Project. The Declarant, or any Owner shall have the right to enforce, by binding arbitration, all restrictions, conditions, covenants, reservations, and charges now or hereafter imposed by the provisions of this Declaration or any amendment thereto. In the event of a dispute between any of the foregoing

73

parties concerning the provisions of this Declaration or any amendments thereto, the issue shall, at the request of a party, be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). In the event of a referral to arbitration, the party initiating the arbitration will remit the fee to initiate the arbitration. The parties agree, however, that the costs of arbitration shall ultimately be borne and determined by the arbitrator. The arbitrator's decision shall be binding and conclusive on all of the parties with respect to the resolution of the dispute and with respect to the payment of the costs of arbitration. The failure of Declarant or any Owner to enforce any of the covenants, restrictions or conditions contained herein shall not be deemed a waiver of the right to enforce the same thereafter or to enforce any other covenant, restriction or condition herein.

Section 5.3. Notice of Breach. Any of the foregoing to the contrary notwithstanding, no action to enforce this Declaration shall be instituted unless and until a written notice of such breach setting forth the facts of such breach has been delivered by certified mail to the Owner of such Lot.

Section 5.4. Disputes Relating to Enforcement of Governing Documents. In the event of a dispute between an Owner and another Owner, relating to the enforcement of this Declaration, the parties shall comply with the provisions of California Civil Code Sections 1363.810, 1369.510 and following, or any successor statute as, applicable, prior to filing any civil action.

ARTICLE 6 MORTGAGEE PROTECTION

Section 6.1. Mortgagee Protection. No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any Mortgage on any Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

ARTICLE 7 AMENDMENTS

Section 7.1. Amendment Vote. This Declaration may be amended only by an affirmative vote of not less than sixty-six and two-thirds percent (66 2/3%) of the Owners, and further, this amendment provision shall not be amended to allow amendments by vote of less than sixty-six and two-thirds percent (66 2/3%) of the Owners. The percentage of the voting power necessary to amend a specific provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under said provision.

Section 7.2. Effective Date of Amendment. From and after its effective date, each amendment made pursuant to the preceding paragraph shall be as effective as to all Lots within the Project, the Owners thereof and their successors in interest.

Section 7.3. Declarant's Right to Amend. Prior to the close of the first escrow for the sale of a Lot in the Project, this Declaration may be unilaterally amended by Declarant, its successors and assigns.

ARTICLE 8 DISPUTE MECHANISM

Section 8.1. Notice of Residential Construction Legislation. Notwithstanding any provision of this Declaration to the contrary, any action or claim by, between or among the Declarant, or any director, officer, member, partner, employer, general contractor, subcontractor, material supplier, individual product manufacturer, design professional, consultant, or agent of the Declarant, or any director, officer, partner, member, employee or agent of the Declarant, or any contractor, subcontractor, design professional, engineer or supplier who provided labor, services or materials to the Project and who is bound or has agreed to be bound to the following dispute notification and resolution procedure (collectively, the "**Declarant Parties**") and any Owner, relating to or arising out of the Project, or any agreements between the Declarant Parties and an Owner (unless any such agreement specifies another form of dispute resolution), the purchase of such Owner's Lot from Declarant, the use or condition of the such Owner's Lot, or the design or construction of or any condition on or affecting such Owner's Lot, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of improvements or disputes which allege fraud, misrepresentation or breach of implied or express warranties as to the condition of such Owner's Lot (collectively, "**Dispute(s)**"), shall be subject to the provisions set forth in this Article.

Section 8.2. Construction Defect Disputes.

8.2.1 Notice of Construction Claims Statute. California Civil Code Section 895 et seq., as hereafter amended ("**Construction Claims Statute**"), delineates standards for how various components of residential dwelling units should be constructed and function, limits the time frames for bringing various claims against the Declarant Parties to anywhere from one (1) year to ten (10) years (as listed in the Construction Claims Statute) from the close of escrow for the residential dwelling unit, imposes an obligation on all Owner's to follow Declarant's maintenance recommendations and schedules, or other applicable maintenance guidelines, and establishes a non-adversarial claims resolution procedure that must be followed by an Owner before the Owner can initiate an adversarial claim and proceed to judicial reference or binding arbitration, as described in Section 8.3 below. THE CONSTRUCTION CLAIMS STATUTE AFFECTS EACH OWNER'S LEGAL RIGHTS. OWNERS ARE ADVISED TO READ THE STATUTE CAREFULLY AND SEEK LEGAL ADVICE IF OWNER HAS ANY QUESTIONS REGARDING ITS AFFECT ON OWNER'S LEGAL RIGHTS. PURSUANT TO CALIFORNIA CIVIL CODE SECTION 914, DECLARANT IS PERMITTED TO ELECT TO USE ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES RATHER THAN THE STATUTORY PRE-LITIGATION PROCEDURES PROVIDED IN THE CONSTRUCTION CLAIMS STATUTE, AND DECLARANT HAS ELECTED TO USE ITS OWN ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES.

76

8.2.2 Owner's Construction Defect Claims. Prior to the commencement of any legal proceeding by any Owner against Declarant or any Declarant Party based upon a claim for defects in the design or construction of any Lot, residence, the Project or any improvements thereon, such Owner must first comply with the provisions of this Section. If at any time during the ten (10) year period following close of escrow for the original Owner's purchase of such Owner's Lot from Declarant, as such period may be extended by any applicable tolling statute or provision, or any shorter period as provided by applicable law, such Owner believes that Declarant has violated any of the standards set forth in the Construction Claims Statute ("**Claimed Defect**"), which such Owner feels may be the responsibility of Declarant, such Owner shall promptly notify, in writing, Declarant's agent for service of construction defect claims, which is currently: 3727 W. Magnolia Blvd., #805, Burbank, California, 91507. Such notice shall be deemed a notice of intention to commence a legal proceeding and shall include: (a) a detailed description of the Claimed Defect, (b) the date upon which the Claimed Defect was first discovered, and (c) dates and times when Owner or Owner's agent will be available during ordinary business hours, so that service calls or inspections by Declarant can be scheduled. Declarant shall, in its sole discretion, be entitled to inspect the applicable property regarding the reported Claimed Defect and, within its sole discretion, shall be entitled to cure such Claimed Defect. Nothing contained in this Article shall obligate Declarant to perform any such inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner. Owner's written notice delivered to Declarant shall be a condition precedent to Owner's right to institute any legal proceeding and to proceed to judicial reference or binding arbitration as set forth in Section 8.4 below, and Owner shall not pursue any other remedies available to it, at law or otherwise, including without limitation the filing of any legal proceeding or action, until Declarant has had the reasonable opportunity to inspect and cure the Claimed Defect. During the term of any written Limited Warranty provided to the original Owner of the Lot by Declarant, any conflict between the provisions of this Section and the Limited Warranty shall be resolved in favor of the Limited Warranty. Declarant shall not be liable for any general, special or consequential damage, cost, diminution in value or other loss which Owner may suffer as a result of any Claimed Defect in the Lot, which reasonably might have been avoided had Owner given Declarant the notice and opportunity to cure as described above within a reasonable time of discovering the Claimed Defect. Except as otherwise provided in the written Limited Warranty, if any, provided to Owner, nothing contained herein shall establish any contractual duty or obligation on the part of Declarant to repair, replace or cure any Claimed Defect. If an Owner sells or otherwise transfers ownership of such Owner's Lot to any other person during such ten (10) year period, as such period may be extended by any applicable tolling statute or provision, Owner covenants and agrees to give such person written notice of these procedures by personal delivery. Owner's continuing obligation under this covenant shall be binding upon Owner and Owner's successors and assigns.

8.2.3 Purchase Documents. All Owners, who originally purchased a Lot from Declarant were provided copies of certain documents through escrow in conjunction with the purchase of the Lot, including this Declaration, maintenance recommendations from Declarant, maintenance recommendations for manufactured products or appliances included with the Lot, a limited warranty, claim forms, and other documentation relating to the Construction Claims Statute. All Owners are required by the Construction Claims Statute to retain these documents and provide copies of such documents to Owner's successors in interest upon the sale or transfer of such Owner's Lot.

8.2.4 Obligation to Follow Maintenance Recommendations and Schedules. All Owners are obligated by Section 907 of the Construction Claims Statute to follow Declarant's maintenance recommendations and schedules, including the maintenance recommendations and schedules for manufactured products and appliances provided with Owner's Lot, as well as all commonly accepted maintenance practices (collectively, "**Maintenance Recommendations**"). Per Section 945.5 of the Construction Claims Statute, failure to follow the Maintenance Recommendations may reduce or preclude Owner's right to recover damages relating to such Owner's Lot, which could have been prevented or mitigated had the Maintenance Recommendations been followed.

Section 8.3. Other Disputes. Any other disputes arising under this Declaration, or otherwise, between any Owner and Declarant or any Declarant Party, shall be resolved in accordance with the alternate dispute resolution provisions of Section 8.4 below.

Section 8.4. Alternate Dispute Resolution Procedures. The following procedures provide for resolution of disputes through general judicial reference or, in the alternative, binding arbitration. In either event, Declarant and each Owner of a Lot within the Project, expressly acknowledge and accept that, by invoking or electing to participate in the procedure, they are waiving their respective rights to a jury trial.

8.4.1 Judicial Reference. Subject to compliance with the provisions of Section 8.2 to the extent applicable, it is the intention of Declarant that, except as otherwise expressly provided herein, any and all disputes, based upon which litigation is filed, shall be resolved by judicial reference under California law. Accordingly, except as otherwise expressly provided in this Declaration, any dispute, between any Owner(s) and the Declarant, or other developer of the Project, or between any Owners with respect to the interpretation of any of the provisions of this Declaration, or with respect to any alleged breach hereof, or with respect to any other claim related to a Lot, including, without limitation, any alleged latent or patent construction or design defect in the Project, any Lot or any part thereof, any alleged violation of the standards set forth in the Construction Claims Statute, shall be heard by a referee pursuant to the provisions of California Code of Civil Procedure Sections 638 through 645.2. Notwithstanding any other provision of this Declaration, this Article shall not be amended without the written consent of Declarant. In the event litigation is filed based upon any such dispute, the following shall apply:

8.4.1.1 The proceeding shall be brought and held in the County in which the Project is located, unless the parties agree to an alternative venue.

8.4.1.2 The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services, Inc. ("**JAMS**") for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties).

8.4.1.3 The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters.

8.4.1.4 The parties to the litigation shall agree upon a single referee who shall have the power to try any and all of the issues raised, whether of fact or of law, which may be

pertinent to the matters in dispute, and to issue a statement of decision thereon to the court. Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction in accordance with California Code of Civil Procedure Sections 638 and 642.

8.4.1.5 The referee shall be authorized to provide all remedies available in law or equity appropriate under the circumstances of the controversy.

8.4.1.6 The referee may require one or more pre-hearing conferences.

8.4.1.7 The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

8.4.1.8 A stenographic record of the trial shall be made.

8.4.1.9 The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.

8.4.1.10 The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

8.4.1.11 The parties shall promptly and diligently cooperate with each other and the referee and perform such acts, as may be necessary for an expeditious resolution of the dispute.

8.4.1.12 The costs and fees of the referee and the costs and fees for the judicial reference proceeding shall be paid as agreed by the parties, or, if the parties cannot agree, then as provisionally determined by the referee, and the overall costs and fees of the proceeding shall be ultimately borne as determined by the referee at the conclusion of the proceeding. The referee may not award against Declarant or any Owner any expenses in excess of those that would be recoverable as costs if the dispute had been litigated to final judgment in court.

8.4.1.13 The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action that may be brought by any of the parties.

8.4.2 Binding Arbitration of Disputes. If for any reason the judicial reference procedures in Section 8.4.1 are legally unavailable at the time a dispute would otherwise be referred to judicial reference, then such dispute shall be submitted to binding arbitration under the rules and procedures in this Section 8.4.2. Any dispute submitted to binding arbitration shall be administered by the American Arbitration Association ("AAA") in accordance with the AAA's Construction Industry Arbitration Rules and AAA's Supplementary Procedures for Residential Construction Disputes in effect on the date of the submission. If such entity is not then in existence, then the dispute shall be submitted to JAMS, and administered in accordance with either the Streamlined Arbitration Rules and Procedures, or (if applicable) the

78

Comprehensive Arbitration Rules of JAMS. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such dispute. If the claimed amount exceeds \$250,000.00 or includes a demand for punitive damages, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved. All decisions concerning the arbitrability of any dispute shall be decided by the arbitrator(s). At the request of any party, the award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither party nor the arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

8.4.3 Applicability of Federal Arbitration Act. The binding arbitration procedures contained in Sections 8.4.2 are implemented for the Project in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C. Section 1 et seq.) ("*FAA*"), which is designed to encourage the use of alternative methods of dispute resolution and avoid costly and potentially lengthy traditional court proceedings. The binding arbitration procedures in said Section are to be interpreted and enforced as authorized by the FAA. Parties interpreting this Section shall follow the federal court rulings, which provide among other things that: (1) the FAA is a congressional declaration of liberal federal policy favoring alternate dispute resolution notwithstanding substantive or procedural state policies or laws to the contrary, (2) alternate dispute resolution agreements are to be rigorously enforced by state courts; and (3) the scope of issues subject to alternate dispute resolution are to be interpreted in favor of alternate dispute resolution.

Section 8.5. Use of Damage Award Amounts. Any and all amounts awarded to a claimant on account of a claimed construction or design defect in the Project, or damage suffered as a result thereof, shall be expended by such claimant for the attorney fees and costs of the proceeding, and the repair, rehabilitation, or remediation of the claimed defect or damage.

Section 8.6. Miscellaneous. Nothing in the Article shall constitute a waiver of any of the benefits of Statutes of Limitations or equitable defense of any party. Furthermore, notwithstanding any other provision of this Declaration, this Article may not be amended without the prior written consent of the Declarant.

ARTICLE 9 GENERAL PROVISIONS

Section 9.1. Term and Extension of Declaration. The provisions of this Declaration shall run with the land and bind the Project, and shall inure to the benefit of and shall be enforceable by the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time the provisions of this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by at least sixty-six and two-thirds percent (66-2/3%) of the then Owners of Lots, has been recorded within six (6) months of the anticipated termination date. The contents of such instrument shall contain the agreement to terminate this Declaration as it may be supplemented in whole or in part.

KTT\OPEN HOUSE\ROWENA\CC&Rs 2C
1-31-12

Section 9.2. Severability. In the event any limitation, restriction, condition, covenant or provision contained in this Declaration is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

Section 9.3. Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of the residential Project.

Section 9.4. Attorneys' Fees. In the event the Declarant or any Owner(s) should commence any legal or equitable proceeding, including judicial reference or binding arbitration, to enforce any of the provisions of this Declaration, the prevailing party, shall be entitled to have judgment against and recover from any defendant in such proceeding such attorney's fees (other than nominal) and costs as the court, judicial referee, arbitration panel or arbitrator may adjudge reasonable and proper.

Section 9.5. Termination of Declarant's Obligations. In the event Declarant shall convey all of its rights, title and interests in and to the Project to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

Section 9.6. Number, Gender. The singular shall include the plural and the plural the singular unless the context requires to the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

Section 9.7. Non-Liability of Declarant. Each Owner, by acceptance of a deed, shall be deemed to have agreed that Declarant shall have no liability whatsoever resulting from any term or provision thereof having been held to be unenforceable in whole or in part.

Section 9.8. Grantees Subject to this Declaration. Each grantee of a conveyance or purchaser under a contract or agreement of sale, by accepting the deed or contract of sale or agreement of purchase, accepts the same subject to all of the limitations, restrictions, conditions and covenants, and agreements set forth in this Declaration, and agrees to be bound by the same.

ARTICLE 10 COVENANTS IN FAVOR OF LOCAL JURISDICTION

Section 10.1. Local Jurisdiction. The local governmental entity with primary jurisdiction over this residential planned development is the City of Los Angeles, a municipal corporation in the State of California. Owners shall, at all times, abide by all City ordinances, statutes and resolutions as well as the laws of the State of California.

10.1.1 Definitions. For purposes of this Article, the term "Improvements" shall have that meaning set forth in this Declaration, if any, but shall also include all improvements in the Project, including, without limitation, the following: all structures and buildings (and all

B

components thereof); private utilities; landscaping improvements and plantings; fences and walls, private streets and driveways, sidewalks, parking areas, garages, carports, lighting, signs, irrigation and drainage facilities.

10.1.2 Maintenance. Declarant and each Owner shall comply with the following special conditions:

10.1.2.1 Owner Maintenance. Except to the extent that such maintenance of the Easement Maintenance Areas and is required to be performed on behalf of all Owners by the Responsible Owners, each Owner, including Declarant, shall, at all times, perform such maintenance as is required to be performed by an Owner under this Declaration, which maintenance shall include, without limitation, maintenance of such Owner's Lot, and all Improvements located therein, in good repair, condition and appearance, and shall keep the Lot neat, clean and sanitary, free from any accumulation of debris or waste materials, and otherwise in accordance this Declaration and applicable City Codes and Regulations.

10.1.2.2 Landscape Maintenance. All landscaping in the Project, including, without limitation, trees, shrubs and other vegetation, drainage and irrigation systems, shall be installed as provided in the landscape plan as approved by the City and shall be permanently maintained by the Owner of the Lot where such landscaping is located in good, first class condition, healthy, without deterioration, free of waste and debris, and in conformity with the landscaping maintenance standards of the City. Dead or diseased plants shall be promptly replaced with landscaping similar in type, size and quality. Automatic irrigation systems shall be properly maintained and other reasonable and adequate landscape maintenance facilities and procedures shall be provided to fulfill the foregoing requirements.

10.1.2.3 Parking and Driveways. Driveways and traffic aisles on the Project shall be kept clear and unobstructed at all times. No vehicles or other obstruction shall project into such driveways or traffic aisles. All private driveways, walkways, stairways and parking areas shall be regularly swept and cleaned. All asphalt and concrete paved areas shall be repaired, replaced, and re-stripped, as necessary, to maintain said pavement at all times in a level and smooth condition. Any traffic or parking signage will be properly maintained.

10.1.2.4 Yards. For each Lot that contains a yard area, the respective Owner shall, at all times, maintain the yard in good, first class condition, including all landscaping, irrigation systems, fences and walls, without deterioration, free of waste and debris, and in conformity with the landscaping maintenance standards of the City.

10.1.3 Enforcement by the City. In the exercise of its general police power, the City regulates land uses and subdivisions within the City, including certain requirements for the Project as reflected in the provisions of this Declaration. Each Owner acknowledges by acceptance of the deed or other conveyance therefore, whether or not it shall be expressed in any such deed or other instrument, that each of the covenants, conditions and restrictions set forth in this Article benefit the City, and that the City has a substantial interest to be protected with regard to assuring compliance with, and enforcement of, these covenants, conditions and restrictions and any amendments thereto. All such covenants, conditions and restrictions shall

31

therefore be enforceable by the City by proceedings at law or in equity or by its code enforcement procedure.

10.1.4 Easement for Law Enforcement and Emergency Vehicles and Personnel.
Declarant hereby reserves a non-exclusive easement for access, ingress and egress upon and across the Project as may be necessary for law enforcement and for the provision of emergency services in the Project by City and state law enforcement officers and vehicles, City Fire Department and other emergency services vehicles and personnel.

32

IN WITNESS WHEREOF, the undersigned, has executed this Declaration on this 1st day of February, 20 12.

"DECLARANT"

OPEN HOUSE REALTY & INVESTMENTS, LLC,
a California limited liability company

By: Peter Baer

Name: Peter Baer for Strategic Acquisitions Inc.

Its: manager of Open House Realty & Investments, LLC

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
COUNTY OF Los Angeles) ss.

On February 1, 20 12, before me, Erica Rose McNeill, a Notary Public for the State of California, personally appeared Peter Baer, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Erica Rose McNeill (Seal)



33

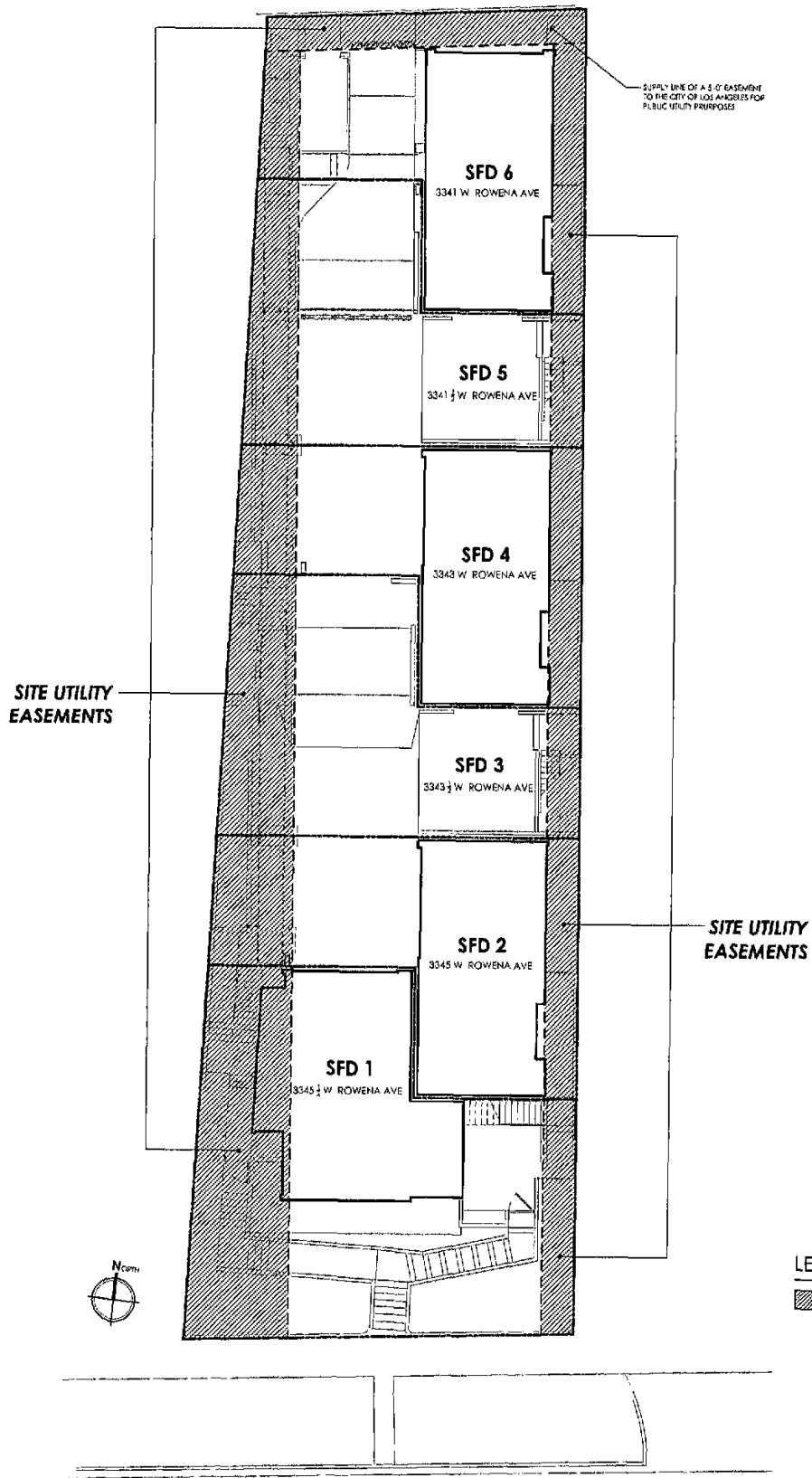


EXHIBIT "A"
SITE UTILITY EASEMENTS

Document received by the CA 2nd District Court of Appeal.

34

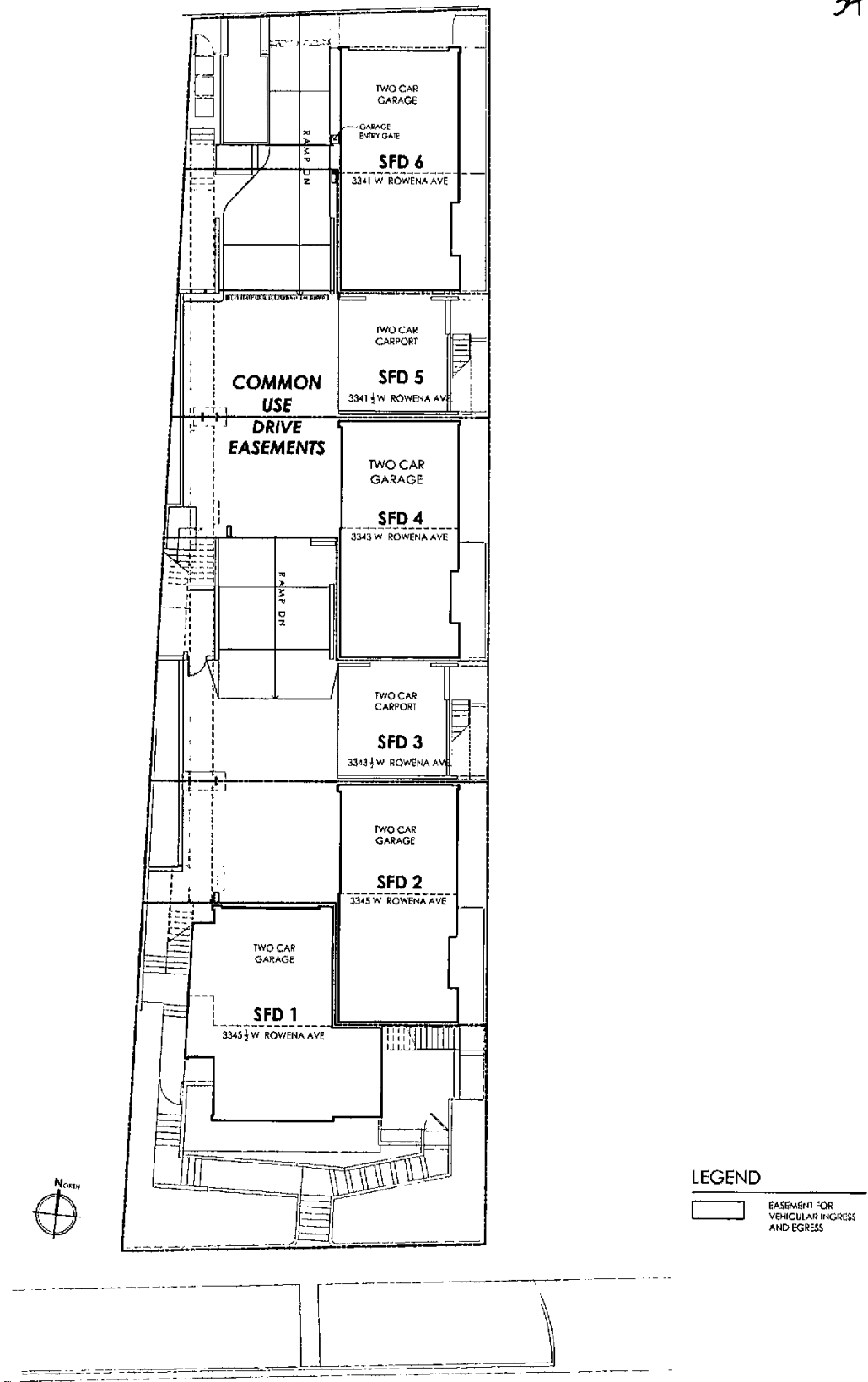


EXHIBIT "B"
COMMON USE DRIVEWAY EASEMENTS

Document received by the CA 2nd District Court of Appeal.

35

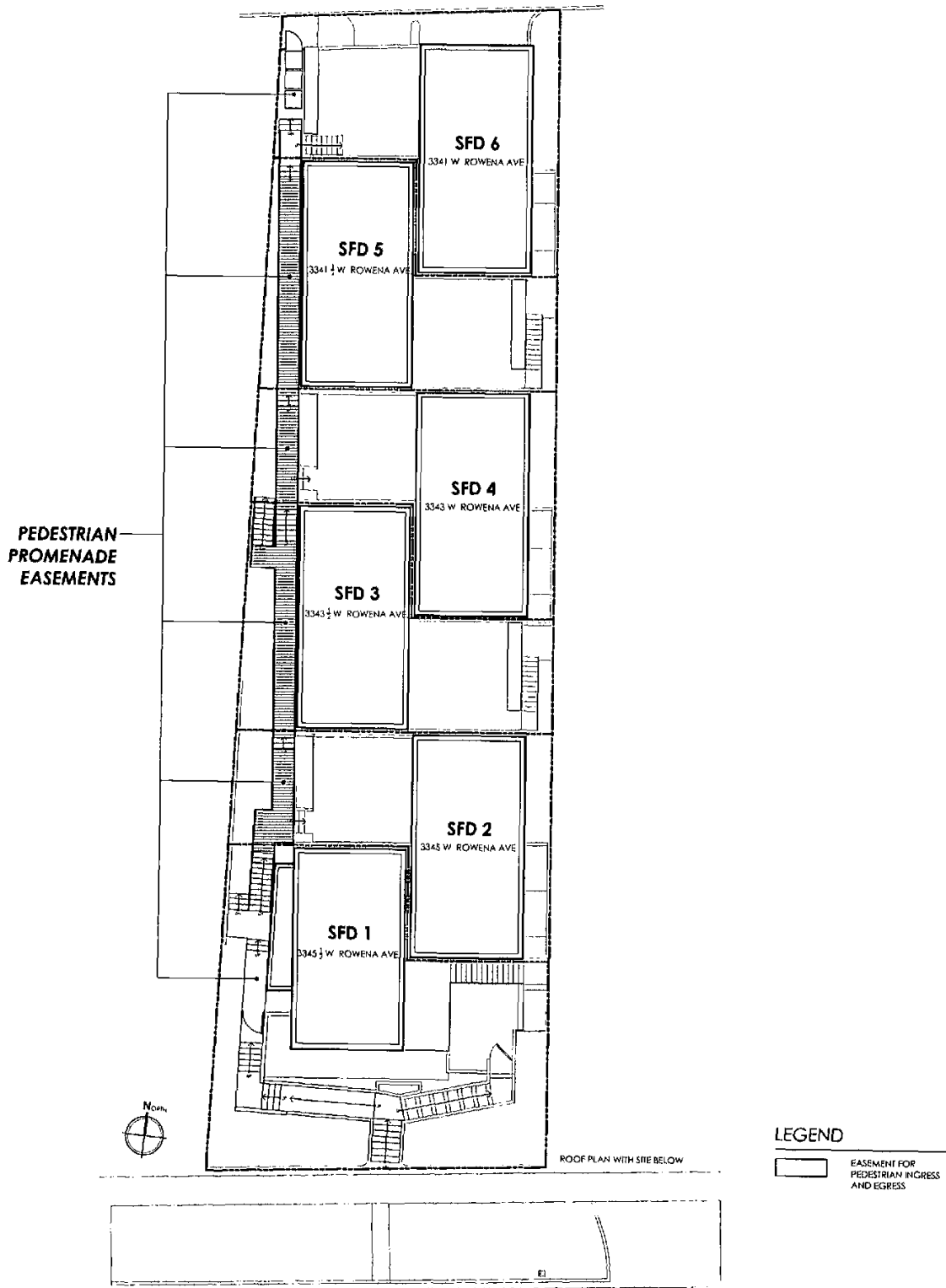


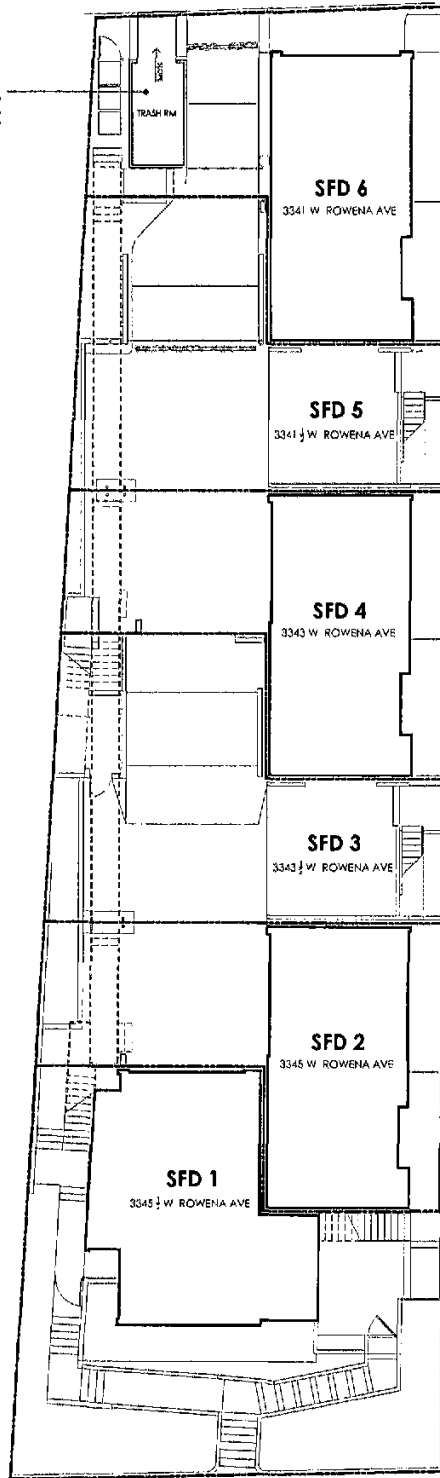
EXHIBIT "C"
PEDESTRIAN PROMENADE EASEMENTS

Document received by the CA 2nd District Court of Appeal.

This map should be used for reference purposes only. No liability is assumed for the accuracy of the data shown. Parcels may not comply with local subdivision or building ordinances.

00532

TRASH AREA
EASEMENTS



LEGEND

 EASEMENT FOR TRASH
DISPOSAL AND
STORAGE INGRESS AND
EGRESS

EXHIBIT "D"
TRASH AREA EASEMENTS

This map should be used for reference purposes only. No liability is assumed for the accuracy of the data shown. Parcels may not comply with local subdivision or building ordinances.

31

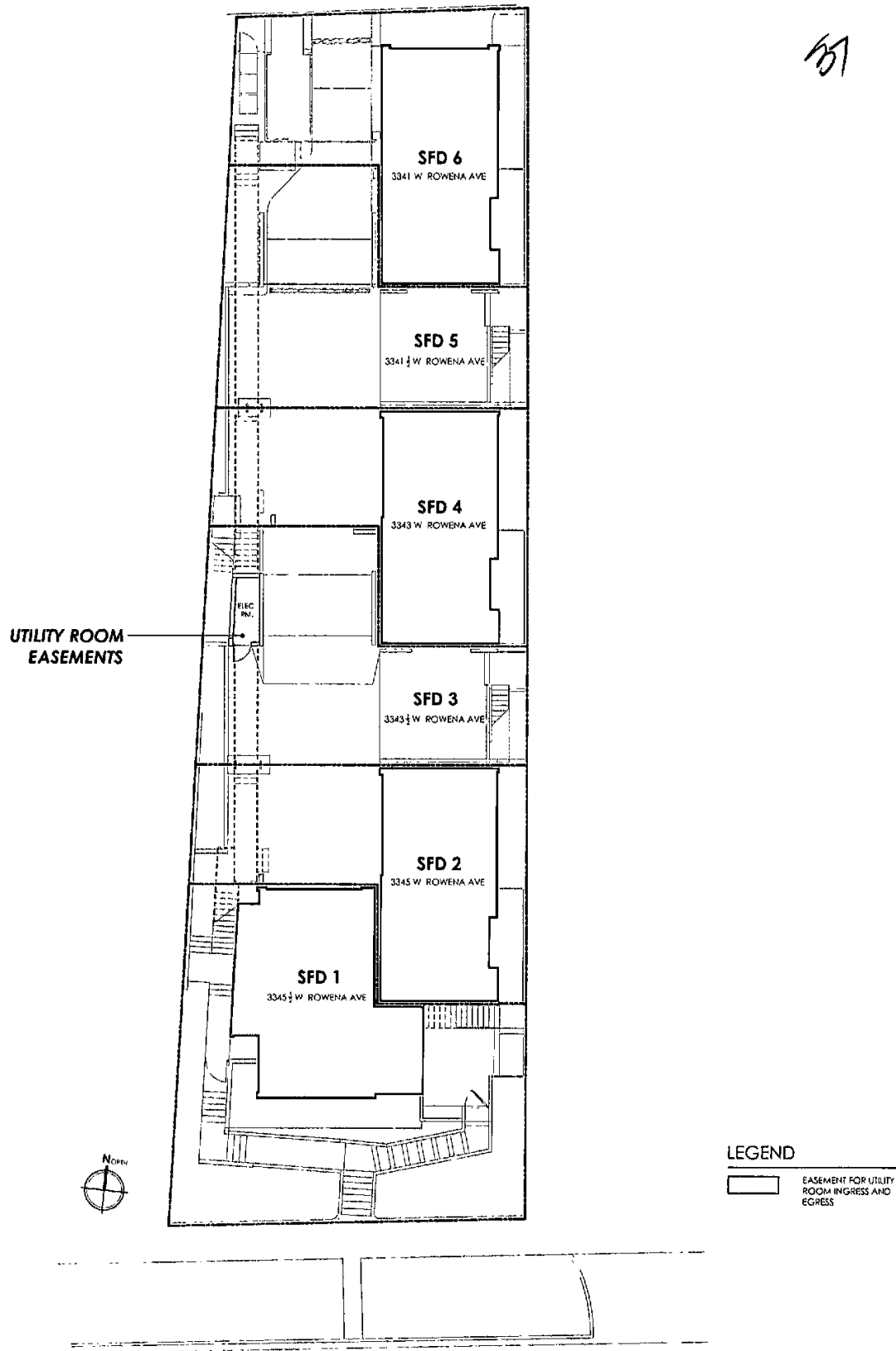


EXHIBIT "E"
UTILITY ROOM EASEMENTS

Document received by the CA 2nd District Court of Appeal.

This map should be used for reference purposes only. No liability is assumed for the accuracy of the data shown. Parcels may not comply with local subdivision or building ordinances.

Exhibit 03

00535

Document received by the CA 2nd District Court of Appeal.

October 12, 2012



9100 Wilshire Boulevard
Suite 275, East Tower
Beverly Hills, CA 90212-3415
Telephone: 310-275-3202
Toll Free: 888-283-6648
Fax: 310-247-1232;
E-Mail: mail@centek.com

PRE-LOAN APPROVAL CONFIRMATION

CenTek Capital Group is in receipt of a completed loan application package on the following referenced client. Based on the information submitted, we are able to issue this Pre-Loan Approval.

BORROWER: Skylar Wells
PROPERTY ADDRESS: 3345 ½ West Rowena Avenue
Los Angeles, CA 90027
SALES PRICE: \$799,000
APPROXIMATE LOAN AMOUNT: \$625,500 (78%)
EXPIRATION OF LOAN APPROVAL: 60 Days

CONDITIONS FOR FUNDING:

Purchase Agreement and Escrow Instructions Verifying Terms
Satisfactory Preliminary Title Report
Satisfactory Appraisal
Maintenance of all information provided
Satisfactory Condo Documentation

COMMENTS:

CenTek Capital Group will be prepared to close within the escrow time frame required. Credit, tax returns and source of down payment are satisfactory, and have been approved. Mr. Skylar Wells is an excellent potential buyer for this property. Please feel free to contact us for more details.



Gloria Shulman

Preliminary Underwriting Findings

SUMMARY

Preliminary Recommendation	Approve/Eligible		
Primary Borrower	SKYLAR WELLS	Co-Borrower	
Lender Loan Number	Unassigned	Casefile ID	1093388120
Submission Date	10/12/2012 08:38PM	Submitted By	121rutrk
Submission Number	1	DU Version	8.3

Mortgage Information

LTV/CLTV/HCLTV	79.00% / 79.00% / 79.00%	Note Rate	4.000%
Housing Expense Ratio	9.99%	Loan Type	Conventional
Total Expense Ratio	10.08%	Loan Term	360
Total Loan Amount	\$625500.00	Amortization Type	Fixed Rate
Sales Price	\$800000.00	Loan Purpose	Purchase
Appraised Value	\$0.00	Refi Purpose	

Property Information

Address	3345 1/2 ROWENA AVENUE Los Angeles, CA 90027	Property Type	Detached
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SPECIAL NOTICE

- 1 This report was created through the Preliminary Findings feature in Desktop Originator (DO) and is provided for informational purposes only.
- 2 To complete the processing of this loan, you must submit it to a DO sponsoring lender. The loan is not eligible for the Fannie Mae limited waiver of underwriting representations and warranties (as described in the Fannie Mae Selling Guide) until it is submitted to a sponsoring lender.
- 3 Depending on the underwriting rules and requirements of your sponsoring lender, the recommendation and findings may change upon submission.

PRELIMINARY RISK/ELIGIBILITY

- 4 The risk profile of this loan casefile appears to meet Fannie Mae's

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guidelines.

- 5 This loan casefile appears to meet Fannie Mae's eligibility requirements.

PRELIMINARY FINDINGS

- 6 The following risk factors represent strengths in the borrower's loan application:
Loan Purpose
Total Expense Ratio

PRELIMINARY VERIFICATION MESSAGES/APPROVAL CONDITIONS

- 7 This loan is also subject to all other lender specified conditions and must comply with all applicable federal, state, and local laws and regulations.
- 8 Based on the credit report obtained through Desktop Underwriter, this loan casefile must close on or before 01/10/2013. All credit documents must be dated within 90 days of the closing date. For new construction, the credit documents must be dated within 120 days of the closing date. For guidelines on the age of the appraisal or property inspection report, refer to the Fannie Mae Selling Guide.
- 9 If there is a home equity line of credit secured against the subject property the maximum allowable HCLTV is 90 percent and the terms of the home equity line of credit must be verified for compliance with the Fannie Mae Selling Guide. The HCLTV calculation is based on the maximum credit limit of the equity line.
- 10 The Adverse Market Delivery Charge will be applied when this mortgage loan is delivered to Fannie Mae, along with any applicable loan-level price adjustments. Refer to the Selling Guide and Loan-level Price Adjustment (LLPA) Matrix and Adverse Market Delivery Charge (AMDC) Information on efanniemae.com for specific details.

Preliminary Employment and Income

- 11 SKYLAR WELLS's self-employed income must be supported by two years' signed personal tax returns if it will be used for qualifying purposes. Provide all tax schedules, and written permission to request tax returns from the IRS. A minimum of 6 months self-employment income must be reported on the latest tax returns. Refer to the Selling Guide for additional information.
- 12 Perform and document a verbal verification of employment for each borrower within 10 business days prior to the note date for all borrowers not using self-employment income for qualifying, and within 30 calendar days prior to the note date for all borrowers using self-employment income for qualifying. For borrowers with military income, a military Leave and Earnings Statement (LES) dated within

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30 calendar days prior to the note date is acceptable in lieu of a verbal verification of employment.

- 13 Obtain a completed and signed Form 4506-T for all borrowers at both application and closing. Form 4506 or Form 8821 may be used in lieu of Form 4506-T.

Preliminary Assets

- 14 Assets totaling \$174500 must be verified. From the liquid assets listed on the 1003, at a minimum verify those accounts that are needed to satisfy this amount.
- 15 If depository assets are needed to support the amount of funds required for reserves, verify these assets with a verification of deposit or bank statements covering a one-month period. A satisfactory explanation and documentation should be provided for large deposits.

Preliminary Property and Appraisal Information

- 16 Desktop Underwriter returned the following standardized address and census tract for the subject property: 3345 1/2 ROWENA AVE, LOS ANGELES, CA 90027-2913, 188200. This is the address that Desktop Underwriter used in its property valuation and fieldwork recommendation. Regardless of the property fieldwork required by Desktop Underwriter, if this address is not valid for the subject property, an appraisal based on an interior and exterior property inspection reported on Form 1004 is required for this transaction. If the subject property is located in a condominium project, the appraisal must be reported on Form 1073.
- 17 An appraisal based on an exterior-only property inspection reported on Form 2055 is required for this transaction.
- 18 This loan casefile was underwritten according to the guidelines outlined for high-balance mortgage loans and must meet all the terms and conditions specified in the Selling Guide. Based on the subject property data entered, DU determined that the subject address is located within the county of LOS ANGELES COUNTY and used the corresponding high-cost area loan limit of \$625500.00.
- 19 Regardless of the level of property fieldwork required by DU, or any waiver of property fieldwork offered by DU, if this purchase transaction is the result of the sale of an REO property, or the last transaction on the subject property was a foreclosure, an appraisal based on an interior and exterior property inspection is required. An appraisal reported on Form 1004 is required for one-unit properties; Form 1073 is required for units in condominium projects; Form 2090 is required for units in cooperative projects.
- 20 Form 1004MC must be completed for any transaction on which an appraisal is obtained. Refer to the Fannie Mae Selling Guide for

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additional information.

PRELIMINARY OBSERVATIONS

- 21 This case was submitted to Desktop Underwriter version 8.3 by ---.
The following information is associated with this loan: Casefile ID is 1093388120 and Submission number is 1. If the loan is delivered to Fannie Mae, the Casefile ID must be provided at delivery.
- 22 The following list of special feature codes is provided to assist you in determining which codes may be associated with this loan. Other codes may be required. Refer to the Fannie Mae Selling Guide for a comprehensive list.

Special Feature Code	Description
127/214	Desktop Underwriter loan
808	High-Balance Mortgage Loan

- 23 Based on the data entered, this loan casefile has been identified as a First Time Homebuyer case. The First Time Homebuyer indicator must be completed at delivery. Refer to the Fannie Mae Selling Guide for additional information.
- 24 The following Credit Report information is associated with this submission:

Borrower Name	Credit Agency	Credit Report ID	Credit Report Date
SKYLAR WELLS	Corelogic Credco	110082438500000	10/12/2012

- 25 The following credit scores were obtained by the credit agency selected by the user and are included in the credit report:

Borrower	Credit Scores
SKYLAR WELLS	683 700 701

- 26 The following sources of income were used in the underwriting analysis:

Borrower	Income Type	Amount
SKYLAR WELLS	Base employment income	40000.00

- 27 The following assets were counted towards available funds. With the exception of cash on hand, all available funds greater than the amount required to close have been added to cash reserves.

Borrower	Asset Type	Institution Name	Amount
SKYLAR	Savings	TD	

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WELLS	Account	AMERITRADE	480093.22
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TRADEMARK

28 Desktop Originator is a registered trademark of Fannie Mae. DO is a trademark of Fannie Mae.

Underwriting Analysis Report

Preliminary Recommendation	Approve/Eligible		
Primary Borrower	SKYLAR WELLS	Co-Borrower	
Lender Loan Number	Unassigned	Casefile ID	1093388120
Submission Date	10/12/2012 08:38PM	Submitted By	121rutrk

PROPERTY INFORMATION

Property Address	3345 1/2 ROWENA AVENUE Los Angeles, CA 90027	Number of Units	1
Property Type	Detached	Occupancy Status	Primary Residence

MORTGAGE INFORMATION

Loan Type	Conventional	LTV/CLTV/HCLTV	79.00% / 79.00% / 79.00%
Amortization Type	Fixed Rate	Loan Amount	\$625500.00
Balloon	No	Financed MI Amount	\$0.00
Community Lending	No	Total Loan Amount	\$625500.00
Payment Frequency	Monthly	Sales Price	\$800000.00
Lien Type	First Mortgage	Appraised Value	\$0.00
Amt. Subordinate Fin.	\$0.00	P&I	\$2986.23
Loan Purpose	Purchase	Note Rate	4.000%
Refi Purpose		Qualifying Rate	4.000%
Owner Existing Mtg.		Bought Down Rate	0.00%
Buydown	No	Term (Months)	360

INCOME

Base	\$40000.00
Commission	\$0.00
Bonus	\$0.00
Overtime	\$0.00
Other	

QUALIFYING RATIOS

Housing Expense	9.99%
Total Expense	10.08%

EXPENSE RATIOS
Including ≤ 10 Mos.

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	\$0.00		10.08%
Positive Net Rental	\$0.00	With Undisclosed Debt	10.08%
Subj. Pos. Cash Flow	\$0.00		
Total	\$40000.00		

PROPOSED MONTHLY PAYMENT

First P&I (Qualifying)	\$2986.23	Negative Net Rental	\$0.00
Second P&I	\$0.00	Subj. Neg. Cash Flow	\$0.00
Hazard Insurance	\$177.23	All Other Payments	\$37.00
Taxes	\$833.33	Total Expense Payment	\$4033.79
Mortgage Insurance	\$0.00		
HOA Fees	\$0.00	Present Housing Payment	\$1000.00
Other	\$0.00		
Total Housing Payment	\$3996.79		

FUNDS

Required	\$174500.00	Net Cash Back	\$0.00
Available	\$480093.22	Reserves	\$305593.22
Cash Back	\$0.00	Months Reserves	76

The Preliminary Recommendation for this case is: Approve/Eligible

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REF:1-10082-43850-0000 10/12/2012 TID:1-10082-43850 10/12/2012 17:30:47
Advisory Acct: 4150036
Prepared for: CENTEK CAPITAL GROUP Notes: 120760
Requested: EFX, XPN, TUC - I Delivered: EFX, XPN, TUC

App: WELLS, SKYLAR Dob: 04/10/74 Ssn: 549-31-8689
Curr Addr: 1450 5TH STREET 301, SANTA MONICA, CA 90401

ANTHEM NON-TRADITIONAL CREDIT ALERT

Attention: The Applicant/Co-applicant has no credit history on file at the national credit bureau(s), lacks sufficient credit history to generate a credit score, or includes a credit score based on limited credit history. The Applicant/Co-applicant may qualify as a Non-Traditional Credit Consumer.

An ANTHEM Report, which can document and verify the Applicant/Co-applicant's non-traditional credit history, is available from CREDCO. For more information or to order an Anthem Report, go online at CREDCO.com or call 800 523 0233.

Exhibit 04

00544

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Date: 10/25/2012

Escrow Officer: Ellen Bebo

Escrow #: _____

JOINT PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

INITIAL DEPOSIT RECEIVED THIS DATE: \$ 24,400

BALANCE OF DOWN PAYMENT: \$ 62,300

NEW DEED OF TRUST TOTAL FINANCING: \$ 780,300

TOTAL PURCHASE PRICE: \$ 867,000

SELLER: **OPEN HOUSE REALTY & INVESTMENTS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY**
P.O. BOX 1065, BURBANK, CA 91507

BUYER(S): Skylar Wells
1450 5th Street #301, Santa Monica, CA 90401

VESTING: A single male

If not provided above, Buyer shall advise Escrow Holder within FIVE (5) days after the date hereof how they wish to hold title. The Seller, Escrow Holder and Agents are not qualified or permitted by law to advise Buyer on how to take title to the Property. If the Buyer has any questions regarding this matter, those questions must be directed to a licensed attorney or tax consultant of Buyer's choice.

HOME PHONE: Not Applicable WORK PHONE: Not Applicable

CELL PHONE: (310) 260-8520 E MAIL: skylar@skysuiteinc.com

MAILING ADDRESS: 1450 5th Street #301
Santa Monica, CA 90401

Buyer will hand you or cause to be handed you the above referenced funds prior to the close of escrow and will deliver to you any and all instruments which this escrow requires, executed by Buyer, all of which you are instructed to use provided on or before the close of escrow you hold a policy of title insurance with the usual title company exceptions, with liability in the amount of the purchase price covering:

Complete legal description shall be provided prior to the close of escrow for approval by all parties. In no case shall legal description contain any oil or mineral reservations of record.

(Memorandum: Property Address: 3345-1/2 Rowena Ave., Los Angeles, California 90027)

Free from encumbrances except [as applicable]:

1. All General and Special Taxes for the fiscal year 2011-2012, including personal property taxes, if any, assessed against the former owner.
2. Covenants, conditions, restrictions, rights, rights of way, and easements of record, if any.
3. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California.
4. New First Deed of Trust to record in the amount as set forth above (see Paragraph Entitled FINANCING of these instructions for additional terms and conditions of this lien.)

EACH PARTY SIGNING THESE INSTRUCTIONS HAS READ THE ADDITIONAL ESCROW CONDITIONS & INSTRUCTIONS ON THE FOLLOWING PAGE HEREOF AND APPROVES, ACCEPTS, AND AGREES TO BE BOUND THEREBY AS THOUGH THEY APPEARED OVER THEIR SIGNATURES. ESCROW OF THE WEST IS LICENSED BY THE DEPARTMENT OF CORPORATIONS, STATE OF CALIFORNIA, LICENSE # 963-2166.

See Pages 2 through 38 attached hereto and made a part hereof for additional terms and conditions.

5900 Canoga Avenue, Suite 100, Woodland Hills, CA 91367

818-963-4900 • 818-963-4901

Escrow Instructions Continued On Page Number 2

Seller's Initials ([Signature])

Buyer's Initials ([Signature])

Last Modified
12/22/2011

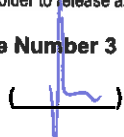
Escrow Instructions Continued From Page Number 1

Escrow Officer: Ellen Bebo

ADDITIONAL ESCROW INSTRUCTIONS AND GENERAL PROVISIONS

1. **COMMENCEMENT:** Your duty as Escrow Holder shall not commence until you receive the Residential Purchase Agreement and Joint Escrow Instructions (RPA) signed by all parties. You shall sign Supplemental Escrow Instructions and these General Provisions in addition to any initial Escrow Instructions you may sign in conjunction with the RPA or otherwise. The deposit of funds with you shall be subject to disbursement pursuant to written Escrow Instructions, which you shall jointly deliver if Escrow Instructions have been jointly signed.
2. **COUNTERPART:** These Escrow Instructions and general provision may be executed in counterparts, each of which shall be deemed an original regardless of the date of this execution and delivery. All such counterparts inclusive shall constitute one and same document.
3. **WRITTEN INSTRUCTIONS:** Any and all further Escrow Instructions, including Amended, Supplemental and general provision instructions, shall be governed by the terms and conditions of these Escrow Instructions, and may be modified from time-to-time by the written mutual agreement of the parties and Escrow Holder. If the date by which a party's performance is due differs from Escrow Holder's regular business day, such performance shall be due on Escrow Holder's next business day.
4. **VERIFICATION OF IDENTITY:** Notwithstanding any provisions otherwise contained in these Escrow Instructions or any amendments or supplements thereto, Escrow Holder shall not be responsible or liable in any manner for the sufficiency or correctness as to form, manner of execution or validity of any documents(s) deposited into Escrow, nor as to the identity, authority or rights of any person executing the same, or for verifying signatures, or determining whether there is a false impersonation, forgery, fraud, or the scope of any agents' authority either as to documents of record or those handled in this Escrow. If the Parties or Lender(s) desire that Escrow Holder verify any signature(s) on instructions, check, loan documents or other items received by you, separate written Escrow Instructions must be entered into and expressly approved by Escrow Holder that specifically evidences Escrow Holders agreement to undertake such responsibility upon the payment of an additional fee. Escrow Holder shall not be liable or responsible for any loss that may occur because of forgeries, fraud or false representations made or involving the principals to this Escrow, any third parties, the principals' agent(s) or broker(s) or any other person or entity.
5. **OUTSIDE OF ESCROW:** Signatures on any documents and instructions or the performance of any act "outside of Escrow", Escrow Holder shall have no responsibility for, shall not be concerned therewith, and is specifically relieved of any obligation or liability relative thereto.
6. **DUTIES:** Your duties hereunder shall be limited to the safe keeping of such money and documents received by you as Escrow Holder and for the disposition and/or disbursement of same in accordance with the written instructions accepted by you in this Escrow. Escrow Holder shall not be liable for any damages, losses, costs or expenses incurred by any party in the handling and processing of Escrow as a result of any act or failure to act made or omitted in good faith or for any action taken that Escrow Holder shall in good faith believe to be genuine. Escrow Holder may consult with legal counsel during the course of this Escrow and Escrow Holder shall be protected in any act taken in good faith based upon advice of counsel.
- (A) **DISBURSEMENT OF FUNDS AND DELIVERY OF DOCUMENTS:** All disbursements are to be made by the Escrow Holder's trust account check unless instructed otherwise in writing. Escrow Holder will not indemnify any payee or guarantee signatures of any person or entity at any financial institution. Any funds disbursed during or at the close of Escrow will be issued jointly to the parties designated as payee unless you are instructed otherwise in writing by all designated payees. The funds representing loan and/or sale proceeds will be disbursed jointly to all persons who were the record owners of the subject real property. All disbursements of funds and/or delivery of other documents or instruments concerning this Escrow will be mailed to the entitled party by regular first-class mail, postage prepaid, at his respective address shown on the file. However, at your discretion, you may send funds and/or other instruments or documents by certified or registered mail, overnight delivery, messenger or facsimile machine, in which case the party for whom the delivery was made agrees to pay the costs.
- (B) The provisions of this paragraph include, but are not limited to: requests for demand statements, requests for beneficiary statements, bank wire charges or any other requests as you may deem necessary for the timely closing of this issuance of the required title insurance policy or closing of this Escrow. You are to instruct the County Recorder to mail recorded documents to the entitled party at his respective address. You are to instruct the title Escrow Holder to mail the title policy(ies) to the Lender(s) or Buyer(s) as appropriate. You are directed to charge Buyer(s) and Buyer(s) agree to pay all incoming and outgoing wire bank charges incurred on Buyer's behalf whether received or sent to a lender, title Escrow Holder, the Buyer(s) or any other party.
7. **DEPOSIT OF FUNDS:** Escrow Holder is authorized and directed to deposit all funds received by it with any state or national bank in a trust account in the name of Escrow Holder, without liability for the payment of interest. The funds may be withdrawn by you and disbursed in accordance with the written instructions of these parties. All deposits made by personal check, cashier's check or certified check are subject to clearance and payment by the financial institution on which drawn and will be identified as collected funds when Escrow Holder's financial institutions confirms the funds are available for disbursement. Escrow Holder does not accept money orders, cash, official checks, foreign currency or Automatic Clearing House transactions for deposit. If any check deposited is dishonored upon presentment for payment, Escrow Holder is authorized to notify all parties to the Escrow, the real estate broker(s), real estate agent(s) and any other person or entity Escrow Holder deems necessary in its sole discretion. On any dishonored check, party presenting it shall reimburse Escrow Holder for all costs and expenses incurred by it.
- (A) All Escrow and sub-Escrow funds received by the Escrow Holder will be deposited with other funds in one or more non-interest bearing Escrow account of the Escrow Holder in a financial institution selected by Escrow Holder. Escrow Holder and/or its parent Escrow Holder may receive certain direct or indirect benefits from the financial institution by reason of the deposit of such funds or the maintenance of such accounts with the financial institution, and Escrow Holder shall have no obligation to account to the depositing party in any manner for the value of, or to pay such party, any benefit received by Escrow Holder and/or its parent Escrow Holder. Those benefits may include, without limitation, accounting, reporting and other services and products of such financial institution. Such benefits shall be deemed additional compensation of Escrow Holder for its services in connection with the Escrow or sub-Escrow. Funds deposited to Escrow Holder are insured only to the limit provided by the FDIC.
- (B) Escrow Holder shall not be responsible for any delay in closing this Escrow if funds received by Escrow Holder are not "good funds" deemed available for immediate withdrawal. Funds deposited by wire transfer or electronic payments are generally available for immediate withdrawal when received by Escrow Holder's bank. Cashier, certified or teller's checks may be available for disbursement on the business day following the business day of deposit; however, other forms of deposit may cause extended delays in closing the Escrow.
- (C) **Wiring of funds:**
 - (1) Should any Principal herein elect to wire funds into the Escrow, it is acknowledged and agreed that such wired funds shall not be considered "good funds" received until such time that Escrow Holder receives notification from Escrow Holder's receiving bank that the wired funds are received and available for immediate withdrawal.
 - (2) At close of the Escrow, should any Principal herein instruct Escrow Holder to wire funds from the Escrow to an entity of Principal's choice, it is acknowledged and agreed that Escrow Holder will not assure nor be responsible in any way for the length of time the wiring process requires from the point in time of sending the wire to receipt notification of Principal's receiving entity.
 - (3) At close of the Escrow, funds may not be disbursed after confirmation of recording for up to 24-48 hours due to wire transfer cut-off times. Escrow Holder must be in receipt of funds prior to disbursement.
- (D) All funds and documents sent from the Escrow will be mailed regular first-class mail; however, Escrow Holder has the option, at Escrow Holder's sole discretion, to send same certified, registered, overnight or by messenger, and charge the account of the benefitting Principal the actual cost of same.
- (E) In the event Escrow Holder disburses more money to, or for the benefit of, any Principal herein than they are entitled to receive, said Principal does agree to reimburse and/or repay to Escrow Holder the amount of said overpayment within five (5) days after demand is made by Escrow Holder. After five (5) days, interest shall be paid to Escrow Holder at the rate of ten percent (10%) per annum. In the event legal proceedings are necessary to collect said money, said Principal agrees to pay all charges, court costs and attorney's fees incurred thereby. If Escrow has not closed at the time of the subject disbursement, Escrow Holder shall have the right to offset the amount wrongfully disbursed from the amounts due to the subject Principal at the close of the Escrow.
- (F) Escrow Holder is authorized to accept and deposit in Escrow, funds and/or documents delivered to Escrow Holder by a Principal, broker, agent or other third party, on behalf of any Principal herein. Escrow Holder shall not be held liable for the sufficiency or correctness as to form, authenticity, manner, execution or validity of any document deposited in this Escrow, and Escrow Holder's duties shall be limited to the safekeeping and disposition of same pursuant to Escrow Holder's Escrow instructions.
- (G) Any instruction to Escrow Holder instructing Escrow Holder to release any funds held in the Escrow, prior to close of Escrow, MUST be executed before a Notary Public.

Escrow Instructions Continued On Page Number 3

Seller's Initials Buyer's Initials  

Escrow Instructions Continued From Page Number 2**Escrow Officer: Ellen Bebo**

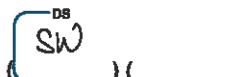
- (H) In the event that Escrow Holder is handed any invoice from any Principal or Principal's Agent with regard to any repair bills for correctional work to the subject property or invoices for disclosure reports, Escrow Holder is authorized and instructed, at the close of the Escrow, to pay those bills from that Principal's proceeds or funds deposited with Escrow Holder without any further written authorization from that Principal.
8. **SUB-ESCROW DEPOSITS:** If necessary, proper or convenient for the closing of this Escrow, you are authorized to deposit any documents and/or funds handed to you under this Escrow with any duly authorized sub-Escrow agent, including, but not limited to, any bank, trust Escrow Holder, title insurance Escrow Holder, underwritten title Escrow Holder, savings and loan association or licensed Escrow agent, subject to your order on or before the close of Escrow. Any such deposit shall be deemed a deposit within the meaning of these Escrow Instructions.
9. **PERSONAL PROPERTY TAXES:** You are not to be held responsible in any way whatsoever for any personal property tax which may be assessed against any former or present owner of the subject property described in these Escrow Instructions, nor for the corporation or license tax of any corporation as a former or present owner.
10. **TIME IS OF THE ESSENCE:** Time is of the essence in these instructions. In the event that the conditions of this Escrow have not been complied with at the expiration of the time provided for herein, or any extension thereof, Escrow Holder is instructed to complete the same at the earliest possible date thereafter, unless written demand upon you for the return of the money and/or instruments deposited by the Principals' herein or to cancel this Escrow. In such event you may withhold and stop all further proceedings in this Escrow, without liability upon your part for interest on funds held or for damages until mutual cancellation instructions signed by all parties shall have been deposited in this Escrow. Whereupon you are then instructed to disburse Escrowed funds and instruments accordingly, less your deduction for Escrow charges, expenses and fees per your current fee schedule, or as incurred by the respective parties hereto whereupon this Escrow will, without further notice be considered terminated.
11. **AGENCY DISCLOSURE:** Your Agency as Escrow Holder shall terminate six (6) months following the date last set for close of Escrow and shall be subject to earlier termination by receipt by you of mutually executed cancellation instructions. If this Escrow was not closed or cancelled within the described six (6) month period, you shall have no further obligations as Escrow Holder except to disburse funds and documents pursuant to written Escrow Instructions and to interplead or otherwise dispose of funds and documents in accordance with a validly issued and validly served order from a court of competent jurisdiction or as otherwise provided under the law.
12. **FURNISHING OF DOCUMENTS:** Escrow Holder without liability may furnish a copy of these instructions, amendments, notice of cancellation and closing statements to any lender or real estate broker referenced in this Escrow. Upon receipt of written instructions from the parties copies of said documents may also be furnished to parties, designated attorneys and accountants. Further, Escrow Holder's delivery of any document or information to a party's broker, agent, or designated agent in this Escrow shall constitute delivery of same to that party.
13. **TITLE:** Escrow Holder shall order title insurance from a title insurance Escrow Holder or underwritten title Escrow Holder in the condition identified in the Escrow Instructions signed by the parties. If requested in writing by the mutual instructions of the parties or upon the request of any lender, Escrow Holder shall provide copies of the preliminary report of title to them without liability as to its contents.
- (A) Escrow Holder is authorized to use the selected title Escrow Holder as a "sub-Escrow" agent for the handling of funds and documents in this Escrow. Escrow Holder is to comply with all "sub-Escrow" agent's instructions and requirements, and Escrow Holder is authorized to deliver funds or documents to said "sub-Escrow agent" at any time during the course of the Escrow, or after the close of Escrow, that Escrow Holder deems appropriate. The Principals agree to pay the fee for such "sub-Escrow service" as charged by the title insurance Escrow Holder.
- (B) On credit lines, a freeze letter may be required by the lender and title Escrow Holder in order to freeze the account. If a signed freeze and close letter is not deposited in the Escrow in a timely manner, the title insurance Escrow Holder may, at the time of recording and close of the Escrow, hold additional funds or proceeds until verification that the line of credit is closed, which may delay delivery of final funds.
- (C) Pursuant to paragraph 12 of the California Residential Purchase Agreement and Joint Escrow Instructions, entitled "Title and Vesting", if applicable, Principals acknowledge that the CLTA/ALTA Homeowner's Policy of Title Insurance, or any other title insurance requested by Principals, to be issued by the insuring title Escrow Holder, shall be delivered directly from the designated title Escrow Holder to the appropriate party after the close of the Escrow. Principals agree that matters regarding that title insurance are between the insuring title Escrow Holder and the designated Principal and not Escrow Holder.
14. **CONDUCT NO SEARCH:** You shall conduct no lien or title search of personal property regarding the sale or transfer of any personal property through this Escrow. Should the parties desire that you conduct a lien or title search of personal property, the parties or lender requesting the same shall enter into a separate and specific written agreement which evidences Escrow Holder's agreement to undertake such responsibility upon the payment of additional fees.
15. **RECORDATION:** The parties authorize the recordation of any instrument delivered through this Escrow if necessary or proper for the issuance of the required policy of title insurance or for the closing of this Escrow. Funds, instructions or instruments received in this Escrow may be delivered to, or deposited with any title insurance Escrow Holder or title Escrow Holder to comply with the terms and conditions of this Escrow. Recording fees shall be charged to the account of the benefited party.
16. **BENEFICIARY DEMANDS/STATEMENTS:** Escrow Holder is not responsible for the contents or accuracy of any beneficiary demand or beneficiary statement delivered to it by the existing lien holder(s). Escrow Holder is not required to submit any beneficiary demand or beneficiary statement to any party for approval before the close of Escrow. Should any party wish to pre-approve any such beneficiary statement or beneficiary demand, such party shall deliver separate and specific written Escrow Instructions to Escrow Holder prior to the close of Escrow.
17. **LOAN:** You are not to be responsible or concerned with the terms of any new loan or the contents of any loan documents obtained by any party in this Escrow except to order loan documents in to the Escrow file, transmit the loan documents to the Buyer (Borrower) for execution and transmit the executed loan documents to the lender. Buyer (Borrower) acknowledges that a sub-agent, including, but not limited to, a notary public or documents sign-up service, may temporarily take possession of the loan documents and various Escrow documents to facilitate the signing of the loan documents for which Escrow Holder shall incur no liability. The parties understand and agree that Escrow Holder is not involved or concerned with the approval or processing of any loan or the contents and effect of any loan documents prepared by a lender. Escrow Holder shall not be responsible for nor is it concerned with any questions of usury in any loan, whether new or of record, in this Escrow. Escrow Holder is not responsible for any lender's instructions which require Escrow Holder to perform obligation or duties beyond those required under California Law or which requires Escrow Holder to assume liability for the lender's regulatory duties and responsibilities.
18. **FEES.** Escrow, title and recording costs are to be charged to the Principals' respective accounts, as Escrow Holder deems are customary in this County, unless Escrow Holder is instructed to do otherwise in writing.
- Buyer and Seller are aware that Escrow Holder may incur certain expenses during the course of processing this Escrow which must be paid prior to the close of Escrow or at the close of Escrow. Such costs may include, but are not limited to: demand request fees, notary fees, wire fees, outside sign-up service fees, overnight mail service, mandatory property disclosure report fees, government agency reports, email documents and copying of loan documents, if applicable.
- Escrow Holder is authorized and instructed to release funds for payment of such costs, if necessary prior to the close of Escrow, from funds deposited into Escrow per the agreement of Principals. Principals acknowledge and accept that said costs are non refundable, whether this Escrow closes or cancels. At the close of Escrow, Escrow Holder is authorized to charge the appropriate Principal for costs incurred and is released from any and all liability in connection with complying with this instruction.
19. **ELECTRONIC DOCUMENT CHARGE:** Buyer hereby understands and acknowledges that it is the responsibility of their lender to provide Escrow Holder with hard copies of their loan documents by overnight mail, courier, Federal Express or other delivery method no less than five (5) business days prior to the close of Escrow. In the event that the lender is unable to produce these documents by any of the above methods in a timely manner, Buyer is aware that they will be charged an electronic document fee for each set of loan documents that will be due this Escrow Holder. The purpose of this charge includes the acceptance of these loan documents over the internet and the preparation and duplication of same on your behalf, which is traditionally the responsibility and expense of the lender.
20. **RIGHTS AND LIABILITY:** All parties agree that your rights and liability in this transaction are as an Escrow Holder and no other legal relation only on the within express terms, and you shall have no responsibility of notifying me or any other party to this Escrow of any sale, resale, loan, exchange or other transaction involving any property herein described or of any profit realized by any person, firm or corporation (broker, agent) and parties to this and/or any other Escrow included, in connection therewith, regardless of the fact that such transaction(s) may be handled by you in this Escrow or in another Escrow. Escrow shall not be required to take any action in connection with the collection, maturity or apparent outlaw of any obligations deposited in this Escrow, unless otherwise instructed.

Escrow Instructions Continued On Page Number 4

Seller's Initials



Buyer's Initials



Escrow Instructions Continued From Page Number 3**Escrow Officer: Ellen Bebo**

21. INSURANCE: Where the assignment of any insurance policy from Seller to Buyer is concerned, Seller represents and warrants, and you shall be fully protected in assuming that, as to any insurance policy handed you, such policy is in force, has not been hypothecated, and all necessary premiums therefore have been paid. You will transmit for assignment any insurance policy handed you for use in this Escrow, but you shall not be responsible for verifying the acceptance of the assignment and policy by the insurance Escrow Holder. ESCROW HOLDER WILL MAKE NO ATTEMPT TO VERIFY THE RECEIPT OF THE REQUEST FOR ASSIGNMENT BY THE ISSUING ESCROW HOLDER. YOU ARE HEREBY PLACED ON NOTICE THAT IF THE INSURANCE ESCROW HOLDER SHOULD FAIL TO RECEIVE SAID ASSIGNMENT; THE ISSUING ESCROW HOLDER MAY DENY COVERAGE FOR ANY LOSS SUFFERED BY BUYER. IT IS THE OBLIGATION OF THE BUYER OR HIS REPRESENTATIVE TO VERIFY THE ACCEPTANCE OF THE ASSIGNMENT OF THE POLICY BY THE ISSUING ESCROW HOLDER.

22. TRANSFER TAXES: In addition to the County Documentary Transfer Tax currently charged to the Buyer, Escrow Holder is authorized and instructed to debit the account of the Buyer for any transfer tax that may be imposed by the City in which the subject property of this Escrow is located.

23. STANDARDIZED FORMS: You are to use your usual document forms or the usual forms of any title insurance Escrow Holder or title Escrow Holder and in our instructions insert dates and terms on the instruments if incomplete when executed.

(A) Escrow Holder is authorized to use any standardized, preprinted form in order to comply with these instructions. Escrow Holder is authorized to use Escrow Holder's own form or any form produced by any reliable forms Escrow Holder or any title Escrow Holder. Excepting Escrow Holder's own form, Escrow Holder shall not be liable for the correctness or sufficiency of such standardized preprinted forms.

24. AMENDMENTS: NO NOTICE, DEMAND, CHANGE IN INSTRUCTION, AMENDMENT, SUPPLEMENT OR MODIFICATION OF THESE ESCROW INSTRUCTIONS SHALL BE OF ANY EFFECT IN THIS ESCROW UNTIL DELIVERED IN WRITING BY ALL PARTIES AFFECTED THEREBY. If conflicting demands are made upon you or notice is served upon you of any controversy or legal action between the parties or third person(s) in connection with this Escrow, you shall not be required to determine the same or take any action, but shall have the absolute right to withhold and stop all further proceedings in and performance of this Escrow without liability until a mutual writing evidencing resolution of the controversy or order of a court of competent jurisdiction, in form satisfactory to you is deposited into Escrow. You may also, at your sole discretion, bring an action in interpleader or declaratory relief, and are instructed and authorized to deposit any documents or funds with the court pursuant to any such action, less your Escrow fees and costs incurred to date.

25. CANCELLATION: The parties, jointly and severally, agree that if this Escrow cancels or is otherwise terminated and not closed, the parties shall pay for any costs and expenses which you have incurred or have become obligated for under these Escrow Instructions, including, but not limited to, courier fees, attorneys' fees and costs, third-party vender fees for services performed for this Escrow, and Escrow fees set forth in your current fee schedule for the services rendered by you. The parties agree that such costs and expenses shall be paid from funds already on deposit or deposited in Escrow before any cancellation or other termination of this Escrow is effective. The parties agree that said charges for expenses, costs and fees may be apportioned between Buyer and Seller in a manner which, in your sole discretion, you consider equitable, and that your decision will be binding and conclusive upon the parties. Upon receipt of mutual cancellation instructions or a final order or judgment of a court of competent jurisdiction with accompanying writs of execution, levies or garnishments in form satisfactory to you, you are instructed to disburse the Escrow funds and instruments in accordance with such cancellation instruction, order or judgment and accompanying writ and this Escrow shall, without further notice be considered terminated and cancelled.

(A) Any Principal requesting Escrow Holder to cancel this Escrow shall file notice of demand to cancel (a "Cancellation Demand") with Escrow Holder in writing. Upon receipt of a Cancellation Demand, Escrow Holder may suspend performance of its Escrow duties and issue written cancellation instructions, by mail, to all Principals ("Cancellation Notice"). Upon Escrow Holder's receipt of original executed cancellation instructions from all Principals, Escrow Holder shall disburse funds and documents pursuant thereto and this Escrow shall be canceled.

(B) If, after a Cancellation Notice has been sent, cancellation instructions executed by all Principals are not received by Escrow Holder, Escrow Holder is authorized to comply with the Cancellation Demand, cancel the Escrow and distribute any money held in the Escrow, less any fees and charges as provided herein, pursuant to the Cancellation Demand. Notwithstanding anything to the contrary provided herein, Escrow Holder shall not distribute any money held in the Escrow if written objection is received from the Principal not making the Cancellation Demand within fifteen (15) calendar days of the mailing of a Cancellation Notice. In the event written objection is received in a timely manner, Escrow Holder may refuse to take any further action in the Escrow and may file an action in Interpleader, pursuant to paragraph 24.

(C) If this Escrow does not close by the Close of Escrow date set forth herein, either Principal may file with Escrow Holder a written demand ("Demand to Perform") that the other Principal perform. Escrow Holder shall immediately mail the Demand to Perform to the other Principal, and if the Escrow is not closed within 5 days of the mailing of the Demand to Perform, a Cancellation Demand may be sent to Escrow Holder, which Demand may be complied with at the discretion of Escrow Holder. Should the Escrow be cancelled pursuant to this paragraph, Escrow Holder shall distribute any monies held in the Escrow, less any fees and charges as provided herein, pursuant to the Cancellation Demand.

(D) If there is no written activity by a Principal for any twelve-month period after the Close of Escrow date set forth above, Escrow Holder may, at its option, terminate its agency relationship with Principals and cancel this Escrow, returning all documents, monies or other items held to the respective parties who deposited those documents, monies or other items in the Escrow, less any fees and charges as provided herein.

26. LEGAL ACTION/INTERPLEADER: IF ANY LEGAL ACTION OR OTHER PROCEEDING, INCLUDING MEDIATION OR ATTENDANCE AT ARBITRATION PROCEEDINGS INVOLVING THE PARTIES AND/OR OTHER PERSONS OR ENTITIES, ARE BROUGHT FOR THE ENFORCEMENT OR INTERPRETATION OF THESE ESCROW INSTRUCTIONS, OR IF YOU ARE REQUIRED TO RESPOND TO ANY LEGAL SUMMONS OR PROCEEDING, OR IF ANY ACTION INTERPLEADER OR DECLATORY RELIEF IS BROUGHT BY OR AGAINST YOU, THE PARTIES, JOINTLY AND SEVERALLY, SHALL PAY ALL COSTS, EXPENSES AND/OR ATTORNEYS' FEES EXPENDED OR INCURRED BY ESCROW HOLDER INCLUDING, BUT NOT LIMITED TO, A FEE FOR ESCROW SERVICES RENDERED, EXPENSES TO THE LAWSUIT, COSTS TO APPEAR AT MEDIATION OR ARBITRATION PROCEEDINGS, EXPENSES ON APPEAL OF ANY JUDGMENT AWARDED TO IT AND IN THE COLLECTION OF ANY JUDGMENT ENTERED FOR ESCROW HOLDER ("ESCROW HOLDER'S COSTS"). SHOULD ESCROW HOLDER DISBURSE MORE FUNDS TO OR FOR THE BENEFIT OF ANY PARTY THAN SUCH PARTY IS ENTITLED TO RECEIVE OR THE ESCROW HAS A SHORTAGE TO OR FOR THE BENEFIT OF ANY PARTY, THE RECEIVING OR BENEFITTING PARTY SHALL REPAY ESCROW HOLDER THE AMOUNT OF THE OVERPAYMENT OR SHORTAGE UPON DEMAND, AFTER WHICH INTEREST SHALL ACCRUE AT 10% PER ANNUM ON THE SUM THEN DUE. THE ESCROW HOLDER'S COSTS SHALL BE PAID FROM THE RESPONSIBLE PARTY'S FUNDS HELD BY ESCROW HOLDER BEFORE ANY OTHER DISBURSEMENTS ARE MADE. A LIEN IS HEREBY CREATED IN ESCROW HOLDER'S FAVOR TO COVER ALL SUCH ESCROW HOLDER'S COSTS. WE AGREE TO SAVE YOU HARMLESS AS ESCROW HOLDER UNDER THIS ESCROW FROM ALL ESCROW HOLDER'S COSTS INCURRED BY REASON OF ANY ACTION, LEGAL OR OTHERWISE, WHICH MAY ARISE, DIRECTLY OR INDIRECTLY, OUT OF THIS ESCROW WHETHER BEFORE OR AFTER CLOSING, CANCELLATION OR OTHERWISE, NOTWITHSTANDING ANY OTHER PROVISION OF THIS ESCROW.

Principals herein acknowledge that Escrow Holder has an absolute legal right to file a court action in interpleader. In the event such an action is filed, Principals herein jointly and severally agree to pay Escrow fees and title fees, court costs and litigation expenses, including attorney's fees, incurred in connection therewith. Upon filing of such action, Escrow Holder is fully released and discharged from any further performance of duties under the terms of this Escrow.

27. DISCLOSURES/WARRANTIES: The Buyer and Seller acknowledge that depending on the type (Commercial or Residential) and location (City) of real property involved in this Escrow, there may be disclosure(s) as well as civil ordinance requirement(s) that would affect the transfer of the real property. Escrow Holder urges both the Buyer and the Seller to seek appropriate counsel from an attorney or licensed broker to ascertain what disclosures and/or civil ordinances, if any, need to be complied with prior to the close of Escrow, outside of the Escrow as between the Buyer and Seller. The Buyers and Sellers' signature upon these instructions shall be deemed evidence to the Escrow Holder that the Buyer and Seller have obtained independent counsel, are aware of any disclosures/civil ordinance requirements and will comply with same outside of this Escrow. Unless otherwise instructed in writing to the contrary within the body of the Escrow Instructions, Escrow Holder shall have no responsibility or liability in connection herewith and is released from liability in connection with the compliance of any such disclosure.

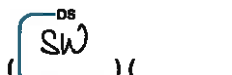
(A) You are not to be responsible or liable for the validity, regularity or sufficiency of municipal residential property reports, or retrofit standards to be complied with upon the transfer of real property. You are instructed to forward request for Residential Property Report or Certificate of Compliance as handed to you to the appropriate governmental agency. You are to

Escrow Instructions Continued On Page Number 5

Seller's Initials



Buyer's Initials



Escrow Instructions Continued From Page Number 4**Escrow Officer: Ellen Bebo**

charge Seller with any fee to file such document. You are not to be responsible or liable for the validity, regularity or sufficiency of any of this documentation nor liable or responsible for the timeliness of the response of any governmental agency or for timeliness for filing any such documents.

(B) You are not to be concerned with the giving of any disclosures except as expressly required by Federal or State law to be given by an Escrow agent, neither are you to be concerned with the effect of zoning ordinances, land division regulations, or building restrictions which may pertain to or affect the land or improvements that are the subject of this Escrow. The parties to this Escrow have satisfied themselves outside of Escrow that the transaction covered by this Escrow is not in violation of the Subdivision Map Act or any other law regulating land division, and you as Escrow Holder are relieved of all responsibility and/or liability in connection therewith, and are not to be concerned with the enforcement of said law. Your signatures to this instruction shall be deemed evidence that each of you, respectively, are aware of any such requirements and Escrow Holder is released from liability in connection with the compliance of any such disclosure.

28. NO INSPECTION: Escrow Holder shall not make any physical examination or inspection of any real and/or personal property described in these instructions or in any instrument or document deposited herewith. The parties to this Escrow hereby, expressly acknowledge that you are not to be responsible nor liable for the sufficiency, validity, or content of any disclosures between the parties to this Escrow regarding the physical condition of any real and/or personal property and that you make no warranties or representations, in any manner whatsoever, regarding the habitability or physical condition of any real and/or personal property. Further, Escrow Holder is not to be concerned with any environmental issue, mold (fungus) disclosure or water intrusion in connection with any real and/or personal property involved in this Escrow, whatsoever, and Escrow Holder is released of liability and responsibility and is indemnified and held harmless in connection herewith.

29. ASSIGNMENT OF FUNDS: If a party to this Escrow unilaterally assigns or orders such party's proceeds to be paid to a person or entity other than the original parties to this Escrow, such order or assignment shall be subordinate to the expenses of this Escrow, liens of record on the subject property and payments directed to be made by the original parties. If the assignment or order leaves the Escrow without sufficient funds to close, then Escrow Holder is directed to close nevertheless, and to pay such assignments or orders from the net proceeds and pay them in the order in which the assignments or orders were received by Escrow Holder. Escrow Holder is not to be concerned with the balance remaining unpaid, if any there may be. If there are insufficient proceeds to pay such assignments or orders in full, or if the assignment or order is revoked, Escrow Holder shall have no responsibility or liability for providing such information to the assignee. In the event of any assignment or order, or of any transfer of interest by operation of law, with or without the approval of consent of any or all of the parties to this Escrow, Escrow Holder shall retain the right to deduct all Escrow costs, fees and expenses it incurs as otherwise set forth in these Escrow Instructions including its Escrow fees.

30. STATUTE OF LIMITATIONS: These instructions are to be construed and interpreted according to California Law. NO ACTION SHALL LIE AGAINST ESCROW HOLDER FOR ANY CLAIM, LOSS, LIABILITY OR ALLEGED CAUSE OF ACTION OF ANY KIND OR NATURE WHATSOEVER, HOWEVER CAUSED OR OCCURRED, UNDER THIS ESCROW OR IN CONNECTION WITH THE HANDLING OR PROCESSING OF THIS ESCROW, UNLESS BROUGHT WITHIN TWELVE (12) MONTHS AFTER THE CLOSE OF ESCROW OR ANY CANCELLATION OR TERMINATION OF ESCROW FOR ANY REASON WHATSOEVER.

31. RESIGNATION OF ESCROW HOLDER: At any time prior to the close of Escrow, Escrow Holder, as its sole and absolute discretion and without liability to the parties to this Escrow, may withdraw and resign from acting as Escrow Holder providing five days prior written notice to the parties to their last known addresses. In such event, Escrow Holder shall be entitled to reasonable compensation for its Escrow services performed and for all costs and expenses incurred in the resignation, including, but not limited to, attorneys' fees. Upon resignation, Escrow Holder shall return to the parties who deposited the same the balance of any funds it holds along with any property or documents in its possession. Alternatively, at the mutual instruction of the parties, Escrow Holder shall deliver the funds, property and documents to a new Escrow agent.

33. CONTEXT: In these Escrow Instructions, wherever the context so requires, the masculine gender includes the feminine and/or neuter and the singular number includes the plural. Further, the terms "you", "Escrow", and "Escrow Holder" shall mean Escrow of the West.

34. DOCUMENT RETENTION: The parties to these Escrow Instructions authorize you to destroy these instructions and all other instructions and records in this Escrow at any time after five (5) years from the close of Escrow, cancellation, or date of the last activity without liability and without further notice to the parties.

35. NO LEGAL/FINANCIAL ADVICE: THE PARTIES ACKNOWLEDGE AND UNDERSTAND THAT YOU, AS ESCROW HOLDER, ARE NOT AUTHORIZED TO PRACTICE LAW NOR DO YOU GIVE FINANCIAL ADVICE. THE PARTIES ARE ADVISED TO SEEK LEGAL AND FINANCIAL COUNSEL AND ADVICE CONCERNING THE EFFECT OF THESE ESCROW INSTRUCTIONS, ANY LOAN DOCUMENTS, OR FINANCIAL TAX DOCUMENTS. THE PARTIES ACKNOWLEDGE THAT NO REPRESENTATIONS ARE MADE BY YOU ABOUT THE LEGAL SUFFICIENCY, LEGAL CONSEQUENCES, FINANCIAL EFFECTS OR TAX CONSEQUENCES OF THE WITHIN ESCROW TRANSACTION.

36. HOLD OPEN FEE: Notwithstanding any other provision of these Escrow Instructions, the parties agree and acknowledge that where a postponement or cancellation of this Escrow result from acts or omissions of the parties, Escrow Holder shall be entitled to a charge for administering an Escrow where the postponement is for at least two months from the most recent closing date agreed upon in writing by the parties in this Escrow or if the Escrow is canceled. The Parties agree that Escrow Holder is authorized and in its sole discretion, and without further instructions, to deduct and pay to Escrow Holder a hold open administration fee of \$50 per month from the funds on deposit with Escrow Holder. On demand, the parties, jointly and severally, agree to deposit such additional funds as may be necessary to cover Escrow Holder's hold open administration fee if the same is necessary.

37. PRIVACY NOTICE: This notification is in compliance with our obligations to comply with federal and state law to safeguard your nonpublic personal information. We collect nonpublic personal information about you from the following sources:

(A) Information we receive from you on applications or other forms;

(B) Information about your transactions with us, our affiliates, or others involved in the processing of your transaction; and

(C) Information we receive from a consumer-reporting agency.

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law. We restrict access to nonpublic information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic and procedural safeguards that comply with federal and state regulations to guard your nonpublic personal information.

38. GROSS NEGLIGENCE/WILLFUL MISCONDUCT: Except for acts of gross negligence or willful misconduct, all parties herein agree to indemnify and hold harmless the Escrow Holder for any errors or omissions resulting from the processing of this transaction.

39. BULK SALE/MOBILE HOME. If this Escrow concerns a "bulk sale" or a "mobile home", Escrow Holder is authorized and instructed to strictly conform to all state and federal laws as they pertain to Escrow Holders, regardless of any conflicting instructions given to Escrow Holder by the Principals herein.

40. I. R. C. 1099: Principals herein agree to cooperate fully, and to execute and complete all necessary documents submitted to them by Escrow Holder to allow Escrow Holder to comply with the income and property tax reporting required pursuant to Internal Revenue Code Section 1099. Escrow Holder is to follow the requirements of federal law and regulations as they pertain to Escrow Holders only, and shall not give consultation or advice as to these laws.

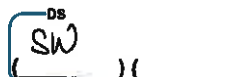
41. PRIVACY POLICY: Escrow Holder's business is to process Escrow transactions. To process this Escrow, we collect information about Principals, such as Principals' names, addresses, telephone numbers, social security numbers and other information about Principals' transaction including the identity of the real property that Buyer is buying or financing. We obtain a copy of various documents, including, but not limited to, deeds, notes and trust deeds involved in Principals' transaction. This information may be obtained from Principals or other entities Principals have selected, such as Principals' attorneys, lenders, title insurance companies, real estate agents and/or brokers, homeowner's associations or insurance agents. The title insurance Escrow Holder associated with Principals' transaction will request a Statement of Information from Principals, and from that completed form it will obtain information from the public records about Principals and the real property that is the subject of Principals' transaction; much of that information is given to Escrow by the title insurance Escrow Holder in the form of a preliminary title report or other documents. During the course of Escrow we may receive additional information from various third parties including appraisals, credit reports, land surveys, credit card statements and bank account numbers. THIS ESCROW HOLDER DOES NOT SHARE ANY OF THIS INFORMATION WITH ANY OTHER ENTITY, PERSON OR ESCROW HOLDER FOR MARKETING PURPOSES. The privacy laws do permit some sharing internally and with nonaffiliated third parties in order to carry out and service Principals' transaction, for institutional risk control, and to provide information to governmental, judicial and law enforcement agencies that have provided appropriate legal documentation. We restrict access to nonpublic personal information about Principals to those employees who need the information to process and complete Principals' transaction.

Escrow Instructions Continued On Page Number 6

Seller's Initials

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Buyer's Initials



Escrow Instructions Continued From Page Number 5**Escrow Officer: Ellen Bebo**

- We maintain physical, electronic and procedural safeguards that comply with law to guard Principals' nonpublic personal information. We reinforce Escrow Holder's privacy policy with our employees.
42. **FORGERIES:** Escrow Holder shall not be liable or responsible for any loss that may occur by reason of forgeries or false representations made by or involving third parties or Principals to this Escrow. Escrow Holder will not verify the authenticity of any signatures in this Escrow, and Escrow Holder shall not be liable or responsible for making any determination as to the legal competency of any Principals executing Escrow documents.
43. **CLOSING:** If this Escrow is not in a position to close upon the closing date set forth herein, and demand is NOT made by any principal to cancel, Escrow Holder is to continue processing to close this Escrow when all the conditions of this Escrow have been complied with. But, if on the closing date, or any date thereafter, written demand is made by any principal to cancel this Escrow, Escrow Holder is to act in accordance with the terms of the parties' contract and/or paragraph 10, above.
44. **FEE DISCOUNTS.** PRINCIPALS HEREBY ACKNOWLEDGE AND AGREE THAT IN SOME SITUATIONS, ONE OR MORE PARTIES TO THIS ESCROW MAY RECEIVE A DISCOUNT ON THE ESCROW FEE.
45. **SIGNATURES:** A Principal's signature on any document or instruction drawn or delivered into the Escrow shall indicate and evidence such Principal's full understanding of and unconditional approval of same, and shall further indicate that they have received a true copy of same.
46. **MATTERS OF MEMO:** Escrow Holder is expressly instructed not to act upon or be concerned with or liable for (i) those items designated in Principals' Escrow instructions as "matters of memo" or "memoranda" between the Principals, nor (ii) any other agreement between the Principals not expressly addressed to Escrow Holder in the form of an Escrow instruction for Escrow Holder's performance.
47. **USURY/ENCUMBRANCES:** Escrow Holder is not to be concerned with any question of usury in any loan or encumbrance involved in the processing of this Escrow and Escrow Holder is hereby released from any responsibility or liability therefore.
48. **SHORT PAY:** If a Principal in this Escrow should negotiate a "short pay" demand with a lender holding an encumbrance against the subject property, Escrow Holder shall not in any way be liable for or concerned with any legal or tax consequences that the Principal may incur as a result of that short pay. Escrow Holder is to pay the lender's beneficiary's demand as presented to Escrow Holder.
49. **CONFLICTING INSTRUCTIONS:** If Escrow Holder receives unilateral or conflicting instructions from Principals, oral or written, Escrow Holder is no longer obligated to continue performance of Escrow Holder's duties. Escrow Holder may withhold documents and funds held in Escrow, until concurring mutual instructions are received from Principals, or Escrow Holder receives a final order from a court of competent jurisdiction.
50. **EXTRAORDINARY SERVICES/FEEs:** Escrow Holder may charge the Principal benefited, an additional fee(s) over and above Escrow Holder's customary Escrow fee, for Escrow services rendered that Escrow Holder considers extraordinary or unusual or not within the range of Escrow Holder's customary Escrow processing. Said fee(s) shall be disclosed to the Principal(s) to be charged prior to the close of the Escrow.
51. **SEVERABILITY:** In the event any instruction in this Escrow is held invalid by judicial proceedings, the remaining shall continue to be operative and enforceable.
52. **REFINANCE:** If this is a refinance Escrow with an institutional lender, the borrower herein acknowledges that only the borrower shall sign these instructions and that the lender will submit Escrow instructions on its own form, which Escrow Holder is instructed to fully comply with.
53. **OTHER TRANSACTIONS:** Escrow Holder has no duty to notify any Principal hereto as to any sale, resale, loan, exchange, or other transaction involving any property that is the subject of this Escrow, or of any profit realized by any person or entity in connection therewith, regardless of the fact that such transaction may be handled by Escrow Holder, or another, in this Escrow or in any other Escrow. Furthermore, the Principals herein agree that Escrow Holder's duty to them is limited to Escrow Holder's performance of the instructions to Escrow Holder and that Escrow Holder has no responsibility to notify any Principal to this Escrow of any other transaction of which Escrow Holder might have knowledge and which concerns the subject property herein, or any profit realized by any Principal or third person in connection therewith.
54. **LANGUAGE:** This Escrow will be processed in the English language. Should any Principal elect to use a language translator to assist them in understanding the Escrow process, or any documentation that is a part of this Escrow, that language translator will be selected and provided by the Principal in need of such assistance. Escrow Holder will not provide language translation services and will not be liable or responsible for the correctness of any language translator's interpretation of the Escrow process or of any documentation that is a part of this Escrow.
55. **ESCROW DUTIES:** THE PRINCIPALS HERETO ACKNOWLEDGE AND UNDERSTAND THAT THE PARTIES HERETO ACKNOWLEDGE THAT ESCROW HOLDER IS A NEUTRAL THIRD PARTY AGENT, AND ESCROW HOLDER'S RESPONSIBILITIES AND DUTIES TO PRINCIPALS ARE LIMITED TO FULLY EXECUTED MUTUAL ESCROW INSTRUCTIONS, AND ANY FULLY EXECUTED MUTUAL SUPPLEMENTS OR AMENDMENTS THERETO.
56. **SUMMARY STATEMENT:** The foregoing terms, provisions, conditions, and instructions, and these "Additional Escrow Instructions and General Provisions" contained herein are hereby approved and accepted in their entirety and concurred in by both parties to this escrow. Seller(s) will hand you necessary documents called for on his/her/their part to cause title to be shown as above which you are authorized to deliver when you hold for Seller's account the sums set forth in this Escrow within the time as above provided, pay your Escrow charges, costs and expenses, recording fees, charges for evidence of title as called for, whether or not this Escrow is consummated, except those Buyer agrees to pay. Escrow Holder is hereby authorized to pay bonds, assessments, taxes and any other liens of record to show title as called for, and affix documentary tax on deed as required, without further instructions.

EACH PARTY SIGNING THESE INSTRUCTIONS HAS READ THE ADDITIONAL ESCROW INSTRUCTIONS AND GENERAL PROVISIONS CONTAINED HEREIN AND APPROVES, ACCEPTS AND AGREES TO BE BOUND THEREBY. ALL PARTIES SIGNING THIS AGREEMENT HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THESE INSTRUCTIONS.

INSTRUCTIONS

- A) **FINANCING:** Buyer to obtain a New First and Second Deed of Trust Loan [as applicable] in favor of **W.J. Bradley Mortgage Capital - W.J. Bradley Mortgage Capital (specifically located at 43620 Ridge Park Drive, Suite 210, Temecula, CA 92590, at phone number 951-795-4768 with the loan officer of Ron Thompson, herein referred to as W.J. Bradley Mortgage Capital) -OR-** a Lender of Seller's Choice to be obtained at Buyer's sole expense, given to secure a note in the principal amount(s) as set forth in Page 1 hereof, per its terms. In the event that Buyer is unable to qualify for a Fixed Rate Mortgage, Buyer shall accept an Adjustable Rate Mortgage (provided he can qualify for same). Buyer's execution of the loan documents shall evidence their full approval of the terms and conditions contained therein.

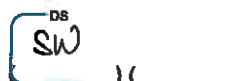
IF ON THE SAME DATE THAT BUYER SIGNED THIS AGREEMENT, BUYER APPLIES FOR THE NEW FIRST AND SECOND TRUST DEED LOAN [AS APPLICABLE] FROM **W.J. BRADLEY MORTGAGE CAPITAL -OR-** A LENDER OF SELLER'S CHOICE, BUYER'S OBLIGATION TO CONSUMMATE THIS TRANSACTION SHALL BE CONTINGENT UPON BUYER'S ABILITY TO SECURE FINANCING OF THE PROPERTY FROM SAID LENDER. BUYER FURTHER ACKNOWLEDGES THAT THE CONSUMMATION OF THIS ESCROW MAY BE SUBJECT TO AND CONTINGENT UPON THE 'PRE-SALE' REQUIREMENTS OF LENDER, IF ANY.

Escrow Instructions Continued On Page Number 7

Seller's Initials



Buyer's Initials



Escrow Instructions Continued From Page Number 6

Escrow Officer: Ellen Bebo

BUYER COVENANTS TO PROVIDE SUCH PERSONAL FINANCIAL STATEMENTS OR OTHER CREDIT INFORMATION REQUIRED BY **W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE** WITHIN THREE (3) DAYS FROM THE DATE HEREOF. IF THROUGH NO FAULT OF BUYER, BUYER IS UNABLE TO OBTAIN SUCH A LOAN FROM **W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE**, THEN THIS ESCROW SHALL TERMINATE. ESCROW HOLDER SHALL RETURN TO BUYER ANY DEPOSIT GIVEN BY BUYER TO ESCROW HOLDER, LESS DOCUMENT AND PROCESSING FEES, IF ANY, TOWARD THE PURCHASE OF THE PROPERTY. UPON ESCROW HOLDER'S RECEIPT OF SIGNED MUTUAL CANCELLATION INSTRUCTIONS, BUYER AND SELLER SHALL BE RELIEVED OF ANY FURTHER LIABILITY AND/OR OBLIGATION TO THE OTHER UNDER THIS AGREEMENT.

THE ABOVE REFERENCED FINANCING CONTINGENCY SHALL BE DEEMED APPROVED UNLESS ESCROW HOLDER HAS RECEIVED WRITTEN NOTIFICATION OF ANY DISAPPROVAL FROM W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE.

FINANCING FROM THIRD PARTY LENDERS: IF BUYER ELECTS TO APPLY FOR THIRD PARTY FINANCING (FINANCING OTHER THAN WITH **W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE), THEN BUYER IS OBLIGATED TO CONSUMMATE FINANCING AND ESCROW WILL NOT BE CONTINGENT UPON FINANCING, NOR WILL ESCROW BE EXTENDED FOR THAT PURPOSE. BUYER(S) WHO FAIL TO QUALIFY FOR OR RECEIVE THIRD PARTY FINANCING AND THEN FAIL TO CLOSE ESCROW FOR THAT REASON WILL FORFEIT THE AMOUNT OF DEPOSIT AS LIQUIDATED DAMAGES, (AS MORE SPECIFICALLY SET FORTH AND PURSUANT TO THE TERMS AND CONDITIONS OF THAT CERTAIN PARAGRAPH ENTITLED "LIQUIDATED DAMAGES/ARBITRATION" CONTAINED HEREIN).**

ESCROW HOLDER IS HEREBY SPECIFICALLY AUTHORIZED AND INSTRUCTED NOT TO FORWARD ANY DOCUMENTS TO ANY THIRD PARTY LENDER, INCLUDING, BUT NOT LIMITED TO: THIS 'JOINT PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS', A COPY OF BUYER'S EARNEST MONEY DEPOSIT AND/OR RECEIPT, OR THE PRELIMINARY TITLE REPORT AND/OR ANY OTHER DOCUMENTS WITHOUT THE EXPRESS WRITTEN CONSENT OF THE SELLER HEREIN. IN ADDITION, BUYER HEREBY AUTHORIZES AND INSTRUCTS THIRD PARTY LENDER, IF ANY, TO FULLY DISCUSS EVERY ASPECT OF BUYER'S LOAN, INCLUDING BUT NOT LIMITED TO: THE TERMS, CONDITIONS, AND STATUS OF THE NEW LOAN WITH SELLER, ESCROW HOLDER, **W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE AND/OR **STRATEGIC REALTY**. FAILURE OF SAID THIRD PARTY LENDER TO COOPERATE WITH THIS INSTRUCTION SHALL GIVE THE SELLER THE RIGHT, BUT NOT THE OBLIGATION, TO CANCEL THIS TRANSACTION.**

A BUYER WHO CHOOSES TO APPLY FOR THIRD PARTY FINANCING MUST NOTIFY **STRATEGIC REALTY AND **W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE** IN WRITING WITHIN FORTY EIGHT (48) HOURS OF SELLER'S ACCEPTANCE OF THIS AGREEMENT, AND MUST OBTAIN A WRITTEN UNCONDITIONAL LENDING COMMITMENT FROM THE THIRD PARTY LENDER WITHIN TWENTY (20) DAYS AFTER THE DATE HEREOF. IF BUYER DOES NOT NOTIFY **STRATEGIC REALTY** AND NOTIFY **W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE** IN WRITING WITHIN FORTY EIGHT (48) HOURS OF THE DATE HEREOF OR IF BUYER FAILS TO OBTAIN THE LOAN COMMITMENT AS DESCRIBED IN THIS SUBPARAGRAPH, THEN WITHOUT ANY REQUIREMENT OF FURTHER NOTICE OR OTHERWISE: BUYER SHALL BE DEEMED TO BE IN DEFAULT UNDER THIS AGREEMENT AND WILL FORFEIT THE AMOUNT OF THE DEPOSIT AS LIQUIDATED DAMAGES (AS MORE SPECIFICALLY SET FORTH AND PURSUANT TO THE TERMS AND CONDITIONS OF THAT CERTAIN PARAGRAPH ENTITLED "LIQUIDATED DAMAGES/ARBITRATION" CONTAINED HEREIN) TO SELLER AND THIS AGREEMENT SHALL BE TERMINATED AT SELLER'S UNILATERAL OPTION.**

Buyer's Initials

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IT IS UNDERSTOOD AND AGREED THAT THE OBTAINING OF ANY FINANCING WHATSOEVER, IN ANY EVENT, IS AND SHALL REMAIN THE BUYER'S AND NOT SELLER'S OBLIGATION. MOREOVER, THE SELLER DOES NOT GUARANTEE ANY LOAN FROM ANY LENDER.

ESCROW IS AUTHORIZED AND INSTRUCTED TO FOLLOW THE DIRECTION OF **W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE** IN CONNECTION WITH SAID LOAN AND TO DELIVER A COPY OF THIS AGREEMENT AND ANY AMENDMENTS THERETO TO **W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE**.

Escrow Instructions Continued On Page Number 8

Seller's Initials

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Buyer's Initials

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Escrow Instructions Continued From Page Number 7**Escrow Officer: Ellen Bebo**

THIS TRANSACTION IS NOT CONTINGENT UPON BUYER'S ABILITY TO RETAIN THE INTEREST RATE (FIXED OR ADJUSTABLE), AND/OR OTHER LOAN TERMS INCLUDING BUT NOT LIMITED TO LOAN ORIGATION FEES QUOTED AT THE TIME OF LOAN APPROVAL, AND BUYER WILL BE REQUIRED TO PAY THE INTEREST RATE CHARGED BY THE FINANCING ENTITY AT THE CLOSE OF ESCROW.

ONCE BUYER HAS DEPOSITED INTO ESCROW THE 'LOAN COMMITMENT' PREVIOUSLY DESCRIBED HEREIN, BUYER SHALL NOT BE ENTITLED TO APPLY FOR OR OBTAIN ANY MODIFIED, ADDITIONAL AND/OR NEW LOAN COMMITMENT FROM ANY OTHER FINANCING ENTITY OR OTHER SOURCE, IF THE APPLICATION OR FUNDING OF THE NEW LOAN WOULD, IN SELLER'S SOLE JUDGMENT, DELAY THE CLOSE OF ESCROW.

IN THE EVENT THAT BUYER OBTAINS A LOAN FROM A THIRD PARTY LENDER, BUYER WILL PROVIDE A COPY OF ALL CREDIT AND APPRAISAL DOCUMENTS TO **W.J. BRADLEY MORTGAGE CAPITAL -OR- A LENDER OF SELLER'S CHOICE** WITHIN TEN (10) DAYS AFTER THE DATE HEREOF.

Seller warrants and represents that he has no equity interest in **W.J. Bradley Mortgage Capital -OR- any other Lender of Seller's Choice.**

- B) FINAL FUNDS:** Please be advised that Escrow Holder will require deposit of Buyer's final funds **FIVE (5) business days prior to the close of escrow**, if funds are deposited in the form of a **Cashier's Check**; or Escrow Holder will require deposit of final funds **TWO (2) business days prior to the close of escrow**, if Buyer's funds are deposited by **Wire Transfer**. Final funds should be obtained from Buyer's Bank or Savings and Loan Association in either of the two following forms:

- 1. CASHIER'S CHECK:** Cashier's checks must be issued by a Bank which is located in the State of California, issues their Cashiers Checks in the State of California, made payable to **ESCROW OF THE WEST** in the amount requested by Escrow Holder.

Parties herein acknowledge that the following types of checks are NOT considered good funds and will be subject to check clearance (approximately 3 to 7 business days): Out of State Cashier's Checks, Drafts, Credit Union Checks, or Stock Brokerage Checks. (Personal checks are not acceptable for use by Escrow Holder as final funds at the close of escrow.)

-OR-

- 2. WIRE TRANSFER:** Wires must be directed to:
CITY NATIONAL BANK
555 South Flower Street
Los Angeles, CA 90071
ATTN: WIRE DEPARTMENT
Routing Number: **122016066**
Credit To: **Escrow of the West**
Trust Account Number: **555-054807**
Reference the Escrow Number
Attention: **Ellen Bebo**

Pursuant to Assembly Bill 512 (AB 512) known as the "Good Funds" legislation, which became effective January 1, 1990, the parties hereto are made aware that closing funds to be deposited by the Buyer and/or lender must be **CLEARED** funds prior to recordation (close of escrow). This law places some very specific constraints upon the time frames in which title companies may make funds available for disbursements. Buyer should ascertain from the lender the type of funding instrument that will be used to fund the new loan as the standard practice in this area is for the new lender to fund directly to the title company via wire transfer.

If the new lender is using a funding instrument which requires a hold, then the time period between funding and recording could be delayed up to Seven (7) Business Days.

Escrow Holder's requirements for funds to close this escrow may be different from those of the title company. Escrow of the West's specific requirements for funds to close this transaction are set forth above.

Buyer is aware that interest on any new loan funded in connection with this escrow shall accrue from the date of Lender's funding and that there may be a delay between the funding date and recording date due to the above "Good Funds" legislation.

- C) PROPERTY TAX PRORATION:** All parties acknowledge that they are aware of the following:

Escrow Instructions Continued On Page Number 9

Seller's Initials ()

Buyer's Initials (DS SW) ()

Escrow Instructions Continued From Page Number 8

Escrow Officer: Ellen Bebo

1. Escrow Holder will, at close of escrow, prorate real property taxes based upon the latest available tax figures as furnished by the insuring title company or based on 1.25% (.0125) of the purchase price if the taxes on the property are not currently segregated by the county tax assessor, from close of escrow to following July 1st (debit the Buyer and credit the Seller), Seller shall be responsible for payment of regular and/or supplemental property taxes during this tax year to be timely paid by Seller **outside of escrow**;
2. The Tax Collector may issue supplemental tax bills for more than the amount so used for proration purposes, or in the event there has been an overpayment, the overpayment amount may not be refunded but may instead be held for the subsequent credit against the payment of future taxes on the subject property. In addition to acknowledging their awareness of the foregoing, all parties hereby agree that, any instruction in this escrow to the contrary notwithstanding, any overpayment or underpayment of taxes accruing because of the amount used by Escrow Holder for proration purposes at close of escrow shall be adjusted by and between the parties **outside of escrow**. Escrow Holder is hereby released from responsibility and/or liability of any kind in connection with any such overpayment or underpayment.

D) SUPPLEMENTAL TAXES: NOTICE OF SUPPLEMENTAL PROPERTY TAX BILL. California property tax law requires the Assessor to revalue real property at the time the ownership of the property changes. Because of the law, you may receive one (1) or two (2) supplemental tax bills, depending on when your loan closes. The supplemental tax bills are not mailed to your lender. If you have arranged for your property tax payments to be paid through an impound account, the supplemental tax bills will not be paid by your lender. It is your responsibility to pay these supplemental bills directly to the Tax Collector. If you have any questions concerning this matter, please call your local Tax Collector's office.

E) FEDERAL TAX WITHHOLDING - FIRPTA: The sale of a U.S. real property interest by a foreign person is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding. FIRPTA authorizes the United States to tax foreign persons on the sale of U.S. real property interests. Persons purchasing U.S. real property interests from foreign persons, certain purchasers' agents, and settlement officers are required to withhold 10 percent of the amount realized. Withholding is intended to ensure U.S. taxation of gains realized on disposition of such interests. The Buyer is the withholding agent. The Buyer must find out if the Seller is a foreign person. If the Seller is a foreign person and the Buyer fails to withhold, the Buyer may be held liable for the tax.

Seller and Buyer agree to execute and deliver to Escrow Holder any instrument, affidavit and statement or to perform any act reasonably necessary to carry out the provisions of FIRPTA and regulations promulgated thereunder. Seller herein certifies under penalty of perjury, that the information provided on said form is true, correct and complete.

F) STATE TAX WITHHOLDING: When California real estate is sold, 3 1/3% of the total sales price must be withheld from the Seller and sent to the California Franchise Tax Board (California Revenue and Taxation Code Section 18662). Withholding of 3 1/3% is not required if:

1. The total sales price is \$100,000 or less;
2. If the property qualifies and the Seller's principal residence as defined by Internal Revenue Code Section 121;
3. If the Seller last used the property as their principal residence as defined by Internal Revenue Code Section 121;
4. If the Seller will have a loss or zero gain for California income tax purposes on this sale;
5. If the Seller is a corporation (or an LLC classified as a corporation for federal and California income tax purposes) that is either qualified through the California Secretary of State or has a permanent place of business in California;
6. If the Seller is a partnership (or an LLC that is not a disregarded single member LLC and is classified as a partnership for federal and California income tax purposes) with recorded title to the property in the name of the partnership or LLC;
7. Or for any other reason acceptable to the California Franchise Tax Board.

If none of the above exemptions apply, Escrow Holder is instructed to withhold an amount equal to 3 1/3% of the total sales price and to forward the funds to the Franchise Tax Board at the close of escrow. Buyer and Seller hereby agree to hold Escrow Holder harmless regarding compliance with this instruction.

G) TAX REPORTING/1099: Seller herein acknowledges their awareness of the fact that Escrow Holder must provide information pertaining to this Escrow to the Internal Revenue Service as required by the Tax Reform Act, Internal Revenue Service Code Section 6045(e). Concurrently with the execution hereof, Seller herein will provide Escrow

Escrow Instructions Continued On Page Number 10

Seller's Initials

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Buyer's Initials

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Escrow Instructions Continued From Page Number 9**Escrow Officer: Ellen Bebo**

Holder information necessary to produce a 1099 Tax Reporting Form in compliance with Internal Revenue Service Code Section 6045(e). Seller herein certifies under penalty of perjury, that the information provided on said form is true, correct and complete.

- H) DOCUMENTARY TRANSFER TAX:** In addition to the County Documentary Transfer Tax currently charged to the Buyer, Escrow Holder is authorized and instructed to debit the account of the Buyer for any transfer tax that may be imposed by the City in which the subject property of this escrow is located.
- I) FACSIMILE TRANSMISSIONS (FAX):** In the event that Buyer and/or Seller transmit signed documents by FAX in this transaction, Buyer and/or Seller and/or each of them, agrees to accept and instructs Escrow Holder to accept such transmitted documents for all purposes the same as if it were signed original documents. Buyer and/or Seller agree to deliver, or cause to be delivered to Escrow Holder the signed originals of each FAXED document within SEVENTY-TWO (72) hours following the FAXING thereof. FAXED, non-original documents are not acceptable by the County Recorder for recordation. Failure to provide Escrow Holder with signed original recording documents will prevent this escrow from closing.
- J) PRELIMINARY CHANGE OF OWNERSHIP:** Section 480.3 of the Revenue and Taxation Code requires that a "Preliminary Change of Ownership Report" be completed and certified by Buyer and filed concurrently with the Deed or other documents that reflect a change of ownership in real property. The Buyer herein agrees to complete and sign said report and deliver same to Escrow Holder for filing concurrently with Buyer's execution of these Escrow instructions. Escrow Holder shall forward same to the Title Insurance Company for submission to the recorder's office at the close of escrow. Buyer understands and acknowledges that the County Recorder's Office will charge an additional non-refundable fee of TWENTY DOLLARS (\$20.00) should the fully completed/certified report not accompany the conveyance document. In addition to this fee, there may be additional expenses incurred by Buyer outside of escrow or after the close of escrow as a result of Buyer's failure to file the fully completed/certified report. Buyer further understands and authorizes Escrow Holder to debit the Buyer's account for said TWENTY DOLLAR (\$20.00) at the close of escrow in the event the change of ownership statement is not deposited with Escrow Holder as provided for herein. Buyer herein certifies under penalty of perjury, that the information provided on said form is true, correct and complete.
- K) HOLD-OPEN FEES:** In the event of the non-completion of this escrow for any reason whatsoever, including without limitation the cancellation or purported cancellation of the escrow by either party and notwithstanding the concurrence or non-concurrence by the other party with such cancellation, and the resultant obligation or advisability of the Escrow Holder to continue to hold undistributed the funds then on deposit in said escrow, then the Escrow Holder may, at its option, withdraw from said funds so held and pay itself a holding fee of \$25.00 for each calendar month, or fraction thereof, that said funds are retained in escrow, not exceeding, however, the whole of such withheld funds.
- L) INSURANCE PRORATION:** Escrow Holder is hereby authorized and instructed to prorate Insurance premiums from the close of escrow to the date of expiration of the policy based upon an amount of 1/6th of the actual annual premium for this Lot. It is understood that Seller has prepaid insurance premiums covering this for one year in advance. It is further understood by Buyer that such policy does not cover the contents of the individual Lots. In the event Buyer desires personal property, contents (fire or liability), etc., Buyer shall be responsible to obtain same outside of escrow.
- M) HOMEOWNER'S INSURANCE:** Buyer is aware that Buyer will need to obtain and secure Buyer's own Homeowner's Policy of Fire and Liability Insurance. At the close of escrow, Escrow Holder is hereby authorized and instructed to obtain said policy of Insurance from All State Insurance Company - Bob Souza Agency unless Escrow Holder has been otherwise instructed by Buyer in writing, prior to the close of escrow. At the close of escrow, Escrow Holder is hereby authorized and instructed to debit the account of the Buyer for the First Annual Premium of Fire Insurance as provided for herein.
- N) OPENING OF ESCROW:** Escrow shall be 'Open' when Escrow Holder is in receipt of these instructions executed by Buyer and Seller herein, Escrow Holder is in receipt of Buyer's 'Initial Deposit' and Buyer's 'Initial Deposit' has been 'Cleared'. Seller's Sales Representatives are not authorized to accept this offer. Receipt and deposit of Buyer's Funds shall not constitute an acceptance of this offer by Seller.
- O) EXISTING BLANKET MONETARY ENCUMBRANCE:** Buyer hereby acknowledges their awareness of the fact that it is possible that Seller's existing Institutional Holder of the Existing Blanket Monetary Encumbrance, if any, may require the concurrent closing of two or more Escrows for the sale of the lots in this project, as a condition to release the encumbrance. Seller may instruct Escrow Holder that no escrow may close within the project, including this

Escrow Instructions Continued On Page Number 11

Seller's Initials

([Signature])

Buyer's Initials

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Escrow Instructions Continued From Page Number 10**Escrow Officer: Ellen Bebo**

transaction, until that number of lots being sold by Seller is equal to the percentile that the lender requires to close simultaneously. Seller's unilateral instruction shall automatically extend the close of escrow on all escrows until the minimum closing requirements are met.

- P) BUYER'S EXPENSES:** Buyer shall pay, in cash, all costs of the following, including but not limited to: credit reports, loan fees, loan points, lender's title insurance charges, Buyer's customary escrow fees and charges, tax service fees, recordation fees for Grant Deed and any Deed(s) of Trust, Buyer's prorated portion of property taxes for the applicable tax year, **county and, if applicable, city documentary transfer tax**, and other closing costs of Buyer.
- Q) RECEIPT OF PROJECT DOCUMENTS:** Buyer acknowledges receipt of all of the following items concurrently with the execution hereof and shall have **THREE (3) Calendar Days** after the date hereof to notify Seller, in writing, of any particular item(s) for which Buyer disapprove(s):
- A copy the Preliminary Title Report;
 - Tract Map;
 - Current Budget;
 - The Declaration of Covenants, Conditions and Restrictions, covering the subject property;
 - 'Natural Hazard Disclosure Report' (covering the subject property); and
 - SB 800 Notice.

In the event that Buyer fails to notify Seller in writing within said THREE (3) Calendar Days after the Date hereof of any disapproval(s), Buyer hereby warrants and represents to Seller, Broker(s) and Escrow Holder that Buyer has approved and are completely satisfied with said items in their entirety.

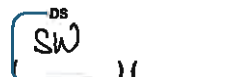
- R) CANCELLATION:** If the Agreement is terminated, (i) This 'Joint Purchase Agreement and Escrow Instructions' shall be automatically cancelled and the parties shall execute cancellation instructions requested by Escrow Holder; as a formality, for benefit of Escrow Holder. Upon Escrow Holder's receipt of these signed cancellation instructions Seller shall be completely released from their obligation to sell and Buyer shall be released from their obligation to buy, (ii) within ten (10) days after such termination Buyer shall deliver to Seller all documents delivered by Seller to Buyer hereunder outside of escrow, (iii) Buyer shall have no further right or interest in the Property, and (iv) Buyer's indemnity of Seller under Paragraph entitled "Possession" shall survive the termination.
- S) REAL ESTATE COMMISSION:** AT CLOSE OF ESCROW, ESCROW HOLDER IS HEREBY AUTHORIZED AND INSTRUCTED BY SELLER TO PAY THE COMMISSION AND/OR OTHER COMPENSATION TO **STRATEGIC REALTY**, AS PER THE LISTING/MARKETING AGREEMENT FROM SELLERS PROCEEDS. NO COMMISSION SHALL BE PAID TO BROKER AND SHALL NOT BE CONSIDERED EARNED AND PAYABLE UNLESS THE SALE OF THE PROPERTY IS CONSUMMATED. BROKER COMMISSION SHALL BE PAID ON THE NET SALES PRICE (TOTAL PURCHASE PRICE AS SET FORTH ON PAGE 1 HEREOF, AS ADJUSTED/REDUCED BY ANY SELLER CLOSING COSTS CREDIT TO BUYER).
- T) CLOSE OF ESCROW:** THE ACTUAL DATE OF THE CLOSE OF ESCROW SHALL TAKE PLACE (A) ON OR BEFORE **THIRTY (30) DAYS** AFTER THE DATE HEREOF OR (B) FIVE (5) DAYS AFTER ESCROW HOLDER HAS BEEN PROVIDED WITH WRITTEN PROOF THAT THE SUBJECT PROPERTY HAS BEEN APPROVED FOR OCCUPANCY BY THE APPROPRIATE CITY AND/OR COUNTY AGENCY IN WHICH THE PROPERTY IS LOCATED, WHICHEVER OCCURS LATER.
- U) BUYER'S EXTENSION:** IN CERTAIN CASES, THE SELLER WILL GRANT A FIFTEEN (15) DAY EXTENSION OF THE CLOSING DATE FOR AN EXTENSION FEE OF ONE-HALF (1/2) OF ONE (1) PERCENT OF THE PURCHASE PRICE OR \$1500.00, **WHICHEVER IS MORE**. THIS FEE WILL BE INCLUDED IN LIQUIDATED DAMAGES. REQUESTS FOR EXTENSIONS MUST BE MADE AT LEAST FIVE (5) DAYS PRIOR TO THE CLOSING DATE. ALL EXTENSION REQUESTS ARE EVALUATED BY THE SELLER ON A CASE-BY-CASE BASIS AND ARE SOLELY AT SELLER'S DISCRETION. IN THE EVENT THAT SELLER GRANTS ONE (1) OR MORE OF THESE EXTENSION(S), BUYER AND SELLER HEREBY AUTHORIZE AND INSTRUCT ESCROW HOLDER TO INCREASE THE TOTAL CONSIDERATION (PURCHASE PRICE) HEREIN BY THE AMOUNT OF SAID EXTENSION FEE(S) WITHOUT ANY ADDITIONAL INSTRUCTIONS AND/OR AUTHORIZATIONS FROM THE BUYER AND/OR SELLER.
- V) PREVIOUS TRANSACTION:** In the event that there was an escrow previously opened at Escrow of the West covering the sale of the within described property ('Previous Escrow'), the consummation of this escrow is subject to and contingent upon Seller's ability to successfully cancel said 'Previous Escrow', if any, prior to or concurrently with the close of this escrow. This contingency shall be deemed approved when Escrow Holder is in possession of a copy of signed Cancellation Instructions from Buyer and Seller in the 'Previous Escrow'.

Escrow Instructions Continued On Page Number 12

Seller's Initials

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Buyer's Initials



Escrow Instructions Continued From Page Number 11

Escrow Officer: Ellen Bebo

- W) HOME PROTECTION PLAN:** Escrow Holder is hereby authorized and instructed to obtain an "EXTENDED WARRANTY PLAN" for appliances for the Benefit of the Buyer from **2-10 Home Buyer's Warranty Corporation**, which will provide coverage to the Buyer from Close of Escrow until the First Year's Anniversary following the Close of Escrow [ONE (1) Year Policy]. At the Close of Escrow, Escrow Holder is authorized and instructed to debit the Seller in the event Buyer obtains Buyer's New Financing through Seller's Preferred Lender or debit the Buyer in the event that Buyer obtains Buyer's New Financing through a Lender other than Seller's Preferred Lender in the amount of **\$395** and forward said sum to **2-10 Home Buyer's Warranty Corporation**. This amount shall represent the first annual premium covering the **Extended Warranty Plan** for the benefit of Buyer. Buyer shall look directly to said policy for specific coverage and is not relying on any warranty and/or representation from the Seller, Broker(s) or Escrow Holder and in the event that Buyer should have any questions relative to said **Extended Warranty Plan**, Buyer shall contact **2-10 Home Buyer's Warranty Corporation** directly at **(800) 775-4736**. Buyer further releases and relieves Seller, Broker(s) and Escrow Holder from **any and all past, present and/or future responsibility and/or liability in connection herewith and shall look only to 2-10 Home Buyer's Warranty Corporation for any questions and/or problems** related to the Extended Warranty Plan. **Escrow Holder's only responsibility shall be to disburse the funds as called for herein.**
- X) BUYER'S DEPOSIT OF DOCUMENTS:** Upon acceptance hereof by Seller and upon demand by Seller and/or Escrow Holder, Buyer will furnish any information, execute all documents and perform any other acts necessary to consummate this sale in accordance with the terms hereof.
- Y) INTENT TO OCCUPY AND NON-ASSIGNMENT OF RIGHTS:** Buyer warrants that the purchase this property is for the intent of occupying the property as buyer's primary residence. This agreement and the escrow established pursuant hereto may not be assigned or transferred voluntarily or by operation by law by Buyer without written consent of Seller and any attempt to do so shall be void and of no effect. Escrow Holder is hereby instructed by Seller not to assist in any way in such assignment or transfer including without limitation, the consummation of so-called "double escrows". This agreement shall be binding upon the heirs, executors, administrators, successor and assigns of the Seller and of the Buyer and each of them, and as to the Buyer, the Agreement herein shall be joint and several if more than one Buyer.
- Z) BUYER'S PERFORMANCE:** At any time following opening of Escrow, this agreement can be unilaterally terminated by Seller upon notice to Buyer of the occurrence of any of the following:
1. Buyer defaults in any payment required hereunder or in the timely performance or otherwise.
 2. Buyer's failure to execute or deliver any escrow instructions and any other documents in accordance with this Agreement and/or any Lender's Loan Documents.
 3. If in the reasonable good faith judgment of Seller, Buyer has violated any representations or warranties contained herein, or any addendum of this Agreement, including, but not limited to Buyer's representation that Buyer has a bona fide intention to reside in the property as Buyer's principal place of residence.
 4. Neither this Agreement nor any of the Buyer's rights hereunder may be assigned by Buyer. Any such purported assignment shall be governed by **INTENT TO OCCUPY AND NON-ASSIGNMENT OF RIGHTS** above.
 5. If for any reason whatsoever, Buyer is unable to present Seller with written Confirmation from the Lender that Buyer has obtained an approved loan as provided for herein, Seller's obligation to sell the Property to Buyer shall be terminated.

In the event of any such default or breach by Buyer, it is agreed by Buyer and Seller and contrary to Escrow Holder's 'General Provisions' that Seller may unilaterally instruct the Escrow Holder to cancel this Escrow and, subject to the liquidated damages that Seller is entitled to retain, all funds deposited by Buyer, shall be returned to Buyer, less Escrow Holder's cancellation charges, if any.

In addition, in the event that Seller seeks to exercise this unilateral right, both Buyer and Seller hereby release, relieve and indemnify Escrow Holder from any risk of any monetary loss and/or legal fees and further release and relieve Escrow Holder from any and all past, present and/or future liability and/or responsibility for Escrow Holder's compliance with this instruction and/or the disbursement of any funds as provided herein.

AA) FEDERAL HOUSING ADMINISTRATION (FHA) ESCAPE CLAUSE: It is expressly agreed that notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the mortgagee has delivered to the purchaser a written statement issued by the Federal Housing Commissioner or a Direct

Escrow Instructions Continued On Page Number 13

Seller's Initials (*JB*)Buyer's Initials (*DS*) (*SW*)

Escrow Instructions Continued From Page Number 12

Escrow Officer: Ellen Bebo

Endorsement lender setting forth the appraised value of the property (excluding closing costs) of not less than the amount as set forth on Page 1 hereof which statement the mortgagee hereby agrees to deliver to the purchaser promptly after such appraised value statement is made available to the mortgagee. The purchaser shall, however, have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the property. The purchaser should satisfy himself/herself that the price and condition of the property are acceptable.

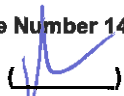
BB) ADDITIONAL DOCUMENTS: The foregoing terms, provisions, conditions and instructions, and those on Pages 2 through 38 hereof are approved and accepted in their entirety and concurred in by all parties. Seller will hand you necessary documents required to cause title to be shown as above, which Escrow Holder authorized to deliver when Buyer has caused funds to be delivered to Escrow Holder as set forth herein within the time as above provided. Seller shall pay the charges for evidence of title as called for, Seller's customary fees except those the Buyer agreed to pay, from Seller's proceeds. The items shall include bonds, assessments, taxes, and any liens of record, including prepayment penalties, if any, to show title as called for and required. **All parties signing this agreement hereby acknowledge a receipt of a copy of this agreement.**

CC) THE FOLLOWING ITEMS ARE MEMORANDUM AGREEMENTS BETWEEN THE BUYER AND SELLER, WITH WHICH ESCROW HOLDER IS SPECIFICALLY INSTRUCTED NOT TO BE CONCERNED, NOR SHALL ESCROW HOLDER HAVE ANY RESPONSIBILITY OR LIABILITY WHATSOEVER WITH REFERENCE TO THESE ITEMS:

- 1) **CAPTIONS:** The captions in this Agreement are for convenience of reference only and are not intended to be part of this Agreement.
- 2) **BINDING CONTRACT:** THIS IS MORE THAN A RECEIPT FOR MONEY. WHEN SIGNED BY BUYER AND SELLER, THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. NEITHER PARTY SHOULD SIGN UNTIL THE CONTRACT HAS BEEN THOROUGHLY READ AND UNTIL EACH PROVISION IS UNDERSTOOD.
- 3) **OTHER AGREEMENTS:** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN BUYER AND SELLER. ALL NEGOTIATIONS ARE MERGED INTO THIS AGREEMENT. THERE ARE NO ORAL OR OTHER WRITTEN AGREEMENTS OR INDUCEMENTS BETWEEN BUYER AND SELLER. THIS AGREEMENT SHALL NOT BE MODIFIED OR AMENDED EXCEPT BY AN INSTRUMENT IN WRITING SIGNED BY BUYER AND SELLER. NO ORAL PROMISES, REPRESENTATIONS (EXPRESSED OR IMPLIED), INDUCEMENTS, WARRANTIES OR AGREEMENTS MADE BY THE SELLER AND/OR BROKER SHALL BE DEEMED VALID OR BINDING UPON THE SELLER UNLESS EXPRESSLY INCLUDED IN THIS AGREEMENT. NO TERMITE EXAMINATION OR REPORT SHALL BE REQUIRED FROM SELLER. BUYER ACKNOWLEDGES THAT BUYER (OR THE AGENT OR REPRESENTATIVE OF THE BUYER) HAS EXAMINED THE SUBJECT PROPERTY IN ITS ENTIRETY AND FINDS THE SAME TO BE IN GOOD CONDITION AND REPAIR. BUYER REPRESENTS AND WARRANTS THAT BUYER IS RELYING SOLELY UPON BUYER'S OWN INDEPENDENT INVESTIGATION AND ANALYSIS OF THE SUBJECT PROPERTY IN ENTERING INTO THIS AGREEMENT. SELLER IS NOT IMPROVING THE SUBJECT PROPERTY SPECIFICALLY FOR THE BUYER, NOR TO THE PRECISE SPECIFICATIONS OR DESIGN OF ANY MODEL (OR APPURTENANCES, IF ANY) DISPLAYED TO OR VISITED BY BUYER, BUT SELLER IS IMPROVING THE RESIDENCE AS ONE UNIT OF THE PROJECT. ANY MODEL, APPURTENANCES AND FURNISHINGS SHOWN TO BUYER ARE DISPLAYED ONLY FOR ILLUSTRATIONS AND SHALL NOT BE DEEMED TO BE AN AGREEMENT OR COMMITMENT BY SELLER TO DELIVER THE RESIDENCE IN EXACT ACCORDANCE WITH SUCH MODEL. IT IS UNDERSTOOD AND AGREED THAT SELLER HAS NOT BUILT THE SUBJECT PROPERTY TO THE PRECISE SPECIFICATIONS OR DESIGNS OF ANY MODEL THEREOF OR THE SPECIFICATIONS OF ANY BUYER. NONE OF THE ITEMS, APPURTENANCES AND FURNISHINGS SHOWN IN ANY MODEL IS INCLUDED IN THE PURCHASE PRICE UNLESS SELLER AGREES IN WRITING TO DELIVER THE SAME AS PART OF THE PURCHASE PRICE, OR AS OPTIONAL ITEMS.
- 4) **DATABASE REGARDING REGISTERED SEX OFFENDERS:** Notice: Pursuant to Section 290.46 of the California Penal Code, information about specific 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. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residences and ZIP Code in which he or she resides.
- 5) **BUYER'S INSPECTION:** Prior to the execution of this **Joint Purchase Agreement and Escrow Instructions** Buyer represents that Buyer has conducted and hereby approves a physical inspection of the subject property and Buyer further represents that Buyer is relying only on their own physical inspection of the subject property. Buyer further

Escrow Instructions Continued On Page Number 14

Seller's Initials



Buyer's Initials



Escrow Instructions Continued From Page Number 13

Escrow Officer: Ellen Bebo

acknowledges that Buyer is aware of all zoning regulations, other governmental requirements, site and physical conditions, and other matters affecting the use, condition and ownership of the subject property.

- 6) **WALK THROUGH:** Within SEVEN (7) Days of opening escrow, Buyer and Seller shall conduct a preliminary walk-through of the Subject Property. Buyer shall provide Seller with a written list of Buyer's requested repairs, to be completed prior to close of escrow. Seller shall approve or disapprove such list in writing within SEVEN (7) Days of receipt of same. Should Buyer and Seller be unable to come to mutual agreement on said repair list, both parties shall execute escrow cancellation instructions, and full deposit shall be released from the obligation to purchase subject property, and Seller shall be released from the obligation to sell subject property to Buyer herein.

Final Walk Through – Not less than THREE (3) days before the close of escrow, Buyer shall have a final walk through, which shall **NOT BE A CONTINGENCY TO THE CLOSING OF THIS ESCROW**, but only to verify that all items approved by Seller on Buyer's initial walk through have been completed.

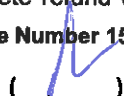
- 7) **INDEPENDENT VERIFICATION:** Buyer's deposit of final funds shall act as an independent verification from Buyer to Escrow Holder that the improvements have been satisfactorily completed.
- 8) **MATERIAL CHANGES:** Prior to close of escrow, Seller, in its sole and absolute discretion, may make material changes in (i) the legal management documents described herein, (ii) the overall development of the Project, (iii) the manner or content of any offering of residence in the Project or any phase of development thereof, or (iv) any aspect of the subject property or the entire project. In such case, Seller shall provide Buyer with written notice of such material change and Buyer's sole remedy at that time shall be to terminate this Agreement, request cancellation of escrow and receive a refund of all amounts deposited hereunder. Failure of Buyer to deliver to Seller written notice of termination within FIVE (5) days of receipt of the written notice of material change from Seller shall constitute a waiver of Buyer's right to terminate this Agreement and cancel escrow with respect to such change.

Notwithstanding anything contained herein to the contrary, including any general instructions hereto, if after submitting all documentation required pursuant to Paragraph Entitled 'Financing', Buyer does not secure loan commitment and approvals described herein, and deposit written verification of the unconditional commitment and approval into escrow within the time specified herein, Seller may, at its election, unilaterally terminate this Agreement and all funds in escrow shall be released to Buyer, provided, however, that if Buyer does not obtain loan approval because of Buyer's failure to sell Buyer's current residence or any other property owned by Buyer, such failure by Buyer shall be considered a default hereunder and Seller shall be entitled to terminate this Agreement, cancel escrow and proceed in accordance with Paragraph Entitled 'Liquidated Damages'.

In addition to other rights of Seller to terminate this Agreement, Seller can cancel escrow if Seller's ability to construct or deliver the Residence to Buyer is materially interfered with as a result of (i) the action of any foreign, federal, state or local governmental authority or utility, (ii) the availability or promptness of delivery of materials, labor, water, sewer or other utility services to the Property or Project, or (iii) changes in weather or Acts of God. In such event, Seller may unilaterally terminate this Agreement, cancel escrow, and upon returning to Buyer its full deposit hereunder, Seller thereafter shall be released from all obligations hereunder.

- 9) **POSSESSION:** Possession and occupancy shall be delivered to Buyer upon the close of escrow. Buyer's right to possession, use and occupancy of the Subject Property shall commence at the close of escrow. Prior to close of escrow, neither Buyer nor their agents shall place any signs or personal property on or about the subject property or the development or commence any improvements, alterations, modifications or changes to the subject property in any manner. Buyer shall not occupy Subject Property in any manner or form prior to close of escrow.
- 10) **WARRANTIES AND REPRESENTATIONS:** Buyer specifically acknowledges that no representations or warranties by Seller or Seller's broker or any agent, employee or representative of them or any other person have been made to or relied upon by Buyer in connection with the within transaction, and that there are and shall be no terms, conditions, representations, warranties or agreements in connection with the within transaction other than specifically stated herein.
- 11) **MULTIPLE LISTING SERVICE:** If Broker is a Participant of an Association/Board multiple listing service ("MLS"), the Broker is authorized to report the sale, its price, terms, and financing for the publication, dissemination, information, and use of the authorized Board members, MLS Participants and Subscribers, only with the (separate) express written consent of the Seller.
- 12) **BUYER'S FUNDS:** If, through no fault of Buyer, this escrow is not closed on the date set forth herein as the "closing date" (or some later date of closing mutually agreed upon by Buyer and Seller) or ONE (1) Year after the date hereof, then Buyer is entitled to a complete refund of all deposit monies, without deductions, such funds to be returned to

Escrow Instructions Continued On Page Number 15

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

Escrow Instructions Continued From Page Number 14**Escrow Officer: Ellen Bebo**

Buyer within FIFTEEN (15) Days after said "Closing date" (or some later date of closing mutually agreed upon by Buyer and Seller).

- 13) ATTORNEY'S FEES:** In any action, proceeding or arbitration between Buyer and Seller arising out of this agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.
- 14) VIEW:** Seller has made no representations or warranties that there is any "view" from the Property or that any existing view will not in the future be obstructed.
- 15) OPTIONAL ITEMS:** If Buyer has the ability to make color and optional item selections from the choice provided by Seller Buyer shall do so within FIVE (5) Calendar Days following written request for such selection by Seller or Seller's Agent. Buyer's selections shall be in writing and final. If Buyer fails to make such selections within the specified time, Seller shall have the unilateral right to make the selections and Buyer hereby accepts same.
- 16) COMPLETION OF CONSTRUCTION:** With the exception of delays caused by circumstances beyond the reasonable control of Seller, Seller shall complete the construction of the residence no later than ONE (1) YEAR from the date set forth as the closing date herein.
- 17) SELLER DISCLOSURES:** As a material inducement to Seller to sell the Property to Buyer, Buyer hereby agrees, understands and acknowledges as follows:
- A. **FUTURE AND ADJACENT DEVELOPMENT:** Seller is not obligated to construct any future common improvements within the Project or in any later phases or development of the project, if applicable. Seller has provided no oral and/or written representations, warranties or promises to Buyer respecting landscaping or improvements that may be constructed elsewhere within the Project or adjacent thereto. The depiction of buildings, facilities or improvements on any plan, model, topographic map, drawing or map does not constitute a representation, warranty or covenant by Seller that such buildings, facilities or improvements will be constructed or that natural or landscaped areas will remain unchanged or undeveloped.
 - B. **SCHOOL INFORMATION:** Seller has made no representations, warranties or assurances to Buyer that the property will be included within any particular school district. Buyer is responsible for determining the availability of schools and the same are subject to change by the applicable school district.
 - C. **CHANGES IN PRICE, SIZE AND DESIGN:** Seller has made no promises, representations or assurances to Buyer regarding the pricing, size, design, configuration and architectural style of any further residences or improvements constructed or to be constructed in the Project or in other phases of development or otherwise, and Buyer acknowledges that as market conditions or other facts change, such matters may be subject to change including, without limitation, increase and/or reduction in prices of other residences to be built or sold in the Project and/or sales incentives offered in connection therewith and changes in size, design or product type of homes to be built or sold in the Project.
 - D. **VIEW AND PRIVACY IMPAIRMENT:** Neither Seller, nor any of its authorized agents, representatives or employees has made any oral and/or written representations, warranties or promises concerning any view, present or future, that may be enjoyed from all or any portion of a residence or the Property. The view from the Property may change, be affected or obstructed by (i) construction or installation of improvements, structures, fences, walls and/or landscaping by Seller or other owners of Property within or outside the Project and/or (ii) the growth of trees, landscaping and/or vegetation within or outside the project. The Declaration does not contain any provisions intended to protect the view from any residence or any other portion of the project. Because of the nature of the terrain and slope and because neighboring homes have view, differing elevations, orientations to the lot and otherwise, architectural design and/or overall layout from the immediately adjoining or in a close proximity and may or may not have the ability to observe the interior and/or exterior of the subject property, neither Seller, nor any of its authorized agents warranties or promises complete privacy on any part, lot or home. Buyer shall satisfy themselves as to these 'View & Privacy Items' and Seller and/or Broker shall have no liability and/or responsibility in connection therewith.
 - E. **TAX AND INSURANCE ESTIMATES:** Any sum estimated for taxes or insurance affecting the property may increase or decrease depending upon fluctuation of real property taxes or insurance rates. Buyer is strongly encouraged to verify these amounts with their own independent investigations including but not limited to verification with their own accountant and/or insurance agent.
- 18) SQUARE FOOTAGE:** Square footages are approximations and have not been and will not be independently verified by Broker and/or Seller. Should exact square footage be required by Buyer, Broker and Seller recommend Buyer

Escrow Instructions Continued On Page Number 16

Seller's Initials

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Buyer's Initials


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Escrow Instructions Continued From Page Number 15**Escrow Officer: Ellen Bebo**

conduct Buyer's own investigation with appropriate independent professionals. Buyer shall indemnify and hold Seller free of any liens regarding such independent professionals on subject property.

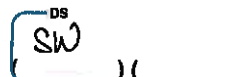
- 19) LAND USE/NEIGHBORHOOD CONDITIONS:** Buyer is aware that the subject property may be affected by future development of property in the neighborhood or surrounding areas, including without limitation, view, noise, traffic, local services and safety. Buyer agrees that Seller and Broker make no representation as to the preservation of existing/future views, and that present/future views may be affected by future development or construction/alteration of neighboring properties. Buyer further acknowledges awareness of existing nearby commercial properties/structures and the inherent traffic, noise and other situations relating to same. Buyer understands this project and other surrounding projects are currently and may be under future development. As a result of this fact, there may be noise, dirt, construction trucks, parking, construction workers, outhouses, and deliveries until all projects in the area are completed, all of which may or may not be under Seller's control.
- 20) WAIVER OF LIS PENDENS:** As a material part of the consideration to be received by Seller under this Agreement, Buyer waives all rights to file and maintain an action against Seller for specific performance and to record a Lis Pendens against the Property is not unique in that Buyer can be adequately compensated solely by receiving a refund of Buyer's deposit if Seller breaches this agreement.
- 21) MANUFACTURED PRODUCTS:** Buyer acknowledges and understands that:
- A. There are certain appliances and other equipment included in or exclusively benefiting the Subject Property which are manufactured by Third Parties (e.g. the dishwasher, heating, ventilation and air conditioning equipment, etc.);
 - B. The only warranties for such manufactures products are those provided by the manufacturer; and
 - C. Buyer shall be responsible for activating specific manufacturer's warranties, including, without limitation, by completing and submitting to the applicable manufacturers any registration cards included with the manufacturer's materials.
- 22) WATER RIGHTS:** If this property is adjacent to or contiguous to any water surface, the Buyer acknowledges and understands that Seller reserves any and all water, water rights and privileges, riparian rights and water easements and points belonging or any way appurtenant to the described real property.
- 23) EXISTING LANDSCAPING/OAK TREE(S):** If any oak tree or other species of tree is situated on the property, Buyer acknowledges that Seller makes no representation or warranty, express or implied, with respect to the condition of any such tree, and Buyer acknowledges that no such representation or warranty has been made or given. Buyer acknowledges that Buyer will make or rely upon his own tests and investigation to ascertain the condition of any such oak tree, or any other species of tree and the required care thereof, and the Seller is not responsible for the same. Buyer, his successors and assigns (if any and if approved by Seller), shall hold Seller, its affiliates, agents and employees, or their successors and assigns, entirely free and harmless from any and all damage, liability or costs of any kind to any person (including Buyer) or property (including Seller's and Buyer's); and Buyer, for himself, his successors and assigns, hereby waives any and all claims against Seller, its affiliates, agents and employees, which may or could affect the price as a result of the condition, maintenance or loss of any such oak tree, or any other species of tree.
- 24) ZONING DISCLOSURE:** Buyer is aware that the Seller and his agents and any representatives have no control over the zoning or development of the surrounding areas and makes no guarantees or representations as to its development.
- 25) PERIMETER EASEMENT AND LOT FENCING:** The placement, set-backs, height, length, width and materials pertaining to any and all fencing, including, but not limited to wood, block wall, slump stone, wrought iron and chain link fencing which may appear on the tract maps and plans are proposed in advance of construction and completion of the new home. The above-mentioned proposals will be finally determined by the appropriate governing agencies. Final approvals and inspections are made by the Planning Department, Building and Safety, Public Works, and Police and Fire emergency services. It is incumbent upon the builder to comply with the final decisions of the governing agencies as prescribed by ordinances. No changes will be made by the Builder which conflict with the aforementioned regulations. Changes made as a result of those requirements will be made without prior notice.
- 26) MODEL:** It is understood and agreed that Seller is not building the subject property specifically for the Buyer, nor to the precise specifications or design of any model or rendering displayed to or visited by Buyer. Buyer acknowledges that models, floor plans, plot maps, measurements and/or dimensions may be used by Seller or Seller's employees, Sales Agents or Sales Agent's employee (s) or representative (s) in the course of offering said property for sale, and

Escrow Instructions Continued On Page Number 17

Seller's Initials

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Buyer's Initials



Escrow Instructions Continued From Page Number 16**Escrow Officer: Ellen Bebo**

of Buyer agreeing to purchase said property, it is not to be construed as exact and may vary either plus or minus. Seller reserves and shall have the right to make any changes, modifications, deletions, additions, changes in specification or substitution Seller deems necessary or desirable at any time without notice to Buyer in the construction, materials, fixtures, hardware, method of construction or other integral or in any portion or feature of the property. Buyer understands that any model, fixtures, or furnishings displayed to or visited by the Buyer are for illustration purposes only and shall not be deemed a representation, agreement or commitment by Seller to deliver the property or any portion or feature thereof in accordance with any such model, fixtures or furnishings. Seller has made no representations to Buyer as to the square footage of the Property or residence located thereon. Square footages that may be quoted in brochures vary according to many actors. They are quoted as a convenience to a potential Buyer and are not meant to be exact. Sales prices are not determined based on square footages. Buyer also understands and acknowledges that certain promotional materials used by Seller (including artist's rendering of the Project and certain exterior design features) may not depict exactly the manner in which the Property will be constructed.

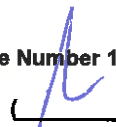
27) CONSTRUCTION CHANGES: It is understood between Buyer and Seller that Seller WILL NOT accept any construction changes for approval later than TEN (10) Calendar Days after the date hereof. Buyer to deposit funds into escrow as determined by Seller, for all construction changes in advance of the start of stated construction changes. Buyer understands that there will be NO CONSTRUCTION CHANGES OTHER THAN THOSE SPECIFICALLY OFFERED ON THE CONSTRUCTION OPTION SHEET. If for any reason Buyer does not proceed to close of escrow on the subject property, Buyer agrees that these amounts will be retained by the Seller as consideration for the construction changes ordered by the Buyer.

28) PLAN MODIFICATIONS: Seller hereby reserves the right, without prior written notice to Buyer, to modify or alter any aspect of the proposed plans and specifications for completion of the residence purchased under the terms of this Agreement including, without limitation, the location and types of kitchen appliances, household fixtures, electrical outlets and switches, hardware, wall surfaces, paint and/or change such improvements, provided, said modifications or alterations shall not result in a product of lesser quality or value than agreed to herein. Buyer expressly agrees that Seller shall have the right to make such modifications and alterations without adjustment in purchase price.

29) COMPLETION: It is agreed by the Buyer that the various steps of construction shall be deemed to have been satisfactorily and fully performed when approved by the appropriate city or county department and shall be deemed to be completed and in full compliance with the terms of the Agreement when a Notice of Completion has been filed, and when the appropriate city or county department has issued a certificate (or the like document) permitting occupancy of the property. Seller agrees that it will diligently commence and pursue to complete the construction of the residence on the property and deliver same to Buyer at close of escrow. Depending upon the nature of the Residence, the number, type and design of improvements or additions thereto, Seller will require anywhere from SIX (6) months to ONE (1) year to construct the residence and, accordingly, the Residence shall be substantially completed and shall have been approved for occupancy by the appropriate government agency between SIX (6) months and ONE (1) year from the date hereof (if residence is not already completed). Should Seller be delayed in completing the residence by reason of Buyer's acts or omissions or any causes beyond Seller's control, including but not limited to governmental action, acts of god, stormy weather, strikes, boycotts, unavailability of materials, labor shortages or delays in receiving materials, the time of such delay shall be added to the time for completion, herein, provided, however, that in the event, though no fault of Buyer, this escrow has not closed within TWELVE (12) months from the date hereof, Buyer shall have the right to cancel this escrow and within FIFTEEN (15) days Seller shall order all money remitted, to be refunded to Buyer. Buyer is purchasing a completed residence.

Seller is not acting as a contractor for Buyer in the construction of said residence. Buyer shall have no right, title or interest in nor any right to possession of nor any right of entry on the subject property until actual close of escrow. Buyer understands and agrees there shall be no liability of any kind whatsoever on the part of the Seller, Seller's employees, Lending institution, Lender's employees, Sales Agents or Sales Agent's employees or representatives as a result of any damages that may be caused by the aforementioned delays. Seller, its agents and representatives, make absolutely no other representation or promises, oral or written, with respect to the construction of said residence except as set forth above. If the Buyer is a 'Non-Defaulting Buyer', then all funds shall be returned per Reg. 2791.

30) OCCUPANCY: It is agreed that occupancy of the subject property by Buyer may not be had under this Agreement prior to recordation of the deed to the Buyer and the recordation of the deeds of trust or mortgage procuring the loan or loans to be made on the subject property. Buyer represents to Seller that Buyer has a bona fide intention of residing in the property as Buyer's principal place of residence.

Escrow Instructions Continued On Page Number 18Seller's Initials Buyer's Initials 

Escrow Instructions Continued From Page Number 17

Escrow Officer: Ellen Bebo

- 31) PROXIMITY WARNING:** Seller makes no representations regarding the community or location of the property. Buyer acknowledges that he is responsible to educate himself as to the proximity of schools, hospitals, factories, heavily traveled streets, air corridors, off-site power sources, parks and other sources of significant noise or pollution adjacent to or in the vicinity of the property and the location of other desirable or undesirable facilities, including but not limited to the seismic activity in the area. Seller makes no representations about the relative safety of the community or vicinity in which subject property is located. Areas near subject property may be zoned, among other things, for residential use, commercial use, industrial use or some combination thereof. It is the duty of Buyer to evaluate the zoning and past use of nearby property to determine whether past, present, or future uses of nearby property may interfere with Buyer's intended use of subject property. Buyer agrees to make his own investigation and signifies his agreement that Seller need not locate or identify for Buyer known or suspected hazards, environmental or otherwise, which do not arise on the subject property and which do not physically affect the subject property at the time of purchase. Buyer agrees further that Seller does not have actual knowledge at the time Seller executes the Agreement, nor does Buyer rely on Seller except as Seller or its agents have made written representations.
- 32) NATURAL WOOD DISCLAIMER:** Natural wood products may be used in the manufacturing of the cabinets, entry doors, stair rails, windows, floors and exteriors. Wood, by nature, is not uniform in regards to color or grain and may have significant color variations. Every piece of wood will accept stains differently depending on its color, porosity and graining. Therefore, Seller makes no representation that the wood used in or on the home will be the same as the model homes or any samples, or that the coloring on subject lot will not vary. Certain wood floors may sliver. Exterior finished wood surfaces, such as siding, doors, railings and eaves, will require maintenance and repainting. The frequency and extent of the maintenance required of Buyer is dependent upon exposure to direct sun, moisture, smog or particulates in the air. Seller has painted the exterior wood surfaces with materials as is customary in the industry and makes no representations other than Seller's standard limited warranty. Buyer further acknowledges that wood products are subject to color variations as they age and/or depending on the exposure to sunlight.
- 33) STUCCO DISCLOSURE:** Concrete, plaster, drywall, masonry and other rigid materials are subject to cracking due to normal shrinkage, settlement, expansion and contraction. Seller is only responsible to repair such materials in the event that such cracks exceed industry standards.
- 34) PAINT DISCLAIMER:** Paints and stains will be installed pursuant to the manufacturer's instructions. Seller makes no warranty beyond the manufacturer's standard limited warranty for such materials.
- 35) SOUND TRANSMISSION:** Seller does not in any manner guarantee or warrant that the property will be soundproof or insulated to any particular degree from noise or sound emanating from within or without the Subject Property, including noise or sound emanating from other units, heating, ventilation air conditioning systems, plumbing, stereo systems, 'Surround Sound Systems', Garages, and any and all Flooring, including, but not limited to: Tile, Hardwood and/or any type of Stone.
- 36) FUTURE VALUE:** Seller makes no representations or warranty, express or implied, as to the price or value of any of the dwellings. It is understood, acknowledged and agreed that: the dwelling being purchased may appreciate or depreciate in value and price; other dwellings in the project may be sold for a higher or lower prices than that paid for the dwelling being purchased by Buyer; incentives, promotions or other concessions not offered to Buyer may be offered to others; and Seller reserves the right, in its sole discretion, and without notice to the Buyer, to increase or decrease the price of dwellings in the project at any time. Buyer shall have no rights to participate in incentives, promotions or concessions offered to others, if any, nor shall they have the right to modify or rescind the terms of this agreement or their purchase of the subject property by reason of same.
- 37) MOLD:** Mold is a type of fungus. It occurs naturally in the environment and it is necessary for the natural decomposition of plants and other organic material. It spreads by means of microscopic spores born on the wind, and is found everywhere life can be supported. Residential home construction is not, and cannot be, designed to exclude mold spores. If the growing conditions are right, mold can grow in the residence. Most homeowners are familiar with mold growth in the form of bread mold, and mold that may grow on bathroom tile.

In order to grow, mold requires a food source. This might be supplied by items found in the home, such as fabric, carpet or even wallpaper, or by building materials, such as drywall, wood and insulation, to name a few. Also, mold growth requires temperate climate. The best growth occurs at temperatures between 40 Degrees and 100 Degrees Fahrenheit. Finally, mold growth requires moisture. Moisture is the only mold growth factor that can be controlled in a residential setting. By minimizing moisture, a homeowner can reduce or eliminate mold growth.

Moisture in the home can have many causes. Spills, leaks, overflows, condensation, and high humidity are common sources of home moisture. Good housekeeping and home maintenance practices are essential in the effort to prevent

Escrow Instructions Continued On Page Number 19

Seller's Initials ()

Buyer's Initials ()

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Escrow Instructions Continued From Page Number 18**Escrow Officer: Ellen Bebo**

or eliminate mold growth. If moisture is allowed to remain on the growth medium, mold can develop within 24 to 48 hours.

All mold is not necessarily harmful, but certain strains of mold have been shown to have adverse health effects in susceptible persons. The most common effects are allergic reactions, including skin irritations, watery eyes, runny nose, coughing, sneezing, congestion, sore throat and headache. Individuals with suppressed immune systems may risk infections. Some experts contend that mold causes serious symptoms and diseases which may even be life threatening. However, experts disagree about the level of mold exposure that may cause health problems, and about the exact nature and extent of health problems that may be caused by mold. The center for Disease Control states that a causal link between the presence of toxic mold and serious health conditions has not been proven.

Whether or not Buyer, as a homeowner, experiences mold growth depends largely on how one manages and maintains the home. The Seller's responsibility as a homeowner must be limited to things one can control. Buyer will need to take actions after the Close of Escrow to prevent conditions which cause the growth of mold or mildew. This is part of the responsibility of home ownership. Buyer agrees to assume responsibility for following the recommendations in the Mold Information Sheet. Buyer further acknowledges that if there is any water damage or water intrusion to Buyer's residence, Buyer will take immediate action to prevent conditions which cause mold or mildew to develop.

Buyer acknowledges and agrees that Seller will not be liable for any actual, special, incidental or consequential damages based on any legal theory whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory with respect to the presence and/or existence of molds, mildew and/or microscopic spores unless caused by the sole negligence or willful misconduct of Seller. Buyer, on behalf of itself and its family members, tenants, invitees and licensees, hereby releases Seller and Seller's officers, directors, partners, members, successors and assigns from and against any and all claims, actions, damages, causes of actions, liabilities and expenses (including without limitation, attorneys fees and costs including enforcing this indemnity) for property damage, injury or death resulting from the exposure to microscopic spores, mold and/or mildew from any loss of resale value due to the presence and/or existence of mold, mildew and/or microscopic spores, provided, however, that in no event is Buyer releasing Seller as a result of the presence and/or existence of mold, mildew and/or microscopic spores if caused by the sole negligence or willful misconduct of Seller.

38) SMOKE DETECTORS: California Law requires that every single-family dwelling housing unit sold on or after January 1, 1986, must have an operable smoke detector, approved and listed by State Fire Marshall, installed in accordance with the State Fire Marshall's regulations. (Health and Safety Code #13113.8.) Smoke detectors must be centrally located outside each sleeping area and in each bedroom. Smoke detectors must be hard wired with a battery backup. **For more detailed information about smoke detector requirements please contact the local building department.**

39) WATER HEATER BRACING: California law requires that all new, replacement, and existing water heaters be braced, anchored, or strapped to resist falling or horizontal displacement due to earthquake motion. (Health and Safety Code #19211). Seller represents that the Property is in compliance, at the time of Close of Escrow, with BOTH California Health and Safety Codes # 13113.8 and # 19211.

40) ALTERATIONS PRIOR TO CLOSING: Until the Close of Escrow, all portions of the Property and materials located on the Property are the property of the Seller or persons other than the Buyer. Buyer has no right to enter the Property without the Seller's prior written consent and under Seller's supervision. Buyer has no right to make any additions or modifications to the Property or any part thereof or to utilize in any way such materials located upon the Property without Seller's specific written permission and Seller supervision, which permission may be withheld at Seller's sole and absolute discretion. Seller's agents, contractors and their employees are specifically not authorized to grant such permission.

If any such changes are made by Buyer at Buyer's request without such written permission of Seller, Buyer agrees that the following should apply:

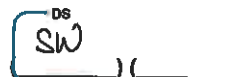
- A. Seller may, at its option, elect not to warrant such changes or the entire system altered by such changes such as the electrical system, plumbing system, etc.
- B. Seller may, at its sole option without notice to Buyer, remove any or all of any additions to the Property made by or at the request of Buyer or may reconstruct all or any portion of the residence which has been changed as a result of any modifications made by or at the request of Buyer, it being acknowledged by Buyer that until the Close of Escrow, the residence and all parts thereof and additions thereto, no matter by whom made, are the

Escrow Instructions Continued On Page Number 20

Seller's Initials



Buyer's Initials



Escrow Instructions Continued From Page Number 19

Escrow Officer: Ellen Bebo

property of Seller. All costs incurred by Seller to remove any additions made by Buyer shall be charged back to Buyer plus a 20% management fee.

- C. With respect to any modifications or additions to the residence made by or at the request of Buyer which are wither known or not known to Seller, but which are allowed by Seller to remain, Buyer hereby waives any claim against Seller, its agents, employees, members, independent contractors, arising as a result of such modifications or additions and agrees to indemnify and save harmless Seller, it agents, employees, members, and independent contractors, from and against all liability, loss, claims, or damages arising as a result of such modifications or additions, whether or not Seller, or any of its agents, employees, members, or independent contractors may have been negligent in connection with such modifications or additions.

41) **EQUAL HOUSING OPPORTUNITIES:** This property is sold in compliance with federal, state and local anti-discrimination laws.

42) **CONSTRUCTION DEFECT CLAIMS RESOLUTION PROCEDURE:**

- A. **NOTICE OF CONSTRUCTION CLAIMS STATUTE.** California Civil Code Section 895 et seq., as hereafter amended ("Construction Claims Statute"), delineates standards for how various components of the Property should be constructed and function, limits the time frames for bringing various claims against Seller to anywhere from one year to ten years (as listed in the Construction Claims Statute) from the Close of Escrow for the Property, imposes an obligation on Buyer to follow the Seller's maintenance recommendations and schedules, or other applicable maintenance guidelines, and establishes a non-adversarial claims resolution procedure that must be followed by Buyer before Buyer can initiate an adversarial claim and proceed to alternate dispute resolution as described in the Paragraph Entitled **ALTERNATIVE DISPUTE RESOLUTION** herein. A Copy of the Construction Claims has been given directly from Seller to Buyer. BY INITIALING BELOW, BUYER ACKNOWLEDGES THAT SELLER HAS PROVIDED BUYER WITH A COPY OF THE CONSTRUCTION CLAIMS STATUTE AND THAT SELLER HAS ADVISED BUYER THAT THE CONSTRUCTION CLAIMS STATUTE AFFECTS BUYER'S LEGAL RIGHTS. BUYER IS ADVISED TO READ THE STATUTE CAREFULLY AND SEEK LEGAL ADVICE IF BUYER HAS ANY QUESTIONS REGARDING ITS AFFECT ON BUYER'S LEGAL RIGHTS.

Seller's Initials (AL) Buyer's Initials (SW) ()

- B. **ELECTION TO USE SELLER'S NON-ADVERSARIAL CONTRACTUAL PROCEDURES FOR HANDLING CONSTRUCTION CLAIMS.** The Construction Claims Statute permits Seller to elect to use alternate contractual non-adversarial claims handling procedures for the resolution of construction defect claims in lieu of the statutory procedures contained in Sections 910 through 938 of the Construction Claims Statute. By initialing below, Buyer acknowledges that Seller has elected to use the non-adversarial process described in the Paragraph Entitled **NOTICE AND OPPORTUNITY TO CURE CLAIMED DEFECTS** contained herein in lieu of the non-adversarial process set forth in the Construction Claims Statute. Buyer also acknowledges that Buyer is aware that a copy of Seller's non-adversarial claims procedures contained in said Paragraph Entitled **NOTICE AND OPPORTUNITY TO CURE CLAIMED DEFECTS** will be recorded on the title to the Property to impart notice upon and bind Buyer's successors in interest to said claims procedures.

Seller's Initials (AL) Buyer's Initials (SW) ()

- C. **NOTICE AND OPPORTUNITY TO CURE CLAIMED DEFECTS.** Prior to the commencement of any legal proceeding by Buyer against Seller based upon a claim for defects in the design or construction of the Property, or any improvements thereon, Buyer must first comply with the provisions of this Paragraph. If at any time during the TEN (10) years after the Close of Escrow, as such period may be extended by any applicable tolling statute or provision, or any shorter period as provided by applicable law, Buyer, or Buyer's successors or assigns (Collectively, "Owner") believes Seller has violated any of the standards set forth in the Construction Claims Statute ("Claimed Defect"), which such Owner feels may be the responsibility of Seller, such owner shall promptly notify Seller in writing at Seller's address for service of process registered with the California Secretary of State, which is currently set forth in Page 1 herein. Such notice shall be deemed a notice of intention to commence a legal proceeding and shall include: (a) a detailed description of the Claimed Defect, (b) the date upon which the Claimed Defect was first discovered, and (c) dates and times when Owner or Owner's agent will be available during ordinary business hours, for service calls or inspections by Seller. Seller shall, in its sole discretion, be entitled to inspect the property regarding the reported Claimed Defect and, within its sole discretion, shall be entitled to cure such Claimed Defect. Nothing contained in this Paragraph shall obligate Seller to perform any such inspection or repair, nor shall this Paragraph be deemed to increase Seller's legal obligations to Owner. Owner's written notice delivered to Seller shall be a condition precedent to Owner's right to institute any legal

Escrow Instructions Continued On Page Number 21

Seller's Initials (AL) Buyer's Initials (SW) ()

Escrow Instructions Continued From Page Number 20

Escrow Officer: Ellen Bebo

proceeding and to proceed to alternate dispute resolution as set forth in the Paragraph Entitled **ALTERNATE DISPUTE RESOLUTION** herein, and Owner shall not pursue any other remedies available to it, at law or otherwise, including the initiation of any legal proceeding or action, until Seller has reasonable opportunity to inspect and cure the Claimed Defect. During the term of any written Limited Warranty provided to the original Owner of the Property by Seller, any conflict between the provisions of this Paragraph and the Limited Warranty shall be resolved in favor of the Limited Warranty. Seller shall not be liable for any general, special or consequential damage, cost, diminution in value or other loss which Owner may suffer as a result of any claimed Defect in the Property, which might have been avoided had Owner given the Seller the timely notice and opportunity to cure as described herein. Except as otherwise provided in the written Limited Warranty, if any, provided to owner, nothing contained herein shall establish any contractual duty or obligation on the part of the Seller to repair, replace or cure any Claimed Defect. If Owner sells or otherwise transfers ownership of the property to any other person during the effective period of this Paragraph, Owner covenants and agrees to give such person written notice of these procedures by personal delivery. Owner's continuing obligation under this covenant shall be binding upon Owner and Owner's successors and assigns and shall survive Close of Escrow.

D. **RECEIPT OF PURCHASE DOCUMENTS.** Buyer will be provided with certain documents through Escrow in conjunction with the purchase of the Property, including maintenance recommendations for manufactured products or appliances included with the Property, claim forms, and other documentation relating to the Construction Claims Statute. Buyer and Buyer's successors in interest, are required by the Construction Claims Statute to retain these documents and provide copies of the documents to such Buyer's successors in interest upon the sale or transfer of their Property.

E. **OBLIGATION TO FOLLOW MAINTENANCE RECOMMENDATIONS.** All owners are obligated by Section 907 of the Construction Claims Statute to follow Seller's maintenance recommendations and schedules, including the maintenance recommendations and schedules for manufactured products and appliances provided with the property, as well as all commonly accepted maintenance practices (collectively, "Maintenance Recommendations"). Per Section 945.5 of the Construction Claims Statute, failure to follow the Maintenance Recommendations may reduce or preclude Owner's right to recover damages relating to such Owner's Property, which could have been prevented or mitigated had the Maintenance Recommendations been followed.

43) ALTERNATE DISPUTE RESOLUTION:

A. **JUDICIAL REFERENCE.** If, either before or after the Close of Escrow, any claims, disputes or controversies (other than in the Paragraph Entitled 'Liquidated Damages-Arbitration') arise between the parties with respect to this Purchase Agreement or the Property, including, without limitation, any claims based upon alleged latent or patent construction defects, and any party commences a legal proceeding based upon such claims, all such matters shall be determined by judicial reference provided for in this Paragraph. If either party to this Purchase Agreement commences a legal proceeding for a dispute arising under this Purchase Agreement, or relating to the property, or the conditions, design or construction of any portion of the Property, all the issues in such action, whether of fact or law, shall be resolved by judicial reference pursuant to the provisions of California Code of Civil Procedure Sections 638 through 645.1. Buyer and Seller should cooperate with good faith to ensure that all necessary and appropriate parties are included in the judicial referenced proceeding. In the event a litigation is filed based on any such dispute, the following shall apply:

1. The proceeding shall be brought and held in the County in which the Project is located, unless the parties agree to an alternative venue.
2. The parties shall use the procedures adopted by JAMS for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties).
3. The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters.
4. The parties to the litigation shall agree upon a single referee who shall have the power to try any and all of the issues raised, whether of fact or of law, which may be pertinent to the matters in dispute, and to issue a statement of decision thereon to the court. Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction in accordance with California Code of Civil Procedure Sections 638 and 640.
5. The referee shall be authorized to provide all remedies available in law or equity appropriate under the circumstances of the controversy

Escrow Instructions Continued On Page Number 22

Seller's Initials ()

Buyer's Initials ()

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Escrow Instructions Continued From Page Number 21

Escrow Officer: Ellen Bebo

6. The referee may require one or more pre-hearing conferences.
7. The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.
8. The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.
9. The referee shall have the authority to rule on all post hearing motions in the same manner as a trial judge.
10. The parties shall promptly and diligently cooperate with each other and the referee and perform such acts, as may be necessary for an expeditious resolution of the dispute.
11. Except as otherwise agreed by the parties or as required by applicable law, the Owner shall not be required to pay any fee of the judicial reference proceeding except to the extent of the cost that would be imposed upon the Owner if the dispute has been resolved as a dispute in court. The referee may not award against the Owner any expenses in excess of those that would be recoverable as costs if the dispute had been litigated to final judgment in court. Each party to the judicial reference proceeding shall bear its own attorney fees and costs in connection with such proceeding.
12. The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is not clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. The provision shall in no way be construed to limit any valid cause of action that may be brought by any of the parties. Declarant and Owners, by accepting a deed within described Real property within the Project, acknowledge and accept that they are waiving their right to a jury trial.

B. **BINDING ARBITRATION OF DISPUTES.** If for any reason the judicial reference procedures referenced above (a) are legally unavailable at the time a dispute would otherwise be referred to judicial reference, then such dispute shall be submitted to binding arbitration. Any dispute submitted to binding arbitration shall be administered by the AAA in accordance with the AAA's Construction Industry Arbitration Rules in effect on the date of the submission. If such entity is not in existence, then the dispute shall be submitted to JAMS, and administered in accordance with either the Streamlined Arbitration Rules and Procedures, or (if applicable) the Comprehensive Arbitration Rules of JAMS.

C. **FEDERAL ARBITRATION ACT.** The binding arbitration procedures contained herein are implemented in accordance with the philosophy and intent of the Federal Arbitration Act (9 U. S. C. Section 1 et seq.) ("FAA"), which were designed to encourage the use of alternative methods of dispute resolution and avoid costly and potentially lengthy traditional court proceedings. The binding arbitration procedures in said Paragraph are to be interpreted and enforced as authorized by the FAA. Parties interpreting the "Binding Arbitration of Disputes" shall follow the federal court rulings, which provide among other things that: (1) the FAA is a congressional declaration of liberal federal policy favoring alternative dispute resolution notwithstanding substantive or procedural state policies or laws to the contrary, (2) alternate dispute resolution agreements are to be rigorously enforced by state courts; and (3) the scope of the issues subject to alternate dispute resolution are to be interpreted in favor of alternate dispute resolution.

44) LIQUIDATED DAMAGES/ARBITRATION: IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY BECAUSE OF A DEFAULT BY BUYER, SELLER MAY PURSUE ANY REMEDY IN LAW OR EQUITY THAT IT MAY HAVE AGAINST BUYER ON ACCOUNT OF THE DEFAULT; PROVIDED, HOWEVER, THAT, BY PLACING THEIR INITIALS HERE

Seller's Initials (*LS*) Buyer's Initials (*DS SW*)

IF INITIALED ABOVE BY ALL PARTIES, BUYER AND SELLER AGREE THAT:

- A. **THE AMOUNT EQUAL TO BUYER'S PURCHASE MONEY DEPOSIT SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO SELLER IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY BECAUSE OF A DEFAULT BY BUYER. THE VALIDITY AND REASONABLENESS OF THE AMOUNT OF LIQUIDATED DAMAGES SHALL BE DETERMINED IN ACCORDANCE WITH CALIFORNIA CIVIL CODE SECTIONS 1675 THROUGH 1678.**
- B. **THE PAYMENT OF SUCH LIQUIDATED DAMAGES TO SELLER SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF SELLER ON ACCOUNT OF ANY DEFAULT BY BUYER.**
- C. **LIQUIDATED DAMAGES SHALL BE PAYABLE TO SELLER OUT OF BUYER'S PURCHASE MONEY DEPOSIT ACCORDING TO THE FOLLOWING PROCEDURES:**

Escrow Instructions Continued On Page Number 23

Seller's Initials (*LS*) Buyer's Initials (*DS SW*)

Escrow Instructions Continued From Page Number 22

Escrow Officer: Ellen Bebo

1. THE SELLER SHALL GIVE WRITTEN NOTICE ("SELLER'S NOTICE AND DEMAND"), IN THE MANNER PRESCRIBED BY SECTION 116.640 OF THE CODE OF CIVIL PROCEDURE FOR SERVICE IN A SMALL CLAIMS ACTION, TO ESCROW HOLDER AND TO BUYER, THAT BUYER IS IN DEFAULT UNDER THIS AGREEMENT AND THAT SELLER IS DEMANDING THAT ESCROW HOLDER REMIT THE PURCHASE MONEY DEPOSIT TO SELLER AS LIQUIDATED DAMAGES UNLESS, WITHIN TWENTY (20) DAYS BUYER GIVES ESCROW HOLDER BUYER'S WRITTEN OBJECTION TO DISBURSEMENT OF THE PURCHASE MONEY AS LIQUIDATED DAMAGES ("BUYER'S OBJECTION"). BUYER'S OBJECTION MUST ALSO AFFIRMATIVELY STATE THAT BUYER IS READY, WILLING AND ABLE TO CLOSE ESCROW AS PROVIDED FOR IN THIS AGREEMENT. BUYER'S FAILURE TO SO SPECIFICALLY STATE THAT THEY ARE PREPARED TO PROCEED WITH THE CLOSE OF ESCROW FOR THE PURCHASE OF THE PROPERTY WILL IMMEDIATELY TERMINATE BUYER'S RIGHT TO PURCHASE THE PROPERTY AND ANY SUCH RIGHTS SHALL THEREUPON BECOME NULL AND VOID. SELLER SHALL, IMMEDIATELY UPON GIVING THE SELLER'S NOTICE AND DEMAND, DELIVER TO ESCROW HOLDER ALL PURCHASE MONEY FUNDS OF BUYER HELD BY SELLER OUTSIDE OF ESCROW, IF ANY.
2. BUYER SHALL HAVE A PERIOD OF TWENTY (20) DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND IN WHICH TO GIVE ESCROW HOLDER BUYER'S OBJECTION.
3. IF BUYER FAILS TO GIVE ESCROW HOLDER BUYER'S OBJECTION WITHIN TWENTY (20) DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND: (A) ESCROW HOLDER SHALL PROMPTLY REMIT THE AMOUNT DEMANDED TO SELLER; AND (B) SELLER IS RELEASED FROM ANY OBLIGATION TO SELL THE PROPERTY TO BUYER.
4. IF BUYER GIVES ESCROW HOLDER BUYER'S OBJECTION WITHIN TWENTY (20) DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND, THEN THE CONTROVERSY SHALL BE DETERMINED BY SUBMISSION TO BINDING ARBITRATION AS PROVIDED IN THE PARAGRAPH ENTITLED 'ARBITRATION OF DISPUTES' HEREIN.

SHOULD BUYER NOT AGREE TO THE FOREGOING LIQUIDATED DAMAGES PROVISION, THE AMOUNT SPECIFIED ABOVE SHALL NOT BE CONSIDERED A LIMITATION ON THE AMOUNT OF DAMAGES SELLER MIGHT RECOVER AS A RESULT OF BUYER'S DEFAULT. SELLER AGREES TO INDEMNIFY AND HOLD ESCROW HOLDER HARMLESS FROM ANY CLAIM ARISING OUT OF ANY DISTRIBUTIONS MADE BY ESCROW HOLDER IN ACCORDANCE WITH AND PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH.

D. ARBITRATION OF DISPUTES: ANY BINDING ARBITRATION REQUIRED PURSUANT TO THE FOREGOING PARAGRAPH ENTITLED 'LIQUIDATED DAMAGES' HEREIN MAY INCLUDE A DETERMINATION OF THE REASONABLENESS OF THE AMOUNT TO BE PAID AS LIQUIDATED DAMAGES, THE VALIDITY OF THE FOREGOING LIQUIDATED DAMAGES PROVISION, AND THE DISPOSITION OF THE FUNDS DEPOSITED INTO ESCROW BY BUYER, AND SUCH ARBITRATION SHALL INCLUDE EVERY CAUSE OF ACTION THAT HAS ARISEN BETWEEN BUYER AND SELLER UNDER THIS AGREEMENT AND SHALL BE CONDUCTED AS PROVIDED HEREIN.

IF AFTER THE CLOSE OF ESCROW ANY OTHER CLAIMS, DISPUTES OR CONTROVERSIES ARISE BETWEEN THE PARTIES WITH RESPECT TO THIS AGREEMENT OR THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS BASED UPON ALLEGED LATENT OR PATENT CONSTRUCTION DEFECTS, ALL SUCH MATTER SHALL BE DETERMINED BY ALTERNATIVE DISPUTE RESOLUTION PROCEDURES AS PROVIDED BELOW.

THE RULES AND PROCEDURES FOR BINDING ARBITRATION SHALL BE SUBJECT TO THE FOLLOWING:

- A. THE ARBITRATION SHALL BE CONDUCTED BY JAMS, IF SUCH ENTITY IS THEN IN EXISTENCE, AND, IF NOT, THEN BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA"), AT A LOCATION SELECTED BY THE ARBITRATOR IN THE COUNTY WHERE THE PROPERTY IS LOCATED (OR SUCH OTHER LOCATION AS THE PARTIES MAY AGREE UPON). JAMS OR AAA, AS THE CASE MAY BE, ARE REFERRED TO HEREIN AS THE "ARBITRATION SERVICE". THE ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE RULES AND PROCEDURES OF THE ARBITRATION SERVICE THEN IN EFFECT, EITHER THE STREAMLINED ARBITRATION RULES AND PROCEDURES, OR (IF APPLICABLE) THE COMPREHENSIVE ARBITRATION RULES OF JAMS, OR THE COMMERCIAL ARBITRATION RULES OF THE AAA.

Escrow Instructions Continued On Page Number 24

Seller's Initials ()

Buyer's Initials ()

DS
SW

Escrow Instructions Continued From Page Number 23

Escrow Officer: Ellen Bebo

- B. THE ARBITRATION SHALL BE COMMENCED UPON DELIVERY BY EITHER PARTY TO THE OTHER AND TO THE ARBITRATION SERVICE (AND, IF ESCROW IS STILL OPEN, TO ESCROW HOLDER) OF A WRITTEN DEMAND FOR ARBITRATION, WHICH SHALL SET FORTH WITH SPECIFICITY THE PARTICULARS OF SUCH PARTY'S CLAIM (S), THE ISSUES TO BE SUBMITTED TO ARBITRATION AND THE RELIEF SOUGHT.
- C. SELLER SHALL ADVANCE THE FEES NECESSARY TO INITIATE ARBITRATION, WITH THE COSTS AND FEES, INCLUDING ONGOING COSTS AND FEES TO BE PAID AS AGREED BY THE PARTIES, OR, IF THE PARTIES CANNOT AGREE UPON THE PAYMENT OF THE ONGOING COSTS AND FEES, THEN AS DETERMINED BY THE ARBITRATOR, WITH THE OVERALL COSTS AND FEES OF THE ARBITRATION TO BE ULTIMATELY BORNE AS DETERMINED BY THE ARBITRATOR.
- D. THE ARBITRATION SHALL BE CONDUCTED BY ONE NEUTRAL AND IMPARTIAL ARBITRATOR WHO SHALL BE SELECTED JOINTLY BY THE PARTIES WITHIN FIFTEEN (15) CALENDAR DAYS, AND IN NO EVENT MORE THAN SIXTY (60) DAYS, FOLLOWING DELIVERY OF THE DEMAND FOR ARBITRATION, FROM THE LIST OF THE AVAILABLE ARBITRATORS OF THE ARBITRATION SERVICE WHO ARE RETIRED JUDGES OF THE SUPERIOR COURT. UNLESS SUCH FIFTEEN (15) DAY PERIOD IS EXTENDED BY MUTUAL AGREEMENT OF THE PARTIES, IF THE PARTIES HAVE FAILED TO AGREE UPON AN ARBITRATOR WITHIN SUCH PERIOD, THE ARBITRATION SERVICE SHALL SELECT A RETIRED JUDGE OF THE SUPERIOR COURT FROM ITS LIST AS THE ARBITRATOR TO CONDUCT THE ARBITRATION. IN SELECTING THE ARBITRATOR, THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1297.121 SHALL APPLY AND AN ARBITRATOR MAY BE CHALLENGED FOR ANY OF THE GROUNDS SET FORTH THEREIN, OR IN SECTION 1297.124.
- E. THE ARBITRATION SHALL COMMENCE IN A PROMPT AND TIMELY MANNER ON THE DATE ESTABLISHED (i) IN ACCORDANCE WITH THE RULES OF THE ARBITRATION SERVICE, OR IF THE ARBITRATION SERVICE'S RULES DO NOT SPECIFY A DATE BY WHICH THE ARBITRATION MUST COMMENCE, THEN (ii) BY AGREEMENT OF THE PARTIES, OR IF THEY CANNOT AGREE, THEN (iii) BY THE ARBITRATOR. THE ARBITRATION SHALL BE CONDUCTED BY THE ARBITRATOR IN SUCH A MANNER SO AS TO OBTAIN A PROMPT AND TIMELY CONCLUSION OF THE MATTER.
- F. BUYER AND SELLER SHALL EACH HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL.
- G. THE PARTIES MAY CONDUCT DISCOVERY AS IF THE MATTER WERE PENDING BEFORE A CALIFORNIA COURT AND THE ARBITRATOR SHALL HAVE THE POWER TO ISSUE AND ENFORCE SUBPOENAS AND TO AWARD SANCTIONS; PROVIDED, HOWEVER, THAT THE PARTIES MAY APPLY TO EITHER THE ARBITRATOR OR THE COURTS OF THE STATE OF CALIFORNIA FOR PROTECTIVE ORDERS WITH RESPECT TO SUCH DISCOVERY.
- H. THE ARBITRATOR SHALL BE AUTHORIZED TO PROVIDE ANY REMEDIES OR RELIEF IN LAW OR IN EQUITY, OTHER THAN PUNITIVE DAMAGES, WHICH THE COURTS OF THE STATE OF CALIFORNIA COULD ISSUE BASED UPON THE SAME CLAIMS, FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF THE ARBITRATION. THE ARBITRATOR SHALL FOLLOW THE STANDARDS FOR ISSUING SUCH RELIEF AS DEFINED UNDER CALIFORNIA LAW. THE ARBITRATOR'S JUDGMENT WITH RESPECT TO THE AMOUNT TO BE PAID AS LIQUIDATED DAMAGES, THE VALIDITY OF THE FOREGOING LIQUIDATED DAMAGES PROVISION, AND THE DISPOSITION OF THE FUNDS DEPOSITED INTO ESCROW BY BUYER, AND MATTER RELATED THERETO, SHALL BE FINAL AND BINDING UPON THE PARTIES, SHALL CONSTITUTE MUTUAL WRITTEN ESCROW INSTRUCTIONS TO ESCROW HOLDER, AND MAY BE ENTERED IN ANY COURT OF THE STATE OF CALIFORNIA HAVING JURISDICTION THEREOF. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR WITH RESPECT TO ANY OTHER MATTER IN DISPUTE NOT RELATED TO THE FOREGOING LIQUIDATED DAMAGES PROVISIONS MAY BE ENTERED IN ANY COURT OF THE STATE OF CALIFORNIA HAVING JURISDICTION THEREOF, BUT SUCH JUDGMENT SHALL BE APPEALABLE IN THE SAME MANNER AND SUBJECT TO THE SAME RULES AS APPLY TO THE APPEALS OF JUDGMENTS OF THE COURT IN WHICH SUCH JUDGMENT IS ENTERED. HOWEVER, (OTHER THAN WITH RESPECT TO LIQUIDATED DAMAGES MATTERS), THE FOREGOING SHALL NOT LIMIT THE SCOPE OF REVIEW WHICH WOULD OTHERWISE BE APPLICABLE TO THE ARBITRATION AWARD UNDER CALIFORNIA LAW OF THE RULES OF THE ARBITRATION SERVICE.

NOTICE: BY INITIALING IN THE SPACE BELOW, THE PARTIES ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS ARBITRATION OF DISPUTES PROVISION, AND IN THE

Escrow Instructions Continued On Page Number 25

Seller's Initials (*JS*)Buyer's Initials (*DS*
SW) ()

Escrow Instructions Continued From Page Number 24

Escrow Officer: Ellen Bebo

ARBITRATION OF DISPUTES PROVISION CONTAINED IN THE PARAGRAPH ENTITLED 'ALTERNATE DISPUTE RESOLUTION' HEREIN, DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND THE PARTIES ARE GIVING UP ANY RIGHTS THE PARTIES MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, THE PARTIES ARE GIVING UP THEIR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARBITRATION OF DISPUTES PROVISION. IF THE PARTIES REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, THE PARTIES MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. 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.

Seller's Initials

Buyer's Initials

- 45) This notification is in compliance with the obligations to comply with federal (and state) law to safeguard the parties' non-public, personal information.

We collect nonpublic personal information about the parties from the following sources:

1. Information received from the parties on applications or other forms; and
2. Information about the transaction with us, our affiliates, or other involved in the processing of the transaction; and
3. Information we receive from a consumer reporting agency.

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law and/or as may be necessary in the processing of this transaction.

We restrict access to nonpublic information about the parties to those employees who need to know that information to provide products or services to the parties. We maintain physical, electronic and procedural safeguards that comply with federal and state regulations to guard the parties' non-public, personal information.

- 46) **ENTIRE AGREEMENT:** This Agreement constitutes the sole Agreement between the parties. There are no collateral understandings or representations or agreements other than those contained herein. No salesperson, employee or agent of Seller has authority to modify its terms. All prior agreements, whether oral or written, are hereby superseded.
- 47) **BROKER DISCLOSURE:** The within Buyer hereby acknowledges their awareness of the fact that a Member of the Seller is a California Real Estate Licensed Real Estate Broker, who is acting as a principal in this transaction. In addition said Member is the Broker of record for the Listing Broker, Strategic Realty, wherein Strategic Realty is receiving commission/compensation from Seller.

Escrow Instructions Continued On Page Number 26

Seller's Initials

Buyer's Initials

Escrow Instructions Continued From Page Number 25

Escrow Officer: Ellen Bebo

48) AGENCY CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:

Listing Agent: STRATEGIC REALTY is the agent of the Seller exclusively;

Selling Agent: IREalty Professionals is the agent of the Buyer exclusively.

Real Estate Brokers are not parties to the Agreement between Buyer and Seller.

DD)REAL ESTATE COMMISSION: AT THE CLOSE OF ESCROW PAY COMMISSION TO THE FOLLOWING LICENSED REAL ESTATE BROKER AS A SELLING (BUYER'S) BROKER'S COMMISSION FOR SERVICES RENDERED, WHICH AMOUNT YOU ARE AUTHORIZED TO DEDUCT FROM FUNDS DUE SELLER UNDER THE ABOVE NUMBERED ESCROW. **BROKER COMMISSION SHALL BE PAID ON THE NET SALES PRICE (TOTAL PURCHASE PRICE AS SET FORTH ON PAGE 1 HEREOF, AS ADJUSTED/REDUCED BY ANY SELLER CLOSING COSTS CREDIT TO BUYER).**

Pay commission to: Company: IREalty Professionals % 2.5%

Address: 70 S. Lake Ave. 10th Floor

Pasadena, CA 91101

Agents Name: Lynette Williams

Agent's Phone: (323) 251-6011

Agent's Fax: (866) 892-6168

49) ADDITIONAL TERMS: Addendum #1 is attached and incorporated by reference.

SELLER:

Open House Realty and Investments, LLC
a California limited liability company

_____, Authorized Signer

BUYER:

DocuSigned by:
Skylar Wells
Skylar Wells
A08728AEBB244EF...

Escrow Instructions Continued On Page Number 27

Seller's Initials (SW)

Buyer's Initials (DS) (SW)



CALIFORNIA
ASSOCIATION
OF REALTORS®

ADDENDUM
(C.A.R. Form ADM, Revised 4/12)

No. ONE

The following terms and conditions are hereby incorporated in and made a part of the: ☒ Residential Purchase Agreement, ☐ Manufactured Home Purchase Agreement, ☐ Business Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Vacant Land Purchase Agreement, ☐ Residential Income Property Purchase Agreement, ☐ Commercial Property Purchase Agreement, ☐ Other _____

dated October 25, 2012, on property known as 3345 1/2 Rowena Ave.

in which Skylar Wells is referred to as ("Buyer/Tenant")
and Open House Realty & Investment is referred to as ("Seller/Landlord").

1. Seller agrees to credit Buyer \$10,000 at close of escrow for Buyer Upgrades.
2. Seller to install reflective mirror tinting on glass panels and glass door of lower bedroom located on ground level.
3. Seller to install reflective mirror tinting on glass door at front entryway.*
4. Seller to install reflective mirror tinting on glass doors located off of balcony in living room.
5. Seller to install reflective mirror tinting on glass doors located off of balcony in stairwell off of upper bedroom.
6. Seller to provide a high gloss polyurethane coat to concrete flooring throughout.
7. Purchase to include Refrigerator.
8. Seller agrees to credit buyer 3% of purchase price to be applied to buyer's recurring and non-recurring closing costs for Buyer obtaining a loan through W.J. Bradley Mortgage Capital, LLC.

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

Date 10/27/2012

Date 10/29/12

DocuSigned by:
Buyer/Tenant Skylar Wells
Skylar Wells
A05728AEBB244EF...

Seller/Landlord Open House Realty & Investment

Buyer/Tenant _____

Seller/Landlord _____

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REAL ESTATE BUSINESS SERVICES, INC.
a subsidiary of the California Association of REALTORS®
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ADM REVISED 4/12 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)

Reviewed by _____ Date _____



Agent: Lynette Williams

Phone: 800-588-0021

Fax: 866-892-6168

Prepared using zipForm® software

Broker: IREalty Professionals 70 S. Lake Avenue, 10th Floor Pasadena, CA 91101

Document received by the CA 2nd District Court of Appeal.

00571

CONSTRUCTION CLAIMS STATUTE – EXCERPT FROM CALIFORNIA CIVIL CODE**TITLE 7 - REQUIREMENTS FOR ACTIONS FOR CONSTRUCTION DEFECTS
CHAPTER 1 - DEFINITIONS**

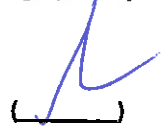
895. (a) "Structure" means any residential dwelling, other building, or improvement located upon a lot or within a common area.
- (b) "Designed moisture barrier" means an installed moisture barrier specified in the plans and specifications, contract documents, or manufacturer's recommendations.
- (c) "Actual moisture barrier" means any component or material, actually installed, that serves to any degree as a barrier against moisture, whether or not intended as such.
- (d) "Unintended water" means water that passes beyond, around, or through a component or the material that is designed to prevent that passage.
- (e) "Close of escrow" means the date of the close of escrow between the builder and the original homeowner. With respect to claims by an association, as defined in subdivision (a) of Section 1351, "close of escrow" means the date of substantial completion, as defined in Section 337.15 of the Code of Civil Procedure, or the date the builder relinquishes control over the association's ability to decide whether to initiate a claim under this title, whichever is later.
- (f) "Claimant" or "homeowner" includes the individual owners of single-family homes, individual unit owners of attached dwellings and, in the case of a common interest development, any association as defined in subdivision (a) of Section 1351.

CHAPTER 2 - ACTIONABLE DEFECTS

896. In any action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, a builder, and to the extent set forth in Chapter 4 (commencing with Section 910), a general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, shall, except as specifically set forth in this title, be liable for, and the claimant's claims or causes of action shall be limited to violation of, the following standards, except as specifically set forth in this title. This title applies to original construction intended to be sold as an individual dwelling unit. As to condominium conversions, this title does not apply to or does not supersede any other statutory or common law.

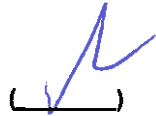
(A) With respect to water issues:

- (1) A door shall not allow unintended water to pass beyond, around, or through the door or its designed or actual moisture barriers, if any.
- (2) Windows, patio doors, deck doors, and their systems shall not allow water to pass beyond, around, or through the window, patio door, or deck door or its designed or actual moisture barriers, including, without limitation, internal barriers within the systems themselves. For purposes of this paragraph, "systems" include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.
- (3) Windows, patio doors, deck doors, and their systems shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.
- (4) Roofs, roofing systems, chimney caps, and ventilation components shall not allow water to enter the structure or to pass beyond, around, or through the designed or actual moisture barriers, including, without limitation, internal barriers located within the systems themselves. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, and sheathing, if any.
- (5) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow water to pass into the adjacent structure. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashing, and sheathing, if any.
- (6) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow unintended water to pass within the systems themselves and cause damage to the systems. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashing, and sheathing, if any.

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Escrow Instructions Continued From Page Number 27**Escrow Officer: Ellen Bebo**

- (7) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to cause damage to another building component.
 - (8) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to limit the installation of the type of flooring materials typically used for the particular application.
 - (9) Hardscape, including paths and patios, irrigation systems, landscaping systems, and drainage systems, that are installed as part of the original construction, shall not be installed in such a way as to cause water or soil erosion to enter into or come in contact with the structure so as to cause damage to another building component.
 - (10) Stucco, exterior siding, exterior walls, including, without limitation, exterior framing, and other exterior wall finishes and fixtures and the systems of those components and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall be installed in such a way so as not to allow unintended water to pass into the structure or to pass beyond, around, or through the designed or actual moisture barriers of the system, including any internal barriers located within the system itself. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.
 - (11) Stucco, exterior siding, and exterior walls shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.
 - (12) Retaining and site walls and their associated drainage systems shall not allow unintended water to pass beyond, around, or through its designed or actual moisture barriers including, without limitation, any internal barriers, so as to cause damage. This standard does not apply to those portions of any wall or drainage system that are designed to have water flow beyond, around, or through them.
 - (13) Retaining walls and site walls, and their associated drainage systems, shall only allow water to flow beyond, around, or through the areas designated by design.
 - (14) The lines and components of the plumbing system, sewer system, and utility systems shall not leak.
 - (15) Plumbing lines, sewer lines, and utility lines shall not corrode so as to impede the useful life of the systems.
 - (16) Sewer systems shall be installed in such a way as to allow the designated amount of sewage to flow through the system.
 - (17) Shower and bath enclosures shall not leak water into the interior of walls, flooring systems, or the interior of other components.
 - (18) Ceramic tile and tile countertops shall not allow water into the interior of walls, flooring systems, or other components so as to cause damage.
- (B) With respect to structural issues:
- (1) Foundations, load bearing components, and slabs, shall not contain significant cracks or significant vertical displacement.
 - (2) Foundations, load bearing components, and slabs shall not cause the structure, in whole or in part, to be structurally unsafe.
 - (3) Foundations, load bearing components, and slabs, and underlying soils shall be constructed so as to materially comply with the design criteria set by applicable government building codes, regulations, and ordinances for chemical deterioration or corrosion resistance in effect at the time of original construction.
 - (4) A structure shall be constructed so as to materially comply with the design criteria for earthquake and wind load resistance, as set forth in the applicable government building codes, regulations, and ordinances in effect at the time of original construction.
- (C) With respect to soil issues:
- (1) Soils and engineered retaining walls shall not cause, in whole or in part, damage to the structure built upon the soil or engineered retaining wall.
 - (2) Soils and engineered retaining walls shall not cause, in whole or in part, the structure to be structurally unsafe.

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

Escrow Instructions Continued From Page Number 28**Escrow Officer: Ellen Bebo**

- (3) Soils shall not cause, in whole or in part, the land upon which no structure is built to become unusable for the purpose represented at the time of original sale by the builder or for the purpose for which that land is commonly used.

(D) With respect to fire protection issues:

- (1) A structure shall be constructed so as to materially comply with the design criteria of the applicable government building codes, regulations, and ordinances for fire protection of the occupants in effect at the time of the original construction.
- (2) Fireplaces, chimneys, chimney structures, and chimney termination caps shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire outside the fireplace enclosure or chimney.
- (3) Electrical and mechanical systems shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire.

(E) With respect to plumbing and sewer issues:

Plumbing and sewer systems shall be installed to operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action may be brought for a violation of this subdivision more than four years after close of escrow.

(F) With respect to electrical system issues:

Electrical systems shall operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action shall be brought pursuant to this subdivision more than four years from close of escrow.

(G) With respect to issues regarding other areas of construction:

- (1) Exterior pathways, driveways, hardscape, sidewalls, sidewalks, and patios installed by the original builder shall not contain cracks that display significant vertical displacement or that are excessive. However, no action shall be brought upon a violation of this paragraph more than four years from close of escrow.
- (2) Stucco, exterior siding, and other exterior wall finishes and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall not contain significant cracks or separations.
- (3) (a) To the extent not otherwise covered by these standards, manufactured products, including, but not limited to, windows, doors, roofs, plumbing products and fixtures, fireplaces, electrical fixtures, HVAC units, countertops, cabinets, paint, and appliances shall be installed so as not to interfere with the products' useful life, if any.
- (b) For purposes of this paragraph, "useful life" means a representation of how long a product is warranted or represented, through its limited warranty or any written representations, to last by its manufacturer, including recommended or required maintenance. If there is no representation by a manufacturer, a builder shall install manufactured products so as not to interfere with the product's utility.
- (c) For purposes of this paragraph, "manufactured product" means a product that is completely manufactured offsite.
- (d) If no useful life representation is made, or if the representation is less than one year, the period shall be no less than one year. If a manufactured product is damaged as a result of a violation of these standards, damage to the product is a recoverable element of damages. This subparagraph does not limit recovery if there has been damage to another building component caused by a manufactured product during the manufactured product's useful life.
- (e) This title does not apply in any action seeking recovery solely for a defect in a manufactured product located within or adjacent to a structure.
- (4) Heating, if any, shall be installed so as to be capable of maintaining a room temperature of 70 degrees Fahrenheit at a point three feet above the floor in any living space.
- (5) Living space air-conditioning, if any, shall be provided in a manner consistent with the size and efficiency design criteria specified in Title 24 of the California Code of Regulations or its successor.
- (6) Attached structures shall be constructed to comply with inter unit noise transmission standards set by the applicable government building codes, ordinances, or regulations in effect at the time of the original

Seller's Initials ()

Buyer's Initials () ()

Escrow Instructions Continued From Page Number 29**Escrow Officer: Ellen Bebo**

construction. If there is no applicable code, ordinance, or regulation, this paragraph does not apply. However, no action shall be brought pursuant to this paragraph more than one year from the original occupancy of the adjacent unit.

- (7) Irrigation systems and drainage shall operate properly so as not to damage landscaping or other external improvements. However, no action shall be brought pursuant to this paragraph more than one year from close of escrow.
- (8) Untreated wood posts shall not be installed in contact with soil so as to cause unreasonable decay to the wood based upon the finish grade at the time of original construction. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.
- (9) Untreated steel fences and adjacent components shall be installed so as to prevent unreasonable corrosion. However, no action shall be brought pursuant to this paragraph more than four years from close of escrow.
- (10) Paint and stains shall be applied in such a manner so as not to cause deterioration of the building surfaces for the length of time specified by the paint or stain manufacturers' representations, if any. However, no action shall be brought pursuant to this paragraph more than five years from close of escrow.
- (11) Roofing materials shall be installed so as to avoid materials falling from the roof.
- (12) The landscaping systems shall be installed in such a manner so as to survive for not less than one year. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.
- (13) Ceramic tile and tile backing shall be installed in such a manner that the tile does not detach.
- (14) Dryer ducts shall be installed and terminated pursuant to manufacturer installation requirements. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.
- (15) Structures shall be constructed in such a manner so as not to impair the occupants' safety because they contain public health hazards as determined by a duly authorized public health official, health agency, or governmental entity having jurisdiction. This paragraph does not limit recovery for any damages caused by a violation of any other paragraph of this section on the grounds that the damages do not constitute a health hazard.

897. The standards set forth in this chapter are intended to address every function or component of a structure. To the extent that a function or component of a structure is not addressed by these standards, it shall be actionable if it causes damage.

CHAPTER 3 - OBLIGATIONS

900. As to fit and finish items, a builder shall provide a homebuyer with a minimum one-year express written limited warranty covering the fit and finish of the following building components. Except as otherwise provided by the standards specified in Chapter 2 (commencing with Section 896), this warranty shall cover the fit and finish of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim, but shall not apply to damage to those components caused by defects in other components governed by the other provisions of this title. Any fit and finish matters covered by this warranty are not subject to the provisions of this title. If a builder fails to provide the express warranty required by this section, the warranty for these items shall be for a period of one year.
901. A builder may, but is not required to, offer greater protection or protection for longer time periods in its express contract with the homeowner than that set forth in Chapter 2 (commencing with Section 896). A builder may not limit the application of Chapter 2 (commencing with Section 896) or lower its protection through the express contract with the homeowner. This type of express contract constitutes an "enhanced protection agreement."
902. If a builder offers an enhanced protection agreement, the builder may choose to be subject to its own express contractual provisions in place of the provisions set forth in Chapter 2 (commencing with Section 896). If an enhanced protection agreement is in place, Chapter 2 (commencing with Section 896) no longer applies other than to set forth minimum provisions by which to judge the enforceability of the particular provisions of the enhanced protection agreement.
903. If a builder offers an enhanced protection agreement in place of the provisions set forth in Chapter 2 (commencing with Section 896), the election to do so shall be made in writing with the homeowner no later than

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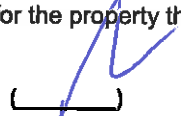
Escrow Instructions Continued From Page Number 30**Escrow Officer: Ellen Bebo**

the close of escrow. The builder shall provide the homeowner with a complete copy of Chapter 2 (commencing with Section 896) and advise the homeowner that the builder has elected not to be subject to its provisions. If any provision of an enhanced protection agreement is later found to be unenforceable as not meeting the minimum standards of Chapter 2 (commencing with Section 896), a builder may use this chapter in lieu of those provisions found to be unenforceable.

904. If a builder has elected to use an enhanced protection agreement, and a homeowner disputes that the particular provision or time periods of the enhanced protection agreement are not greater than, or equal to, the provisions of Chapter 2 (commencing with Section 896) as they apply to the particular deficiency alleged by the homeowner, the homeowner may seek to enforce the application of the standards set forth in this chapter as to those claimed deficiencies. If a homeowner seeks to enforce a particular standard in lieu of a provision of the enhanced protection agreement, the homeowner shall give the builder written notice of that intent at the time the homeowner files a notice of claim pursuant to Chapter 4 (commencing with Section 910).
905. If a homeowner seeks to enforce Chapter 2 (commencing with Section 896), in lieu of the enhanced protection agreement in a subsequent litigation or other legal action, the builder shall have the right to have the matter bifurcated, and to have an immediately binding determination of his or her responsive pleading within 60 days after the filing of that pleading, but in no event after the commencement of discovery, as to the application of either Chapter 2 (commencing with Section 896) or the enhanced protection agreement as to the deficiencies claimed by the homeowner. If the builder fails to seek that determination in the timeframe specified, the builder waives the right to do so and the standards set forth in this title shall apply. As to any non-original homeowner, that homeowner shall be deemed in privity for purposes of an enhanced protection agreement only to the extent that the builder has recorded the enhanced protection agreement on title or provided actual notice to the non-original homeowner of the enhanced protection agreement. If the enhanced protection agreement is not recorded on title or no actual notice has been provided, the standards set forth in this title apply to any non-original homeowners' claims.
906. A builder's election to use an enhanced protection agreement addresses only the issues set forth in Chapter 2 (commencing with Section 896) and does not constitute an election to use or not use the provisions of Chapter 4 (commencing with Section 910). The decision to use or not use Chapter 4 (commencing with Section 910) is governed by the provisions of that chapter.
907. A homeowner is obligated to follow all reasonable maintenance obligations and schedules communicated in writing to the homeowner by the builder and product manufacturers, as well as commonly accepted maintenance practices. A failure by a homeowner to follow these obligations, schedules, and practices may subject the homeowner to the affirmative defenses contained in Section 944.

CHAPTER 4 - PRELITIGATION PROCEDURE

910. Prior to filing an action against any party alleged to have contributed to a violation of the standards set forth in Chapter 2 (commencing with Section 896), the claimant shall initiate the following pre-litigation procedures:
- (a) The claimant or his or her legal representative shall provide written notice via certified mail, overnight mail, or personal delivery to the builder, in the manner prescribed in this section, of the claimant's claim that the construction of his or her residence violates any of the standards set forth in Chapter 2 (commencing with Section 896). That notice shall provide the claimant's name, address, and preferred method of contact, and shall state that the claimant alleges a violation pursuant to this part against the builder, and shall describe the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation. In the case of a group of homeowners or an association, the notice may identify the claimants solely by address or other description sufficient to apprise the builder of the locations of the subject residences. That document shall have the same force and effect as a notice of commencement of a legal proceeding.
- (b) The notice requirements of this section do not preclude a homeowner from seeking redress through any applicable normal customer service procedure as set forth in any contractual, warranty, or other builder-generated document; and, if a homeowner seeks to do so, that request shall not satisfy the notice requirements of this section.
911. (a) For purposes of this title, except as provided in subdivision (b), "builder" means any entity or individual, including, but not limited to a builder, developer, general contractor, contractor, or original seller, who, at the time of sale, was also in the business of selling residential units to the public for the property that is the subject of the homeowner's claim or was in the business of building, developing, or constructing residential units for public purchase for the property that is the subject of the homeowner's claim.

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Escrow Instructions Continued From Page Number 31**Escrow Officer: Ellen Bebo**

- (b) For the purposes of this title, "builder" does not include any entity or individual whose involvement with a residential unit that is the subject of the homeowner's claim is limited to his or her capacity as general contractor or contractor and who is not a partner, member of, subsidiary of, or otherwise similarly affiliated with the builder. For purposes of this title, these nonaffiliated general contractors and nonaffiliated contractors shall be treated the same as subcontractors, material suppliers, individual product manufacturers, and design professionals.

912. A builder shall do all of the following:

- (a) Within 30 days of a written request by a homeowner or his or her legal representative, the builder shall provide copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations, that pertain to a homeowner's residence specifically or as part of a larger development tract. The request shall be honored if it states that it is made relative to structural, fire safety, or soils provisions of this title. However, a builder is not obligated to provide a copying service, and reasonable copying costs shall be borne by the requesting party. A builder may require that the documents be copied onsite by the requesting party, except that the homeowner may, at his or her option, use his or her own copying service, which may include an offsite copy facility that is bonded and insured. If a builder can show that the builder maintained the documents, but that they later became unavailable due to loss or destruction that was not the fault of the builder, the builder may be excused from the requirements of this subdivision, in which case the builder shall act with reasonable diligence to assist the homeowner in obtaining those documents from any applicable government authority or from the source that generated the document. However, in that case, the time limits specified by this section do not apply.
- (b) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, the builder shall provide to the homeowner or his or her legal representative copies of all maintenance and preventative maintenance recommendations that pertain to his or her residence within 30 days of service of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.
- (c) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all manufactured products maintenance, preventive maintenance, and limited warranty information within 30 days of a written request for those documents. These documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.
- (d) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all of the builder's limited contractual warranties in accordance with this part in effect at the time of the original sale of the residence within 30 days of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.
- (e) A builder shall maintain the name and address of an agent for notice pursuant to this chapter with the Secretary of State or, alternatively, elect to use a third party for that notice if the builder has notified the homeowner in writing of the third party's name and address, to whom claims and requests for information under this section may be mailed. The name and address of the agent for notice or third party shall be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative. This subdivision applies to instances in which a builder contracts with a third party to accept claims and act on the builder's behalf. A builder shall give actual notice to the homeowner that the builder has made such an election, and shall include the name and address of the third party.
- (f) A builder shall record on title a notice of the existence of these procedures and a notice that these procedures impact the legal rights of the homeowner. This information shall also be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.
- (g) A builder shall provide, with the original sales documentation, a written copy of this title, which shall be initialed and acknowledged by the purchaser and the builder's sales representative.
- (h) As to any documents provided in conjunction with the original sale, the builder shall instruct the original purchaser to provide those documents to any subsequent purchaser.

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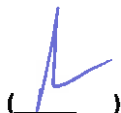
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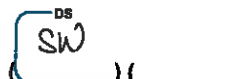
Escrow Instructions Continued From Page Number 32**Escrow Officer: Ellen Bebo**

- (i) Any builder who fails to comply with any of these requirements within the time specified is not entitled to the protection of this chapter, and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action, in which case the remaining chapters of this part shall continue to apply to the action.
913. A builder or his or her representative shall acknowledge, in writing, receipt of the notice of the claim within 14 days after receipt of the notice of the claim. If the notice of the claim is served by the claimant's legal representative, or if the builder receives a written representation letter from a homeowner's attorney, the builder shall include the attorney in all subsequent substantive communications, including, without limitation, all written communications occurring pursuant to this chapter, and all substantive and procedural communications, including all written communications, following the commencement of any subsequent complaint or other legal action, except that if the builder has retained or involved legal counsel to assist the builder in this process, all communications by the builder's counsel shall only be with the claimant's legal representative, if any.
914. (a) This chapter establishes a non-adversarial procedure, including the remedies available under this chapter which, if the procedure does not resolve the dispute between the parties, may result in a subsequent action to enforce the other chapters of this title. A builder may attempt to commence non-adversarial contractual provisions other than the non-adversarial procedures and remedies set forth in this chapter, but may not, in addition to its own non-adversarial contractual provisions, require adherence to the non-adversarial procedures and remedies set forth in this chapter, regardless of whether the builder's own alternative non-adversarial contractual provisions are successful in resolving the dispute or ultimately deemed enforceable.
- At the time the sales agreement is executed, the builder shall notify the homeowner whether the builder intends to engage in the non-adversarial procedure of this section or attempt to enforce alternative non-adversarial contractual provisions. If the builder elects to use alternative non-adversarial contractual provisions in lieu of this chapter, the election is binding, regardless of whether the builder's alternative non-adversarial contractual provisions are successful in resolving the ultimate dispute or are ultimately deemed enforceable.
- (b) Nothing in this title is intended to affect existing statutory or decisional law pertaining to the applicability, viability, or enforceability of alternative dispute resolution methods, alternative remedies, or contractual arbitration, judicial reference, or similar procedures requiring a binding resolution to enforce the other chapters of this title or any other disputes between homeowners and builders. Nothing in this title is intended to affect the applicability, viability, or enforceability, if any, of contractual arbitration or judicial reference after a non-adversarial procedure or provision has been completed.
915. If a builder fails to acknowledge receipt of the notice of a claim within the time specified, elects not to go through the process set forth in this chapter, or fails to request an inspection within the time specified, or at the conclusion or cessation of an alternative non adversarial proceeding, this chapter does not apply and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.
916. (a) If a builder elects to inspect the claimed unmet standards, the builder shall complete the initial inspection and testing within 14 days after acknowledgment of receipt of the notice of the claim, at a mutually convenient date and time. If the homeowner has retained legal representation, the inspection shall be scheduled with the legal representative's office at a mutually convenient date and time, unless the legal representative is unavailable during the relevant time periods. All costs of builder inspection and testing, including any damage caused by the builder inspection, shall be borne by the builder. The builder shall also provide written proof that the builder has liability insurance to cover any damages or injuries occurring during inspection and testing. The builder shall restore the property to its pre-testing condition within 48 hours of the testing. The builder shall, upon request, allow the inspections to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative.
- (b) Nothing that occurs during a builder's or claimant's inspection or testing may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.
- (c) If a builder deems a second inspection or testing reasonably necessary, and specifies the reasons therefore in writing within three days following the initial inspection, the builder may conduct a second inspection or testing. A second inspection or testing shall be completed within 40 days of the initial inspection or testing. All requirements concerning the initial inspection or testing shall also apply to the second inspection or testing.

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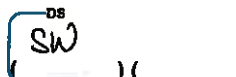
Escrow Officer: Ellen Bebo

- (d) If the builder fails to inspect or test the property within the time specified, the claimant is released from the requirements of this section and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.
- (e) If a builder intends to hold a subcontractor, design professional, individual product manufacturer, or material supplier, including an insurance carrier, warranty company, or service company, responsible for its contribution to the unmet standard, the builder shall provide notice to that person or entity sufficiently in advance to allow them to attend the initial, or if requested, second inspection of any alleged unmet standard and to participate in the repair process. The claimant and his or her legal representative, if any, shall be advised in a reasonable time prior to the inspection as to the identity of all persons or entities invited to attend. This subdivision does not apply to the builder's insurance company. Except with respect to any claims involving a repair actually conducted under this chapter, nothing in this subdivision shall be construed to relieve a subcontractor, design professional, individual product manufacturer, or material supplier of any liability under an action brought by a claimant.
917. Within 30 days of the initial or, if requested, second inspection or testing, the builder may offer in writing to repair the violation. The offer to repair shall also compensate the homeowner for all applicable damages recoverable under Section 944, within the timeframe for the repair set forth in this chapter. Any such offer shall be accompanied by a detailed, specific, step-by-step statement identifying the particular violation that is being repaired, explaining the nature, scope, and location of the repair, and setting a reasonable completion date for the repair. The offer shall also include the names, addresses, telephone numbers, and license numbers of the contractors whom the builder intends to have perform the repair. Those contractors shall be fully insured for, and shall be responsible for, all damages or injuries that they may cause to occur during the repair, and evidence of that insurance shall be provided to the homeowner upon request. Upon written request by the homeowner or his or her legal representative, and within the timeframes set forth in this chapter, the builder shall also provide any available technical documentation, including, without limitation, plans and specifications, pertaining to the claimed violation within the particular home or development tract. The offer shall also advise the homeowner in writing of his or her right to request up to three additional contractors from which to select to do the repair pursuant to this chapter.
918. Upon receipt of the offer to repair, the homeowner shall have 30 days to authorize the builder to proceed with the repair. The homeowner may alternatively request, at the homeowner's sole option and discretion, that the builder provide the names, addresses, telephone numbers, and license numbers for up to three alternative contractors who are not owned or financially controlled by the builder and who regularly conduct business in the county where the structure is located. If the homeowner so elects, the builder is entitled to an additional noninvasive inspection, to occur at a mutually convenient date and time within 20 days of the election, so as to permit the other proposed contractors to review the proposed site of the repair. Within 35 days after the request of the homeowner for alternative contractors, the builder shall present the homeowner with a choice of contractors. Within 20 days after that presentation, the homeowner shall authorize the builder or one of the alternative contractors to perform the repair.
919. The offer to repair shall also be accompanied by an offer to mediate the dispute if the homeowner so chooses. The mediation shall be limited to a four hour mediation, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator, and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation occurs within 15 days after the request to mediate is received and occurs at a mutually convenient location within the county where the action is pending. If a builder has made an offer to repair a violation, and the mediation has failed to resolve the dispute, the homeowner shall allow the repair to be performed either by the builder, its contractor, or the selected contractor.
920. If the builder fails to make an offer to repair or otherwise strictly comply with this chapter within the times specified, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If the contractor performing the repair does not complete the repair in the time or manner specified, the claimant may file an action. If this occurs, the standards set forth in the other chapters of this part shall continue to apply to the action.
921. (a) In the event that a resolution under this chapter involves a repair by the builder, the builder shall make an appointment with the claimant, make all appropriate arrangements to effectuate a repair of the claimed unmet standards, and compensate the homeowner for all damages resulting therefrom free of charge to the claimant. The repair shall be scheduled through the claimant's legal representative, if any, unless he or she is unavailable during the relevant time periods. The repair shall be commenced on a mutually convenient date

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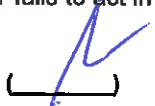


Escrow Instructions Continued From Page Number 34

Escrow Officer: Ellen Bebo

within 14 days of acceptance or, if an alternative contractor is selected by the homeowner, within 14 days of the selection, or, if a mediation occurs, within seven days of the mediation, or within five days after a permit is obtained if one is required. The builder shall act with reasonable diligence in obtaining any such permit.

- (b) The builder shall ensure that work done on the repairs is done with the utmost diligence, and that the repairs are completed as soon as reasonably possible, subject to the nature of the repair or some unforeseen event not caused by the builder or the contractor performing the repair. Every effort shall be made to complete the repair within 120 days.
922. The builder shall, upon request, allow the repair to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative. Nothing that occurs during the repair process may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.
923. The builder shall provide the homeowner or his or her legal representative, upon request, with copies of all correspondence, photographs, and other materials pertaining or relating in any manner to the repairs.
924. If the builder elects to repair some, but not all of, the claimed unmet standards, the builder shall, at the same time it makes its offer, set forth with particularity in writing the reasons, and the support for those reasons, for not repairing all claimed unmet standards.
925. If the builder fails to complete the repair within the time specified in the repair plan, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If this occurs, the standards set forth in the other chapters of this title shall continue to apply to the action.
926. The builder may not obtain a release or waiver of any kind in exchange for the repair work mandated by this chapter. At the conclusion of the repair, the claimant may proceed with filing an action for violation of the applicable standard or for a claim of inadequate repair, or both, including all applicable damages available under Section 944.
927. If the applicable statute of limitations has otherwise run during this process, the time period for filing a complaint or other legal remedies for violation of any provision of this title, or for a claim of inadequate repair, is extended from the time of the original claim by the claimant to 100 days after the repair is completed, whether or not the particular violation is the one being repaired. If the builder fails to acknowledge the claim within the time specified, elects not to go through this statutory process, or fails to request an inspection within the time specified, the time period for filing a complaint or other legal remedies for violation of any provision of this title is extended from the time of the original claim by the claimant to 45 days after the time for responding to the notice of claim has expired. If the builder elects to attempt to enforce its own non-adversarial procedure in lieu of the procedure set forth in this chapter, the time period for filing a complaint or other legal remedies for violation of any provision of this part is extended from the time of the original claim by the claimant to 100 days after either the completion of the builder's alternative non-adversarial procedure, or 100 days after the builder's alternative non-adversarial procedure is deemed unenforceable, whichever is later.
928. If the builder has invoked this chapter and completed a repair, prior to filing an action, if there has been no previous mediation between the parties, the homeowner or his or her legal representative shall request mediation in writing. The mediation shall be limited to four hours, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation will occur within 15 days after the request for mediation is received and shall occur at a mutually convenient location within the county where the action is pending. In the event that a mediation is used at this point, any applicable statutes of limitations shall be tolled from the date of the request to mediate until the next court day after the mediation is completed, or the 100-day period, whichever is later.
929. (a) Nothing in this chapter prohibits the builder from making only a cash offer and no repair. In this situation, the homeowner is free to accept the offer, or he or she may reject the offer and proceed with the filing of an action. If the latter occurs, the standards of the other chapters of this title shall continue to apply to the action.
- (b) The builder may obtain a reasonable release in exchange for the cash payment. The builder may negotiate the terms and conditions of any reasonable release in terms of scope and consideration in conjunction with a cash payment under this chapter.
930. (a) The time periods and all other requirements in this chapter are to be strictly construed, and, unless extended by the mutual agreement of the parties in accordance with this chapter, shall govern the rights and obligations under this title. If a builder fails to act in accordance with this section within the timeframes mandated, unless

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Escrow Instructions Continued From Page Number 35**Escrow Officer: Ellen Bebo**

extended by the mutual agreement of the parties as evidenced by a post claim written confirmation by the affected homeowner demonstrating that he or she has knowingly and voluntarily extended the statutory timeframe, the claimant may proceed with filing an action. If this occurs, the standards of the other chapters of this title shall continue to apply to the action.

- (b) If the claimant does not conform with the requirements of this chapter, the builder may bring a motion to stay any subsequent court action or other proceeding until the requirements of this chapter have been satisfied. The court, in its discretion, may award the prevailing party on such a motion, his or her attorney's fees and costs in bringing or opposing the motion.
931. If a claim combines causes of action or damages not covered by this part, including, without limitation, personal injuries, class actions, other statutory remedies, or fraud-based claims, the claimed unmet standards shall be administered according to this part, although evidence of the property in its unrepaired condition may be introduced to support the respective elements of any such cause of action. As to any fraud-based claim, if the fact that the property has been repaired under this chapter is deemed admissible, the trier of fact shall be informed that the repair was not voluntarily accepted by the homeowner. As to any class action claims that address solely the incorporation of a defective component into a residence, the named and unnamed class members need not comply with this chapter.
932. Subsequently discovered claims of unmet standards shall be administered separately under this chapter, unless otherwise agreed to by the parties. However, in the case of a detached single family residence, in the same home, if the subsequently discovered claim is for a violation of the same standard as that which has already been initiated by the same claimant and the subject of a currently pending action, the claimant need not reinstate the process as to the same standard. In the case of an attached project, if the subsequently discovered claim is for a violation of the same standard for a connected component system in the same building as has already been initiated by the same claimant, and the subject of a currently pending action, the claimant need not reinstate this process as to that standard.
933. If any enforcement of these standards is commenced, the fact that a repair effort was made may be introduced to the trier of fact. However, the claimant may use the condition of the property prior to the repair as the basis for contending that the repair work was inappropriate, inadequate, or incomplete, or that the violation still exists. The claimant need not show that the repair work resulted in further damage nor that damage has continued to occur as a result of the violation.
934. Evidence of both parties' conduct during this process may be introduced during a subsequent enforcement action, if any, with the exception of any mediation. Any repair efforts undertaken by the builder, shall not be considered settlement communications or offers of settlement and are not inadmissible in evidence on such a basis.
935. To the extent that provisions of this chapter are enforced and those provisions are substantially similar to provisions in Section 1375 of the Civil Code, but an action is subsequently commenced under Section 1375 of the Civil Code, the parties are excused from performing the substantially similar requirements under Section 1375 of the Civil Code.
936. Each and every provision of the other chapters of this title apply to general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals to the extent that the general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals caused, in whole or in part, a violation of a particular standard as the result of a negligent act or omission or a breach of contract. In addition to the affirmative defenses set forth in Section 945.5, a general contractor, subcontractor, material supplier, design professional, individual product manufacturer, or other entity may also offer common law and contractual defenses as applicable to any claimed violation of a standard. All actions by a claimant or builder to enforce an express contract, or any provision thereof, against a general contractor, subcontractor, material supplier, individual product manufacturer, or design professional is preserved. Nothing in this title modifies the law pertaining to joint and several liability for builders, general contractors, subcontractors, material suppliers, individual product manufacturer, and design professionals that contribute to any specific violation of this title. However, the negligence standard in this section does not apply to any general contractor, subcontractor, material supplier, individual product manufacturer, or design professional with respect to claims for which strict liability would apply.
937. Nothing in this title shall be interpreted to eliminate or abrogate the requirement to comply with Section 411.35 of the Code of Civil Procedure or to affect the liability of design professionals, including architects and architectural firms, for claims and damages not covered by this title.

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Escrow Instructions Continued From Page Number 36**Escrow Officer: Ellen Bebo**

938. This title applies only to new residential units where the purchase agreement with the buyer was signed by the seller on or after January 1, 2003.

CHAPTER 5 - PROCEDURE

941. (a) Except as specifically set forth in this title, no action may be brought to recover under this title more than 10 years after substantial completion of the improvement but not later than the date of recordation of a valid notice of completion.
- (b) As used in this section, "action" includes an action for indemnity brought against a person arising out of that person's performance or furnishing of services or materials referred to in this title, except that a cross-complaint for indemnity may be filed pursuant to subdivision (b) of Section 428.10 of the Code of Civil Procedure in an action which has been brought within the time period set forth in subdivision (a).
- (c) The limitation prescribed by this section may not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to make a claim or bring an action.
- (d) Sections 337.15 and 337.1 of the Code of Civil Procedure do not apply to actions under this title.
- (e) Existing statutory and decisional law regarding tolling of the statute of limitations shall apply to the time periods for filing an action or making a claim under this title, except that repairs made pursuant to Chapter 4 (commencing with Section 910), with the exception of the tolling provision contained in Section 927, do not extend the period for filing an action, or restart the time limitations contained in subdivision (a) or (b) of Section 7091 of the Business and Professions Code. If a builder arranges for a contractor to perform a repair pursuant to Chapter 4 (commencing with Section 910), as to the builder the time period for calculating the statute of limitation in subdivision (a) or (b) of Section 7091 of the Business and Professions Code shall pertain to the substantial completion of the original construction and not to the date of repairs under this title. The time limitations established by this title do not apply to any action by a claimant for a contract or express contractual provision.
- Causes of action and damages to which this chapter does not apply are not limited by this section.
942. In order to make a claim for violation of the standards set forth in Chapter 2 (commencing with Section 896), a homeowner need only demonstrate, in accordance with the applicable evidentiary standard, that the home does not meet the applicable standard, subject to the affirmative defenses set forth in Section 945.5. No further showing of causation or damages is required to meet the burden of proof regarding a violation of a standard set forth in Chapter 2 (commencing with Section 896), provided that the violation arises out of, pertains to, or is related to, the original construction.
943. (a) Except as provided in this title, no other cause of action for a claim covered by this title or for damages recoverable under Section 944 is allowed. In addition to the rights under this title, this title does not apply to any action by a claimant to enforce a contract or express contractual provision, or any action for fraud, personal injury, or violation of a statute. Damages awarded for the items set forth in Section 944 in such other cause of action shall be reduced by the amounts recovered pursuant to Section 944 for violation of the standards set forth in this title.
- (b) As to any claims involving a detached single-family home, the homeowner's right to the reasonable value of repairing any nonconformity is limited to the repair costs, or the diminution in current value of the home caused by the nonconformity, whichever is less, subject to the personal use exception as developed under common law.
944. If a claim for damages is made under this title, the homeowner is only entitled to damages for the reasonable value of repairing any violation of the standards set forth in this title, the reasonable cost of repairing any damages caused by the repair efforts, the reasonable cost of repairing and rectifying any damages resulting from the failure of the home to meet the standards, the reasonable cost of removing and replacing any improper repair by the builder, reasonable relocation and storage expenses, lost business income if the home was used as a principal place of a business licensed to be operated from the home, reasonable investigative costs for each established violation, and all other costs or fees recoverable by contract or statute.
945. The provisions, standards, rights, and obligations set forth in this title are binding upon all original purchasers and their successors-in-interest. For purposes of this title, associations and others having the rights set forth in

Seller's Initials Buyer's Initials  ()

Escrow Instructions Continued From Page Number 37**Escrow Officer: Ellen Bebo**

Section 383 of the Code of Civil Procedure shall be considered to be original purchasers and shall have standing to enforce the provisions, standards, rights, and obligations set forth in this title.

945.5 A builder, general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, under the principles of comparative fault pertaining to affirmative defenses, may be excused, in whole or in part, from any obligation, damage, loss, or liability if the builder, general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, can demonstrate any of the following affirmative defenses in response to a claimed violation:

- (a) To the extent it is caused by an unforeseen act of nature which caused the structure not to meet the standard. For purposes of this section an "unforeseen act of nature" means a weather condition, earthquake, or manmade event such as war, terrorism, or vandalism, in excess of the design criteria expressed by the applicable building codes, regulations, and ordinances in effect at the time of original construction.
- (b) To the extent it is caused by a homeowner's unreasonable failure to minimize or prevent those damages in a timely manner, including the failure of the homeowner to allow reasonable and timely access for inspections and repairs under this title. This includes the failure to give timely notice to the builder after discovery of a violation, but does not include damages due to the untimely or inadequate response of a builder to the homeowner's claim.
- (c) To the extent it is caused by the homeowner or his or her agent, employee, general contractor, subcontractor, independent contractor, or consultant by virtue of their failure to follow the builder's or manufacturer's recommendations, or commonly accepted homeowner maintenance obligations. In order to rely upon this defense as it relates to a builder's recommended maintenance schedule, the builder shall show that the homeowner had written notice of these schedules and recommendations and that the recommendations and schedules were reasonable at the time they were issued.
- (d) To the extent it is caused by the homeowner or his or her agent's or an independent third party's alterations, ordinary wear and tear, misuse, abuse, or neglect, or by the structure's use for something other than its intended purpose.
- (e) To the extent that the time period for filing actions bars the claimed violation.
- (f) As to a particular violation for which the builder has obtained a valid release.
- (g) To the extent that the builder's repair was successful in correcting the particular violation of the applicable standard.
- (h) As to any causes of action to which this statute does not apply, all applicable affirmative defenses are preserved.

BY INITIALING BELOW BUYER ACKNOWLEDGES THAT THIS COPY OF THE CONSTRUCTION CLAIMS STATUTE WAS PROVIDED WITH AND MADE A PART OF THE JOINT PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS.

Seller's Initials



Buyer's Initials



Exhibit 05

00584

Document received by the CA 2nd District Court of Appeal.

Uniform Residential Appraisal Report

SUBJECT

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

Property Address	3345 1/2 Rowena Avenue	City	Los Angeles	State	CA	Zip Code	90027
Borrower	Skylar Wells/Marilyn & David Schiamburg Owner of Public Record		Openhouse Realty & Investments LLC		County	Los Angeles	
Legal Description	Lot 1, Tract 63131, M.B. 1360-39-41						
Assessor's Parcel #	5434-005-010	Tax Year	2012	R.E. Taxes \$	1,629		
Neighborhood Name	None	Map Reference	594 B3	Census Tract	1882.01		
Occupant	☐ Owner	☐ Tenant	☒ Vacant	Special Assessments \$	0	☒ PUD	HOA \$ 199 ☐ per year ☒ per month
Property Rights Appraised	☒ Fee Simple ☐ Leasehold ☐ Other (describe)						
Assignment Type	☒ Purchase Transaction ☐ Refinance Transaction ☐ Other (describe)						
Lender/Client	W.J. Bradley Mortgage Capital, LLC Address 100 W Towne Ridge Parkway #300, Sandy, UT 84070						
Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? ☒ Yes ☐ No							
Report data source(s) used, offerings price(s), and date(s). DOM 325;Subject property was offered for sale.;Original Price \$879,000;Original Date 12/09/2011;MLS#F11158805							

CONTRACT

I ☒ did ☐ did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed. Arms length sale;The subject is currently under the contract for sale. Sales Contract terms deemed to be standard with no personal property or concessions included.

Contract Price \$ 857,000 Date of Contract 10/29/2012 Is the property seller the owner of public record? ☒ Yes ☐ No Data Source(s) NDC/RealQuest

Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? ☒ Yes ☐ No

If Yes, report the total dollar amount and describe the items to be paid. \$25710;;Seller is paying toward buyer's closing cost.

NEIGHBORHOOD

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood Characteristics			One-Unit Housing Trends			One-Unit Housing		Present Land Use %			
Location	☐ Urban	☒ Suburban	☐ Rural	Property Values	☐ Increasing	☒ Stable	☐ Declining	PRICE	AGE	One-Unit	95 %
Built-Up	☒ Over 75%	☐ 25-75%	☐ Under 25%	Demand/Supply	☐ Shortage	☒ In Balance	☐ Over Supply	\$ (000)	(yrs)	2-4 Unit	%
Growth	☐ Rapid	☒ Stable	☐ Slow	Marketing Time	☐ Under 3 mths	☒ 3-6 mths	☐ Over 6 mths	400	Low	0	Multi-Family %
Neighborhood Boundaries Area is located SE of Los Feliz Blvd., NW of Hyperion Ave., north of Sunset Dr. and east of Hillhurst Avenue.								1,200	High	105	Commercial %
								860	Pred.	60	Other VAC. %
Neighborhood Description The subject property is located in a mature and established neighborhood consisting primarily of SFRs that are considered to be in overall average to good condition and market appeal. Subject is located within close proximity of shopping, retail stores and freeway access. Employment is typical for the area. Major business center is within 5-10 miles from subject. Schools are within a reasonable distance from subject.											
Market Conditions (including support for the above conclusions) Conventional and FHA financing are readily available at rates purchasers consider attractive and sellers need not negotiate a sale on financing related concessions. Marketing time appears to be typical for a reasonably priced home and is supported by recent sale. Property value appears to have stabilized at present time, see market conditions addendum.											

SITE

Dimensions	See Site Map for Area Calculation	Area	2465 sf	Shape	Irregular	View	B;City Scene			
Specific Zoning Classification	RD1.5	Zoning Description	Single Family Residential							
Zoning Compliance	☒ Legal ☐ Legal Nonconforming (Grandfathered Use) ☐ No Zoning ☐ Illegal (describe)									
Is the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use? ☒ Yes ☐ No If No, describe.										
Utilities		Public	Other (describe)	Public	Other (describe)	Off-site Improvements--Type		Public	Private	
Electricity	☒	☐		Water	☒	☐	Street	Asphalt	☒	☐
Gas	☒	☐		Sanitary Sewer	☒	☐	Alley	Asphalt	☒	☐
FEMA Special Flood Hazard Area	☒ Yes	☐ No	FEMA Flood Zone	"X"	FEMA Map #	060137-1610F	FEMA Map Date	09/26/2008		
Are the utilities and/or off-site improvements typical for the market area? ☒ Yes ☐ No If No, describe.										
Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? ☐ Yes ☒ No If Yes, describe.										
None apparent or disclosed to appraiser at time of inspection. No legal, environmental or title documents provided to appraiser. Typical utility easement exist.										

IMPROVEMENTS

General Description		Foundation		Exterior Description		materials/condition		Interior		materials/condition	
Units	☒ One ☐ One with Accessory Unit	☒ Concrete Slab ☐ Crawl Space		Foundation Walls	Concrete/Good			Floors	Wood/Concrete/Good		
# of Stories	3.0	☐ Full Basement ☐ Partial Basement		Exterior Walls	Wood/Stucco/Good			Walls	Drywall/Good		
Type	☒ Det. ☐ Att. ☐ S-Det./End Unit	Basement Area	0 sq. ft.	Roof Surface	Built-Up/Good			Trim/Finish	Wood/Good		
☒ Existing ☐ Proposed ☐ Under Const.		Basement Finish	0 %	Gutters & Downspouts	None/Avg			Bath Floor	Tile/Good		
Design (Style)	Convent.	☐ Outside Entry/Exit ☐ Sump Pump		Window Type	Aluminium/Good			Bath Wainscot	Tile/Good		
Year Built	2012	Evidence of ☐ Infestation	None	Storm Sash/Insulated	None/Avg			Car Storage	☐ None		
Effective Age (Yrs)	0	☐ Dampness ☐ Settlement		Screens	Aluminium/Good			☒ Driveway	# of Cars		
Attic	☒ None	Heating	☒ FWA ☐ HWBB ☐ Radiant	Amenities	☐ Woodstove(s) # 0			Driveway Surface	Concrete		
☐ Drop Stair ☐ Stairs		☐ Other	Fuel Gas	☐ Fireplace(s) # 0	☒ Fence	Blk/Wood	☒	Garage	# of Cars 2		
☐ Floor ☐ Scuttle		Cooling	☒ Central Air Conditioning	☒ Patio/Deck	Slab	☒ Porch	Slab	☐ Carport	# of Cars 0		
☐ Finished ☐ Heated		☐ Individual ☐ Other		☐ Pool	None	☐ Other	None	☐ Att.	☐ Det.	☒ Built-in	
Appliances ☐ Refrigerator ☒ Range/Oven ☒ Dishwasher ☒ Disposal ☒ Microwave ☐ Washer/Dryer ☒ Other (describe) Fan/Hood											
Finished area above grade contains: 5 Rooms 2 Bedrooms 2.1 Bath(s) 1,681 Square Feet of Gross Living Area Above Grade											
Additional features (special energy efficient items, etc.) Energy Efficient dual glazed aluminum windows with low E-glass.											
Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.). C1;Kitchen-updated-less than one year ago;Bathrooms-updated-less than one year ago; Subject's features includes: Hardwood and polished concrete floors throughout; Formal living room; Kitchen with caesar stone counter tops and built-in stainless steel appliances; Baths with caesar stone and tiles; High ceilings; Recess lights Baseboard moulding; French doors; Security alarm; Patio and porch; Attached two car garage; City view. The subject property is considered to be in good condition with many upgrades. No external or functional inadequacies were observed. All utilities on and operational. Smoke and carbon monoxide detectors were installed and functional.											
Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? ☐ Yes ☒ No If Yes, describe											
None Apparent or disclosed to appraiser. I have not been provided with any documentation revealing any physical deficiencies and have reported only apparent adverse conditions. Borrower may not rely on this report for structural conditions that may exist and is encouraged to obtain a home inspection by a professional home inspector to determine if problems exist. See Limiting Condition #5.											
Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? ☒ Yes ☐ No If No, describe											

Uniform Residential Appraisal Report

SALES COMPARISON ANALYSIS

There are 20 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ 749,000 to \$ 895,000 .				There are 25 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ 400,000 to \$ 1,200,000 .								
FEATURE		SUBJECT		COMPARABLE SALE # 1			COMPARABLE SALE # 2			COMPARABLE SALE # 3		
Address		3345 1/2 Rowena Avenue Los Angeles, CA 90027		4327 Ambrose Avenue Los Angeles, CA 90027			4144 Tracy Street Los Angeles, CA 90027			4421 Finley Avenue Los Angeles, CA 90027		
Proximity to Subject				0.33 miles W			0.27 miles SW			0.49 miles SW		
Sale Price		\$ 857,000		\$ 835,000			\$ 875,000			\$ 895,000		
Sale Price/Gross Liv. Area		\$ 509.82 sq. ft.		\$ 445.33 sq. ft.			\$ 643.38 sq. ft.			\$ 599.87 sq. ft.		
Data Source(s)				NDC/RealQuest/MLS;DOM 43			NDC/RealQuest/MLS;DOM 11			NDC/RealQuest/MLS;DOM 7		
Verification Source(s)				Doc.#1748298/MLS#F12121424			Doc.#1602567/MLS#12623403			Doc.#1596927/MLS#12623121		
VALUE ADJUSTMENTS		DESCRIPTION		DESCRIPTION		+(-) \$ Adjustment	DESCRIPTION		+(-) \$ Adjustment	DESCRIPTION		+(-) \$ Adjustment
Sale or Financing				ArmLth			ArmLth			ArmLth		
Concessions				Conv;0		-13,000	Conv;0		-13,000	Conv;0		-13,000
Date of Sale/Time				s11/12;c10/12			s10/12;c09/12			s10/12;c09/12		
Location		N;Res;		N;Res;			N;Res;			N;Res;		
Leasehold/Fee Simple		Fee Simple		Fee Simple			Fee Simple			Fee Simple		
Site		2465 sf		5950 sf		-10,500	5154 sf		-8,100	6817 sf		-13,100
View		B;City Scene;		N;Res;		+30,000	N;Res;		+30,000	N;Res;		+30,000
Design (Style)		Convent.		Convent.			Convent.			Convent.		
Quality of Construction		Q3		Q3			Q3			Q3		
Actual Age		0		64		+10,000	77		+10,000	102		+10,000
Condition		C1		C2		+20,000	C2		+20,000	C2		+20,000
Above Grade		Total	Bdrms	Baths	Total	Bdrms	Baths	-8,000	Total	Bdrms	Baths	-8,000
Room Count		5	2	2.1	6	3	2.0	+5,000	6	3	2.0	+5,000
Gross Living Area		1,681 sq. ft.		1,875 sq. ft.		-11,600	1,360 sq. ft.		+19,300	1,492 sq. ft.		+11,300
Basement & Finished Rooms Below Grade		0sf		0sf			0sf			0sf		
Functional Utility		Average		Average			Average			Average		
Heating/Cooling		FAU/Central		FAU/Central			FAU/Central			Floor/None		+2,000
Energy Efficient Items		Typical		Typical			Typical			Typical		
Garage/Carport		2 Car Garage		2 Car Garage			2 Car Garage			2 Car Garage		
Porch/Patio/Deck		Patio		Patio			Patio			Patio		
Fireplaces		None		1 Fireplace		-2,000	1 Fireplace		-2,000	1 Fireplace		-2,000
Amenities		Fence		Fence			Fence			Fence		
AP#		5434-005-010		5591-008-005		0	5591-012-009		0	5590-009-018		
Net Adjustment (Total)				[X] + [] -		\$ 19,900	[X] + [] -		\$ 53,200	[X] + [] -		\$ 42,000
Adjusted Sale Price of Comparables				Net Adj: 2%			Net Adj: 6%			Net Adj: 5%		
				Gross Adj : 13%		\$ 854,900	Gross Adj: 13%		\$ 928,200	Gross Adj: 13%		\$ 937,200

I ☒ did ☐ did not research the sale or transfer history of the subject property and comparable sales. If not, explain

My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data source(s) NDC/RealQuest/MLS

My research ☐ did ☒ did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.

Data source(s) NDC/RealQuest/MLS

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3)

ITEM	SUBJECT	COMPARABLE SALE # 1	COMPARABLE SALE # 2	COMPARABLE SALE # 3
Date of Prior Sale/Transfer				
Price of Prior Sale/Transfer				
Data Source(s)	NDC/RealQuest	NDC/RealQuest	NDC/RealQuest	NDC/RealQuest
Effective Date of Data Source(s)	11/27/2012	11/27/2012	11/27/2012	11/27/2012

Analysis of prior sale or transfer history of the subject property and comparable sales Subject has not been sold within last 36 months. In compliance with USPAP and the Ethics Rule, I have performed no other services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.

Summary of Sales Comparison Approach Comparables were selected based on overall similar condition and location. Each is deemed to be a reasonable alternative to the subject property with similar neighborhood influences, unless otherwise noted. Other active listings are noted within the market area, however the ones chosen are most similar to the subject property in overall size and condition and offer the best alternative to the subject property. Comparables utilized were best available at time of the inspection. Comparables #1-#4 required age and condition adjustments for subject being new construction with superior condition. All comparables except comparables #3 & #4 required view adjustment for subject having city scene. Living area adjustment of \$60/sf and lot size adjustment of \$3/sf are extracted from the subject's market place. All the comparables were considered in arriving at the final estimated market value. A reasonable exposure time for the subject property at the opinion of value indicated is estimated to be 90-120 days and was derived using market conditions addendum and local MLS datas.

Indicated Value by Sales Comparison Approach \$ 857,000

RECONCILIATION

Indicated Value by: Sales Comparison Approach \$ 857,000 Cost Approach (if developed) \$ 857,235 Income Approach (if developed) \$

The Cost Approach supports the more reliable Sales Comparison Approach with the latter given more weight. Due to lack of sufficient data, Income Approach was not considered. THIS APPRAISAL REPORT IS INTENDED FOR USE IN A MORTGAGE FINANCE TRANSACTION ONLY. THIS REPORT IS NOT INTENDED FOR ANY OTHER USE.

This appraisal is made ☒ "as is," ☐ subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, ☐ subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or ☐ subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair: The Subject property meets all FHA/HUD minimum guidelines as outlined by Handbooks 4150.2 and 4905.1, and all applicable mortgagee letters.

Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ 857,000 , as of 11/27/2012 , which is the date of inspection and the effective date of this appraisal.

Document received by the CA 2nd District Court of Appeals

Uniform Residential Appraisal Report

ADDITIONAL COMMENTS

Extraordinary Assumption: An assumption, directly related to a specific assignment, as of the effective date of the assignment result, which, if found to be false, could alter the appraiser's opinions or conclusions.

The buyers reliance on this appraisal is limited to utilization for making a decision to place a loan on the subject property if they receive a copy of the appraisal prior to the recording of the loan. The appraiser assumes that there are no hidden or unapparent conditions of the property, subsoil or structures which would render if more or less valuable. The appraiser assumes no responsibility for such conditions or for engineering which might be required to discover such factors. If the client or borrower have any questions regarding these items, it is ther responsibility to order the appropriate inspections by a licensed contractor or home inspector. This report is not a home inspection and the appraiser assumes no responbility for these items. No party may rely on this document without possessing the complete 6 pages of the report plus all exhibits. The scope of work completed was appropriate for the named client and any intended uses, but may not be appropriate for other third party users, such as the borrowers or property owners. The client may use this appraisal for a single determination only (1 time use).

The Intended User of the appraisal report is the Lender/Client. The Intended Use is to evaluate the property that is the subject of this appraisal for a mortgage finance transaction, subject to the stated Scope of Work, purpose of the appraisal, reporting requirements of the this appraisal report form, and Definition of Market Value. No additional Intended Users are identified by the appraiser.

No employee, director, office, or agent of the lender, or any other third party acting as a joint venture partner, independent contractor, appraisal management company or partner of behalf of the lender has influenced or attempted to influence the development, reporting, result, or review of this assignment through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery or in any other matter.

FOR FHA:

Lead-based paint treatment per 24 CFR, park 35: All chipping, flaking or peeling paint on a structure built before 1978 must be removed only by hand sanding or hand scraping; a drop cloth must be used to collect all the particles of paint; all particles must be disposed of outside the possbility of ingestion by humans and the affected area must be repainted with two (2) coasts of non-lend based paint to closely match in color. The areas of affected are: None.

Condition of A/C: Functional
Condition of Water Heater: Functional

Repair Requirements: None noted.

This appraiser certified that head/shoulders inspection of attic & crawl space was conducted and all utilities on and operational, and smoke/carbon monoxide detectors were in working order.

This appraisal was completed to be used in an FHA loan transaction. The Intened users are the lender and HUD/FHA only.

The subject property meets minimum property requirements per HUD handbooks 4905.1 & 4150.2.

COST APPROACH

COST APPROACH TO VALUE (not required by Fannie Mae.)										
Provide adequate information for the lender/client to replicate your cost figures and calculations.										
Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value) Land value in excess of 60% of total value is typical in the area. The land value is determined by the extraction method, due to the lack of available and buildable land for sales.										
ESTIMATED ☐	REPRODUCTION OR ☒	REPLACEMENT COST NEW	OPINION OF SITE VALUE				= \$	560,000		
Source of cost data	Marshall & Swift Cost Handbook		Dwelling	1,681	Sq. Ft. @ \$	110.00	= \$	184,980		
Quality rating from cost service	75%	Effective date of cost data	11/27/2012		Sq. Ft. @ \$		= \$			
Comments on Cost Approach (gross living area calculations, depreciation, etc.)			Patio					3,000		
Conclusions as to construction quality and materials were based on observations made during the inspection of the property.			Garage/Carport	373	Sq. Ft. @ \$	25.00	= \$	9,323		
Effective age was based on the condition of the property at the time of inspection. The land value is determined by the extraction method, due to lack of land sales. The building sketch is intended to assist the reader, and is not an engineer draft effort.			Total Estimate of Cost-new				= \$	197,283		
			Less	Physical	0	Functional	0	External	0	
			Depreciation	0		0		0	= \$ (0)	
			Depreciated Cost of Improvements				= \$	197,283		
			"As-is" Value of Site Improvements				= \$	100,000		
Estimated Remaining Economic Life (HUD and VA only)			60	Years	Indicated Value By Cost Approach				= \$	857,283

INCOME

INCOME APPROACH TO VALUE (not required by Fannie Mae.)			
Estimated Monthly Market Rent \$	X Gross Multiplier	= \$	Indicated Value by Income Approach
Summary of Income Approach (including support for market rent and GRM)			

PUD INFORMATION

PROJECT INFORMATION FOR PUDs (if applicable)			
Is the developer/builder in control of the Homeowner's Association (HOA)? ☐ Yes ☒ No Unit type(s) ☒ Detached ☐ Attached			
Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.			
Legal Name of Project			
Total number of phases	Total number of units	Total number of units sold	
Total number of units rented	Total number of units for sale	Data source(s)	
Was the project created by the conversion of existing building(s) into a PUD? ☐ Yes ☐ No If Yes, date of conversion.			
Does the project contain any multi-dwelling units? ☐ Yes ☐ No Data source.			
Are the units, common elements, and recreation facilities complete? ☐ Yes ☐ No If No, describe the status of completion.			
Are the common elements leased to or by the Homeowner's Association? ☐ Yes ☐ No If Yes, describe the rental terms and options.			
Describe common elements and recreational facilities.			

Uniform Residential Appraisal Report

This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit; including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

SCOPE OF WORK: The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the interior and exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal report is the lender/client.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has provided a sketch in this appraisal report to show the approximate dimensions of the improvements. The sketch is included only to assist the reader in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
5. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing this appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
6. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

Document received by the CA 2nd District Court of Appeal.

APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a complete visual inspection of the interior and exterior areas of the subject property. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.
20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.

Document received by the CA 2nd District Court of Appeal.

Uniform Residential Appraisal Report

21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

- 1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
- 2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
- 3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
- 4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
- 5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER

Signature 
Name Joseph Y. Kwon
Company Name Tri-Star Appraisal, Inc.
Company Address 3932 Wilshire Blvd., #211
Los Angeles, CA 90010
Telephone Number (213) 365-9321
Email Address tristarappraisal@yahoo.com
Date of Signature and Report 11/28/2012
Effective Date of Appraisal 11/27/2012
State Certification # AR 019672
or State License #
or Other (describe) State #
State CA
Expiration Date of Certification or License 07/11/2014

ADDRESS OF PROPERTY APPRAISED
3345 1/2 Rowena Avenue
Los Angeles, CA 90027

APPRAISED VALUE OF SUBJECT PROPERTY \$ 857,000
LENDER/CLIENT
Name W.J.B. Mortgage Services, LLC
Company Name W.J. Bradley Mortgage Capital, LLC
Company Address 100 W Towne Ridge Parkway #300
Sandy, UT 84070
Email Address

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature
Name
Company Name
Company Address
Telephone Number
Email Address
Date of Signature
State Certification #
or State License #
State
Expiration Date of Certification or License

SUBJECT PROPERTY

☐ Did not inspect subject property
☐ Did inspect exterior of subject property from street
Date of Inspection
☐ Did inspect interior and exterior of subject property
Date of Inspection

COMPARABLE SALES

☐ Did not inspect exterior of comparable sales from street
☐ Did inspect exterior of comparable sales from street
Date of Inspection

Document received by the CA 2nd District Court of Appeal.

Tri-Star Appraisal, Inc.
EXTRA COMPARABLES 4-5-6

File No. 1112-064/Order#96852
FHA CASE#197-6247233

Borrower Skylar Wells/Marilyn & David Schiamberg							
Property Address 3345 1/2 Rowena Avenue							
City	Los Angeles	County	Los Angeles	State	CA	Zip Code	90027
Lender/Client	W.J. Bradley Mortgage Capital, LLC	Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070				

SALES COMPARISON ANALYSIS	FEATURE			SUBJECT			COMPARABLE SALE # 4			COMPARABLE SALE # 5			COMPARABLE SALE # 6		
	Address			3345 1/2 Rowena Avenue Los Angeles, CA 90027			2154 Talmadge Street Los Angeles, CA 90027			3807 Sunset Drive Los Angeles, CA 90027			3341 Rowena Avenue Los Angeles, CA 90027		
	Proximity to Subject						0.29 miles SW			0.91 miles S			0.02 miles N		
	Sale Price			\$ 857,000			\$ 879,000			\$ 890,000			\$ 805,000		
	Sale Price/Gross Liv. Area			\$ 509.82 sq. ft.			\$ 521.35 sq. ft.			\$ 490.09 sq. ft.			\$ 487.00 sq. ft.		
	Data Source(s)						NDC/RealQuest/MLS;DOM 7			NDC/RealQuest/MLS;DOM 81			NDC/RealQuest/MLS;DOM 329		
	Verification Source(s)						Doc.#1265895/MLS#22166507			Doc.#1016061/MLS#12595425			MLS#F12007001-Pending/Standard		
	VALUE ADJUSTMENTS			DESCRIPTION			DESCRIPTION +(-) \$ Adjustment			DESCRIPTION +(-) \$ Adjustment			DESCRIPTION +(-) \$ Adjustment		
	Sale or Financing						ArmLth			ArmLth			Listing		
	Concessions						Conv;0 -13,000			Conv;0 -13,000			Conv;24200 0		
	Date of Sale/Time						s08/12;c07/12			s07/12;c05/12			c01/12		
	Location			N;Res;			N;Res;			N;Res;			N;Res;		
	Leasehold/Fee Simple			Fee Simple			Fee Simple			Fee Simple			Fee Simple		
	Site			2465 sf			4790 sf -7,000			3221 sf 0			1220 sf +3,700		
	View			B;City Scene;			B;City Scene;			B;City Scene;			B;Partial View; +15,000		
	Design (Style)			Convent.			Convent.			Convent.			Convent.		
	Quality of Construction			Q3			Q3			Q3			Q3		
	Actual Age			0			81 +10,000			17 0			0		
	Condition			C1			C2 +20,000			C2 +20,000			C1		
	Above Grade			Total	Bdrms.	Baths	Total	Bdrms.	Baths	Total	Bdrms.	Baths	Total	Bdrms.	Baths
	Room Count			5	2	2.1	5	2	2.0 +5,000	6	3	2.0 +5,000	5	2	2.1
	Gross Living Area			1,681 sq. ft.			1,686 sq. ft. 0			1,816 sq. ft. -8,100			1,652 sq. ft.		
	Basement & Finished Rooms Below Grade			0sf			0sf			0sf			0sf		
	Functional Utility			Average			Average			Average			Average		
	Heating/Cooling			FAU/Central			FAU/Central			FAU/Central			FAU/Central		
	Energy Efficient Items			Typical			Typical			Typical			Typical		
	Garage/Carport			2 Car Garage			2 Car Garage			2 Car Garage			2 Car Garage		
	Porch/Patio/Deck			Patio			Patio			Patio			Patio		
	Fireplaces			None			1 Fireplace -2,000			2 Fireplaces -4,000			None		
	Amenities			Fence			Fence			Fence			Fence		
	AP#			5434-005-010			5591-010-013 0			5430-016-023 0			5434-005-015		
	Net Adjustment (Total)						[X] + [] - \$ 13,000			[] + [X] - \$ -8,100			[X] + [] - \$ 18,200		
	Adjusted Sale Price of Comparables						Net Adj: 1% Gross Adj : 6% \$ 892,000			Net Adj: -1% Gross Adj: 7% \$ 881,900			Net Adj: 2% Gross Adj: 2% \$ 825,000		
Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales															
ITEM			SUBJECT			COMPARABLE SALE # 4			COMPARABLE SALE # 5			COMPARABLE SALE # 6			
Date of Prior Sale/Transfer															
Price of Prior Sale/Transfer															
Data Source(s)			NDC/RealQuest			NDC/RealQuest			NDC/RealQuest			NDC/RealQuest			
Effective Date of Data Source(s)			11/27/2012			11/27/2012			11/27/2012			11/27/2012			
Analysis of prior sale or transfer history of the subject property and comparable sales															

File No. 1112-064/Order#96852
FHA CASE#197-6247233

Borrower	Skylar Wells/Marilyn & David Schiamburg						
Property Address	3345 1/2 Rowena Avenue						
City	Los Angeles	County	Los Angeles	State	CA	Zip Code	90027
Lender/Client	W.J. Bradley Mortgage Capital, LLC		Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070			

[illegible]

Market Conditions Addendum to the Appraisal Report

The purpose of this addendum is to provide the lender/client with a clear and accurate understanding of the market trends and conditions prevalent in the subject neighborhood. This is a required addendum for all appraisal reports with an effective date on or after April 1, 2009.

Property Address 3345 1/2 Rowena Avenue City Los Angeles State CA ZIP Code 90027

Borrower Skylar Wells/Marilyn & David Schiamberg

Instructions: The appraiser must use the information required on this form as the basis for his/her conclusions and must provide support for those conclusions, regarding housing trends and overall market conditions as reported in the Neighborhood section of the appraisal report form. The appraiser must fill in all the information to the extent it is available and reliable and must provide analysis as indicated below. If any required data is unavailable or is considered unreliable, the appraiser must provide an explanation. It is recognized that not all data sources will be able to provide data for the shaded areas below; if it is available, however, the appraiser must include that data in the analysis. If data sources provide all the required information as an average instead of the median, the appraiser should report the available figure and identify it as an average. Sales and listings must be properties that compete with the subject property, determined by applying the criteria that would be used by a prospective buyer of the subject property. The appraiser must explain any anomalies in the data, such as seasonal markets, new construction, foreclosures, etc.

Inventory Analysis	Prior 7-12 Months	Prior 4-6 Months	Current - 3 Months	Overall Trend					
Total # of Comparable Sales (Settled)	8	8	9	☐	Increasing	☒	Stable	☐	Declining
Absorption Rate (Total Sales/Months)	1.33	2.67	3.00	☒	Increasing	☐	Stable	☐	Declining
Total # of Comparable Active Listings	16	17	20	☐	Declining	☒	Stable	☐	Increasing
Months of Housing Supply (Total Listings/Ab. Rate)	12.03	6.37	6.67	☒	Declining	☐	Stable	☐	Increasing
Median Sales & List Price, DOM, Sale/List %	Prior 7-12 Months	Prior 4-6 Months	Current - 3 Months	Overall Trend					
Median Comparable Sales Price	818,500	801,800	795,500	☐	Increasing	☒	Stable	☐	Declining
Median Comparable Sales Days on Market	65	72	81	☐	Declining	☒	Stable	☐	Increasing
Median Comparable List Price	889,135	879,500	854,355	☐	Increasing	☒	Stable	☐	Declining
Median Comparable Listing Days on Market	115	125	108	☐	Declining	☒	Stable	☐	Increasing
Median Sale Price as % of List Price	0.92	0.91	0.93	☐	Increasing	☒	Stable	☐	Declining
Seller-(developer, builder, etc.) paid financial assistance prevalent?	☐ Yes	☒ No		☐	Declining	☒	Stable	☐	Increasing

Explain in detail seller concessions trends for the past 12 months (e.g. seller contributions increased from 3% to 5%, increasing use of buydowns, closing costs condo fees, options, etc.)

Seller concessions appear to remain stable, under 1%, and consist primarily of payment toward non-recurring closing costs. The market at this time does not appear to be experiencing any motivation toward greater contributions by sellers. Overall supply and demand appear to be more in balance at this time, compared to 6 to 12 months ago, with no significant amount of interest buydowns, loan discounts or other concessions.

Are foreclosure sales (REO sales) a factor in the market? ☐ Yes ☒ No If yes, explain (including the trends in listings and sales of foreclosed properties).

At this time, there is not a significant amount of REO activity, due to the usually long terms of ownership in this community. Although, there are some short sales and foreclosures, they do not appears to be a strong impact on subjects current market trend.

Cite data sources for above information.

Local MLS, NAR, Dataquick, RealQuest & NDC. The data search was neighborhood boundary specific.

Summarize the above information as support for your conclusions in the Neighborhood section of the appraisal report form. If you used any additional information, such as an analysis of pending sales, and/or expired and withdrawn listings, to formulate your conclusions, provide both an explanation and support for your conclusions.

This appraisal is the result of extensive research into the local and regional market. Current and historical data included listings, pendings, closed, expired and withdrawn listings. Summaries are exhibited in the market conditions form as the main appraisal form. Market activity has slowed considerably over the past year and in some cases areas have declined. This is evidence by listing remaining on the market for longer periods of time. However, it appears that this rate of decline is slowdown to a stabilization state. This may be due to a mixture of factors, such as affordability, mortgage rate and financing availability.

If the subject is a unit in a condominium or cooperative project, complete the following:

Project Name:

Subject Project Data	Prior 7-12 Months	Prior 4-6 Months	Current - 3 Months	Overall Trend					
Total # of Comparable Sales (Settled)				☐	Increasing	☐	Stable	☐	Declining
Absorption Rate (Total Sales/Months)				☐	Increasing	☐	Stable	☐	Declining
Total # of Active Comparable Listings				☐	Declining	☐	Stable	☐	Increasing
Months of Unit Supply (Total Listings/Ab. Rate)				☐	Declining	☐	Stable	☐	Increasing

Are foreclosures sales (REO sales) a factor in the project? ☐ Yes ☐ No If yes, indicate the number of REO listings and explain the trends in listings and sales of foreclosed properties.

Summarize the above trends and address the impact on the subject unit and project.

Signature
Appraiser Name Joseph Y. Kwon
Company Name Tri-Star Appraisal, Inc.
Company Address 3932 Wilshire Blvd. #211, Los Angeles, CA 90010
State License/Certification # AR 019672 State CA
Email Address tristarappraisal@yahoo.com

Signature
Supervisor Name
Company Name
Company Address
State License/Certification #
Email Address

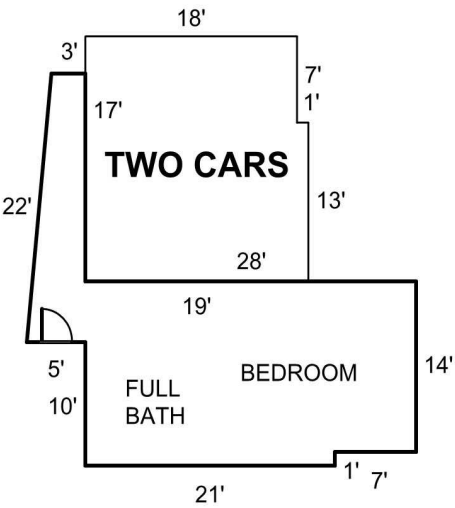
MARKET RESEARCH & ANALYSIS

CONDO/CO-OP PROJECTS

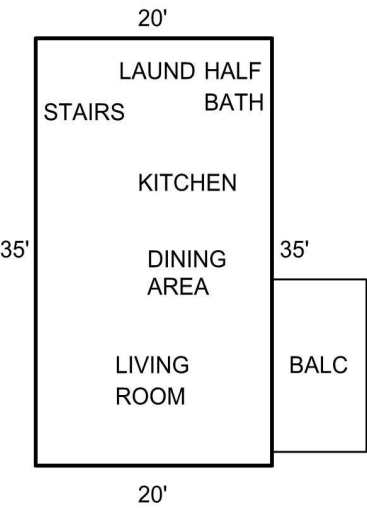
APPRAISER

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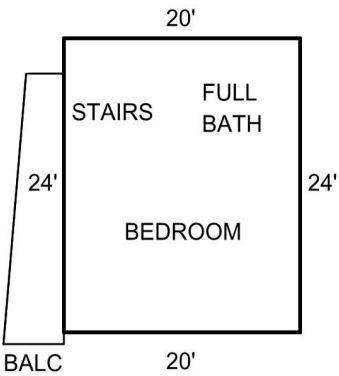
Borrower	Skylar Wells/Marilyn & David Schiamberg						
Property Address	3345 1/2 Rowena Avenue						
City	Los Angeles	County	Los Angeles	State	CA	Zip Code	90027
Lender/Client	W.J. Bradley Mortgage Capital, LLC			Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070		



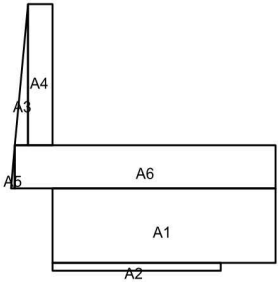
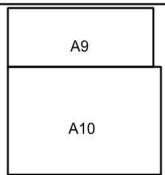
FIRST LEVEL



SECOND LEVEL



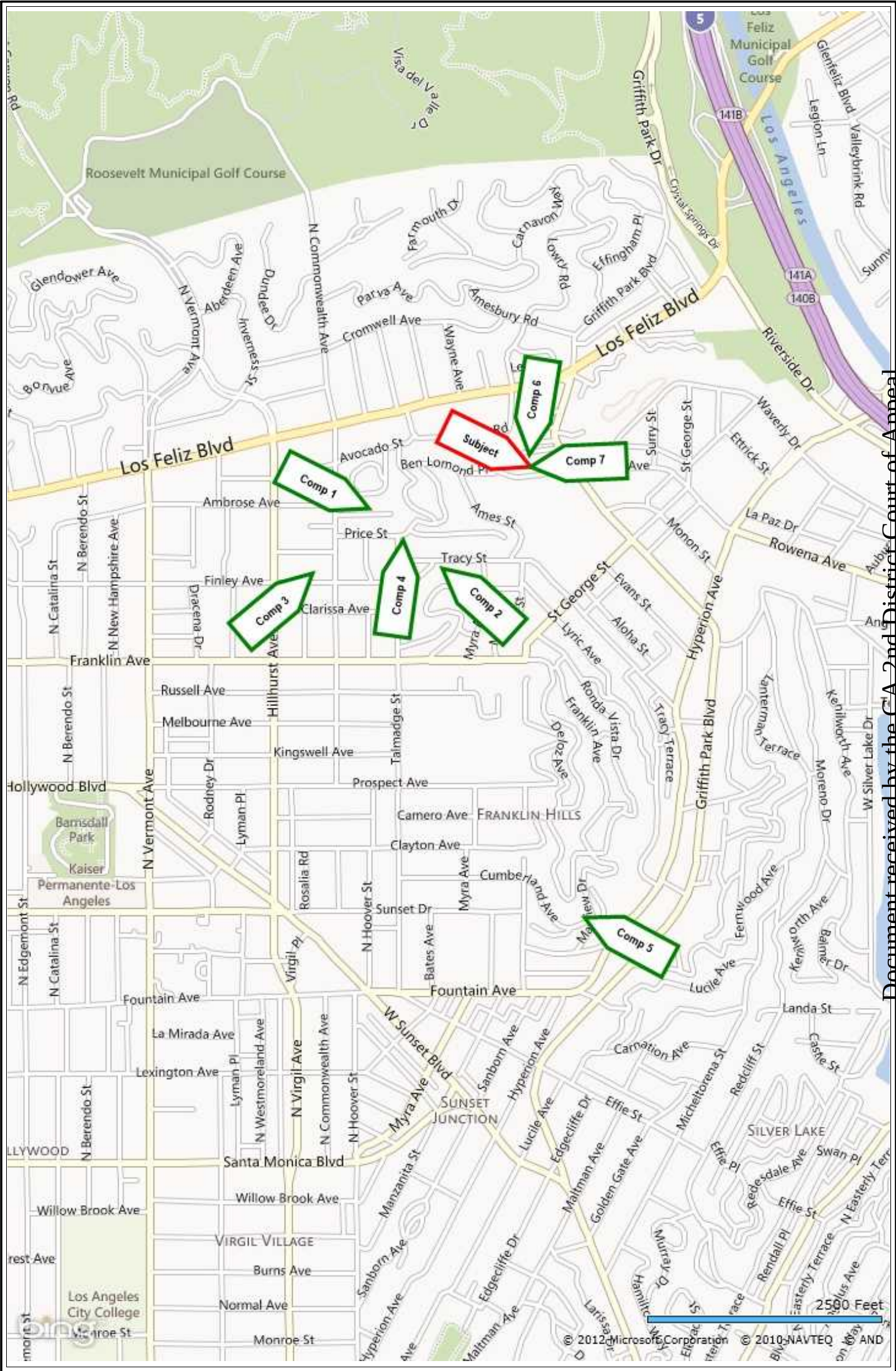
THIRD LEVEL

SKETCH CALCULATIONS		Perimeter	Area
	A1 : 28.0 x 9.0 = A2 : 21.0 x 1.0 = A3 : 0.5 x 1.5x17.0 = A4 : 3.0 x 17.0 = A5 : 0.5 x 0.5x5.0 = A6 : 32.5 x 5.0 = First Floor		252.0 21.0 13.1 51.0 1.1 162.7 500.9
	A7 : 20.0 x 35.0 = Second Floor		700.0 700.0
	A8 : 20.0 x 24.0 = Third Floor		480.0 480.0
Total Living Area			1680.9
	A9 : 18.0 x 7.0 = A10 : 19.0 x 13.0 = Attached Garage		126.0 247.0 373.0
Total Garage Area			373.0

Tri-Star Appraisal, Inc.
LOCATION MAP ADDENDUM

File No. 1112-064/Order#96852
FHA CASE#197-6247233

Borrower	Skylar Wells/Marilyn & David Schiamburg				
Property Address	3345 1/2 Rowena Avenue				
City	Los Angeles	County	Los Angeles	State	CA
Zip Code	90027				
Lender/Client	W.J. Bradley Mortgage Capital, LLC				
Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070				



Document received by the CA 2nd District Court of Appeal.

Borrower Skylar Wells/Marilyn & David Schiamberg							
Property Address 3345 1/2 Rowena Avenue							
City	Los Angeles	County	Los Angeles	State	CA	Zip Code	90027
Lender/Client	W.J. Bradley Mortgage Capital, LLC			Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070		

Property Detail Report

For Property Located At



3345 1/2 ROWENA AVE, LOS ANGELES, CA 90027

Owner Information:

Owner Name: OPENHOUSE REALTY & INVESTMENTS LLC

Mailing Address: PO BOX 1065, BURBANK CA 91507-1065 B001

Phone Number: Vesting Codes: // CO

Location Information:

Legal Description: TR=63131 LOT 1

County: LOS ANGELES, CA

Census Tract / Block: 1882.01 / 3

Township-Range-Sect:

Legal Book/Page:

Legal Lot: 1

Legal Block:

Market Area:

Neighbor Code:

APN: 5434-005-010

Alternate APN:

Subdivision:

Map Reference: / 594-B3

Tract #: 63131

School District: LOS ANGELES

Munic/Township:

Owner Transfer Information:

Recording/Sale Date: 01/26/2011 / 11/19/2010

Sale Price:

Document #: 143772

Deed Type: TRUSTEE'S DEED

1st Mtg Document #:

Last Market Sale Information:

Recording/Sale Date: /

Sale Price:

Sale Type:

Document #:

Deed Type:

Transfer Document #:

New Construction:

Title Company:

Lender:

Seller Name:

1st Mtg Amount/Type: /

1st Mtg Int. Rate/Type: /

1st Mtg Document #:

2nd Mtg Amount/Type: /

2nd Mtg Int. Rate/Type: /

Price Per SqFt:

Multi/Split Sale:

Prior Sale Information:

Prior Rec/Sale Date: /

Prior Sale Price:

Prior Doc Number:

Prior Deed Type:

Prior Lender:

Prior 1st Mtg Amt/Type: /

Prior 1st Mtg Rate/Type: /

Property Characteristics:

Gross Area:

Living Area:

Tot Adj Area:

Above Grade:

Total Rooms:

Bedrooms:

Bath(F/H): /

Year Built / Eff: /

Fireplace: /

of Stories:

Other Improvements:

Parking Type:

Garage Area:

Garage Capacity:

Parking Spaces:

Basement Area:

Finish Bsmnt Area:

Basement Type:

Roof Type:

Foundation:

Roof Material:

Construction:

Heat Type:

Exterior wall:

Porch Type:

Patio Type:

Pool:

Air Cond:

Style:

Quality:

Condition:

Site Information:

Zoning: LARD1.5

Acres: 0.06

County Use: SINGLE FAMILY RESID (0100)

Lot Area: 2,465

Lot Width/Depth: x

State Use:

Land Use: SFR

Res/Comm Units: /

Water Type:

Site Influence:

Sewer Type:

Tax Information:

Total Value: \$128,470

Assessed Year: 2012

Property Tax: \$1,628.94

Land Value: \$80,457

Improved %: 37%

Tax Area: 13

Improvement Value: \$48,013

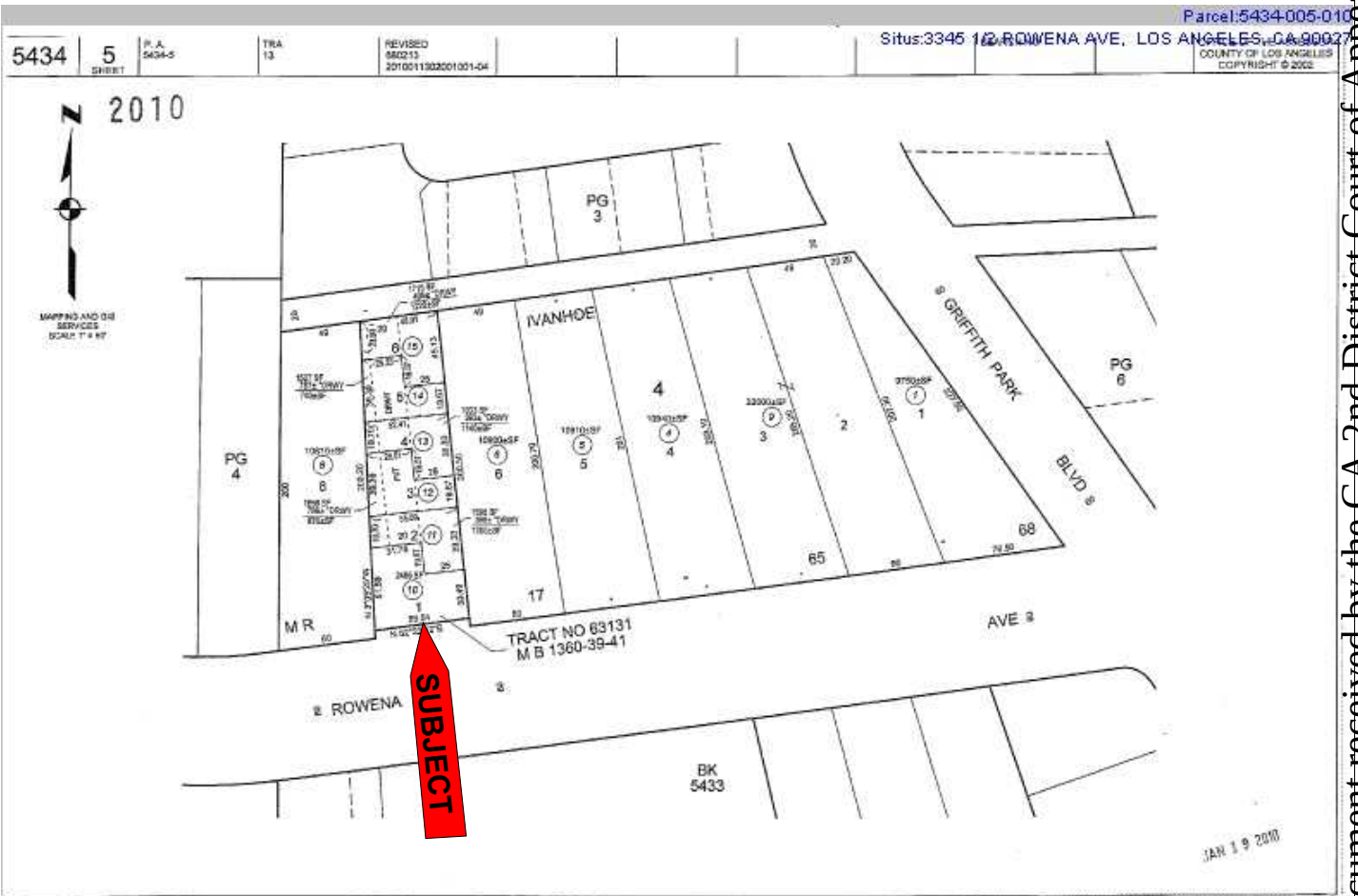
Tax Year: 2011

Tax Exemption:

Total Taxable Value: \$128,470

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Borrower	Skylar Wells/Marilyn & David Schiamberg				
Property Address	3345 1/2 Rowena Avenue				
City	Los Angeles	County	Los Angeles	State	CA
Zip Code	90027				
Lender/Client	W.J. Bradley Mortgage Capital, LLC				
Address	100 W Towne Ridge Parkway #300, Sandy, UT 84070				



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RealQuest.com ® - Report

Page 1 of 1

Flood Map Report
For Property Located At
3345 1/2 ROWENA AVE, LOS ANGELES, CA 90027
Report Date: 11/27/2012
County: LOS ANGELES, CA

Flood Zone Code

X

Special Flood Hazard Area (SFHA)

Out

Flood Zone Panel

060137 - 1610F

Within 250 ft. of multiple flood zones?

No

Panel Date

09/26/2008

Community Name

LOS ANGELES

CoreLogic®

RealQuest Professional

Flood Zone Description:

Zone X-An area that is determined to be outside the 100- and 500-year floodplains.

Flood Zones

- Coastal 100-year Floodway
- 100-year Floodway
- Undetermined
- 500-year Floodplain incl. levee protected area
- Coastal 100-year Floodplain
- 100-year Floodplain
- Unknown or Area Not Included
- Out of Special Flood Hazard Area

Disclaimer of Use

This map/report was produced using multiple sources. It is provided for informational purposes only. This map/report should not be relied upon by any third parties. It is not intended to satisfy any regulatory guidelines and should not be used for this or any other purpose.

<http://pro.realquest.com/jsp/report.jsp?&client=&action=confirm&type=getreport&record...> 11/27/2012

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Page 14 of 28
00598

Tri-Star Appraisal, Inc.
SUBJECT PHOTO ADDENDUM

File No. 1112-064/Order#96852
FHA CASE#197-6247233

Borrower	Skylar Wells/Marilyn & David Schiamberg						
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**FRONT OF
SUBJECT PROPERTY**
3345 1/2 Rowena Avenue
Los Angeles, CA 90027



**REAR OF
SUBJECT PROPERTY**



STREET SCENE

Document received by the CA 2nd District Court of Appeal.

Tri-Star Appraisal, Inc.
SUBJECT PHOTO ADDENDUM

File No. 1112-064/Order#96852
FHA CASE#197-6247233

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SUBJECT-SIDE



SUBJECT-SIDE



SUBJECT-LIVING ROOM

Document received by the CA 2nd District Court of Appeal.