



EXISTING SUBDIVISION PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

Use Only When A Residence Has Been Completed and Is Subject to a Public Report (C.A.R. Form ESPA, 12/18)

Date Prepared: _____,

1. OFFER:

- A. THIS IS AN OFFER FROM _____ ("Buyer").
B. THE REAL PROPERTY to be acquired is _____, situated in _____ (City), _____ County, California, _____ (Zip Code), Assessor's Parcel No. _____ ("Property").
C. THE PURCHASE PRICE offered is _____ (Dollars) \$ _____.
D. CLOSE OF ESCROW shall occur on the later of _____ Days After Acceptance, or _____ on _____ (date) ("Closing Date").
E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.

2. AGENCY:

- A. DISCLOSURE: The Parties each acknowledge receipt of a "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
B. CONFIRMATION: The following agency relationships are confirmed for this transaction:
Seller's Brokerage Firm _____ License Number _____
Is the broker of (check one): _____ the seller; or _____ both the buyer and seller. (dual agent)
Seller's Agent _____ License Number _____
Is (check one): _____ the Seller's Agent. (salesperson or broker associate) _____ both the Buyer's and Seller's Agent. (dual agent)
Buyer's Brokerage Firm _____ License Number _____
Is the broker of (check one): _____ the buyer; or _____ both the buyer and seller. (dual agent)
Buyer's Agent _____ License Number _____
Is (check one): _____ the Buyer's Agent. (salesperson or broker associate) _____ both the Buyer's and Seller's Agent. (dual agent)

C. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

D. (If checked) REFERRAL LICENSEE: _____ (Print Firm Name) is a Referral Licensee only. Buyer and Seller acknowledge and agree that Referral Licensee has merely introduced Buyer to the Property and does not represent Buyer or Seller in this transaction.

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

A. INITIAL DEPOSIT: Deposit shall be in the amount of _____ \$ _____.
(1) Buyer shall deliver deposit directly to Escrow Holder or _____ with Seller (provided that Seller has obtained a bond or bonds meeting the requirements of B & P Code §§11013.2(c) or 11013.4(b) or (c) and DRE Regulation 2791.2) by personal check, _____ electronic funds transfer, _____ Other _____ within 3 business days after Acceptance (or _____ Other _____);

OR (2) (If checked) _____ Buyer has given the deposit by personal check (or _____) to the agent submitting the offer (or to _____), made payable to _____. The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder, or _____ with Seller (provided that Seller has obtained a bond or bonds meeting the requirements of B&P Code §§11013.2(c) or 11013.4(b) or (c), and DRE Regulation 2791.2) within 3 business days after Acceptance (or _____ Other _____).

[Note to Seller: If the purchase agreement is signed under the authority of a Conditional Public Report, all funds must be impounded and held in a neutral escrow depository per B&P Code §§11013.4(a) or 11013.2(a).]

B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of _____ \$ _____ within _____ Days After Acceptance, or _____.

If a liquidated damages clause is incorporated into this Agreement, Buyer and Seller shall sign a separate liquidated damages clause (C.A.R. Form RID) for any increased deposit at the time it is deposited.

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

Buyer's Initials (____)(_____)

Seller's Initials (____)(_____)



Property Address: _____

Date: _____

D. LOAN(S):

(1) **FIRST LOAN** in the amount of\$ _____

This loan will be conventional financing **OR**, if checked, FHA, VA, Seller financing (C.A.R. Form SFA), assumed financing (C.A.R. Form AFA), Other _____. This loan shall be at a fixed rate not to exceed _____% or an adjustable rate loan with initial rate not to exceed ____%. Regardless of the type of loan, Buyer shall pay points not to exceed _____% of the loan amount.

(2) **SECOND LOAN** in the amount of\$ _____

This loan will be conventional financing **OR**, if checked, Seller financing (C.A.R. Form SFA), assumed financing (C.A.R. Form AFA), Other _____. This loan shall be at a fixed rate not to exceed _____% or an adjustable rate loan with initial rate not to exceed ____%. Regardless of the type of loan, Buyer shall pay points not to exceed _____% of the loan amount.

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

E. ADDITIONAL FINANCING TERMS: _____

F. BALANCE OF PURCHASE PRICE OR DOWN PAYMENT in the amount of\$ _____ to be deposited with Escrow Holder within sufficient time to close escrow.

G. PURCHASE PRICE (TOTAL):\$ _____

H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or loan broker pursuant to 3.I(1)) shall, within **7 (or _____)** Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. (If checked, verification attached.)

I. LOAN TERMS:

(1) **LOAN APPLICATIONS:** Within **3 (or _____)** Days After Acceptance, Buyer shall Deliver to Seller a letter from lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or pre-approved for any NEW loan specified in 3D above. (If checked, letter attached.)

(2) **LOAN CONTINGENCY:** Buyer shall act diligently and in good faith to obtain the designated loan(s). Obtaining the loan(s) specified above **is a contingency** of this Agreement unless otherwise agreed in writing. Buyer's contractual obligations to obtain and provide deposit, balance of down payment and closing costs **are not contingencies** of this Agreement.

(3) **LOAN CONTINGENCY REMOVAL:**

(i) Within **21 (or _____)** Days After Acceptance, Buyer shall, as specified in paragraph 18, in writing remove the loan contingency or cancel this Agreement;

4. ALLOCATION OF COSTS (If checked):

ESCROW, TITLE AND CLOSING COSTS:

A. Buyer Seller shall pay escrow fee _____
Escrow Holder shall be _____

B. Buyer Seller shall pay for **owner's** title insurance policy in favor of Buyer as specified in paragraph 17C.
Owner's title policy to be issued by _____
(Buyer shall pay for any title insurance policy insuring Buyer's **Lender**, unless otherwise agreed.)

C. Buyer Seller shall pay county transfer tax or transfer fee _____

D. Buyer Seller shall pay city transfer tax or transfer fee _____

E. Buyer Seller shall pay Homeowners' Association ("HOA") transfer fees _____

F. Seller shall pay HOA fees for preparing documents required to be delivered by Civil Code §4525.

G. Buyer Seller shall pay HOA fees for preparing all documents other than those required by Civil Code §4525.

H. Buyer to pay for any HOA certification fee.

OTHER COSTS:

I. Buyer shall pay _____

5. CLOSING AND POSSESSION:

A. Buyer intends (or does not intend) to occupy Property as Buyer's primary residence.

B. Possession of the Property shall be delivered to Buyer at 6 PM or (_____ AM/PM), on the date of Close Of Escrow, no later than _____ calendar days after Close Of Escrow; **or** on _____.

C. Property shall be vacant, unless otherwise agreed in writing. If transfer of title and possession do not occur at the same time, Buyer and Seller are advised to **(i)** enter into a written occupancy agreement and **(ii)** consult with their insurance advisors.

D. At Close Of Escrow, **(i)** Seller assigns to Buyer any assignable warranty rights for items included in the sale, and **(ii)** Seller shall Deliver to Buyer available Copies of such warranties. Brokers cannot and will not determine the assignability of any warranties.

E. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys and/or means to operate all locks, mailboxes, security systems, alarms and garage door openers.

6. DISCLOSURES: Within the time specified in paragraph 18, Seller shall **(i)** disclose if Property is located in any zone identified in paragraph 6A and provide any other information (including a Natural Hazard Disclosure Statement) required for those zones, and **(ii)** if applicable, take the actions specified in paragraphs 6B and 8B. Buyer, within the time specified in paragraph 18, shall then investigate the disclosures and other information provided to Buyer, and the data base in paragraph 6C, and take the action specified in paragraph 18.

Buyer's Initials (____)(____)

Seller's Initials (____)(____)



Property Address: _____

Date: _____

- A. NATURAL HAZARD ZONES:** Special Flood Hazard Areas; Potential Flooding (Inundation) Areas; Very High Fire Hazard Severity Zones; State Fire Responsibility Areas; Earthquake Fault Zones; Seismic Hazard Zones; or any other federal, state, or locally designated zone for which disclosure is required by Law.
- B. CONDOMINIUM/Common Interest Subdivision:** Property is a unit in a condominium, planned development, or other common interest subdivision. Seller shall provide to Buyer copies of covenants, conditions and restrictions; articles of incorporation; bylaws and other governing documents; statement regarding limited enforceability of age restrictions, if applicable; copies of most current financial statements distributed; statement indicating current regular, special and emergency dues and assessments, any unpaid assessment, and additional amounts due from Seller or Property, any approved changes to regular, special or emergency dues or assessments; and any other documents required by Law.
- C. MEGAN'S LAW DATABASE DISCLOSURE:** Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer's inspection contingency period. Brokers do not have expertise in this area.)
- D. WITHHOLDING TAXES:** Within the time specified in paragraph 18A, to avoid required withholding, Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law (C.A.R. Form AS or QS).
- E. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.
- F. PROPOSITION 65 WARNING:**

MATERIALS INCLUDED IN THE CONSTRUCTION OF THIS HOUSE WILL EXPOSE YOU TO FORMALDEHYDE, A SUBSTANCE KNOWN TO CAUSE CANCER. FURTHER INFORMATION MAY BE OBTAINED FROM THE BUILDER/SELLER.

The following information is intended to explain the warning furnished by Seller of this home for exposures to formaldehyde, a substance known to the State of California to cause cancer. The exposures are caused by materials of which the house is or will be built.

The United States Environmental Protection Agency, the California Air Resources Board, and other agencies have measured the presence of formaldehyde in the indoor air of homes in California. Levels of formaldehyde that present a significant cancer risk have been measured in most homes. Formaldehyde is present in the air because it is emitted by a variety of building materials and home products purchased by Seller from materials suppliers. These materials include carpeting, pressed wood products, insulation, plastics, and glues.

This home, if constructed prior to entering into this Agreement, has not been tested, and if constructed after entering into this Agreement, will not be tested. Most homes that have been tested elsewhere do contain formaldehyde, although the concentrations vary from home to home with no obvious explanation for the differences. One of the problems is that many suppliers of building materials and home products do not provide information on chemical ingredients to builders. In the absence of specific information on these homes, and in light of the materials used in their construction, Seller believes that a warning is necessary.

Buyer may have further questions about these issues. Seller is willing to share any further information Seller has obtained and will provide, upon request, a list of known materials suppliers that may be contacted for further information, and whether any inquiry has been made by Seller.

- 7. INSULATION:** The Federal Trade Commission requires that a new home seller must include in every new home sales contract the following information regarding type, thickness and R-value of insulation to be installed in each part of the residence:

Exterior Walls:	Type _____	Thickness _____	R-Value _____
Ceilings:	Type _____	Thickness _____	R-Value _____
Interior Walls:	Type _____	Thickness _____	R-Value _____
Other _____:	Type _____	Thickness _____	R-Value _____

8. ATTACHED DISCLOSURES:

- A.** If checked, Buyer acknowledges receipt of the following disclosures:

- | | | |
|--|--|--|
| <input type="checkbox"/> Public Report | <input type="checkbox"/> Buyer's Inspection Advisory | <input type="checkbox"/> Zone Report |
| <input type="checkbox"/> Site Report | <input type="checkbox"/> Bonded Debt | <input type="checkbox"/> Property Disclosure Statement |
| <input type="checkbox"/> Seller's Warranty | <input type="checkbox"/> Notice of Special Tax | <input type="checkbox"/> HOA Documents |
| <input type="checkbox"/> Utility Disclosures | <input type="checkbox"/> Smoke Detector | <input type="checkbox"/> Transportation Corridors |
| <input type="checkbox"/> Water Heater | <input type="checkbox"/> Industrial, Commercial | <input type="checkbox"/> Airport Zone |
| <input type="checkbox"/> _____ | | |

- B. ADDITIONAL DISCLOSURES:** Seller shall provide Buyer with the following additional disclosures: _____

9. PUBLIC REPORT (Check those boxes which apply):

- A.** (If checked) **FINAL PUBLIC REPORT:** A public report is required to be delivered to Buyer prior to the execution of this Agreement.
- B.** (If checked) **CONDITIONAL PUBLIC REPORT:** If the Property is subject to a Conditional Public Report under the B&P Code, escrow will not close, funds will not be released from the escrow, and any interest contracted for and the subject of the escrow will not be conveyed until a current Final Public Report is delivered to Buyer. Furthermore, the entire sum of money paid or advanced by Buyer shall be returned to Buyer under B&P Code §11013.4 (a) or §11013.2 (a) if (i) the Final Public Report has not been issued within 6 months or 30 months of the date of issuance of the Conditional Public Report. Buyer has the ability to cancel the Agreement if the Final Public Report has not been issued unless a conditional public report is renewed for another 6 months, or (ii) the Buyer is dissatisfied with the Final Public Report because of a change pursuant to B&P Code §11012.
- C.** (If checked) **AMENDED PUBLIC REPORT:** An amended public report is required to be delivered to Buyer prior to the execution of this Agreement.

Buyer's Initials (____)(____)

Seller's Initials (____)(____)



10. CONDITION OF PROPERTY; RENOVATIONS AND STATEMENT OF DEFECTS PER DRE Regulations 2790.8 and 2790.9; Existing Subdivision Interest Disclosure (For properties that have been either completed or occupied more than 3 years prior to a public report application being filed with the DRE, the Seller disclosure shall be on the form specified in DRE Regulation 2790.9):

- A. Condition:** The Property is to be maintained in its present physical condition as on the date of Acceptance.
- B. Renovations:** All renovations affecting this unit disclosed to DRE pursuant to DRE form RE 639 shall be completed prior to the Close of Escrow.
- C. Statement of Defects:**
 - (1)** As required by DRE Regulation 2790.8, Seller shall complete and provide an "Existing Subdivision Interest Disclosure Statement" form specified in DRE Regulation 2790.9 ("ESI Disclosure") to Buyer as soon as practicable before the transfer of title.
 - (2)** If any ESI Disclosure is Delivered to Buyer after the offer is Signed, Buyer shall have the right to cancel this Agreement within **3 Days After Delivery** in person or **5 Days After Delivery** by deposit in the mail, by giving written notice of cancellation to Seller or Seller's agent.
 - (3)** Seller is obligated to disclose information in the ESI Disclosure based on Seller's actual knowledge, after making a reasonable effort to obtain such information, whether derived from Seller's own investigation and inspection of the Existing Subdivision Interest or from written reports prepared by third parties retained by Seller to perform inspections.
 - (4)** Seller shall amend any information in an ESI Disclosure after the ESI Disclosure is provided to Buyer, if the information in the ESI Disclosure is or becomes materially inaccurate and the Seller has actual knowledge of the inaccuracy. Seller is otherwise not required to amend the ESI Disclosure once it has been provided to Buyer. If the amended ESI Disclosure shows that the original ESI Disclosure was inaccurate or has become inaccurate in any material respect, Buyer shall have the right to cancel this Agreement within **3 Days After Delivery** in person or **5 Days After Delivery** by deposit in the mail, by giving written notice of cancellation to Seller or Seller's agent.
- D. Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.**

11. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:

- A.** Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 18B. Within the time specified in paragraph 18B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to, the right to: **(i)** inspect for lead-based paint and other lead-based paint hazards; **(ii)** inspect for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2); **(iii)** review the registered sex offender database; **(iv)** confirm the insurability of Buyer and the Property including the availability and cost of flood and fire insurance; **(v)** review and seek approval of leases that may need to be assumed by Buyer; and **(vi)** satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA). Without Seller's prior written consent, Buyer shall neither make nor cause to be made: **(i)** invasive or destructive Buyer Investigations except for minimally invasive testing required to prepare a Pest Control Report; or **(ii)** inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- B.** Seller shall make the Property available for all Buyer Investigations. Buyer shall **(i)** as specified in paragraph 18B, complete Buyer Investigations and either remove the contingency or cancel this Agreement, and **(ii)** give Seller, at no cost, complete Copies of all such Investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
- C.** Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is made available to Buyer.
- D. Buyer indemnity and seller protection for entry upon property:** Buyer shall: **(i)** keep the Property free and clear of liens; **(ii)** repair all damage arising from Buyer Investigations; and **(iii)** indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

12. WARRANTY:

- A. (1) SELLER WARRANTY:** (Applies UNLESS paragraph 12A(2) is checked.) Seller warrants the Property against defective materials and workmanship (i) for sales subject to Civil Code §§ 895-945.5 for the minimum period of time established by those code sections, or (ii) for Sales not subject to Civil Code §§ 895-945.5, for a period of 1 year from the date of possession. In either (i) or (ii), Seller's Warranty only applies if Seller receives notice of such defect(s) within the warranty period. Items or defects that were inspected and approved under paragraph 18 or thereafter, minor settling cracks, damage caused by Buyer or movers, or damage due to alterations or additions made other than by Seller, are excluded from Seller's Warranty. For defects that are covered by the seller warranty in 12A(1)(i)(ii), Seller will, within a reasonable time, at Seller's option repair or replace any covered defect in the Property.



Property Address: _____

Date: _____

OR (2) WARRANTY TO BE PROVIDED: (APPLIES ONLY IF CHECKED) At Close Of Escrow, Seller shall provide Buyer with a limited warranty ("Seller's Warranty") against defective materials and workmanship, which will be evidenced by the documents delivered with this Agreement. **[Note to Seller: For property sold subject to a public report, you must submit to, and have approval for use from, the DRE for any Seller Warranty you intend to attach to this Agreement.] A copy of such warranty shall be provided to Buyer within the time specified in paragraph 18.**

B. Seller shall not be liable for, or have any obligation to provide, warranty services with respect to any defect expressly accepted by Buyer at Close Of Escrow.

C. THE SELLER'S WARRANTY IS PROVIDED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS, AND IN LIEU OF ANY STRICT LIABILITY OF SELLER IN TORT, TO THE EXTENT SUCH LIABILITY MAY BE DISCLAIMED UNDER CALIFORNIA LAW. THE SELLER'S WARRANTY ALSO EXCLUDES LIABILITY FOR CONSEQUENTIAL DAMAGES TO THE EXTENT THAT SUCH LIABILITY MAY BE DISCLAIMED UNDER CALIFORNIA LAW.

D. WHETHER OR NOT SELLER WARRANTS ANY ASPECT OF THE PROPERTY, SELLER IS OBLIGATED TO DISCLOSE KNOWN MATERIAL FACTS, AND TO MAKE OTHER DISCLOSURES REQUIRED BY LAW.

E. Buyer and Seller understand and acknowledge that Brokers or Referral Licensee shall not be liable for any breach of this paragraph.

13. BUILDER LIMITED CONTRACTUAL WARRANTIES: Provided with this Agreement are Copies of all builder limited contractual warranties not specified in paragraph 12 of this Addendum or elsewhere in writing.

14. PROCEDURES FOR ACTIONS ON CONSTRUCTION DEFECTS AND ESCROW INSTRUCTION: Unless specified below, this sale is governed by Civil Code §§ 895-945.5 and all of the terms of paragraph 14 apply (if checked, this sale is not governed by Civil Code §§ 895-945.5 and paragraphs 14 A-E do not apply).

A. "Notice: California law establishes procedures that must be followed prior to the filing of any action related to a claimed construction defect. These procedures impact the legal rights of a homeowner. These procedures may be found in Title 7 of Part 2 of Division 2 of the California Civil Code commencing with § 895."

B. Escrow Holder Instruction: By signing this document, the parties are instructing Escrow Holder to insert in the deed the language specified in quotes in paragraph 14A above.

C. Attached to the Agreement is a Copy of California Civil Code §§ 895 to 945.5. (NOTE: REALTORS® may obtain a PDF version of California Civil Code §§ 895 to 945.5 at www.car.org on the Standard Forms page of the Legal Section.)

D. By initialing here, Buyer and Seller acknowledge that each has received and read this paragraph and the copy of California Civil Code §§ 895 to 945.5 provided.

Buyer's Initials _____ / _____	Seller's Initials _____ / _____
(or Seller's Representative)	

E. AGENT FOR NOTICE: Claims and requests for information relating to construction defect allegations made pursuant to Chapter 4 of Title 7 of Part 2 of Division 2 of the California Civil Code commencing with § 910 may be made to the following person at the following address: _____

By initialing here, Buyer and Seller acknowledge that each has read and understands this paragraph.

Buyer's Initials _____ / _____	Seller's Initials _____ / _____
(or Seller's Representative)	

15. NON-ADVERSARIAL PROCEDURE OF CALIFORNIA CIVIL CODE: Seller elects to engage in (or, if checked, opts out of) the non-adversarial procedure set forth in California Civil Code § 914 for construction defect claims. If checked, Seller opts-out and Buyer and Seller agree to be bound by the alternative procedure, set forth in the attached Addendum. **[Note to Seller: For property sold subject to a public report, you must submit to, and have approval for use from, the DRE for any addenda you intend to attach to this Agreement.]**

16. OTHER TERMS AND CONDITIONS: Other terms and conditions are void to the extent that they impair or limit the rights or remedies reserved to Buyer elsewhere in this Agreement. **[Note to Seller: For property sold subject to a public report, you must submit to, and have approval for use from, the DRE for any addenda you intend to attach to this Agreement.]**

17. TITLE AND VESTING:

A. Within the time specified in paragraph 18, Buyer shall be provided a current preliminary title report, "Preliminary Report". The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 18B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities. Sellers shall within **7 Days** After Acceptance, give Escrow Holder a completed Statement of Information.

Buyer's Initials (____)(____)

Seller's Initials (____)(____)



- B. At Close Of Escrow, Buyer shall receive a grant deed conveying title including, unless reserved by Seller, oil, gas, mineral and water rights, if currently owned by Seller. Title shall be subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters that are of record or disclosed to Buyer prior to Close Of Escrow, unless disapproved in writing by Buyer within the time specified in paragraph 18. However, title shall not be subject to any liens against the Property, except for those specified in this Agreement. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.
- C. Buyer shall receive a CLTA/ALTA Homeowner's Policy of Title Insurance, if available for the Property. If not, Buyer shall receive a Standard Coverage Owner's Policy (CLTA or ALTA-R with regional exceptions) and Escrow Holder shall so inform Buyer prior to close of escrow. A title company, at Buyer's request, can provide information about availability, desirability, coverage, survey requirements, and cost of various title insurance coverages and endorsements. If Buyer desires a policy other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and pay any increase in costs.

18. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).

[NOTE TO BUYER AND SELLER: THIS PARAGRAPH 18 DOES NOT APPLY TO THE DELIVERY OF THE PUBLIC REPORT REQUIRED UNDER PARAGRAPH 9 IF THE PROPERTY IS SOLD SUBJECT TO A PUBLIC REPORT. SEE PARAGRAPH 9 FOR THE DELIVERY REQUIREMENTS FOR THE PUBLIC REPORT.]

A. SELLER HAS: 7 (or _____) Days After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 6, 8, 12, 16, and 17. If, by the time specified, Seller has not delivered any such item, Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement.

B. (1) BUYER HAS: 17 (or _____) Days After Acceptance, unless otherwise agreed in writing, to complete all Buyer Investigations; approve all disclosures, reports and other applicable information, which Buyer receives from Seller; and approve all other matters affecting the Property (including those concerning the registered sex offender data base in paragraph 6(C)).

(2) Within the time specified in 18B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller either (i) a removal of the applicable contingency (C.A.R. Form CR), or (ii) a cancellation (C.A.R. Form CC) of this Agreement based upon a remaining contingency or Seller's failure to Deliver the specified items. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in 18A, then Buyer has **5 (or _____) Days** After Delivery of any such items, or the time specified in 18B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.

(3) Continuation of Contingency: Even after the end of the time specified in 18B(1) and before Seller cancels this Agreement, if at all, pursuant to 18C, Buyer retains the right to either (i) in writing remove remaining contingencies, or (ii) cancel this Agreement based upon a remaining contingency or Seller's failure to Deliver the specified terms. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to 18C(1).

C. SELLER RIGHT TO CANCEL:

(1) Seller right to Cancel; Buyer Contingencies: If, within time specified in this Agreement, Buyer does not, in writing, Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize return of Buyer's deposits.

(2) Seller right to Cancel; Buyer Contract Obligations: Seller, after first Delivering to Buyer a NBP may cancel this Agreement for any of the following reasons: **(i)** if Buyer fails to deposit funds as required by 3A or 3B; **(ii)** if the funds deposited pursuant to 3A or 3B are not good when deposited; **(iii)** if Buyer fails to Deliver a notice of FHA or VA costs or terms as required by 3D(3) (C.A.R. Form FVA); **(iv)** if Buyer fails to Deliver a letter as required by 3.I; **(v)** if Buyer fails to Deliver verification as required by 3C or 3H; **(vi)** if Seller reasonably disapproves of the verification provided by 3C or 3H; **(vii)** or if Buyer fails to sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B. In such event, Seller shall authorize return of Buyer's deposit.

D. NOTICE TO BUYER OR SELLER TO PERFORM: The NBP or NSP shall: **(i)** be in writing; **(ii)** be signed by the applicable Buyer or Seller; and **(iii)** give the other Party at least **2 (or _____) Days** After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP or NSP may not be Delivered any earlier than **2 Days** Prior to the expiration of the applicable time for Buyer to remove a contingency or cancel this Agreement or meet an obligation specified in 18C(2).

E. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES: If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in a separate written agreement between Buyer and Seller, Buyer shall with regard to that contingency or cancellation right conclusively be deemed to have: **(i)** completed all Buyer Investigations, and review of reports and other applicable information and disclosures; **(ii)** elected to proceed with the transaction; and **(iii)** assumed all liability, responsibility and expense for Repairs or corrections or for inability to obtain financing.

F. CLOSE OF ESCROW: Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: **(i)** be signed by the applicable Buyer or Seller; and **(ii)** give the other Party at least **3 (or _____) Days** After Delivery to close escrow. A DCE may not be Delivered any earlier than **3 Days** Prior to the scheduled close of escrow.

G. EFFECT OF CANCELLATION ON DEPOSITS: If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, Buyer and Seller agree to Sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. For subdivision sales subject to DRE approval, the entire deposit must be returned to Buyer or held pursuant to the Liquidated Damage provision without any reduction for fees and costs. **Except as provided elsewhere in this Agreement, release of funds will require mutual Signed release instructions from Buyer and Seller, judicial decision or arbitration award. A Buyer or Seller may be subject to a civil penalty of up to \$1,000 for refusal to sign such instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).**



Property Address: _____

Date: _____

- 19. **FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final inspection of the Property accompanied by Seller within 5 (or _____) Days prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely for the purpose of preparing a list of corrective work, if any, which may be necessary. Seller shall provide Buyer with at least 3 Days notice of the date on which the Property is to be inspected and shall have the right to accompany Buyer on such inspection. Buyer's failure to make the final inspection on the agreed date, the existence of minor defects in the dwelling, or any corrective work agreed to be performed by Seller pursuant to this paragraph shall not cause a delay in the Close Of Escrow or entitle Buyer to withhold any portion of the purchase price. Seller shall, prior to or after the Close Of Escrow, proceed diligently to complete all corrective work agreed to and acknowledged by Buyer and Seller in writing in a reasonably prompt manner in accordance with Seller's Warranty.
- 20. **PURCHASE MONEY DISTRIBUTIONS TO THIRD PARTIES:** Pursuant to DRE Regulation 2791(b), certain distributions and charges may be made against Buyer's deposits to Seller. These charges under Regulation 2791(b), and the Seller's estimates of such charges, are set forth below:

Credit Reports _____	Preliminary Title Reports _____
Escrow Services _____	Loan Processing Fees _____
Appraisals _____	
- 21. **RETENTION OF BUYER DEPOSITS IN THE EVENT OF BUYER DEFAULT:** In the event Seller has used Buyer's deposits pending consummation of this Agreement, Seller shall immediately, upon alleging Buyer's default, transmit to Escrow Holder funds equal to all of Buyer's deposits so used.
- 22. **PRORATIONS AND PROPERTY TAXES:** Unless otherwise agreed in writing, real property taxes and assessments, interest, HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are a current lien shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow. Prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are a current lien but not yet due, shall be assumed by Buyer WITHOUT CREDIT toward the purchase price. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer; and, (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT OR SBSA for further information). TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be on a 30 day month. Exceptions: _____
- 23. **SELECTION OF SERVICE PROVIDERS:** Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
- 24. **EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Law.
- 25. **ATTORNEY FEES:** In any action, proceeding or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller may be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 37A.
- 26. **DESTRUCTION OF PROPERTY:** If the Property is destroyed or materially damaged prior to Close Of Escrow, then upon the election of Buyer or Seller, any deposit made by Buyer shall be returned to Buyer and this Agreement and the escrow shall terminate, and both parties shall be discharged of all liability and obligations under this Agreement and the escrow instructions.
- 27. **SEVERABILITY:** If any term, condition or provision of this Agreement is declared illegal or invalid for any reason by a court of competent jurisdiction, or arbitrator, the remaining terms, conditions and provisions shall, nevertheless, remain in full force and effect.
- 28. **NO TRANSFER DURING ESCROW:** Buyer hereby represents that Buyer is buying the Property for Buyer's own account. This Agreement and the related escrow may not be assigned or otherwise transferred by Buyer voluntarily or by operation of Law, without the written consent of Seller to a specified assignee, and any attempt to do so shall be null, void, of no effect, and a default by Buyer under this Agreement. Such consent shall not be unreasonably withheld. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Seller (C.A.R. Form AOAA). Escrow Holder is and shall be instructed by Seller not to assist or participate in any way in the consummation of any so called "double escrows." Buyer further acknowledges that Buyer will not attempt to sell or advertise the Property until after the Close Of Escrow.
- 29. **DOCUMENTATION TO SUBSEQUENT PURCHASERS:** Buyer is instructed to give any subsequent purchaser all documents related to the sale and purchase that Buyer receives from Seller.
- 30. **MAINTENANCE RECOMMENDATIONS:** Provided with the Agreement are Copies of all builder maintenance and preventative maintenance recommendations.
- 31. **MANUFACTURED PRODUCTS MAINTENANCE AND LIMITED WARRANTIES:** Provided with the Agreement are Copies of all manufactured products maintenance, preventative maintenance and limited warranty information.
- 32. **DEFINITIONS:** As used in this Agreement:
 - A. "Acceptance" means the time the offer or final counter offer is accepted in writing by a party and is delivered to and personally received by the other party or that party's authorized agent in accordance with the terms of this offer or a final counter offer.
 - B. "Agreement" means this document and any counter offers and any incorporated addenda, collectively forming the binding agreement between the Parties. Addenda are incorporated only when Signed by all Parties.
 - C. "DRE" means the Department of Real Estate, an entity of the California Department of Consumer Affairs.
 - D. "C.A.R. Form" means the specific form referenced or another comparable form agreed to by the parties.
 - E. "Close Of Escrow" means the date the grant deed, or other evidence of transfer of title, is recorded.
 - F. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.
 - G. "Days" means calendar days. However, after Acceptance, the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
 - H. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.

Buyer's Initials (____)(____)

Seller's Initials (____)(____)



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- I. **“Days Prior”** means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
- J. **“Deliver”, “Delivered” or “Delivery”**, unless otherwise specified in writing, means and shall be effective upon: personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in the section titled Real Estate Brokers on page 12, regardless of the method used (i.e., messenger, mail, email, fax, other).
- K. **“Electronic Copy” or “Electronic Signature”** means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
- L. **“Law”** means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
- M. **“Repairs”** means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
- N. **“Signed”** means either a handwritten or electronic signature on an original document, Copy or any counterpart.

33. BROKERAGE:

- A. **BROKER COMPENSATION:** Seller or Buyer, or both, as applicable, agrees to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
- B. (Applies only if checked) **REFERRAL LICENSEE COMPENSATION:** to _____, Referral Licensee, \$ _____ or _____ percent of the purchase price.

34. REPRESENTATIVE CAPACITY: If one or more Parties is signing this Agreement in a representative capacity and not for him/herself as an individual then that Party shall so indicate in paragraph 40 or 41 and attach a Representative Capacity Signature Disclosure (C.A.R. Form RCSD). Wherever the signature or initials of the representative identified in the RCSD appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Party acting in a representative capacity (i) represents that the entity for which that party is acting already exists and (ii) shall Deliver to the other Party and Escrow Holder, within **3 Days** After Acceptance, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code §18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).

35. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:

- A. **The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions** of Buyer and Seller to Escrow Holder, which Escrow Holder is to use, along with any related counter offers and addenda and any additional mutual instructions, to close the transaction: **1, 3, 4, 6D, 9, 14, 16, 17, 18, 20, 21, 22, 26, 28, 32, 33, 34, 35, 36, 39, 40, 41 and paragraph D of the section titled Real Estate Brokers on page 12.** The terms and conditions of the Agreement not specifically referenced above, in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder’s general provisions directly from Escrow Holder and will execute such provisions upon Escrow Holder’s request. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms reasonably necessary to complete this transaction if provided by Escrow Holder.
- B. A Copy of this Agreement shall be delivered to Escrow Holder within **3** business days after Acceptance (or _____). **Escrow will be deemed open when Escrow Holder has Signed an acknowledgement of receipt of a Copy of this accepted Agreement.** Escrow Holder will provide Seller’s Statement of Information to title company when received from Seller. Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures, as defined in this Agreement, as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs the Agreement. If Seller delivers an affidavit to Escrow Holder to satisfy Seller’s FIRPTA obligation under paragraph 6D, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.
- C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 33 and paragraph D of the section titled Real Estate Brokers on page 12. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 33, respectively, and irrevocably instruct Escrow Holder to disburse those funds to the respective Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder’s payment to Broker(s) of compensation pursuant to this Agreement. Escrow Holder shall immediately notify Brokers: **(i)** if Buyer’s initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or **(ii)** if either Buyer or Seller instructs Escrow Holder to cancel escrow.
- D. **IF THE PROPERTY IS SUBJECT TO A PUBLIC REPORT OR EXEMPT FROM A PUBLIC REPORT PURSUANT TO BUSINESS AND PROFESSIONS CODE §11010.4, THE FOLLOWING ADDITIONAL ESCROW INSTRUCTIONS APPLY:**
(1) BLANKET ENCUMBRANCE: Not as a condition of Seller’s duty to complete performance but solely for the benefit of Buyer, the escrow shall not close, funds shall not be released from escrow, and title shall not be conveyed to Buyer, until **all** of the following conditions have been met: **(i)** Seller has complied with the purchase money handling requirements of B&P Code §§11013, 11013.1, 11013.2 or 11013.4, as applicable; and **(ii)** Buyer has been provided a policy of title insurance showing that the Property is free and clear of any blanket encumbrances as defined in §11013. For purposes of compliance with §11013.2(a), a release from a blanket encumbrance resulting from a deed of trust or mortgage shall require satisfaction with either of the following: **(a)** an instrument has

Buyer’s Initials (____)(____)

Seller’s Initials (____)(____)



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been duly recorded unconditionally reconveying and releasing the Property from the lien or charge of such deed of trust; or (b) Buyer is notified that an agreement or demand constituting a release agreement as defined in DRE Regulation 2791.1(b)(2)(A) has been duly deposited with Escrow Holder and is available to Buyer on request for each deed of trust, and Buyer will be provided with a policy of title insurance insuring Buyer against loss by reason of such deed of trust.

(2) **COMMON INTEREST SUBDIVISION:** The Property is in a common interest subdivision and the attached Condominium Conversion And Existing Subdivision Supplemental Escrow Instructions are made a part of this Agreement.

(3) If escrow does not close within 1 year after Acceptance of this Agreement, and Buyer and Seller have not extended the closing date in writing, and the failure to close escrow is not due to the default of Buyer, escrow is to be cancelled and all funds in escrow immediately returned to Buyer upon Buyer's request.

(4) Subject to the requirements of Civil Code §§1675(c) or (d), 1676, 1677 and 1678, if funds deposited in escrow by Buyer have been disbursed on Seller's instructions as permitted by DRE Regulation 2791, the funds expended by Seller shall be reimbursed to escrow within **15 Days** After Seller's failure to perform within 1 year after Acceptance of this Agreement, and Buyer and Seller have not extended the closing date in writing, and these funds shall be immediately returned to Buyer from escrow.

(5) Escrow shall not close until Escrow Holder has received written notice from a title insurance company that each and every encumbrance, including without limitation, any mortgage or deed of trust, filed of record prior to the time of recording of the Declaration of Covenants, Conditions and Restrictions has been either (i) fully reconveyed or (ii) expressly subordinated to the Declaration of Covenants, Conditions and Restrictions.

(6) If the Property is a newly converted condominium subject to Civil Code §1134, Buyer has acknowledged receipt of either a statement listing all substantial defects or malfunctions or a statement of disclaimer and the required rescission period has expired pursuant to Civil Code §1134.

(7) For properties that have been either completed or occupied more than 3 years prior to a public report application being filed with the DRE, the Seller disclosure shall be on the form specified in DRE Regulation 2790.9.

36. LIQUIDATED DAMAGES: IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY BY REASON OF DEFAULT OF 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, BUYER _____/_____ AND SELLER _____/_____ AGREE THAT:

A. THE SUMS PAID ON DEPOSIT PURSUANT TO PARAGRAPH 3 HEREOF PLUS ANY AMOUNTS PAID FOR ADDITIONAL ITEMS, EXTRAS AND/OR CUSTOMER SELECTED MATERIALS ORDERED BY BUYER ("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.

B. THE PAYMENT OF SUCH LIQUIDATED DAMAGES TO SELLER SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF SELLER ON ACCOUNT OF THE DEFAULT OF BUYER.

C. LIQUIDATED DAMAGES SHALL BE PAYABLE TO SELLER OUT OF BUYER'S DEPOSIT TOWARD PURCHASE OF THE PROPERTY ACCORDING TO THE FOLLOWING PROCEDURES:

(1) SELLER SHALL GIVE WRITTEN NOTICE ("SELLER'S NOTICE AND DEMAND") (C.A.R. Form SDRD), IN THE MANNER PRESCRIBED BY SECTION 116.340 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 THE CONTRACT AND THAT SELLER IS DEMANDING THAT ESCROW HOLDER REMIT THE PURCHASE MONEY DEPOSIT TO SELLER AS LIQUIDATED DAMAGES UNLESS, WITHIN 20 DAYS, BUYER GIVES ESCROW HOLDER BUYER'S WRITTEN OBJECTION TO DISBURSEMENT OF PURCHASE MONEY AS LIQUIDATED DAMAGES ("BUYER'S OBJECTION").

(2) BUYER HAS A PERIOD OF 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 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 20 DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND, THEN THE DETERMINATION AS TO WHETHER SELLER IS ENTITLED TO THE DISBURSEMENT OF PURCHASE MONEY AS LIQUIDATED DAMAGES, AND EVERY OTHER CAUSE OF ACTION THAT HAS ARISEN BETWEEN BUYER AND SELLER UNDER THIS AGREEMENT, SHALL BE DECIDED IN ACCORDANCE WITH PARAGRAPH 37 OF THIS AGREEMENT.

(5) IF THE DETERMINATION AS TO WHETHER SELLER IS ENTITLED TO THE DISBURSEMENT OF PURCHASE MONEY AS LIQUIDATED DAMAGES IS REFERRED TO ARBITRATION, ANY FEE TO INITIATE ARBITRATION SHALL BE PAID BY SELLER, BUT THE COST OF ARBITRATION SHALL ULTIMATELY BE BORNE AS DETERMINED BY THE ARBITRATOR.

Buyer's Initials (____)(____)

Seller's Initials (____)(____)



SELLER AGREES TO INDEMNIFY AND HOLD ESCROW HOLDER HARMLESS FROM ANY CLAIM BY BUYER ARISING OUT OF ANY DISTRIBUTIONS MADE BY ESCROW HOLDER IN ACCORDANCE WITH, AND PURSUANT TO, THE PROVISIONS OF THIS PARAGRAPH.

REMITTANCE OF THE AFORESAID LIQUIDATED DAMAGES TO SELLER SHALL PRECLUDE ANY RIGHT OF ACTION SELLER MAY HAVE TO CONTEST THE REASONABLENESS OF THE AMOUNT ACTUALLY PAID AS LIQUIDATED DAMAGES OR THE VALIDITY OF THIS LIQUIDATED DAMAGES PROVISION.

NOTE: CIVIL CODE SECTION 1675(D) IS APPLICABLE TO THIS PROVISION. SECTION 1675(D) PROVIDES "IF THE AMOUNT ACTUALLY PAID PURSUANT TO THE LIQUIDATED DAMAGES PROVISION EXCEEDS 3 PERCENT OF THE PURCHASE PRICE, THE PROVISION IS INVALID UNLESS THE PARTY SEEKING TO UPHOLD THE PROVISION ESTABLISHES THAT THE AMOUNT ACTUALLY PAID IS REASONABLE AS LIQUIDATED DAMAGES."

37. DISPUTE RESOLUTION:

A. MEDIATION: The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action, subject to paragraphs 37C and D below. The Parties also **agree to mediate any dispute or claims with Broker(s), who, in writing, agree to such a mediation prior to, or within a reasonable time after, the dispute or claim is presented to Broker.** If, for any dispute to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.

The fees necessary to initiate the mediation shall be advanced by Seller, with the costs of the mediation to be borne as determined by the parties. If the parties cannot resolve their dispute through mediation and they proceed to arbitration or court, then the costs of mediation shall be borne as determined by the arbitrator or judge.

B. ARBITRATION OF DISPUTES: THE PARTIES AGREE THAT ANY CONTROVERSY BETWEEN THEM REGARDING LIQUIDATED DAMAGES, TERMINATION OF THIS AGREEMENT BEFORE CLOSE OF ESCROW, BUYER'S INTEREST IN THE PROPERTY OR OTHER ISSUES WHICH ARISE BEFORE CLOSE OF ESCROW, INCLUDING CONTROVERSY CREATED BY CONFLICTING NOTICES BY BUYER AND SELLER, AND THE DISPOSITION OF FUNDS HELD BY ESCROW HOLDER SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, PROVIDED THAT THOSE RULES ARE CONSISTENT WITH THE FOLLOWING REQUIREMENTS:

(1) THE FEES NECESSARY TO INITIATE THE ARBITRATION SHALL BE ADVANCED BY SELLER, WITH COSTS AND FEES (INCLUDING ONGOING COSTS AND FEES) TO BE PAID AS AGREED BY THE PARTIES. IF THE PARTIES CANNOT AGREE ON THE PAYMENT OF SUCH COSTS AND FEES, ALL COSTS AND FEES OF THE ARBITRATION SHALL ULTIMATELY BE BORNE AS DETERMINED BY THE ARBITRATION.

(2) THE ARBITRATION SHALL BE ADMINISTERED BY A NEUTRAL AND IMPARTIAL PERSON(S).

(3) A NEUTRAL AND IMPARTIAL INDIVIDUAL(S) SHALL BE APPOINTED TO SERVE AS ARBITRATOR(S) WITHIN THE SPECIFIED PERIOD OF TIME, WHICH SHALL IN NO EVENT BE MORE THAN 60 DAYS FROM THE ADMINISTRATOR'S RECEIPT OF A WRITTEN REQUEST FROM A PARTY TO ARBITRATE THE CLAIM OR DISPUTE. THE PROVISIONS OF SECTION 1297.121 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE SHALL APPLY TO THE SELECTION OF ARBITRATOR(S). AN ARBITRATOR MAY BE CHALLENGED FOR ANY OF THE GROUNDS LISTED IN SECTION 1297.121, OR 1297.124 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

(4) THE VENUE OF THE ARBITRATION SHALL BE IN THE COUNTY WHERE THE PROPERTY IS LOCATED UNLESS BUYER AND SELLER AGREE TO SOME OTHER LOCATION.

(5) THE ARBITRATION SHALL BE COMMENCED PROMPTLY AND TIMELY IN ACCORDANCE WITH THE RULES OF ARBITRATION. IF THE RULES OF THE ARBITRATION DO NOT SPECIFY A DATE BY WHICH THE ARBITRATION MUST COMMENCE, THEN IT SHALL COMMENCE ON A DATE AGREED TO BY THE PARTIES. IF THE PARTIES CANNOT AGREE ON AN ARBITRATION COMMENCEMENT DATE, IT SHALL COMMENCE ON THE DATE DETERMINED BY THE ARBITRATOR(S).

(6) THE ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH RULES AND PROCEDURES WHICH ARE REASONABLE AND FAIR TO BUYER AND SELLER. THE AMERICAN ARBITRATION ASSOCIATION COMMERCIAL RULES OF ARBITRATION IN EFFECT AS OF THE DATE OF THIS AGREEMENT SHALL BE DEEMED IN COMPLIANCE WITH THIS REQUIREMENT.

(7) THE ARBITRATION SHALL CONCLUDE PROMPTLY AND TIMELY.

(8) THE ARBITRATOR(S) ARE AUTHORIZED TO PROVIDE ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR EQUITY FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF THE ARBITRATION.

JUDGMENT UPON THE DECISION RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED INTO ANY COURT HAVING PROPER JURISDICTION.

Buyer's Initials (____)(____)

Seller's Initials (____)(____)



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

“WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISIONS TO NEUTRAL ARBITRATION.”

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

C. MEDIATION AND ARBITRATION TERMS:

(1) EXCLUSIONS: The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985, (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.

(2) PRESERVATION OF ACTIONS: The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.

(3) BROKERS; REFERRAL LICENSEE: Neither Brokers nor Referral Licensee shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) or Referral Licensee participating in mediation or arbitration shall not be deemed a party to this Agreement.

38. TERMS AND CONDITIONS OF OFFER:

This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initialed by all parties or if incorporated by mutual agreement in a counter offer or addendum. If at least one but not all parties initial such paragraph(s), a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.

39. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES: Time is of the essence. All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**

40. EXPIRATION OF OFFER: This offer shall be deemed revoked and the deposit shall be returned unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by _____, who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or, if checked, by _____ AM/PM, on _____ (date)). Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the above confirmation of agency relationships.

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

Date _____ BUYER _____
(Print name) _____

Date _____ BUYER _____
(Print name) _____

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



Property Address: _____ Date: _____

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

(If checked) **SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMCO), DATED:** _____.

Note to Seller: For property sold subject to a public report you must submit to, and have approval for use from, the CalBRE for any counter offer you intend to use with this Agreement.

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

Date _____ SELLER _____

(Print name) _____

Date _____ SELLER _____

(Print name) _____

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

(____/____) **(Do not initial if making a counter offer) CONFIRMATION OF ACCEPTANCE:** A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) _____ at _____ AM/PM. **A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement. It is solely intended to evidence the date that Confirmation of Acceptance has occurred.**

REAL ESTATE BROKERS:

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

B. Agency relationships are confirmed as stated in paragraph 2.

C. If specified in paragraph 2A(2), Agent who submitted the offer for Buyer acknowledges receipt of deposit.

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

Real Estate Broker (Selling Firm) _____ DRE Lic. # _____

By _____ DRE Lic. # _____ Date _____

By _____ DRE Lic. # _____ Date _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

Real Estate Broker (Listing Firm) _____ DRE Lic. # _____

By _____ DRE Lic. # _____ Date _____

By _____ DRE Lic. # _____ Date _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, a deposit in the amount of \$ _____), counter offer numbers _____ Seller's Statement of Information and _____, and agrees to act as Escrow Holder subject to paragraph 35 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

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

Escrow Holder _____ Escrow # _____

By _____ Date _____

Address _____

Phone/Fax/E-mail _____

Escrow Holder has the following license number # _____

Department of Business Oversight, Department of Insurance, DRE.

PRESENTATION OF OFFER: (____) Listing Broker presented this offer to Seller on _____ (date).
Broker or Designee Initials _____

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

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Buyer acknowledges that page 12 is part of this Agreement (____)(____)

