ATTACHMENT A October 2003

CHANGES TO THE C.A.R. MODEL MLS RULES APPROVED BY THE C.A.R. BOARD OF DIRECTORS REGARDING VIRTUAL OFFICE WEBSITES (V.O.W.)

I. Proposed Additions to the C.A.R. Model MLS Rules:

- 12.19 Virtual Office Websites ("VOWs")
- 12.19.1 VOW Defined. A VOW (1) means any participant's Internet website (and, where authorized, any subscriber's website, subject to the participant's permission, oversight, supervision and responsibility), other than an IDX site as set forth in section 12.16, through which consumers receive real estate brokerage services, including the opportunity to search for MLS data conditional on the participant's oversight, supervision and responsibility and (ii) not withstanding anything in these rules and regulations to the contrary, is subject to paragraphs 12.19.1 through 12.19.13 below:
- 12.19.2 Authorization and Opt Out. Participants' and subscribers' use of listings of other participants on VOWs is subject to the consent of such other participants. Participants' consent for display of their listings by other participants and subscribers on VOWs pursuant to these rules is presumed unless a participant independently and affirmatively withholds that consent ("opts out"). Participants may independently "opt out" of the VOWs of other participants and subscribers on (a) a blanket basis ("blanket opt out") or (b) on a selective basis ("selective opt out").
- (a) "Blanket opting out" can be accomplished by either: (i) notifying the MLS, which shall withhold (or instruct the VOW vendor to withhold) the listings of any "blanket opt out" participant from its VOW download of listing information; or (ii) notifying the MLS, which shall compile and maintain a list of the names of any "blanket opt out" participants and make such list available to all participants and subscribers operating VOWs in which case it is the responsibility of participants and subscribers to refrain from displaying the listings of "blanket opt out" participants on their VOWs.

(Note: The MLS must select one of the two options [either (i) or (ii)] shown immediately above.)

- (b) "Selective opting out" can be accomplished by the "selective opt out" participant providing written notice to another participant or subscriber operating a VOW of the "selective opt out" participant's independent decision to withhold consent for display of that participant's listings on the VOW. In the event such opt out notice is directed to the participant, the participant is responsible for notifying all of its subscribers of said opt out. An opt out notice directed to a specific subscriber, however, must also include a written notice to that subscriber's responsible participant. Any "selective opt out" is solely the responsibility of such selective opt out participants and shall not be published by the service.
- 12.19.3 Operational Compliance. Participants, and subscribers acting on their behalf, operating VOWs must establish a broker-consumer relationship with each

consumer seeking to receive information from a participant's or subscriber's VOW ("Registrant") evidenced by and in compliance with the following:

- (a) Confirmation and Verification: Participants and subscribers must (1) obtain the name and valid email address of each Registrant and (2) send an email to each Registrant in order to confirm that the Registrant has received and agreed to the VOW's Terms of Use. Participants and subscribers can provide access to their VOW only after a Registrant's email address is verified as valid and the Registrant's agreement to the VOW's Terms of Use is confirmed.
- (b) Terms of Use: Participant's and subscriber's Terms of Use shall include the following terms:
- 1. That the Registrant acknowledges entering into a consumer–broker relationship with the participant;
- 2. That all data obtained from the VOW is only for the Registrant's personal, non-commercial use:
- 3. That the Registrant has a bona fide interest in the purchase, sale or lease of real estate of the type being offered through the VOW;
- 4. That the Registrant will not copy, redistribute or retransmit any of the data or information provided; and
- 5. That the Registrant acknowledges the MLS's ownership of and the validity of the copyright in the MLS database.
- 6. That the Registrant authorizes the MLS and the other MLS participants to access the VOW for the purpose of monitoring the site's compliance with the applicable MLS rules and policies.
- Participant's and subscriber's Terms of Use may also include other provisions determined by the participant.
- (c) Financial Obligation: Participants' and subscribers' Terms of Use may not impose a financial obligation on a Registrant. Financial obligations, if any, must be established separately from the participants' and subscribers' Terms of Use, must be prominently labeled, and may not be accepted solely by a "mouse click." (The term "mouse click" denotes a purposeful action by a computer user with a pointing device, such as a computer "mouse" or functionally equivalent mechanism, or simply a keyboard entry, by which the user affirmatively makes a selection or choice.)
- (d) Representation Agreement: Participants' and subscribers' Terms of Use may not create any representation agreement between a Registrant and the participant. Representation agreements, if any, must be established separately from the participants' and subscribers' Terms of Use, must be prominently labeled, and may not be accepted solely by a "mouse click."
- (e) User Name and Password: Participants and subscribers must obtain from or supply to each Registrant a user name and a password, the combination of which must be different from those of all other Registrants on the VOW, before being permitted to search and retrieve information from the MLS database via the VOW.
- (f) Protection from Misappropriation: Participants' and subscribers' VOWs must protect MLS data from misappropriation by employing reasonable efforts to

- monitor for and prevent "scraping" and other unauthorized accessing, reproduction or use of the MLS database.
- (g) Seller Withholding: Listings or property addresses of sellers who have directed their listing brokers to withhold their listing or their property address from display on the Internet (including, but not limited to, publicly–accessible websites or VOWs) shall not be accessible to Registrants. This does not preclude listing participants or subscribers from displaying on their VOW or their other website(s) the listing or property address of consenting sellers.
- (h) Source and Update: MLS information available on any VOW must indicate the source of the information being displayed and the most recent date uploaded and must be refreshed at least once every seven (7) days.
- (i) Distribution of Database: No portion of the MLS database shall be distributed, provided to or made accessible to any person except as provided for in these rules and/or in the National Association of REALTORS VOW policy.
- (j) Privacy Policy: VOWs must display the participant's and subscriber's privacy policy informing Registrants how information they provide may be used.
- (k) Objective Exclusions: Not all listings from the MLS must be displayed as long as any exclusions from display on participants' and subscribers' VOWs are based on objective criteria, e.g. type of property, listed price or geographical location.
- (I) Referral Fees: Participants and subscribers may not provide the identity of Registrants to any other entity for compensation except where (1) the participant's residential real estate brokerage activities principally consist of listing or selling the types of properties required to be filed with the MLS; (2) Registrants are seeking property in a price range or in a location for which the participant ordinarily does not provide real estate brokerage services; and (3) the number of Registrant identities provided, or the corresponding revenue generated, is an insubstantial portion of the participant's real estate brokerage activities. For purposes of this rule, "selling" does not include making referrals of prospective purchasers to other real estate brokers and agents and "listing" does not include making referrals of prospective sellers to other real estate brokers and agents.
- (m) Notice of Intent to Establish VOW: Participants and subscribers (as authorized in accordance with Section 12.19.4 below) must notify the MLS of their intention to establish a VOW, and must make their VOW directly accessible to the MLS and other MLS participants for purposes of monitoring/ensuring compliance with applicable rules and policies.
- 12.19.4 Subscriber Authorization. Subscribers are authorized by the Service to operate VOWs subject to their participant's written consent submitted to the Service, expressly permitting said subscribers to have VOWs. Notwithstanding, VOWs remain subject to the participant's control, and both the participant and the subscriber operating the VOW shall be accountable under these rules.
- 12.19.5 Confidential Information Fields. Participant's and subscriber's VOWs may not make available for consumer self-directed search by or display to Registrants the following data intended exclusively for other MLS Participants and their affiliated licensees:
- 1. Off market comparable data such as expired, withdrawn, pending or sold

listings.

[However, use of "sold" information, in conjunction with work product, to develop or support opinions of real property value or price (ex: appraisals, broker price opinions and Comparable Market Analysis ("CMAs")) is permissible as long as such opinions of real property value or price consist of more than a mere recitation of raw data].

- 2. The compensation offered to other MLS Participants.
- 3. The type of listing agreement, i.e., exclusive right to sell or exclusive agency.
- 4. The seller(s) and occupant(s) name(s), phone number(s) and email address(es) where available.
- 5. Instructions or remarks intended for cooperating brokers only, including but not limited to showing instructions or security references (ex: lock box, burglar alarm or security system, vacancies) regarding the listed property.
- 6. Any other information that goes beyond a description of the property.
- 12.19.6 Advertising vs. Contact Information. No advertising may be visible on a page displaying any portion of the listings of other Participants except that the name, company logo and contact information of the Participant operating the VOW and/or the name, company logo and contact information of the non-principal broker or sales licensee operating the VOW, and any other information required by California law or regulation may not be prohibited.
- 12.19.7 Modification. MLS data fields authorized for display may not be changed. MLS data may be augmented with additional data not otherwise prohibited from display provided the source of any additional data is clearly identified. This rule does not restrict the format of MLS data display or display of fewer than all of the listings or fewer authorized data fields.
- 12.19.8 Notice and Disclaimers. Display of MLS data must include a notice indicating that the data is deemed reliable but is not guaranteed accurate by the MLS. Participants' and subscribers' VOWs may include other appropriate disclaimers necessary to protect the participant, subscriber and/or the MLS from liability.
- 12.19.9 Identity of Listing Broker and Agent. All listings displayed on VOWs shall identify the name of the listing firm and the name of the listing agent in a manner designed to easily identify such listing firm and agent.
- 12.19.10 Viewable Number of Listings. Registrants may view, retrieve or download not more than _____ (insert number that will be the same as the number in 12.15.1) active listings in response to any inquiry.
- 12.19.11 Source of Other Listing Data. Participants and subscribers displaying other brokers' listings obtained from sources other than this MLS (e.g. from other MLSs, from non-Participant brokers, etc.) shall display the source from which each such listing was obtained.
- 12.19.12 Password Validity Period. Registrants' passwords may be valid no longer than 180 days, after which such passwords must be reconfirmed or changed.
- 12.19.13 Right to Charge for Download. The MLS has the right to charge the costs of adding or enhancing its downloading capacity to participants and

subscribers who request downloading of listing information pursuant to Section 12.19.

II. Proposed Revisions to Existing C.A.R. Model MLS Rules (shown in redline format):

12.PROHIBITIONS AND REQUIREMENTS.

law relating to appraisers.

- 12.1 Notification of California Department of Real Estate (DRE) or California Office of Real Estate Appraisers (OREA) Action. Participants and subscribers are required to notify the MLS within 24 hours of any final action taken by the DRE or the OREA against the participant, subscriber or any licensee affiliated with the participant or subscriber including, but not limited to any final decisions restricting, suspending or revoking a real estate license or appraiser's certification or license of a participant, the participant's firm or corporation under which the participant or subscriber acts, or any licensee affiliated with the participant or the participant's firm or licensee or appraiser who was affiliated with the participant or participant's firm at the time of the underlying act. 12.2 Violations of the Law. If a participant, subscriber, appraiser or a licensee affiliated with a participant or subscriber commits a felony or a crime involving moral turpitude or violates the Real Estate Law or the laws relating to appraisers, the participant and subscriber shall be in violation of this section. However, a participant or subscriber shall not be found to have violated this section unless the participant, subscriber, appraiser or salesperson licensed to the participant has been convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of (1) a felony, or (2) a crime involving moral turpitude, or (3) on a determination by any court of competent jurisdiction, or official of the State of California authorized to make the determination, that the participant or subscriber violated a provision of the California Real Estate Law or a Regulation of the Real Estate Commissioner or
- 12.3 Supervision of Licensees and Appraisers. In addition to the notification requirements of paragraph 12.1, a participant may not allow any licensee, under the participant's license, whose license has been revoked, suspended or restricted by the DRE to use the MLS in any manner while the DRE discipline is in effect except that the licensee may use the MLS under a restricted license providing such use is consistent with and does not violate such license restrictions.
- 12.4 Solicitation of Listing Filed With the MLS. Participants and subscribers shall not solicit a listing filed with the service unless such solicitation is consistent with Article 16 of the N.A.R. Code of Ethics, its Standards of Practice and its Case Interpretations. The purpose of this section is to encourage sellers to permit their properties to be filed with the service by protecting them from being solicited through unwanted phone calls, visits and communications, prior to expiration of the listing, by brokers and salespersons seeking the listing upon its expiration. This section is also intended to encourage brokers to participate in the service by assuring them that other participants and subscribers will not attempt to persuade the seller to breach the listing agreement or to interfere with the listing broker's attempts to market the property. This section does not

preclude solicitation of listings under circumstances otherwise permitted under Article 16 of the N.A.R. Code of Ethics, its Standards of Practice and its Case Interpretations.

- 12.5 Misuse of Remarks. Participants and subscribers may not use the remarks in a property data profile sheet or listing submitted to the MLS or inputted directly into the MLS database for purposes of disparaging other real estate agents or conveying information about other offices or for conveying any other information that does not directly relate to the marketing of the listing.
- 12.6 "For Sale" Signs. Only the "For Sale" signs of the listing broker may be placed on the property.
- 12.7 "Sold" Signs and Use of the Term "Sold." Only broker participants or r.e. subscribers who participated in the transaction as the listing broker or cooperating broker may claim to have "sold" the property. Prior to closing, a cooperating broker may post a "sold" sign on a property only with the consent of the listing broker. This section does not, however, prohibit any broker from advertising the addresses and prices of the properties that have sold in a neighborhood after the information regarding the properties has been published as long as the advertisement does not imply the agent was involved in the transaction unless such is the case and as long as the advertisement otherwise presents a "true picture" as is meant under Article 12 of the N.A.R. Code of Ethics, its Standards of Practice and its Case Interpretations.
- 12.8 Advertising of Listing Filed With the MLS. A listing shall not be advertised by any participant or subscriber, other than the listing broker, without the prior consent of the listing broker except as provided in Sections 12.16 and 12.19 relating to display of listings on the internet.
- 12.9 Limitations on Use of Association or MLS Information in Advertising. Except as provided in Sections 12.7, 12.8, 12.11 and 12.15, truthful use of information from the MLS compilation of current listing information, from the A.O.R.'s "statistical report," or from any "sold" or "comparable" report of the A.O.R. or MLS for public mass media advertising by an MLS participant or subscriber or in other public representations for purposes of demonstrating market share is not prohibited. However, any print or non-print forms of advertising or other forms of public representations must clearly demonstrate the period of time over which such claims are based and must include the following, or substantially similar, notice:

Based on information from the	/Association of
REALTORS® (alternatively, from the _	MLS) for the
period (date) through (date). Display of	of MLS data is deemed reliable but is not
guaranteed accurate by the MLS.	

- 12.10 False or Misleading Advertising and Representations. Participants and subscribers may not engage in false or misleading advertising, including, but not limited to, advertisements or representations regarding the participant's or subscriber's relationship to the service, about the service itself, or about any property listed with the service.
- 12.11 Use of MLS Information. In recognition that the purpose of the MLS is to market properties and offer compensation to other broker participants and r.e.

subscribers for the sole purpose of selling the property, and that sellers of properties filed with the service have not given permission to disseminate the information for any other purpose, participants and subscribers are expressly prohibited from using MLS information for any purpose other than to market property to bonafide prospective purchasers or to support market evaluations or appraisals as specifically allowed by Sections 12.14, 12.15, and 12.16 and 12.19. Any uses of MLS information inconsistent with these Sections is expressly prohibited. Nothing in this Section, however, shall limit the A.O.R. from entering into licensing agreements with MLS participants and subscribers or other third parties for use of the MLS information.

- 12.12 Confidentiality of MLS Information. Any information provided by the service to the participants and subscribers shall be considered and treated as confidential by participants and subscribers and shall be for the exclusive use of the participants and subscribers for purposes described in Sections 2, 12.7, 12.11, 12.14, 12.15, 12.16, 12.19 and this section. Participants and subscribers shall at all times maintain control over and responsibility for each copy of any MLS compilation leased to them by the A.O.R. and shall not distribute any such copies to persons other than participants and subscribers. Participants and subscribers are responsible for the security of their passcodes and shall not give or allow use of or make available their pass codes to any person. Participants and subscribers may reproduce or display the information as provided in these rules.
- 12.12.1 Clerical Users. Clerical users may have access to MLS information solely under the direction and supervision of the participant or subscriber. Clerical users may not provide any MLS information to persons other than the participant or subscriber under whom they are registered. Access by clerical users to the data base is solely for clerical and administrative functions for the participant or subscriber under whom the clerical user is registered.
- 12.13 Access to Comparable and Statistical Information. A.O.R. members who are actively engaged in real estate brokerage, management, mortgage financing, appraising, land development, or building, but who do not participate in the service, are nonetheless entitled to receive, by purchase or lease, all information other than current listing information that is generated wholly or in part by the MLS including "comparable" information, "sold" information, and statistical reports. This information is provided for the exclusive use of A.O.R. members and individuals affiliated with A.O.R. members who are also engaged in the real estate business and may not be transmitted, retransmitted or provided in any manner to any unauthorized individual, office or firm except as otherwise specified in these rules and regulations.
- 12.14 Display. Subject to Sections 12.15, and 12.16 and 12.19, broker participants and r.e. subscribers shall be permitted to display the MLS compilation in either electronic or printed format to specifically identified and bonafide prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing and able buyers for the properties described in said MLS compilation. Broker participants and r.e. subscribers shall be permitted to display the MLS compilation in either electronic or printed format

to specifically identified and bonafide sellers or prospective sellers only in conjunction with their ordinary business activities in listing properties. Appraiser participants and appraiser subscribers shall be permitted to display the MLS compilation to the person requesting the appraisal only in conjunction with their ordinary business activities of producing a written appraisal. Such displays under this section shall be only in the immediate presence of the MLS participant or subscriber.

- 12.14.1 Clerical Users. Clerical users are expressly prohibited from displaying or distributing MLS information to anyone other than the participant or subscribers under whom the clerical user is registered.
- 12.15 Reproduction. "Reproduction" shall include, but not be limited to, making photocopies, computer printouts, electronic transfers (including email), or downloading of MLS data or compilations. Participants and subscribers or their affiliated licensees shall not reproduce any MLS compilation or any portion thereof except as provided in Sections 12.16, 12.19 and in the following limited circumstances:
- 12.15.1 Copies to Prospective Purchasers. Broker participants and r.e. subscribers may reproduce from the MLS compilation, and distribute to prospective real estate purchasers, copies of those portions of the MLS compilation consisting only of a description of the property, including the address, features, financing and price. Such "client copies" shall also comply with the following:
- a. No advertising may be visible except that the name, company logo and contact information of the Participant and/or the name, company logo and contact information of the non-principal broker or sales licensee, and any other information required by California law or regulation may not be prohibited.
 b. Permissible MLS data may be augmented with additional data not otherwise prohibited from display, provided the source of any additional data is clearly identified.
- c. All listings provided shall identify the name of the listing firm and the name of the listing agent in a manner designed to easily identify such listing firm and agent.
- d. No more than _____ (insert number that will be the same as the number in 12.19.10) active listings may be provided in response to any inquiry.
- 12.15.2 Information Reproduced. Unless the participant or subscriber obtains prior written consent from the listing broker, the information reproduced pursuant to this section shall not include the following:
- a. Property owner's name, phone number, and address (if different than the listed property);
- b. Showing instructions including any references to a lock box, burglar alarm or any security system, or to the vacancy of the property; Instructions or remarks intended for cooperating brokers, including but not limited to showing instructions or security references (ex: lock box, burglar alarm or security system, vacancies) regarding the listed property.
- c. Type of listing;
- d. Compensation or bonuses offered to cooperating brokers.

- e. Other information which that goes beyond a description of the property. 12.15.3 Copies for Appraisals. Participants and subscribers may reproduce from the MLS compilation, and attach to an appraisal as supporting documentation copies of those portions of the MLS compilation consisting only of such information on properties necessary to support a written appraisal or estimate of value on a particular property.
- 12.15.4 Downloading into Computers. Participants and subscribers may download MLS information into a computer or computer system as long as:
- a. Access to the computer or computer system receiving the information is strictly limited to authorized participants, subscribers and clerical users as defined in these rules; and
- b. The information is only retransmitted to the participants, subscribers and clerical users authorized to access the computer or computer system by these rules; and
- c. The information is not reformatted or used to create another product except as may be used by the participant <u>or subscriber</u> who downloaded the data and such use strictly complies with sections 12.7, 12.11, 12.15, <u>and</u> 12.16 <u>and 12.19</u>. 12.15.5 Sold Information. Individuals legitimately in possession of current listing information, "sold" information, "comparables" or statistical information may utilize such information to support an estimate of value on a particular property for a particular client. However, only such information that the MLS has deemed to be nonconfidential, <u>and</u> necessary to support the estimate of value <u>and used in conjunction with work product (i.e. more than a mere recitation of raw data)</u> may be reproduced and attached to the report as supporting documentation. Any other use of such information is unauthorized and prohibited by these rules and regulations.
- 12.16 Use of Active Listing Information on Internet [Also known as Internet Data Exchange ("IDX")].
- (a) Subject to paragraphs (b) through (g) below, and notwithstanding anything in these rules and regulations to the contrary, participants and subscribers may display on their public websites aggregated MLS active listing information through either downloading and placing the data on the participant or subscriber's public access websites or by framing such information on the MLS or association public access website (if such a site is available).
- (b) The listing brokers' consent for such internet display is presumed, in satisfaction of Rule 12.8, unless a listing broker affirmatively notifies the MLS that the listing broker refuses to permit display on either on a blanket or on a listing-by listing basis. Listing brokers that refuse to permit other MLS participants or subscribers to display their listing information on a blanket basis may not display MLS active listing information of other brokers' listings.
- (c) Participants and subscribers shall not display confidential information fields, as determined by the MLS in the MLSs' sole discretion, such as that information intended for cooperating brokers rather than consumers.

- (d) All listings on a participant or subscriber's site displayed by framing or other electronic means, shall identify the name of the listing firm and the name of the listing agent in a manner designed to easily identify such listing firm or agent.
- (e) Participants and subscribers shall not modify the information displayed pursuant to these MLS rules.
- (f) Information displayed shall indicate the source of the information being displayed and the most recent date updated. Participants and subscribers shall update all downloads and refresh all data at least once every seven [7] days;
- (g) Sharing of the MLS compilation with any third party not authorized by the MLS is prohibited. Participants and subscribers shall indicate on their websites that the information being provided is for consumers' personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing.
- 12.16.1 Registry of Authorized Participants and Subscribers. The MLS has the right to require that Participants and Subscribers partaking in the display of MLS active listing information of other brokers' listings pursuant to Section 12.16 register with the MLS before displaying said MLS active listing information.
- 12.16.2 Right to Charge for Download. The MLS has the right to charge the costs of adding or enhancing its downloading capacity to Participants and Subscribers who request downloading of listing information pursuant to Section 12.16.
- 12.17 Applicability of Rules to MLS or Association. Nothing in these rules shall limit the right of the A.O.R. or MLS to enter into licensing agreements with third parties for use of the MLS compilations or any portion thereof in accordance with terms approved by the Board of Directors.
- 12.18 Listing Broker's Right to Opt Out of Internet Advertising of MLS Information. If the A.O.R. advertises MLS information on the Internet or licenses MLS information for advertising on the Internet, the listing broker shall have the right to opt out of such advertising in accordance with the MLS's procedures for opting out. The listing broker also shall have the right to refuse to have listings displayed on a blanket basis or on a listing by listing basis in accordance with Section 12.16 by affirmatively notifying the MLS in accordance with the MLS procedures for opting out. Notwithstanding any thing in these rules and regulations to the contrary, the A.O.R. reserves the right to determine whether to provide Internet advertising services and whether such services are to be made available to non-A.O.R. members.