

Date: _____

Escrow Officer: Diane Welch

Unit/Lot # _____

Escrow #: _____



JOINT PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

INITIAL DEPOSIT RECEIVED THIS DATE: \$ _____

BALANCE OF DOWN PAYMENT: \$ _____

NEW DEED OF TRUST TOTAL FINANCING: \$ _____

TOTAL PURCHASE PRICE: \$ _____

SELLER: VALENCIA LIGHTS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY
220 N. VALLEY STREET, # 104, BURBANK, CA 91505
818-919-4294 • FAX 818-563-1937

BUYER(S): _____

VESTING: _____

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

HOME PHONE: _____ WORK PHONE: _____

CELL PHONE: _____ E MAIL: _____

MAILING ADDRESS: _____

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

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

(Memorandum: Property Address: **500 E. Valencia Ave., Unit # _____ Burbank, CA 91501**)

Free from encumbrances except [as applicable]:

1. All General and Special Taxes for the fiscal year 2009-2010, including personal property taxes, if any, assessed against the former owner.
2. Covenants, conditions, restrictions, rights, rights of way, and easements of record, if any.
3. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California.
4. New First Deed of Trust to record in the amount as set forth above (see Paragraph Entitled FINANCING of these instructions for additional terms and conditions of this lien.)

EACH PARTY SIGNING THESE INSTRUCTIONS HAS READ THE ADDITIONAL ESCROW CONDITIONS & INSTRUCTIONS ON THE FOLLOWING PAGE HEREOF AND APPROVES, ACCEPTS, AND AGREES TO BE BOUND THEREBY AS THOUGH THEY APPEARED OVER THEIR SIGNATURES.

MARA ESCROW COMPANY IS LICENSED BY THE DEPARTMENT OF CORPORATIONS, STATE OF CALIFORNIA, LICENSE #963-1155.

See Pages 2 through 26 attached hereto and made a part hereof for additional terms and conditions.

15821 Ventura Blvd., Suite 165, Encino, CA 91436
(818) 386-2244 • (818) 386-2233

Escrow Instructions Continued On Page Number 2

4/30/2008 Seller's Initials (_____) Buyer's Initials (_____) (_____)

ADDITIONAL ESCROW INSTRUCTIONS AND PROVISIONS

SAVINGS ACCOUNT: The law concerning the disbursement of funds requires that all funds must be available for withdrawal by and from the account of the escrow entity prior to the disbursement of any such funds. Only cash or wire transferred funds can be considered immediately available on deposit. Cashiers checks, tellers checks and certified checks may be available one business day after deposit. All other funds are subject to mandatory holding periods which may cause delays in closing this escrow and the disbursement of funds. In order to avoid delays, please consider that all fundings and/or deposits should be made by wire transfer. Outgoing wire transfers will be authorized only upon confirmation of the respective incoming wire transfer(s) or the immediate availability of any deposited checks.

A. **Deposited Funds Generally Bear No Interest.** All funds received in this escrow will be commingled and deposited with other funds from other escrows in a general escrow account or accounts at the discretion and in the name of Mara Escrow Company with any state or national bank or savings and loan association ("depository institution(s)") and may be transferred to any other such general account or accounts. The parties to this escrow acknowledge and agree that the maintenance of such escrow accounts with certain depository institutions may result in the receipt by Mara Escrow Company various bank services, accommodations and/or other benefits from the depository institutions. Mara Escrow Company or its affiliates may elect to enter into other business arrangements or transactions with or to obtain loans for investment or other purposes from such depository institutions. All such services, accommodations and other services shall accrue to Mara Escrow Company or its affiliates, who shall have no obligations to account to the parties to this escrow for the value of such services, accommodations or other benefits.

B. **Option For Interest Bearing Account.** Funds deposited into escrow shall not earn interest unless the parties execute instructions specifically directing Mara Escrow Company to deposit such funds in an interest bearing account. Upon receipt of such fully executed instructions along with an executed Form W-9 from the Buyer, Mara Escrow Company will place Buyer's initial deposit and any subsequent deposits in and interest bearing account in the name of Mara Escrow Company as Trustee for the escrow in questions City National Bank-California, 10900 Wilshire Blvd., Los Angeles, CA 90024. Until such time as escrow is in a position to disburse or close escrow as provided herein, any accrued interest shall be credited to the account of the Buyer herein. Buyer acknowledges that there shall be a service charge to the Buyer for the servicing of said interest bearing account. In addition, the within parties hereby acknowledge their awareness of the fact that the Federal Deposit Insurance Corporation (FDIC) only insures depositors up to \$100,000.00.

Further, Escrow Holder will be given or provided reasonable notice and time to comply with any instructions for bank wires to process and complete this escrow. Accordingly, Escrow Holder's sole duty and responsibility shall be to place said wire transfer instructions with its wiring bank upon confirmation of (1) satisfaction of conditions precedent or (2) document recordation at close of escrow. Escrow Holder will NOT be held responsible for lost interest due to wire delays caused by any bank of the Federal Reserve System, and recommends that all parties make themselves aware of banking regulations with regard to placement of wires.

In the event there is insufficient time to place a wire upon any such confirmation or the wires have closed to the day, the parties agree to provide written instructions for an alternative method of disbursement. WITHOUT AN ALTERNATIVE DISBURSEMENT INSTRUCTION, FUNDS WILL BE HELD IN TRUST IN A NON-INTEREST BEARING ACCOUNT UNTIL THE NEXT OPPORTUNITY FOR WIRE PLACEMENT.

The following general provisions shall apply in this escrow:

1. **Deposits and Disbursement of Funds.** Disbursements are ordinarily made by check of Escrow Holder. Escrow Holder offers its customers the opportunity to transfer funds by wire from its depository bank. Use of a wire transfer may offer benefits to a party who wishes to more quickly satisfy an obligation and stop the accrual of additional interest. Escrow Holder will charge a wire transfer service handling fee for each wire requested. Please let your escrow officer know should you require a wire transfer of any portion of the escrow proceeds.
2. **Prorations and Adjustments.** All prorations and/or adjustments called for in this escrow are to made on the basis of a thirty (30) day month unless otherwise instructed in writing. At closing, Escrow Holder may adjust estimated amounts and prorations and other items that may change based on the recording date. In all acts relating, but not limited to fire/hazard insurance, rents and rental deposits, real property taxes, and interest, Escrow Holder shall presume that the information provided to Escrow Holder by the parties to this escrow, or their agent(s), is correct and that insurance premiums have been paid.
3. **Recordation of Instruments.** If necessary or proper for the issuance of the Policy of Title Insurance requested in this escrow, recordation of any instrument delivered to escrow is authorized. Escrow Holder is further authorized to take any action necessary to comply with these instructions of any lender and to execute any and all documents that may be necessary or incidental to the carrying out of these instructions.
4. **Authorization to Furnish Copies.** Escrow Holder is authorized to furnish copies of these instructions and supplements thereto, notices of cancellation, and closing statements pertaining to this escrow to the real estate broker(s) and lender(s) named in this escrow.
5. **Delivery of Non-Recorded Documents.** Upon close of escrow, documents that are not required to be recorded may be delivered by Escrow Holder by depositing same in the United States Mail, postage prepaid, addressed to the party entitled thereto, at the mailing address provided to Escrow Holder.
6. **Conflicting Instructions.** Upon receipt of any conflicting instructions (other than cancellation instructions), Escrow Holder is no longer obligated to take any further action in connection with this escrow until further consistent instructions are received from the parties. Escrow Holder is authorized to hold all monies and/or instruments in this escrow until otherwise directed, either by the parties' mutual written instructions or by final order of a court of competent jurisdiction. In the event of conflicting claims to any funds or other documents, Escrow Holder shall have the absolute right, at Escrow Holder's discretion, to file an action in interpleader requiring the parties to answer and litigate their several claims and rights amongst themselves. Any such action must comply with the requisite interpleader statutes of the state of California in this regard.
7. **Disclosure.** Escrow Holder shall have no duty to disclose to any party to this escrow any information, which may come to Escrow Holder's attention concerning this transaction unless specifically requested to do so by any party.
8. **Right of Cancellation.** This escrow shall be deemed canceled upon Escrow Holder's receipt of any party's instruction to cancel the escrow. Upon receipt of a party's instructions to cancel the escrow, Escrow Holder shall distribute Cancellation Instructions to the parties or to their agents regarding disbursement of funds in the escrow. Escrow Holder then is no longer obligated to take any further action in connection with this escrow until receipt of mutual non-conflicting instructions from the parties. Upon receipt of mutual, non-conflicting instructions regarding the disbursement of funds in the escrow, Escrow Holder shall disburse the funds in accordance with the instructions, less fees and other costs incurred in connection with the escrow. In the absence of non-conflicting instructions regarding the disbursement of funds in the escrow, Escrow Holder is authorized and instructed to hold all funds in excess of earnest money to the depositors of the funds or their assignees at Escrow Holder's sole discretion.
9. **Entire Agreement and Indemnification.** These General Provisions and the joint escrow instructions received and accepted by Escrow Holder (if applicable), shall be the whole and only agreement between the parties regarding the obligations of Escrow Holder to complete this escrow and shall supersede and cancel any prior instructions. Escrow Holder shall disregard and assume no responsibility for complying with any other agreement(s) between the parties, whether or not such an agreement(s) have been made a part of this escrow. To the extent of any conflicts between these General Provisions (including joint escrow instructions, if applicable) and any other agreement(s) between the parties, these General Provisions (including joint escrow instructions, if applicable) shall control.
10. **Compliance with Regulatory Matters.** Escrow Holder is not responsible or liable for determining that there has been compliance with any matters that are excluded from coverage under the title insurance policy to be issued in conjunction with close of this escrow including, but not limited to, county or municipal ordinances and state, county or municipal subdivision or land division regulations or laws. Reference is made to the policy form on file with the Insurance Commissioner of the State of California and available through the Title Company for the customer's review for a complete statement of such exclusions.
11. **Licensee Status.** Escrow Holder is not responsible or liable for determining that any person or entity receiving a commission or other compensation from escrow is currently and regularly licensed, nor for communicating the license status of any person or entity receiving a commission or other compensation from escrow to the parties herein.
12. **Unclaimed Funds.** After Three (3) Years from the deposit of funds into escrow, any amounts thereafter remaining unclaimed may be escheated to the State of California in compliance with the State of California's Unclaimed Property Law and Regulations.
13. **Fees and Charges.** The parties to this escrow agree to pay all charges, billings, advances and expenses, including cancellation fees, that are properly chargeable to the undersigned, and further to pay any balance for fees, costs or shortages due in connection with these instructions.
14. **Payments From Escrow.** Escrow Holder is acting as the disbursing agent of the parties to this escrow for all payments, such as, but not limited to, commissions, signing service providers, notary fees and termite inspections and/or reports, owed and authorized herein by the parties.
15. **Inspections.** Escrow Holder is relieved of any obligation to order or obtain any of the inspections or reports required by this transaction.
16. **Contingencies.** Escrow holder is relieved of any obligation to monitor, schedule the timing of, or obtain any party's compliance with, any of the contingencies required by this transaction.

INSTRUCTIONS

A) FINANCING: Buyer to obtain a New First and Second Deed of Trust Loan [as applicable] in favor of **The OCD Group – The OCD Group (specifically located at 1540 W. Glenoaks Blvd., Suite 204, Glendale, CA 91201, at phone number 800-963-4623 with the loan officer of Anglea Farsakyan, herein referred to as The OCD Group) -OR-** a Lender of Seller’s Choice to be obtained at Buyer’s sole expense, given to secure a note in the principal amount(s) as set forth in Page 1 hereof, per its terms. In the event that Buyer is unable to qualify for a Fixed Rate Mortgage, Buyer shall accept an Adjustable Rate Mortgage (provided he can qualify for same). Buyer’s execution of the loan documents shall evidence their full approval of the terms and conditions contained therein.

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

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

THE ABOVE REFERENCED FINANCING CONTINGENCY SHALL BE DEEMED APPROVED UNLESS ESCROW HOLDER HAS RECEIVED WRITTEN NOTIFICATION OF ANY DISAPPROVAL FROM THE OCD GROUP -OR- A LENDER OF SELLER’S CHOICE.

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

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

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

Buyer’s Initials (_____) (_____)

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

ESCROW IS AUTHORIZED AND INSTRUCTED TO FOLLOW THE DIRECTION OF **THE OCD GROUP -OR- A LENDER OF SELLER’S CHOICE** IN CONNECTION WITH SAID LOAN AND TO DELIVER A COPY OF THIS AGREEMENT AND ANY AMENDMENTS THERETO TO **THE OCD GROUP -OR- A LENDER OF SELLER’S CHOICE.**

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

Seller’s Initials (_____)

Buyer’s Initials (_____) (_____)

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

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

Seller warrants and represents that he has no equity interest in **The OCD Group -OR-** any other Lender of Seller's Choice.

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

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

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

-OR-

2. **WIRE TRANSFER:** Wires must be directed to:
COMERICA BANK
10900 WILSHIRE BLVD.
LOS ANGELES, CA 90024
ATTN: WIRE DEPARTMENT
Routing Number: **1211-3752-2**
Credit To: **Mara Escrow Company**
Trust Account Number: **189-1023424**
Reference the Escrow Number
Attention: **Diane Welch**

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

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

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

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

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

1. Escrow Holder will, at close of escrow, prorate real property taxes based upon the latest available tax figures as furnished by the insuring title company or based on 1.25% (.0125) of the purchase price if the taxes on the property are not currently segregated by the county tax assessor, from close of escrow to July 1^{st, 2009} (debit the Buyer and credit the Seller), Seller shall be responsible for payment of regular and/or supplemental property taxes during this tax year to be timely paid by Seller **outside of escrow**;
2. The Tax Collector may issue supplemental tax bills for more than the amount so used for proration purposes, or in the event there has been an overpayment, the overpayment amount may not be refunded but may instead be held for the subsequent credit against the payment of future taxes on the subject property. In addition to acknowledging their awareness of the foregoing, all parties hereby agree that, any instruction in this escrow to the contrary notwithstanding, any overpayment or underpayment of taxes accruing because of the amount used by Escrow Holder for proration purposes at close of escrow shall be adjusted by and between the parties **outside of escrow**. Escrow Holder is hereby released from responsibility and/or liability of any kind in connection with any such overpayment or underpayment.

D) SUPPLEMENTAL TAXES: Buyer is aware that the property will be reassessed upon change of ownership. This will affect the taxes to be paid. A supplemental Tax Bill will be issued by the County Tax Assessor, which shall be paid as follows: (a) for periods after close of escrow (or after the current fiscal tax year if the 1.25% proration amount was used), by Buyer and (b) for periods prior to close of escrow, by Seller. In the event that Buyer's Lender requires Tax Impounds, Tax Collector will not furnish a copy of said bill to the Lender. TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER OUTSIDE OF ESCROW.

E) FEDERAL TAX WITHHOLDING - FIRPTA: The sale of a U.S. real property interest by a foreign person is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding. FIRPTA authorizes the United States to tax foreign persons on the sale of U.S. real property interests. Persons purchasing U.S. real property

Escrow Instructions Continued On Page Number 5

Seller's Initials (_____)

Buyer's Initials (_____) (_____)

interests from foreign persons, certain purchasers' agents, and settlement officers are required to withhold 10 percent of the amount realized. Withholding is intended to ensure U.S. taxation of gains realized on disposition of such interests. The Buyer is the withholding agent. The Buyer must find out if the Seller is a foreign person. If the Seller is a foreign person and the Buyer fails to withhold, the Buyer may be held liable for the tax.

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

- F) STATE TAX WITHHOLDING:** When California real estate is sold, 3 1/3% of the total sales price must be withheld from the Seller and sent to the California Franchise Tax Board (California Revenue and Taxation Code Section 18662). Withholding of 3 1/3% is not required if:
1. The total sales price is \$100,000 or less;
 2. If the property qualifies and the Seller's principal residence as defined by Internal Revenue Code Section 121;
 3. If the Seller last used the property as their principal residence as defined by Internal Revenue Code Section 121;
 4. If the Seller will have a loss or zero gain for California income tax purposes on this sale;
 5. If the Seller is a corporation (or an LLC classified as a corporation for federal and California income tax purposes) that is either qualified through the California Secretary of State or has a permanent place of business in California;
 6. If the Seller is a partnership (or an LLC that is not a disregarded single member LLC and is classified as a partnership for federal and California income tax purposes) with recorded title to the property in the name of the partnership or LLC;
 7. Or for any other reason acceptable to the California Franchise Tax Board.

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

- G) TAX REPORTING/1099:** Seller herein acknowledges their awareness of the fact that Escrow Holder must provide information pertaining to this Escrow to the Internal Revenue Service as required by the Tax Reform Act, Internal Revenue Service Code Section 6045(e). Concurrently with the execution hereof, Seller herein will provide Escrow Holder information necessary to produce a 1099 Tax Reporting Form in compliance with Internal Revenue Service Code Section 6045(e). Seller herein certifies under penalty of perjury, that the information provided on said form is true, correct and complete.
- H) DOCUMENTARY TRANSFER TAX:** In addition to the County Documentary Transfer Tax currently charged to the **Buyer**, Escrow Holder is authorized and instructed to debit the account of the **Buyer** for any transfer tax that may be imposed by the City in which the subject property of this escrow is located.
- I) FACSIMILE TRANSMISSIONS (FAX):** In the event that Buyer and/or Seller transmit signed documents by FAX in this transaction, Buyer and/or Seller and/or each of them, agrees to accept and instructs Escrow Holder to accept such transmitted documents for all purposes the same as if it were signed original documents. Buyer and/or Seller agree to deliver, or cause to be delivered to Escrow Holder the signed originals of each FAXED document within SEVENTY-TWO (72) hours following the FAXING thereof. FAXED, non-original documents are not acceptable by the County Recorder for recordation. Failure to provide Escrow Holder with signed original recording documents will prevent this escrow from closing.
- J) OIL, GAS AND MINERAL LEASE:** In the event that the Preliminary Title Report discloses oil and gas lease(s) of record, information regarding said lease will be forwarded to the Homeowner's Association.
- K) PRELIMINARY CHANGE OF OWNERSHIP:** Section 480.3 of the Revenue and Taxation Code requires that a "Preliminary Change of Ownership Report" be completed and certified by Buyer and filed concurrently with the Deed or other documents that reflect a change of ownership in real property. The Buyer herein agrees to complete and sign said report and deliver same to Escrow Holder for filing concurrently with Buyer's execution of these Escrow instructions. Escrow Holder shall forward same to the Title Insurance Company for submission to the recorder's office at the close of escrow. Buyer understands and acknowledges that the County Recorder's Office will charge an additional non-refundable fee of TWENTY DOLLARS (\$20.00) should the fully completed/certified report not accompany the conveyance document. In addition to this fee, there may be additional expenses incurred by Buyer outside of escrow or after the close of escrow as a result of Buyer's failure to file the fully completed/certified report. Buyer further understands and authorizes Escrow Holder to debit the Buyer's account for said TWENTY DOLLAR (\$20.00) at the close of escrow in the event the change of ownership statement is not deposited with Escrow Holder as provided for herein. Buyer herein certifies under penalty of perjury, that the information provided on said form is true, correct and complete.
- L) HOLD-OPEN FEES:** In the event of the non-completion of this escrow for any reason whatsoever, including without limitation the cancellation or purported cancellation of the escrow by either party and notwithstanding the concurrence or non-concurrence by the other party with such cancellation, and the resultant obligation or advisability of the Escrow Holder to continue to hold undistributed the funds then on deposit in said escrow, then the Escrow Holder may, at its option, withdraw from said funds so held and pay itself a holding fee of \$25.00 for each calendar month, or fraction thereof, that said funds are retained in escrow, not exceeding, however, the whole of such withheld funds.
- M) HOMEOWNER'S ASSOCIATION DUES PRORATION AUTHORIZATION:** Association Monthly Assessment in the amount disclosed in the DRE approved budget shall be prorated as of close of escrow unless Association Assessments commence at a later date pursuant to the provisions of the Declaration. In addition, Buyer shall be charged with the Association's Assessment for the full month following the close of escrow, which assessments Escrow Holder shall disburse to the Association upon the close of escrow.

- N) INSURANCE PRORATION:** Escrow Holder is hereby authorized and instructed to prorate Insurance premiums from the close of escrow to the date of expiration of the policy based upon an amount of 1/6th of the actual annual premium for this unit. It is understood that Seller has prepaid insurance premiums covering this and or other property in the name of the Association for one year in advance. Insurance premiums paid as part of the Association dues is being collected for the next year's premium on the policy. It is further understood by Buyer that such policy does not cover the contents of the individual units. In the event Buyer desires personal property, contents (fire or liability), etc., Buyer shall be responsible to obtain same **outside of escrow**. Buyer is aware that the declaration requires that the Board of Directors maintain liability insurance in a minimum amount and if they fail to do so, owners may be individually liable for the entire amount of a judgment rendered against the association.
- O) OPENING OF ESCROW:** Escrow shall be 'Open' when Escrow Holder is in receipt of these instructions executed by Buyer and Seller herein, Escrow Holder is in receipt of Buyer's 'Initial Deposit' and Buyer's 'Initial Deposit' has been 'Cleared'. Seller's Sales Representatives are not authorized to accept this offer. Receipt and deposit of Buyer's Funds shall not constitute an acceptance of this offer by Seller.
- P) EXISTING BLANKET MONETARY ENCUMBRANCE:** Buyer hereby acknowledges their awareness of the fact that it is possible that Seller's existing Institutional Holder of the Existing Blanket Monetary Encumbrance, if any, may require the concurrent closing of two or more Escrows for the sale of the units in this project, as a condition to release the encumbrance. Seller may instruct Escrow Holder that no escrow may close within the project, including this transaction, until that number of units being sold by Seller is equal to the percentile that the lender requires to close simultaneously. Seller's unilateral instruction shall automatically extend the close of escrow on all escrows until the minimum closing requirements are met.
- Q) BUYER'S EXPENSES:** Buyer shall pay, in cash, all costs of the following, including but not limited to: credit reports, loan fees, loan points, lender's title insurance charges, Buyer's escrow fees and charges, tax service fees, recordation fees for Grant Deed and any Deed(s) of Trust, Buyer's prorated portion of property taxes for the applicable tax year and first month's association membership fees and assessments, **county and, if applicable, city documentary transfer tax**, and other closing costs of Buyer.
- R) IT IS UNDERSTOOD AND ACKNOWLEDGED BY ALL PARTIES HERETO THAT THIS ESCROW SHALL REMAIN OPEN AND NO FUNDS SHALL BE RELEASED UNTIL EACH AND ALL THE FOLLOWING CONDITIONS HAVE BEEN MET:**
1. Within 12 months after opening escrow, sufficient funds are on hand to release all blanket encumbrances of record as defined in Section 11013 (B & P Code), and Escrow Holder can obtain a Policy of title insurance as hereinbefore provided, showing real property to be free and clear of any and all blanket encumbrances;
 2. This escrow shall not close and funds shall not be released from escrow until title, free and clear of any blanket encumbrances, is conveyed to the purchaser, after completion of all common facilities including, but not limited to: the Landscaping, Streets & Drives, Fences & Walls, Walkways, Lighting and Lobbies and all structures containing a total of **6** Units of Lot 1 of Tract **64013** and until the expiration of the statutory period for recordation of all mechanics' liens claims after the recordation of Valid Notice of Completion, as defined in Section 3093 of the Civil Code,

-OR-

Purchaser's funds may be released from escrow after conveyance of title to him, upon completion of all improvements and facilities as defined above on Lot 1 of Tract **64013**, but prior to the expiration of the statutory period of mechanics' lien claims pertinent to said project, if the subdivider has provided that each such purchaser of a lot, parcel, or unit shall receive a policy of Title Insurance with provisions guaranteeing the purchaser against any mechanics' liens affecting the purchaser's lot or Unit that may arise during the applicable statutory mechanics' lien period;

3. Any or all monetary encumbrances recorded prior to the Declaration of Restrictions shall be Subordinated thereto by the recordation of a Subordination Agreement;
4. If this escrow does not close within 12 months from the date contained on Page 1 of these escrow Instructions, the Buyer, where failure to close the escrow is not due to Buyer's default, may cancel the escrow and receive back all consideration paid by Buyer within 15 days, and title and escrow expenses, will be paid by Seller;
5. Seller has posted 'Security' to ensure availability of funds for owner's operation and maintenance of common areas, land and facilities as provided in Subsection A.2 of the Real Estate Commissioner's Regulation 2792.9, said security to remain on deposit until EIGHTY (80%) Percent of the units in this project have been sold and escrow is presented with written assurance from the Association that Seller is current in payment of assessments on the unsold units;
6. A 1/6th undivided percentage interest in Lot 1 of Tract No. **64013** has been or is being conveyed to purchaser with title to purchaser's individual condominium unit;
7. Buyer acknowledges receipt of all of the following items concurrently with the execution hereof and shall have THREE (3) Calendar Days after the date hereof to notify Seller, in writing, of any particular item(s) for which Buyer disapprove(s):
 - a. A copy of Chicago Title's Preliminary Title Report;
 - b. Tract Map;
 - c. Final Subdivision Public Report;
 - d. Current Budget;
 - e. Association Bylaws;
 - f. Condominium Plan;
 - g. Filed Articles of Incorporation;
 - h. The Declaration of Covenants, Conditions and Restrictions, covering the subject property;
 - i. 'Natural Hazard Disclosure Report' (covering the subject property); and
 - j. SB 800 Notice.

Escrow Instructions Continued On Page Number 7

Seller's Initials (_____)

Buyer's Initials (_____) (_____)

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

- S) CANCELLATION:** If the Agreement is terminated, (i) This 'Joint Purchase Agreement and Escrow Instructions' shall be automatically cancelled and the parties shall execute cancellation instructions requested by Escrow Holder; as a formality, for benefit of Escrow Holder. Upon Escrow Holder's receipt of these signed cancellation instructions Seller shall be completely released from their obligation to sell and Buyer shall be released from their obligation to buy, (ii) within ten (10) days after such termination Buyer shall deliver to Seller all documents delivered by Seller to Buyer hereunder outside of escrow, (iii) Buyer shall have no further right or interest in the Property, and (iv) Buyer's indemnity of Seller under Paragraph entitled "Possession" shall survive the termination.
- T) REAL ESTATE COMMISSION:** AT CLOSE OF ESCROW, ESCROW HOLDER IS HEREBY AUTHORIZED AND INSTRUCTED BY SELLER TO PAY THE COMMISSION AND/OR OTHER COMPENSATION TO **REAL ESTATE PEOPLE**, AS PER THE LISTING/MARKETING AGREEMENT FROM SELLERS PROCEEDS. NO COMMISSION SHALL BE PAID TO BROKER AND SHALL NOT BE CONSIDERED EARNED AND PAYABLE UNLESS THE SALE OF THE PROPERTY IS CONSUMMATED. BROKER COMMISSION SHALL BE PAID ON THE NET SALES PRICE (TOTAL PURCHASE PRICE AS SET FORTH ON PAGE 1 HEREOF, AS ADJUSTED/REDUCED BY ANY SELLER CLOSING COSTS CREDIT TO BUYER).
- U) CLOSE OF ESCROW:** THE ACTUAL DATE OF THE CLOSE OF ESCROW SHALL TAKE PLACE (A) ON OR BEFORE **THIRTY (30) DAYS** AFTER THE DATE HEREOF OR (B) FIVE (5) DAYS AFTER ESCROW HOLDER HAS BEEN PROVIDED WITH WRITTEN PROOF THAT THE SUBJECT PROPERTY HAS BEEN APPROVED FOR OCCUPANCY BY THE APPROPRIATE CITY AND/OR COUNTY AGENCY IN WHICH THE PROPERTY IS LOCATED, WHICHEVER OCCURS LATER.
- V) BUYER'S EXTENSION:** IN CERTAIN CASES, THE SELLER WILL GRANT A FIFTEEN (15) DAY EXTENSION OF THE CLOSING DATE FOR AN EXTENSION FEE OF ONE-HALF (1/2) OF ONE (1) PERCENT OF THE PURCHASE PRICE OR \$1500.00, **WHICHEVER IS MORE**. THIS FEE WILL BE INCLUDED IN LIQUIDATED DAMAGES. REQUESTS FOR EXTENSIONS MUST BE MADE AT LEAST FIVE (5) DAYS PRIOR TO THE CLOSING DATE. ALL EXTENSION REQUESTS ARE EVALUATED BY THE SELLER ON A CASE-BY-CASE BASIS AND ARE SOLELY AT SELLER'S DISCRETION. IN THE EVENT THAT SELLER GRANTS ONE (1) OR MORE OF THESE EXTENSION(S), BUYER AND SELLER HEREBY AUTHORIZE AND INSTRUCT ESCROW HOLDER TO INCREASE THE TOTAL CONSIDERATION (PURCHASE PRICE) HEREIN BY THE AMOUNT OF SAID EXTENSION FEE(S) WITHOUT ANY ADDITIONAL INSTRUCTIONS AND/OR AUTHORIZATIONS FROM THE BUYER AND/OR SELLER.
- W) PREVIOUS TRANSACTION:** In the event that there was an escrow previously opened at MARA Escrow Company covering the sale of the within described property ('Previous Escrow'), the consummation of this escrow is subject to and contingent upon Seller's ability to successfully cancel said 'Previous Escrow', if any, prior to or concurrently with the close of this escrow. This contingency shall be deemed approved when Escrow Holder is in possession of a copy of signed Cancellation Instructions from Buyer and Seller in the 'Previous Escrow'.
- X) HOME PROTECTION PLAN:** Escrow Holder is hereby authorized and instructed to obtain an "**EXTENDED WARRANTY PLAN**" for appliances for the Benefit of the Buyer from **2-10 Home Buyer's Warranty Corporation**, which will provide coverage to the Buyer from Close of Escrow until the First Year's Anniversary following the Close of Escrow [**ONE (1) Year Policy**]. At the Close of Escrow, Escrow Holder is authorized and instructed to debit the Seller in the event Buyer obtains Buyer's New Financing through The OCD Group or debit the Buyer in the event that Buyer obtains Buyer's New Financing through a Lender other than The OCD Group in the amount of **\$265** and forward said sum to **2-10 Home Buyer's Warranty Corporation**. This amount shall represent the first annual premium covering the **Extended Warranty Plan** for the benefit of Buyer. Buyer shall look directly to said policy for specific coverage and is not relying on any warranty and/or representation from the Seller, Broker(s) or Escrow Holder and in the event that Buyer should have any questions relative to said **Extended Warranty Plan**, Buyer shall contact **2-10 Home Buyer's Warranty Corporation** directly at **(800) 775-4736**. Buyer further releases and relieves Seller, Broker(s) and Escrow Holder from **any and all past, present and/or future responsibility and/or liability in connection herewith and shall look only to 2-10 Home Buyer's Warranty Corporation for any questions and/or problems** related to the Extended Warranty Plan. **Escrow Holder's only responsibility shall be to disburse the funds as called for herein.**
- Y) BUYER'S DEPOSIT OF DOCUMENTS:** Upon acceptance hereof by Seller and upon demand by Seller and/or Escrow Holder, Buyer will furnish any information, execute all documents and perform any other acts necessary to consummate this sale in accordance with the terms hereof.
- Z) INTENT TO OCCUPY AND NON-ASSIGNMENT OF RIGHTS:** Buyer warrants that the purchase this property is for the intent of occupying the property as buyer's primary residence. This agreement and the escrow established pursuant hereto may not be assigned or transferred voluntarily or by operation by law by Buyer without written consent of Seller and any attempt to do so shall be void and of no effect. Escrow Holder is hereby instructed by Seller not to assist in any way in such assignment or transfer including without limitation, the consummation of so-called "double escrows". This agreement shall be binding upon the heirs, executors, administrators, successor and assigns of the Seller and of the Buyer and each of them, and as to the Buyer, the Agreement herein shall be joint and several if more than one Buyer.
- AA) BUYER'S PERFORMANCE:** At any time following opening of Escrow, this agreement can be unilaterally terminated by Seller upon notice to Buyer of the occurrence of any of the following:
1. Buyer defaults in any payment required hereunder or in the timely performance or otherwise.
 2. Buyer's failure to execute or deliver any escrow instructions and any other documents in accordance with this Agreement and/or any Lender's Loan Documents.

3. If in the reasonable good faith judgment of Seller, Buyer has violated any representations or warranties contained herein, or any addendum of this Agreement, including, but not limited to Buyer's representation that Buyer has a bona fide intention to reside in the property as Buyer's principal place of residence.
4. Neither this Agreement nor any of the Buyer's rights hereunder may be assigned by Buyer. Any such purported assignment shall be governed by **INTENT TO OCCUPY AND NON-ASSIGNMENT OF RIGHTS** above.
5. If for any reason whatsoever, Buyer is unable to present Seller with written Confirmation from the Lender that Buyer has obtained an approved loan as provided for herein, Seller's obligation to sell the Property to Buyer shall be terminated.

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

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

BB) PRELIMINARY SUBDIVISION REPORT: IF A RESERVATION AGREEMENT WAS SIGNED UNDER THE AUTHORITY OF A PRELIMINARY PUBLIC REPORT, THE BUYER HAS A RIGHT TO CANCEL (RESCIND) THIS CONTRACT TO PURCHASE AND TO THE RETURN OF ALL MONEY GIVEN TOWARD THE PURCHASE UNTIL MIDNIGHT OF THE FIFTH CALENDAR DAY FOLLOWING THE DAY THIS CONTRACT WAS SIGNED BY THE PURCHASER. In the event that Buyer has a 'Deposit' with Escrow Holder under a 'Preliminary Public Report', by Buyer's execution of this 'Joint Purchase Agreement and Escrow Instructions' Buyer hereby authorizes and instructs Escrow Holder to consider Buyer's 'Deposit' as a 'Deposit' for this 'Escrow'. All terms and conditions of said Agreement shall remain in full force and effect with the exception of the following" Seller is relying in good faith on Buyer's representation that Buyer's purchase herein is not, in any way, conditioned upon the sale of real property. Buyer warrants to Seller that Buyer's ability to complete the terms and conditions of the Agreement will not be affected, in any manner, by Buyer's need to sell, lease, refinance, obtain a home equity loan, liquidate assets, or otherwise dispose of any property, either real or personal. Should Buyer's circumstances prove contrary to this Affidavit, Seller has the unilateral right to terminate the Agreement in its entirety.

CC) ADDITIONAL DOCUMENTS: The foregoing terms, provisions, conditions and instructions, and those on Pages 2 through 26 hereof are approved and accepted in their entirety and concurred in by all parties. Seller will hand you necessary documents required to cause title to be shown as above, which Escrow Holder authorized to deliver when Buyer has caused funds to be delivered to Escrow Holder as set forth herein within the time as above provided. Seller shall pay the charges for evidence of title as called for, except those the Buyer agreed to pay, from Seller's proceeds. The items shall include bonds, assessments, taxes, and any liens of record, including prepayment penalties, if any, to show title as called for and required. **All parties signing this agreement hereby acknowledge a receipt of a copy of this agreement.**

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

- 1) **CAPTIONS:** The captions in this Agreement are for convenience of reference only and are not intended to be part of this Agreement.
- 2) **BINDING CONTRACT:** THIS IS MORE THAN A RECEIPT FOR MONEY. WHEN SIGNED BY BUYER AND SELLER, THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. NEITHER PARTY SHOULD SIGN UNTIL THE CONTRACT HAS BEEN THOROUGHLY READ AND UNTIL EACH PROVISION IS UNDERSTOOD.
- 3) **OTHER AGREEMENTS:** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN BUYER AND SELLER. ALL NEGOTIATIONS ARE MERGED INTO THIS AGREEMENT. THERE ARE NO ORAL OR OTHER WRITTEN AGREEMENTS OR INDUCEMENTS BETWEEN BUYER AND SELLER. THIS AGREEMENT SHALL NOT BE MODIFIED OR AMENDED EXCEPT BY AN INSTRUMENT IN WRITING SIGNED BY BUYER AND SELLER. NO ORAL PROMISES, REPRESENTATIONS (EXPRESSED OR IMPLIED), INDUCEMENTS, WARRANTIES OR AGREEMENTS MADE BY THE SELLER AND/OR BROKER SHALL BE DEEMED VALID OR BINDING UPON THE SELLER UNLESS EXPRESSLY INCLUDED IN THIS AGREEMENT. NO TERMITE EXAMINATION OR REPORT SHALL BE REQUIRED FROM SELLER. BUYER ACKNOWLEDGES THAT BUYER (OR THE AGENT OR REPRESENTATIVE OF THE BUYER) HAS EXAMINED THE SUBJECT PROPERTY IN ITS ENTIRETY AND FINDS THE SAME TO BE IN GOOD CONDITION AND REPAIR. BUYER REPRESENTS AND WARRANTS THAT BUYER IS RELYING SOLELY UPON BUYER'S OWN INDEPENDENT INVESTIGATION AND ANALYSIS OF THE SUBJECT PROPERTY IN ENTERING INTO THIS AGREEMENT. SELLER IS NOT IMPROVING THE SUBJECT PROPERTY SPECIFICALLY FOR THE BUYER, NOR TO THE PRECISE SPECIFICATIONS OR DESIGN OF ANY MODEL (OR APPURTENANCES, IF ANY) DISPLAYED TO OR VISITED BY BUYER, BUT SELLER IS IMPROVING THE RESIDENCE AS ONE UNIT OF THE PROJECT. ANY MODEL, APPURTENANCES AND FURNISHINGS SHOWN TO BUYER ARE DISPLAYED ONLY FOR ILLUSTRATIONS AND SHALL NOT BE DEEMED TO BE AN AGREEMENT OR COMMITMENT BY SELLER TO DELIVER THE RESIDENCE IN EXACT ACCORDANCE WITH SUCH MODEL. IT IS UNDERSTOOD AND AGREED THAT SELLER HAS NOT BUILT THE SUBJECT PROPERTY TO THE PRECISE SPECIFICATIONS OR DESIGNS OF ANY MODEL THEREOF OR THE SPECIFICATIONS OF ANY BUYER. NONE OF THE ITEMS, APPURTENANCES AND FURNISHINGS SHOWN IN ANY MODEL IS INCLUDED IN THE PURCHASE PRICE UNLESS SELLER AGREES IN WRITING TO DELIVER THE SAME AS PART OF THE PURCHASE PRICE, OR AS OPTIONAL ITEMS.
- 4) **DATABASE REGARDING REGISTERED SEX OFFENDERS:** **Notice:** Pursuant to Section 290.46 of the California Penal Code, information about specific registered sex offenders is made available to the public via an Internet Web Site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal

history, this information will include either the address at which the offender resides or the community of residences and ZIP Code in which he or she resides.

5) BUYER'S INSPECTION: Prior to the execution of this Joint Purchase Agreement and Escrow Instructions Buyer represents that Buyer has conducted and hereby approves a physical inspection of the subject property and Buyer further represents that Buyer is relying only on their own physical inspection of the subject property. Buyer further acknowledges that Buyer is aware of all zoning regulations, other governmental requirements, site and physical conditions, and other matters affecting the use, condition and ownership of the subject property.

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

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

7) INDEPENDENT VERIFICATION: Buyer's deposit of final funds shall act as an independent verification from Buyer to Escrow Holder that the common area improvements have been satisfactorily completed.

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

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

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

9) POSSESSION: Possession and occupancy shall be delivered to Buyer upon the close of escrow. Buyer's right to possession, use and occupancy of the Subject Property shall commence at the close of escrow. Prior to close of escrow, neither Buyer nor their agents shall place any signs or personal property on or about the subject property or the development or commence any improvements, alterations, modifications or changes to the subject property in any manner. Buyer shall not occupy Subject Property in any manner or form prior to close of escrow.

10) WARRANTIES AND REPRESENTATIONS: Buyer specifically acknowledges that no representations or warranties by Seller or Seller's broker or any agent, employee or representative of them or any other person have been made to or relied upon by Buyer in connection with the within transaction, and that there are and shall be no terms, conditions, representations, warranties or agreements in connection with the within transaction other than specifically stated herein.

11) MULTIPLE LISTING SERVICE: If Broker is a Participant of an Association/Board multiple listing service ("MLS"), the Broker is authorized to report the sale, its price, terms, and financing for the publication, dissemination, information, and use of the authorized Board members, MLS Participants and Subscribers, only with the (separate) express written consent of the Seller.

12) BUYER'S FUNDS: If, through no fault of Buyer, this escrow is not closed on the date set forth herein as the "closing date" (or some later date of closing mutually agreed upon by Buyer and Seller) or ONE (1) Year after the date hereof, then Buyer is entitled to a complete refund of all deposit monies, without deductions, such funds to be returned to Buyer within FIFTEEN (15) Days after said "Closing date" (or some later date of closing mutually agreed upon by Buyer and Seller).

13) VIEW: Seller has made no representations or warranties that there is any "view" from the Property or that any existing view will not in the future be obstructed.

14) HOMEOWNER'S ASSOCIATION: Buyer acknowledges that membership in Homeowner's Association is mandatory and that Buyer shall be required to make assessment payments to the Association in accordance with the CC&R's (Declaration of Covenants, Conditions and Restrictions) of record. The herein Agreement, upon its execution by both parties, is herewith made an integral part of this 'Joint Purchase Agreement and Escrow Instructions'. The Project in which the Property is located is subject to a Declaration of Covenants, Conditions and Restrictions. The association property, if any, common areas and facilities within the project will be managed by an Association(s). Buyer will receive a membership in the Association as an appurtenance to the Property. Each owner will be charged a pro rata maintenance assessment to cover the operational costs of the Association including the cost of maintenance of the

association property, if any, common areas, including exterior maintenance of the residence as provided in the Declaration.

15) OPTIONAL ITEMS: If Buyer has the ability to make color and optional item selections from the choice provided by Seller Buyer shall do so within FIVE (5) Calendar Days following written request for such selection by Seller or Seller's Agent. Buyer's selections shall be in writing and final. If Buyer fails to make such selections within the specified time, Seller shall have the unilateral right to make the selections and Buyer hereby accepts same.

16) COMPLETION OF CONSTRUCTION: With the exception of delays caused by circumstances beyond the reasonable control of Seller, Seller shall complete the construction of the residence no later than ONE (1) YEAR from the date set forth as the closing date herein.

17) SELLER DISCLOSURES: As a material inducement to Seller to sell the Property to Buyer, Buyer hereby agrees, understands and acknowledges as follows:

- A. **FUTURE AND ADJACENT DEVELOPMENT:** Seller is not obligated to construct any future common improvements within the Project (except as to improvements for which bonds or other security have been posted in favor of the Association) or in any later phases or development of the project, if applicable. Seller has provided no oral and/or written representations, warranties or promises to Buyer respecting landscaping or improvements that may be constructed elsewhere within the Project or adjacent thereto. The depiction of buildings, facilities or improvements on any plan, model, topographic map, drawing or map does not constitute a representation, warranty or covenant by Seller that such buildings, facilities or improvements will be constructed or that natural or landscaped areas will remain unchanged or undeveloped.
- B. **SCHOOL INFORMATION:** Seller has made no representations, warranties or assurances to Buyer that the property will be included within any particular school district. Buyer is responsible for determining the availability of schools and the same are subject to change by the applicable school district.
- C. **CHANGES IN PRICE, SIZE AND DESIGN:** Seller has made no promises, representations or assurances to Buyer regarding the pricing, size, design, configuration and architectural style of any further residences or improvements constructed or to be constructed in the Project or in other phases of development or otherwise, and Buyer acknowledges that as market conditions or other facts change, such matters may be subject to change including, without limitation, increase and/or reduction in prices of other residences to be built or sold in the Project and/or sales incentives offered in connection therewith and changes in size, design or product type of homes to be built or sold in the Project.
- D. **VIEW AND PRIVACY IMPAIRMENT:** Neither Seller, nor any of its authorized agents, representatives or employees has made any oral and/or written representations, warranties or promises concerning any view, present or future, that may be enjoyed from all or any portion of a residence or the Property. The view from the Property may change, be affected or obstructed by (i) construction or installation of improvements, structures, fences, walls and/or landscaping by Seller or other owners of Property within or outside the Project and/or (ii) the growth of trees, landscaping and/or vegetation within or outside the project. The Declaration does not contain any provisions intended to protect the view from any residence or any other portion of the project. Because of the nature of the terrain and slope and because neighboring homes have view, differing elevations, orientations to the lot and otherwise, architectural design and/or overall layout from the immediately adjoining or in a close proximity and may or may not have the ability to observe the interior and/or exterior of the subject property, neither Seller, nor any of its authorized agents warranties or promises complete privacy on any part, lot or home. Buyer shall satisfy themselves as to these 'View & Privacy Items' and Seller and/or Broker shall have no liability and/or responsibility in connection therewith.
- E. **TAX AND INSURANCE ESTIMATES:** Any sum estimated for taxes or insurance affecting the property may increase or decrease depending upon fluctuation of real property taxes or insurance rates. Buyer is strongly encouraged to verify these amounts with their own independent investigations including but not limited to verification with their own accountant and/or insurance agent.

18) TEXTURE, PATIOS, BALCONIES AND COMMON AREAS: Seller advises Buyer that a surface coat of textured covering has been initially applied to patio and balcony surfaces, if any. Application of this coating is designed to assist those surfaces in being water retardant. Buyer acknowledges that Seller has advised Buyer that a maintenance coat of the textured coating needs to be applied to all such surfaces at least two (2) years (or as soon as the first sign of cracking) to preserve the effectiveness of the coating. Buyer further acknowledges that it shall be the obligation of Buyer and/or any future owners of the subject property to apply all such maintenance coats and that neither Seller, Brokers, nor the Homeowner's Association shall have any responsibility to apply such maintenance coats, (except in common areas if they exist, which shall be the responsibility of the Homeowner's Association), nor shall have any liability for failure of Buyer or its successors to perform such work. In the event that Buyer should sell the subject property at a later date, Buyer shall notify its purchaser of this maintenance requirement in writing.

Buyer acknowledges that certain annual regular maintenance must be done to property, including but not limited to items as noted in Owner's Manual, which Seller will provide to Buyer at close of escrow. Seller recommends Buyer obtain a licensed contractor to complete these required items. Buyer may request in writing from Seller a list of service vendors no later than 30 days after the close of escrow, or Buyer may hire Buyer's own contractors. In any event, if Buyer fails to maintain the property as recommended by Seller, by a licensed contractor(s), there may be damage to property and property may not be subject to Seller's warranty, if any.

In new construction which has utilized many different natural materials in its development, such as wood, concrete, etc., the occurrence of certain phenomena, such as expansion and contraction, moisture, absorption, settlement, cracking, etc., are quite normal and to be expected. Seller does not in any manner guarantee or warrantee against the occurrence of these natural phenomena to the Property.

19) SQUARE FOOTAGE: Square footages are approximations and have not been and will not be independently verified by Broker and/or Seller. Should exact square footage be required by Buyer, Broker and Seller recommend Buyer

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

20) LAND USE/NEIGHBORHOOD CONDITIONS: Buyer is aware that the subject property may be affected by future development of property in the neighborhood or surrounding areas, including without limitation, view, noise, traffic, local services and safety. Buyer agrees that Seller and Broker make no representation as to the preservation of existing/future views, and that present/future views may be affected by future development or construction/alteration of neighboring properties. Buyer further acknowledges awareness of existing nearby commercial properties/structures and the inherent traffic, noise and other situations relating to same. Buyer understands this project and other surrounding projects are currently and may be under future development. As a result of this fact, there may be noise, dirt, construction trucks, parking, construction workers, outhouses, and deliveries until all projects in the area are completed, all of which may or may not be under Seller's control.

21) WAIVER OF LIS PENDENS: As a material part of the consideration to be received by Seller under this Agreement, Buyer waives all rights to file and maintain an action against Seller for specific performance and to record a Lis Pendens against the Property is not unique in that Buyer can be adequately compensated solely by receiving a refund of Buyer's deposit if Seller breaches this agreement.

22) MANUFACTURED PRODUCTS: Buyer acknowledges and understands that:

- A. There are certain appliances and other equipment included in or exclusively benefiting the Subject Property which are manufactured by Third Parties (e.g. the dishwasher, heating, ventilation and air conditioning equipment, etc.);
- B. The only warranties for such manufactures products are those provided by the manufacturer; and
- C. Buyer shall be responsible for activating specific manufacturer's warranties, including, without limitation, by completing and submitting to the applicable manufacturers any registration cards included with the manufacturer's materials.

23) WATER RIGHTS: If this property is adjacent to or contiguous to any water surface, the Buyer acknowledges and understands that Seller reserves any and all water, water rights and privileges, riparian rights and water easements and points belonging or any way appurtenant to the described real property.

24) EXISTING LANDSCAPING/OAK TREE(S): If any oak tree or other species of tree is situated on the property, Buyer acknowledges that Seller makes no representation or warranty, express or implied, with respect to the condition of any such tree, and Buyer acknowledges that no such representation or warranty has been made or given. Buyer acknowledges that Buyer will make or rely upon his own tests and investigation to ascertain the condition of any such oak tree, or any other species of tree and the required care thereof, and the Seller is not responsible for the same. Buyer, his successors and assigns (if any and if approved by Seller), shall hold Seller, its affiliates, agents and employees, or their successors and assigns, entirely free and harmless from any and all damage, liability or costs of any kind to any person (including Buyer) or property (including Seller's and Buyer's); and Buyer, for himself, his successors and assigns, hereby waives any and all claims against Seller, its affiliates, agents and employees, which may or could affect the price as a result of the condition, maintenance or loss of any such oak tree, or any other species of tree.

25) ZONING DISCLOSURE: Buyer is aware that the Seller and his agents and any representatives have no control over the zoning or development of the surrounding areas and makes no guarantees or representations as to its development.

26) PERIMETER EASEMENT AND LOT FENCING: The placement, set-backs, height, length, width and materials pertaining to any and all fencing, including, but not limited to wood, block wall, slumpstone, wrought iron and chain link fencing which may appear on the tract maps and plans are proposed in advance of construction and completion of the new home. The above mentioned proposals will be finally determined by the appropriate governing agencies. Final approvals and inspections are made by the Planning Department, Building and Safety, Public Works, and Police and Fire emergency services. It is incumbent upon the builder to comply with the final decisions of the governing agencies as prescribed by ordinances. No changes will be made by the Builder which conflict with the aforementioned regulations. Changes made as a result of those requirements will be made without prior notice.

27) MODEL: It is understood and agreed that Seller is not building the subject property specifically for the Buyer, nor to the precise specifications or design of any model or rendering displayed to or visited by Buyer. Buyer acknowledges that models, floor plans, plot maps, measurements and/or dimensions may be used by Seller or Seller's employees, Sales Agents or Sales Agent's employee (s) or representative (s) in the course of offering said property for sale, and of Buyer agreeing to purchase said property, it is not to be construed as exact and may vary either plus or minus. Seller reserves and shall have the right to make any changes, modifications, deletions, additions, changes in specification or substitution Seller deems necessary or desirable at any time without notice to Buyer in the construction, materials, fixtures, hardware, method of construction or other integral or in any portion or feature of the property. Buyer understands that any model, fixtures, or furnishings displayed to or visited by the Buyer are for illustration purposes only and shall not be deemed a representation, agreement or commitment by Seller to deliver the property or any portion or feature thereof in accordance with any such model, fixtures or furnishings. Seller has made no representations to Buyer as to the square footage of the Property or residence located thereon. Square footages that may be quoted in brochures vary according to many actors. They are quoted as a convenience to a potential Buyer and are not meant to be exact. Sales prices are not determined based on square footages. Buyer also understands and acknowledges that certain promotional materials used by Seller (including artist's rendering of the Project and certain exterior design features) may not depict exactly the manner in which the Property will be constructed.

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

close of escrow on the subject property, Buyer agrees that these amounts will be retained by the Seller as consideration for the construction changes ordered by the Buyer.

- 29) PLAN MODIFICATIONS:** Seller hereby reserves the right, without prior written notice to Buyer, to modify or alter any aspect of the proposed plans and specifications for completion of the residence purchased under the terms of this Agreement including, without limitation, the location and types of kitchen appliances, household fixtures, electrical outlets and switches, hardware, wall surfaces, paint and/or change such improvements, provided, said modifications or alterations shall not result in a product of lesser quality or value than agreed to herein. Buyer expressly agrees that Seller shall have the right to make such modifications and alterations without adjustment in purchase price.
- 30) COMPLETION:** It is agreed by the Buyer that the various steps of construction shall be deemed to have been satisfactorily and fully performed when approved by the appropriate city or county department and shall be deemed to be completed and in full compliance with the terms of the Agreement when a Notice of Completion has been filed, and when the appropriate city or county department has issued a certificate (or the like document) permitting occupancy of the property. Seller agrees that it will diligently commence and pursue to complete the construction of the residence on the property and deliver same to Buyer at close of escrow. Depending upon the nature of the Residence, the number, type and design of improvements or additions thereto, Seller will require anywhere from SIX (6) months to ONE (1) year to construct the residence and, accordingly, the Residence shall be substantially completed and shall have been approved for occupancy by the appropriate government agency between SIX (6) months and ONE (1) year from the date hereof (if residence is not already completed). Should Seller be delayed in completing the residence by reason of Buyer's acts or omissions or any causes beyond Seller's control, including but not limited to governmental action, acts of god, stormy weather, strikes, boycotts, unavailability of materials, labor shortages or delays in receiving materials, the time of such delay shall be added to the time for completion, herein, provided, however, that in the event, though no fault of Buyer, this escrow has not closed within TWELVE (12) months from the date hereof, Buyer shall have the right to cancel this escrow and within FIFTEEN (15) days Seller shall order all money remitted, to be refunded to Buyer. Buyer is purchasing a completed residence.

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

- 31) OCCUPANCY:** It is agreed that occupancy of the subject property by Buyer may not be had under this Agreement prior to recordation of the deed to the Buyer and the recordation of the deeds of trust or mortgage procuring the loan or loans to be made on the subject property. Buyer represents to Seller that Buyer has a bona fide intention of residing in the property as Buyer's principal place of residence.
- 32) PROXIMITY WARNING:** Seller makes no representations regarding the community or location of the property. Buyer acknowledges that he is responsible to educate himself as to the proximity of schools, hospitals, factories, heavily traveled streets, air corridors, off-site power sources, parks and other sources of significant noise or pollution adjacent to or in the vicinity of the property and the location of other desirable or undesirable facilities, including but not limited to the seismic activity in the area. Seller makes no representations about the relative safety of the community or vicinity in which subject property is located. Areas near subject property may be zoned, among other things, for residential use, commercial use, industrial use or some combination thereof. It is the duty of Buyer to evaluate the zoning and past use of nearby property to determine whether past, present, or future uses of nearby property may interfere with Buyer's intended use of subject property. Buyer agrees to make his own investigation and signifies his agreement that Seller need not locate or identify for Buyer known or suspected hazards, environmental or otherwise, which do not arise on the subject property and which do not physically affect the subject property at the time of purchase. Buyer agrees further that Seller does not have actual knowledge at the time Seller executes the Agreement, nor does Buyer rely on Seller except as Seller or its agents have made written representations.
- 33) NATURAL WOOD DISCLAIMER:** Natural wood products may be used in the manufacturing of the cabinets, entry doors, stair rails, windows, floors and exteriors. Wood, by nature, is not uniform in regards to color or grain and may have significant color variations. Every piece of wood will accept stains differently depending on its color, porosity and graining. Therefore, Seller makes no representation that the wood used in or on the home will be the same as the model homes or any samples, or that the coloring on subject lot will not vary. Certain wood floors may sliver. Exterior finished wood surfaces, such as siding, doors, railings and eaves, will require maintenance and repainting. The frequency and extent of the maintenance required of Buyer is dependent upon exposure to direct sun, moisture, smog or particulates in the air. Seller has painted the exterior wood surfaces with materials as is customary in the industry and makes no representations other than Seller's standard limited warranty. Buyer further acknowledges that wood products are subject to color variations as they age and/or depending on the exposure to sunlight.
- 34) STUCCO DISCLOSURE:** Concrete, plaster, drywall, masonry and other rigid materials are subject to cracking due to normal shrinkage, settlement, expansion and contraction. Seller is only responsible to repair such materials in the event that such cracks exceed industry standards.
- 35) PAINT DISCLAIMER:** Paints and stains will be installed pursuant to the manufacturer's instructions. Seller makes no warranty beyond the manufacturer's standard limited warranty for such materials.
- 36) SOUND TRANSMISSION:** Seller does not in any manner guarantee or warrant that the property will be soundproof or insulated to any particular degree from noise or sound emanating from within or without the Subject Property, including noise or sound emanating from other units, heating, ventilation air conditioning systems, plumbing, stereo systems, 'Surround Sound Systems', Common Area(s), Garages, etc.
- 37) FUTURE VALUE:** Seller makes no representations or warranty, express or implied, as to the price or value of any of the dwellings. It is understood, acknowledged and agreed that: the dwelling being purchased may appreciate or depreciate in value and price; other dwellings in the project may be sold for a higher or lower prices than that paid for the dwelling being purchased by Buyer; incentives, promotions or other concessions not offered to Buyer may be

offered to others; and Seller reserves the right, in its sold discretion, and without notice to the Buyer, to increase or decrease the price of dwellings in the project at any time. Buyer shall have nor rights to participate in incentives, promotions or concessions offered to others, if any, nor shall they have the right to modify or rescind the terms of this agreement or their purchase of the subject property by reason of same.

38) MOLD: In recent years, mold have received significant attention, as significantly increased levels of mold have accumulated and spread through residential dwellings. It is important to note that mold tends to proliferate in warm, wet areas. High levels of mold in an enclosed setting can lead to mild to significant detrimental health effects. As such, it is each Buyer's responsibility to maintain his or her Unit so as to avoid the accumulation of moisture and/or mold within the Unit. Such mitigation matters should include, without limitation, the frequent ventilation of the Unit, removal of standing water on balcony, patio or deck areas, if any, prompt repair of any leaks which permit water intrusion into the Unit, and prompt repair of plumbing leaks within the Unit (irrespective of who or what may have caused the leaks). Each Buyer also understands that the presence of indoor plants may also increase mold levels within the Unit. Also, the propping of large pieces of furniture against wall surfaces may lead to the presence and/or spreading of mold. In the event that mold does appear within the Unit, it is also the Buyer's responsibility to promptly and properly treat such mold to minimize the spreading thereof and/or unhealthy conditions likely to arise as a result thereof. Each owner is responsible to learn how to clean any affected Improvements. For further information on mold related issues including g mold cleanup and moisture control condensation/humidity issues, Buyer may call the Environmental Protection Agency Indoor Air Quality Clearinghouse whose telephone number, at the date hereof, is (800) 438.4318.

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

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

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

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

- A. Seller may, at its option, elect not to warrant such changes or the entire system altered by such changes such as the electrical system, plumbing system, etc.
- B. Seller may, at its sole option without notice to Buyer, remove any or all of any additions to the Property made by or at the request of Buyer or may reconstruct all or any portion of the residence which has been changed as a result of any modifications made by or at the request of Buyer, it being acknowledged by Buyer that until the Close of Escrow, the residence and all parts thereof and additions thereto, no matter by whom made, are the property of Seller. All costs incurred by Seller to remove any additions made by Buyer shall be charged back to Buyer plus a 20% management fee.
- C. With respect to any modifications or additions to the residence made by or at the request of Buyer which are wither known or not known to Seller, but which are allowed by Seller to remain, Buyer hereby waives any claim against Seller, its agents, employees, members, independent contractors, arising as a result of such modifications or additions and agrees to indemnify and save harmless Seller, it agents, employees, members, and independent contractors, from and against all liability, loss, claims, or damages arising as a result of such modifications or additions, whether or not Seller, or any of its agents, employees, members, or independent contractors may have been negligent in connection with such modifications or additions.

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

43) RESOLUTION FOR DISPUTES:

- A. DISPUTES: IF ANY DISPUTE SHOULD ARISE BETWEEN THE ASSOCIATION AND/OR BUYER OR BUYERS ON THE ONE PART ("CLAIMANT") AND THE SELLER, OR ANY OFFICER, DIRECTOR, MANAGER, SHAREHOLDER, PARTNER, MEMBER, EMPLOYER, CONTRACTOR, SUBCONTRACTOR, MATERIAL SUPPLIER, DESIGN PROFESSIONALS, PROPERTY MANAGER, EMPLOYEE, OR AGENT OF THE SELLER ON THE OTHER PART (HEREINAFTER COLLECTIVELY THE "SELLER GROUP") WHETHER THE DISPUTE ARISES UNDER THE DECLARATION OR ANY OTHER MANAGEMENT DOCUMENT, OR RELATING TO ANY CLAIM OF DEFECTS IN CONSTRUCTION OF THE PROTECT OR ANY INDIVIDUAL, OR GROUP OF INDIVIDUAL DWELLINGS, OR FOR THE BREACH OF ALLEGED DUTY OF GOOD FAITH AND FAIR DEALING, NEGLIGENT MISREPRESENTATION, LATENT OR PATENT DEFECTS, NON-DISCLOSURE, FRAUD, BREACH OF CONTRACT, OR OTHERWISE (A "DISPUTE"), THE DISPUTE SHALL BE RESOLVED IN THE MANNER PROVIDED IN THIS PARAGRAPH 44 WHICH PROVIDES FOR ARBITRATION AND WAIVERS OF THE RIGHT TO LITIGATE AND A JURY TRIAL.
- B. CONSTRUCTION DEFECTS: BEFORE THE ASSOCIATION OR A BUYER COMMENCE AN ARBITRATION PROCEEDING CLAIMING DAMAGES AGAINST SELLER BASED ON A CLAIM FOR DEFECTS IN THE PROJECT (AS SPECIFIED IN CIVIL CODE SECTION 896), OR ANY INDIVIDUAL OR GROUP OF INDIVIDUAL

UNITS IN THE PROJECT, THE ASSOCIATION OR BUYER MUST FIRST COMPLY WITH ALL OF THE REQUIREMENTS OF THE PRELITIGATION PROCEDURE SET FORTH IN CALIFORNIA CIVIL CODE SECTION 910 THROUGH 938 AS AMENDED FROM TIME TO TIME, AS SELLER HAS ELECTED TO USE THE NON ADVERSARIAL PROCEDURES SET FORTH IN SAID SECTIONS. THE PRELITIGATION PROCEDURE IMPACTS THE LEGAL RIGHTS OF A PURCHASER OF A UNIT INCLUDING SUCCESSORS TO THE INITIAL PURCHASER. A COPY OF CALIFORNIA'S CONSTRUCTION CLAIMS STATUTE IS ATTACHED AND MADE A PART OF THIS CONTRACT.

IN THE EVENT THAT AFTER COMPLYING WITH THE PRELITIGATION PROCEDURE, THE PARTIES ARE UNABLE TO RESOLVE THE DISPUTE, THE MATTER SHALL BE REFERRED TO BINDING ARBITRATION IN ACCORDANCE WITH D. BINDING ARBITRATION BELOW.

- C. NON CONSTRUCTION DISPUTES: ANY OTHER DISPUTES ARISING BETWEEN THE ASSOCIATION AND/OR A BUYER ON THE ONE PART AND SELLER ON THE OTHER PART SHALL, EXCEPT FOR FAILURE OF SELLER TO PAY ASSESSMENTS, AND EXCEPT FOR AN ACTION FOR DECLARATORY RELIEF OR INJUNCTIVE RELIEF RELATED TO THE ENFORCEMENT OF THE DECLARATION, THE BYLAWS, THE ARTICLES, OR THE RULES AND REGULATIONS, BE RESOLVED IN ACCORDANCE WITH D. BINDING ARBITRATION BELOW. RESOLUTION OF DISPUTES ARISING UNDER THIS SECTION SHALL BE IN LIEU OF AND IN SATISFACTION OF THE REQUIREMENTS OF CIVIL CODE SECTION 1354 RELATING TO ALTERNATIVE DISPUTE RESOLUTION.
- D. BINDING ARBITRATION: ANY DISPUTES UNDER SUBPARAGRAPHS B. (CONSTRUCTION DEFECTS) OR C. (NON CONSTRUCTION DISPUTES) ABOVE, WHICH REMAIN UNRESOLVED, FOR ANY REASON WHATSOEVER, SHALL, PROVIDED THAT THE BOARD HAS OBTAINED THE VOTE OR WRITTEN CONSENT OF A MAJORITY OF THE OWNERS IF THE ASSOCIATION IS INVOLVED, BE SUBMITTED TO MANDATORY BINDING ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT. THE PROVISIONS OF CODE OF CIVIL PROCEDURE §1298.7, IF APPLICABLE, ARE WAIVED. THE PARTIES EXPRESSLY AGREE THAT THIS AGREEMENT AND THE TRANSACTION BETWEEN THE PARTIES INVOLVE AND CONCERN INTERSTATE COMMERCE AND ARE THEREFORE GOVERNED BY THE PROVISIONS OF THE FEDERAL ARBITRATION ACT.
- E. FORUM FOR ARBITRATION: All disputes shall be submitted to binding arbitration by and pursuant to the streamlined arbitration rules and procedures of judicial Arbitration and Mediation Services ("JAMS") in effect at the time of the initiation of the arbitration. In the event JAMS is for any reason unwilling or unable to serve as the arbitration service, the parties shall select another reputable arbitration service. If the parties are unable to agree on an alternative service, then either party may petition any court of competent jurisdiction in the county in which the Property is located to appoint such an alternative service, which shall be binding on the parties. The rules and procedures of such alternative service in effect at the time the request for arbitration is submitted shall be followed.
- F. GENERAL ARBITRATION PROVISIONS:
1. Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the dispute shall be considered communications undertaken in the course of effecting a settlement and compromise and, as such, shall not be admissible as the admission on the part of any party or any representative or agent of that party to be utilized for any purpose in any arbitration proceeding.
 2. The arbitration shall not be deemed a waiver of the attorney/client or attorney/work product privilege.
 3. The proceeding shall be held in the County where the Project is located.
 4. The proceeding shall commence on a date agreed to by the parties and, if the parties cannot agree, then at a date determined by the arbitrator.
 5. The parties shall promptly and diligently cooperate with one another and the arbitrator, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute.
 6. The arbitrator shall have the power to decide all discovery disputes and all issues of fact and law and report his/her decision thereon, and to issue all legal and equitable relief appropriate under the circumstances of the controversy before him/her. The arbitrator shall conduct neutral and impartial proceedings in accordance with rules and procedures which are fair and reasonable to the parties.
 7. The arbitrator shall be selected according to the procedures of JAMS. The arbitrator appointed to serve shall be a neutral and impartial person.
 8. The Seller shall advance all fees necessary to initiate the arbitration, and subsequent fees and costs of the arbitration and/or the arbitrator shall be paid equally by the parties to the arbitration, with the costs and fees of the arbitration and/or the arbitrator to ultimately be borne as determined by the arbitrator.
 9. A stenographic record of the proceeding shall be made if requested by the parties.
 10. The decision of the arbitrator upon all the issues shall be final and binding upon the parties.
 11. The arbitrators shall not have the power or authority to award attorney's and/or expert (consultant's) fees. Each party shall be obligated to pay its own attorney's and expert fees even though a party is determined to be the prevailing party by the arbitrator.
- G. OPTION OF NONBINDING MEDIATION FOR UNRESOLVED CONSTRUCTION DEFECT CLAIMS: If the Association/Buyer or Seller or any person or entity involved in a Construction Defect Claim cannot informally resolve the dispute to their mutual satisfaction and would prefer to attempt a resolution of the construction defect claim before initiating binding arbitration pursuant to D. BINDING ARBITRATION above, then, if the parties agree, the matter may be submitted to a non-binding mediation before a neutral, knowledgeable, experienced

construction defect mediator mutually agreeable to the parties at JAMS/ENDIPUTE or any mutually acceptable alternative dispute resolution provider. The parties may design the mediation process to best suit their mutual needs. Before the mediation, the parties shall execute an agreement pursuant to *California Evidence Code* §1119 and agree that the mediation as well as any resolution is confidential, not to be revealed to any person or entity beyond the parties and their attorneys, if any.

- H. **INJUNCTIVE RELIEF:** If the Association or Buyer shall breach the provisions of this section, Seller shall be entitled to injunctive relief (without the necessity or proving any damages) to compel the Association and/or Buyer to comply with the procedures set forth in this section.
- I. **NO AMENDMENT WITHOUT CONSENT:** Notwithstanding any other provisions or the Declaration neither this section nor any provisions hereof shall be amended, altered, rescinded, or deleted without the written consent of Seller.
- J. **DISPUTES RELATING TO GOVERNING DOCUMENTS:** If the event of a dispute between the Association and a Buyer, or between Buyer and another owner, relating to the to the enforcement of the Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations, or other governing documents of the Association, the issue or issues, at the request of any party, shall be submitted to arbitration in accordance with the Commercial Arbitration rules of the American Arbitration Association (AAA) before an arbitrator selected from the panels of the arbitrators of AAA. Where a vote or written assent is required, either for or against an action, the arbitration shall be considered a provision director and/or member of the Association who is authorized to attend any regular, special or adjourned meeting of the Association. In the event of referral to arbitration, the person requesting the arbitration shall remit the fee to initiate the arbitration. However, the final cost of said arbitration shall ultimately be borne as determined by the arbitrator.
- K. **WAIVER OF RIGHT TO LITIGATE A JURY TRIAL:** BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH BUYER, AND THE ASSOCIATION, SHALL BE DEEMED TO HAVE AGREED TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE PROVISION HEREOF. SELLER, THE ASSOCIATION, AND EACH BUYER ARE GIVING UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT WITH A JURY TRIAL AND ARE GIVING UP JUDICIAL RIGHT TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS "RESOLUTION OF DISPUTES" SECTION. IF SELLER, THE ASSOCIATION, AND/OR ANY BUYER REFUSES TO SUBMIT TO ARBITRATION, SELLER, THE ASSOCIATION OR SUCH BUYER MAY BE COMPELLED TO ARBITRATION UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.
- L. **JUDICIAL REFERENCE OF CONSTRUCTION DEFECT CLAIMS:** Solely in the event that the binding arbitration provisions herein should be challenged and found by a final order of court of competent jurisdiction to be unenforceable or otherwise inapplicable, then all unresolved construction defect and other claims shall be resolved by general judicial reference, without a jury trial, pursuant to *California Code of Civil Procedure* §638 and 641 through 645.1, or any successor and companion statutes. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included.
- M. **PARTIES BENEFITTED:** This Paragraph 43 shall inure to the benefit of, and be enforceable by, Seller's contractors, subcontractors, agents, vendors, suppliers, design professionals, insurers and any other person whom Buyers, the Association and/or Seller contend is responsible, in whole or in part for any Dispute, including without limitation, any alleged defect in or to the Property or the project, or any improvement or appurtenance thereto. The parties contemplate the inclusion of such parties in any arbitration of a Dispute and agree that the inclusion of such parties in any arbitration of a Dispute and agree that the inclusion of such parties will not effect the enforceability of this arbitration agreement.

44) SUBMISSION OF DOCUMENTS TO SUBSEQUENT PURCHASER: Buyer covenants and agrees that upon their sale of the Property to a subsequent purchaser, they will provide such purchaser with a copy of all documents provided by Seller to Buyer regarding the Property and the Project. Buyer covenants and agrees that if they should fail to provide such documents to their purchaser, they will indemnify and hold Seller free and harmless from any and all claims, costs, expenses (including attorneys fees), obligations, liabilities, actions and judgments which Seller may sustain, incur or be subject to as a result of Buyer's breach of this covenant.

45) NO IMPLIED WARRANTIES: There are no implied warranties of any kind or nature regarding the Property or the Project, including but not limited to merchantability of fitness. Seller elects to have the standards set forth in Senate Bill 800 (*California Civil Code*, Sections 895 through 945.5) apply with regard to Seller's obligations to repair defects in the construction of the Property, including Dwelling thereon.

46) LIMITED WARRANTY OF FIT-AND-FINISH COMPONENTS: In compliance with Civil Code, Section 900, Seller warrants the Fit and Finish components of Buyer's Dwelling against defects in materials and workmanship for a period of one year commencing with the close of escrow. This warranty shall cover the Fit and Finish of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes and trim.

47) MANUFACTURED PRODUCT INFORMATION: Buyer's acknowledge receipt of manufactured products maintenance, preventative maintenance and manufacturer limited warranty information. If manufactured products are to be selected by Buyer during the pendency of construction, then this information will be provided to Buyer by Seller at close of escrow.

48) BUYER'S MAINTENANCE RESPONSIBILITY: Buyer acknowledges, pursuant to Civil Code, Section 907, that if they fail to properly and adequately maintain the Fit and Finish and other components according to schedules and procedures provided by Seller in the Maintenance Manual or product manufacturers, or under commonly accepted maintenance practices, the Seller or manufacturer may be relieved from their limited warranty obligations.

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

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

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

- A. THE AMOUNT EQUAL TO BUYER'S PURCHASE MONEY DEPOSIT SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO SELLER IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY BECAUSE OF A DEFAULT BY BUYER. THE VALIDITY AND REASONABLENESS OF THE AMOUNT OF LIQUIDATED DAMAGES SHALL BE DETERMINED IN ACCORDANCE WITH CALIFORNIA CIVIL CODE SECTIONS 1675 THROUGH 1678.
- B. THE PAYMENT OF SUCH LIQUIDATED DAMAGES TO SELLER SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF SELLER ON ACCOUNT OF ANY DEFAULT BY BUYER.
- C. LIQUIDATED DAMAGES SHALL BE PAYABLE TO SELLER OUT OF BUYER'S PURCHASE MONEY DEPOSIT ACCORDING TO THE FOLLOWING PROCEDURES:
 - 1. THE SELLER SHALL GIVE WRITTEN NOTICE ("SELLER'S NOTICE AND DEMAND"), IN THE MANNER PRESCRIBED BY SECTION 116.640 OF THE CODE OF CIVIL PROCEDURE FOR SERVICE IN A SMALL CLAIMS ACTION, TO ESCROW HOLDER AND TO BUYER, THAT BUYER IS IN DEFAULT UNDER THIS AGREEMENT AND THAT SELLER IS DEMANDING THAT ESCROW HOLDER REMIT THE PURCHASE MONEY DEPOSIT TO SELLER AS LIQUIDATED DAMAGES UNLESS, WITHIN TWENTY (20) DAYS BUYER GIVES ESCROW HOLDER BUYER'S WRITTEN OBJECTION TO DISBURSEMENT OF THE PURCHASE MONEY AS LIQUIDATED DAMAGES ("BUYER'S OBJECTION"). BUYER'S OBJECTION MUST ALSO AFFIRMATIVELY STATE THAT BUYER IS READY, WILLING AND ABLE TO CLOSE ESCROW AS PROVIDED FOR IN THIS AGREEMENT. BUYER'S FAILURE TO SO SPECIFICALLY STATE THAT THEY ARE PREPARED TO PROCEED WITH THE CLOSE OF ESCROW FOR THE PURCHASE OF THE PROPERTY WILL IMMEDIATELY TERMINATE BUYER'S RIGHT TO PURCHASE THE PROPERTY AND ANY SUCH RIGHTS SHALL THEREUPON BECOME NULL AND VOID. SELLER SHALL, IMMEDIATELY UPON GIVING THE SELLER'S NOTICE AND DEMAND, DELIVER TO ESCROW HOLDER ALL PURCHASE MONEY FUNDS OF BUYER HELD BY SELLER OUTSIDE OF ESCROW, IF ANY.
 - 2. BUYER SHALL HAVE A PERIOD OF TWENTY (20) DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND IN WHICH TO GIVE ESCROW HOLDER BUYER'S OBJECTION.
 - 3. IF BUYER FAILS TO GIVE ESCROW HOLDER BUYER'S OBJECTION WITHIN TWENTY (20) DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND: (A) ESCROW HOLDER SHALL PROMPTLY REMIT THE AMOUNT DEMANDED TO SELLER; AND (B) SELLER IS RELEASED FROM ANY OBLIGATION TO SELL THE PROPERTY TO BUYER.
 - 4. IF BUYER GIVES ESCROW HOLDER BUYER'S OBJECTION WITHIN TWENTY (20) DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND, THEN THE CONTROVERSY SHALL BE DETERMINED BY SUBMISSION TO BINDING ARBITRATION AS PROVIDED IN THE PARAGRAPH ENTITLED 'ARBITRATION OF DISPUTES' HEREIN.
- D. IF THE PROPERTY IS A NEWLY CONSTRUCTED ATTACHED CONDOMINIUM UNIT LOCATED WITHIN A SINGLE BUILDING CONTAINING TEN (10) OR MORE RESIDENTIAL CONDOMINIUM UNITS WHERE THE AMOUNT PAID TO THE SELLER PURSUANT TO THIS LIQUIDATED DAMAGES PROVISION EXCEEDS THE AMOUNT SPECIFIED IN THE CIVIL CODE SECTION 1675 (F) (1), THE FOLLOWING ADDITIONAL PROCEDURE SHALL ALSO APPLY:
 - 1. SELLER SHALL PERFORM AN ACCOUNTING OF ALL COSTS AND REVENUES RELATED TO THE CONSTRUCTION AND THE SALE OF THE UNIT, INCLUDING ANY COSTS OF DELAY RELATED TO BUYER'S DEFAULT, LESS ANY AMOUNT BY WHICH SELLER CAN REDUCE THE DELAY COSTS BY REASONABLE EFFORTS ("ACCOUNTING"); AND
 - 2. REFUND TO THE BUYER, AT HIS OR HER LAST KNOWN ADDRESS WITHIN TEN (10) DAYS AFTER COMPLETING THE ACCOUNTING, EITHER THE AMOUNT OF THE DEPOSIT THAT EXCEEDS THE AMOUNT SPECIFIED IN THE CIVIL CODE SECTION 1675 (F) (1) OR THE AMOUNT OF THE DEPOSIT THAT EXCEEDS THE SELLER'S ACTUAL DAMAGES, AS DETERMINED BY THE ACCOUNTING, WHICHEVER AMOUNT IS GREATER; AND
 - 3. ANY ACCOUNTING PURSUANT TO PARAGRAPH (D.1) ABOVE MUST BE DONE EITHER:
 - a. WITHIN SIXTY (60) CALENDAR DAYS OF THE FINAL CLOSE OF ESCROW OF THE UNIT;
 - OR-
 - b. WITHIN SIXTY (60) CALENDAR DAYS FROM THE TIME OF A "NEW QUALIFIED BUYER" ENTERED INTO A CONTRACT TO PURCHASE. A "NEW QUALIFIED BUYER" IS ONE WHO HAS SATISFIED THE LOAN CONTINGENCY IN THE CONTRACT AND WHO HAS CONTRACTED TO PAY A PURCHASE PRICE THAT IS GREATER THAN OR EQUAL TO THE PURCHASE PRICE TO BE PAID BY THE ORIGINAL BUYER WHO DEFAULTED.

ANY OBJECTIONS FROM BUYER ARISING OUT OF OR RELATING TO THE ACCOUNTING SHALL BE RESOLVED BY SUBMISSION OF THE CONTROVERSY TO BINDING ARBITRATION, AS PROVIDED HEREIN.

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

ARBITRATION OF DISPUTES: ANY BINDING ARBITRATION REQUIRED PURSUANT TO THIS PARAGRAPH 50 MAY INCLUDE A DETERMINATION OF THE REASONABLENESS OF THE AMOUNT TO BE PAID AS

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

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

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

CHAPTER 2 - ACTIONABLE DEFECTS

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

(A) With respect to water issues:

- (1) A door shall not allow unintended water to pass beyond, around, or through the door or its designed or actual moisture barriers, if any.
- (2) Windows, patio doors, deck doors, and their systems shall not allow water to pass beyond, around, or through the window, patio door, or deck door or its designed or actual moisture barriers, including, without limitation, internal barriers within the systems themselves. For purposes of this paragraph, "systems" include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.
- (3) Windows, patio doors, deck doors, and their systems shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.
- (4) Roofs, roofing systems, chimney caps, and ventilation components shall not allow water to enter the structure or to pass beyond, around, or through the designed or actual moisture barriers, including, without limitation, internal barriers located within the systems themselves. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, and sheathing, if any.
- (5) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow water to pass into the adjacent structure. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashing, and sheathing, if any.
- (6) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow unintended water to pass within the systems themselves and cause damage to the systems. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashing, and sheathing, if any.
- (7) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to cause damage to another building component.
- (8) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to limit the installation of the type of flooring materials typically used for the particular application.
- (9) Hardscape, including paths and patios, irrigation systems, landscaping systems, and drainage systems, that are installed as part of the original construction, shall not be installed in such a way as to cause water or soil erosion to enter into or come in contact with the structure so as to cause damage to another building component.
- (10) Stucco, exterior siding, exterior walls, including, without limitation, exterior framing, and other exterior wall finishes and fixtures and the systems of those components and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall be installed in such a way so as not to allow unintended water to pass into the structure or to pass beyond, around, or through the designed or actual moisture barriers of the system, including any internal barriers located within the system itself. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.

- (11) Stucco, exterior siding, and exterior walls shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.
 - (12) Retaining and site walls and their associated drainage systems shall not allow unintended water to pass beyond, around, or through its designed or actual moisture barriers including, without limitation, any internal barriers, so as to cause damage. This standard does not apply to those portions of any wall or drainage system that are designed to have water flow beyond, around, or through them.
 - (13) Retaining walls and site walls, and their associated drainage systems, shall only allow water to flow beyond, around, or through the areas designated by design.
 - (14) The lines and components of the plumbing system, sewer system, and utility systems shall not leak.
 - (15) Plumbing lines, sewer lines, and utility lines shall not corrode so as to impede the useful life of the systems.
 - (16) Sewer systems shall be installed in such a way as to allow the designated amount of sewage to flow through the system.
 - (17) Shower and bath enclosures shall not leak water into the interior of walls, flooring systems, or the interior of other components.
 - (18) Ceramic tile and tile countertops shall not allow water into the interior of walls, flooring systems, or other components so as to cause damage.
- (B) With respect to structural issues:
- (1) Foundations, load bearing components, and slabs, shall not contain significant cracks or significant vertical displacement.
 - (2) Foundations, load bearing components, and slabs shall not cause the structure, in whole or in part, to be structurally unsafe.
 - (3) Foundations, load bearing components, and slabs, and underlying soils shall be constructed so as to materially comply with the design criteria set by applicable government building codes, regulations, and ordinances for chemical deterioration or corrosion resistance in effect at the time of original construction.
 - (4) A structure shall be constructed so as to materially comply with the design criteria for earthquake and wind load resistance, as set forth in the applicable government building codes, regulations, and ordinances in effect at the time of original construction.
- (C) With respect to soil issues:
- (1) Soils and engineered retaining walls shall not cause, in whole or in part, damage to the structure built upon the soil or engineered retaining wall.
 - (2) Soils and engineered retaining walls shall not cause, in whole or in part, the structure to be structurally unsafe.
 - (3) Soils shall not cause, in whole or in part, the land upon which no structure is built to become unusable for the purpose represented at the time of original sale by the builder or for the purpose for which that land is commonly used.
- (D) With respect to fire protection issues:
- (1) A structure shall be constructed so as to materially comply with the design criteria of the applicable government building codes, regulations, and ordinances for fire protection of the occupants in effect at the time of the original construction.
 - (2) Fireplaces, chimneys, chimney structures, and chimney termination caps shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire outside the fireplace enclosure or chimney.
 - (3) Electrical and mechanical systems shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire.
- (E) With respect to plumbing and sewer issues:
- Plumbing and sewer systems shall be installed to operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action may be brought for a violation of this subdivision more than four years after close of escrow.
- (F) With respect to electrical system issues:
- Electrical systems shall operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action shall be brought pursuant to this subdivision more than four years from close of escrow.
- (G) With respect to issues regarding other areas of construction:
- (1) Exterior pathways, driveways, hardscape, sidewalls, sidewalks, and patios installed by the original builder shall not contain cracks that display significant vertical displacement or that are excessive. However, no action shall be brought upon a violation of this paragraph more than four years from close of escrow.
 - (2) Stucco, exterior siding, and other exterior wall finishes and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall not contain significant cracks or separations.
 - (3) (a) To the extent not otherwise covered by these standards, manufactured products, including, but not limited to, windows, doors, roofs, plumbing products and fixtures, fireplaces, electrical fixtures, HVAC units, countertops, cabinets, paint, and appliances shall be installed so as not to interfere with the products' useful life, if any.

- (b) For purposes of this paragraph, "useful life" means a representation of how long a product is warranted or represented, through its limited warranty or any written representations, to last by its manufacturer, including recommended or required maintenance. If there is no representation by a manufacturer, a builder shall install manufactured products so as not to interfere with the product's utility.
 - (c) For purposes of this paragraph, "manufactured product" means a product that is completely manufactured offsite.
 - (d) If no useful life representation is made, or if the representation is less than one year, the period shall be no less than one year. If a manufactured product is damaged as a result of a violation of these standards, damage to the product is a recoverable element of damages. This subparagraph does not limit recovery if there has been damage to another building component caused by a manufactured product during the manufactured product's useful life.
 - (e) This title does not apply in any action seeking recovery solely for a defect in a manufactured product located within or adjacent to a structure.
- (4) Heating, if any, shall be installed so as to be capable of maintaining a room temperature of 70 degrees Fahrenheit at a point three feet above the floor in any living space.
 - (5) Living space air-conditioning, if any, shall be provided in a manner consistent with the size and efficiency design criteria specified in Title 24 of the California Code of Regulations or its successor.
 - (6) Attached structures shall be constructed to comply with inter unit noise transmission standards set by the applicable government building codes, ordinances, or regulations in effect at the time of the original construction. If there is no applicable code, ordinance, or regulation, this paragraph does not apply. However, no action shall be brought pursuant to this paragraph more than one year from the original occupancy of the adjacent unit.
 - (7) Irrigation systems and drainage shall operate properly so as not to damage landscaping or other external improvements. However, no action shall be brought pursuant to this paragraph more than one year from close of escrow.
 - (8) Untreated wood posts shall not be installed in contact with soil so as to cause unreasonable decay to the wood based upon the finish grade at the time of original construction. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.
 - (9) Untreated steel fences and adjacent components shall be installed so as to prevent unreasonable corrosion. However, no action shall be brought pursuant to this paragraph more than four years from close of escrow.
 - (10) Paint and stains shall be applied in such a manner so as not to cause deterioration of the building surfaces for the length of time specified by the paint or stain manufacturers' representations, if any. However, no action shall be brought pursuant to this paragraph more than five years from close of escrow.
 - (11) Roofing materials shall be installed so as to avoid materials falling from the roof.
 - (12) The landscaping systems shall be installed in such a manner so as to survive for not less than one year. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.
 - (13) Ceramic tile and tile backing shall be installed in such a manner that the tile does not detach.
 - (14) Dryer ducts shall be installed and terminated pursuant to manufacturer installation requirements. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.
 - (15) Structures shall be constructed in such a manner so as not to impair the occupants' safety because they contain public health hazards as determined by a duly authorized public health official, health agency, or governmental entity having jurisdiction. This paragraph does not limit recovery for any damages caused by a violation of any other paragraph of this section on the grounds that the damages do not constitute a health hazard.

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

CHAPTER 3 - OBLIGATIONS

- 900. As to fit and finish items, a builder shall provide a homebuyer with a minimum one-year express written limited warranty covering the fit and finish of the following building components. Except as otherwise provided by the standards specified in Chapter 2 (commencing with Section 896), this warranty shall cover the fit and finish of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim, but shall not apply to damage to those components caused by defects in other components governed by the other provisions of this title. Any fit and finish matters covered by this warranty are not subject to the provisions of this title. If a builder fails to provide the express warranty required by this section, the warranty for these items shall be for a period of one year.
- 901. A builder may, but is not required to, offer greater protection or protection for longer time periods in its express contract with the homeowner than that set forth in Chapter 2 (commencing with Section 896). A builder may not limit the application of Chapter 2 (commencing with Section 896) or lower its protection through the express contract with the homeowner. This type of express contract constitutes an "enhanced protection agreement."
- 902. If a builder offers an enhanced protection agreement, the builder may choose to be subject to its own express contractual provisions in place of the provisions set forth in Chapter 2 (commencing with Section 896). If an

enhanced protection agreement is in place, Chapter 2 (commencing with Section 896) no longer applies other than to set forth minimum provisions by which to judge the enforceability of the particular provisions of the enhanced protection agreement.

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

CHAPTER 4 - PRELITIGATION PROCEDURE

910. Prior to filing an action against any party alleged to have contributed to a violation of the standards set forth in Chapter 2 (commencing with Section 896), the claimant shall initiate the following pre-litigation procedures:
- (a) The claimant or his or her legal representative shall provide written notice via certified mail, overnight mail, or personal delivery to the builder, in the manner prescribed in this section, of the claimant's claim that the construction of his or her residence violates any of the standards set forth in Chapter 2 (commencing with Section 896). That notice shall provide the claimant's name, address, and preferred method of contact, and shall state that the claimant alleges a violation pursuant to this part against the builder, and shall describe the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation. In the case of a group of homeowners or an association, the notice may identify the claimants solely by address or other description sufficient to apprise the builder of the locations of the subject residences. That document shall have the same force and effect as a notice of commencement of a legal proceeding.
- (b) The notice requirements of this section do not preclude a homeowner from seeking redress through any applicable normal customer service procedure as set forth in any contractual, warranty, or other builder-generated document; and, if a homeowner seeks to do so, that request shall not satisfy the notice requirements of this section.
911. (a) For purposes of this title, except as provided in subdivision (b), "builder" means any entity or individual, including, but not limited to a builder, developer, general contractor, contractor, or original seller, who, at the time of sale, was also in the business of selling residential units to the public for the property that is the subject of the homeowner's claim or was in the business of building, developing, or constructing residential units for public purchase for the property that is the subject of the homeowner's claim.
- (b) For the purposes of this title, "builder" does not include any entity or individual whose involvement with a residential unit that is the subject of the homeowner's claim is limited to his or her capacity as general contractor or contractor and who is not a partner, member of, subsidiary of, or otherwise similarly affiliated with the builder. For purposes of this title, these nonaffiliated general contractors and nonaffiliated contractors shall be treated the same as subcontractors, material suppliers, individual product manufacturers, and design professionals.
912. A builder shall do all of the following:
- (a) Within 30 days of a written request by a homeowner or his or her legal representative, the builder shall provide copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations, that pertain to a homeowner's residence specifically or as part of a larger development tract. The request shall be honored if it

states that it is made relative to structural, fire safety, or soils provisions of this title. However, a builder is not obligated to provide a copying service, and reasonable copying costs shall be borne by the requesting party. A builder may require that the documents be copied onsite by the requesting party, except that the homeowner may, at his or her option, use his or her own copying service, which may include an offsite copy facility that is bonded and insured. If a builder can show that the builder maintained the documents, but that they later became unavailable due to loss or destruction that was not the fault of the builder, the builder may be excused from the requirements of this subdivision, in which case the builder shall act with reasonable diligence to assist the homeowner in obtaining those documents from any applicable government authority or from the source that generated the document. However, in that case, the time limits specified by this section do not apply.

- (b) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, the builder shall provide to the homeowner or his or her legal representative copies of all maintenance and preventative maintenance recommendations that pertain to his or her residence within 30 days of service of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.
 - (c) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all manufactured products maintenance, preventive maintenance, and limited warranty information within 30 days of a written request for those documents. These documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.
 - (d) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all of the builder's limited contractual warranties in accordance with this part in effect at the time of the original sale of the residence within 30 days of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.
 - (e) A builder shall maintain the name and address of an agent for notice pursuant to this chapter with the Secretary of State or, alternatively, elect to use a third party for that notice if the builder has notified the homeowner in writing of the third party's name and address, to whom claims and requests for information under this section may be mailed. The name and address of the agent for notice or third party shall be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative. This subdivision applies to instances in which a builder contracts with a third party to accept claims and act on the builder's behalf. A builder shall give actual notice to the homeowner that the builder has made such an election, and shall include the name and address of the third party.
 - (f) A builder shall record on title a notice of the existence of these procedures and a notice that these procedures impact the legal rights of the homeowner. This information shall also be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.
 - (g) A builder shall provide, with the original sales documentation, a written copy of this title, which shall be initialed and acknowledged by the purchaser and the builder's sales representative.
 - (h) As to any documents provided in conjunction with the original sale, the builder shall instruct the original purchaser to provide those documents to any subsequent purchaser.
 - (i) Any builder who fails to comply with any of these requirements within the time specified is not entitled to the protection of this chapter, and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action, in which case the remaining chapters of this part shall continue to apply to the action.
913. A builder or his or her representative shall acknowledge, in writing, receipt of the notice of the claim within 14 days after receipt of the notice of the claim. If the notice of the claim is served by the claimant's legal representative, or if the builder receives a written representation letter from a homeowner's attorney, the builder shall include the attorney in all subsequent substantive communications, including, without limitation, all written communications occurring pursuant to this chapter, and all substantive and procedural communications, including all written communications, following the commencement of any subsequent complaint or other legal action, except that if the builder has retained or involved legal counsel to assist the builder in this process, all communications by the builder's counsel shall only be with the claimant's legal representative, if any.
914. (a) This chapter establishes a non-adversarial procedure, including the remedies available under this chapter which, if the procedure does not resolve the dispute between the parties, may result in a subsequent action to enforce the other chapters of this title. A builder may attempt to commence non-adversarial contractual provisions other than the non-adversarial procedures and remedies set forth in this chapter, but may not, in addition to its own non-adversarial contractual provisions, require adherence to the non-adversarial procedures and remedies set forth in this chapter, regardless of whether the builder's own alternative non-adversarial contractual provisions are successful in resolving the dispute or ultimately deemed enforceable.
- At the time the sales agreement is executed, the builder shall notify the homeowner whether the builder intends to engage in the non-adversarial procedure of this section or attempt to enforce alternative non-adversarial contractual provisions. If the builder elects to use alternative non-adversarial contractual provisions in lieu of this chapter, the election is binding, regardless of whether the builder's alternative non-adversarial contractual provisions are successful in resolving the ultimate dispute or are ultimately deemed enforceable.
- (b) Nothing in this title is intended to affect existing statutory or decisional law pertaining to the applicability, viability, or enforceability of alternative dispute resolution methods, alternative remedies, or contractual arbitration, judicial reference, or similar procedures requiring a binding resolution to enforce the other chapters of this title or any other disputes between homeowners and builders. Nothing in this title is intended

to affect the applicability, viability, or enforceability, if any, of contractual arbitration or judicial reference after a non-adversarial procedure or provision has been completed.

915. If a builder fails to acknowledge receipt of the notice of a claim within the time specified, elects not to go through the process set forth in this chapter, or fails to request an inspection within the time specified, or at the conclusion or cessation of an alternative non adversarial proceeding, this chapter does not apply and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.
916. (a) If a builder elects to inspect the claimed unmet standards, the builder shall complete the initial inspection and testing within 14 days after acknowledgment of receipt of the notice of the claim, at a mutually convenient date and time. If the homeowner has retained legal representation, the inspection shall be scheduled with the legal representative's office at a mutually convenient date and time, unless the legal representative is unavailable during the relevant time periods. All costs of builder inspection and testing, including any damage caused by the builder inspection, shall be borne by the builder. The builder shall also provide written proof that the builder has liability insurance to cover any damages or injuries occurring during inspection and testing. The builder shall restore the property to its pre-testing condition within 48 hours of the testing. The builder shall, upon request, allow the inspections to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative.
- (b) Nothing that occurs during a builder's or claimant's inspection or testing may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.
- (c) If a builder deems a second inspection or testing reasonably necessary, and specifies the reasons therefore in writing within three days following the initial inspection, the builder may conduct a second inspection or testing. A second inspection or testing shall be completed within 40 days of the initial inspection or testing. All requirements concerning the initial inspection or testing shall also apply to the second inspection or testing.
- (d) If the builder fails to inspect or test the property within the time specified, the claimant is released from the requirements of this section and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.
- (e) If a builder intends to hold a subcontractor, design professional, individual product manufacturer, or material supplier, including an insurance carrier, warranty company, or service company, responsible for its contribution to the unmet standard, the builder shall provide notice to that person or entity sufficiently in advance to allow them to attend the initial, or if requested, second inspection of any alleged unmet standard and to participate in the repair process. The claimant and his or her legal representative, if any, shall be advised in a reasonable time prior to the inspection as to the identity of all persons or entities invited to attend. This subdivision does not apply to the builder's insurance company. Except with respect to any claims involving a repair actually conducted under this chapter, nothing in this subdivision shall be construed to relieve a subcontractor, design professional, individual product manufacturer, or material supplier of any liability under an action brought by a claimant.
917. Within 30 days of the initial or, if requested, second inspection or testing, the builder may offer in writing to repair the violation. The offer to repair shall also compensate the homeowner for all applicable damages recoverable under Section 944, within the timeframe for the repair set forth in this chapter. Any such offer shall be accompanied by a detailed, specific, step-by-step statement identifying the particular violation that is being repaired, explaining the nature, scope, and location of the repair, and setting a reasonable completion date for the repair. The offer shall also include the names, addresses, telephone numbers, and license numbers of the contractors whom the builder intends to have perform the repair. Those contractors shall be fully insured for, and shall be responsible for, all damages or injuries that they may cause to occur during the repair, and evidence of that insurance shall be provided to the homeowner upon request. Upon written request by the homeowner or his or her legal representative, and within the timeframes set forth in this chapter, the builder shall also provide any available technical documentation, including, without limitation, plans and specifications, pertaining to the claimed violation within the particular home or development tract. The offer shall also advise the homeowner in writing of his or her right to request up to three additional contractors from which to select to do the repair pursuant to this chapter.
918. Upon receipt of the offer to repair, the homeowner shall have 30 days to authorize the builder to proceed with the repair. The homeowner may alternatively request, at the homeowner's sole option and discretion, that the builder provide the names, addresses, telephone numbers, and license numbers for up to three alternative contractors who are not owned or financially controlled by the builder and who regularly conduct business in the county where the structure is located. If the homeowner so elects, the builder is entitled to an additional noninvasive inspection, to occur at a mutually convenient date and time within 20 days of the election, so as to permit the other proposed contractors to review the proposed site of the repair. Within 35 days after the request of the homeowner for alternative contractors, the builder shall present the homeowner with a choice of contractors. Within 20 days after that presentation, the homeowner shall authorize the builder or one of the alternative contractors to perform the repair.
919. The offer to repair shall also be accompanied by an offer to mediate the dispute if the homeowner so chooses. The mediation shall be limited to a four hour mediation, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator, and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation occurs within 15 days after the request to mediate is received and occurs at a mutually convenient location within the county where the action is pending. If a builder has made an offer to repair a violation, and the mediation has failed to resolve the dispute, the homeowner shall allow the repair to be performed either by the builder, its contractor, or the selected contractor.
920. If the builder fails to make an offer to repair or otherwise strictly comply with this chapter within the times specified, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If the contractor performing the repair does not complete the repair in the time or manner specified, the

claimant may file an action. If this occurs, the standards set forth in the other chapters of this part shall continue to apply to the action.

921. (a) In the event that a resolution under this chapter involves a repair by the builder, the builder shall make an appointment with the claimant, make all appropriate arrangements to effectuate a repair of the claimed unmet standards, and compensate the homeowner for all damages resulting therefrom free of charge to the claimant. The repair shall be scheduled through the claimant's legal representative, if any, unless he or she is unavailable during the relevant time periods. The repair shall be commenced on a mutually convenient date within 14 days of acceptance or, if an alternative contractor is selected by the homeowner, within 14 days of the selection, or, if a mediation occurs, within seven days of the mediation, or within five days after a permit is obtained if one is required. The builder shall act with reasonable diligence in obtaining any such permit.
- (b) The builder shall ensure that work done on the repairs is done with the utmost diligence, and that the repairs are completed as soon as reasonably possible, subject to the nature of the repair or some unforeseen event not caused by the builder or the contractor performing the repair. Every effort shall be made to complete the repair within 120 days.
922. The builder shall, upon request, allow the repair to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative. Nothing that occurs during the repair process may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.
923. The builder shall provide the homeowner or his or her legal representative, upon request, with copies of all correspondence, photographs, and other materials pertaining or relating in any manner to the repairs.
924. If the builder elects to repair some, but not all of, the claimed unmet standards, the builder shall, at the same time it makes its offer, set forth with particularity in writing the reasons, and the support for those reasons, for not repairing all claimed unmet standards.
925. If the builder fails to complete the repair within the time specified in the repair plan, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If this occurs, the standards set forth in the other chapters of this title shall continue to apply to the action.
926. The builder may not obtain a release or waiver of any kind in exchange for the repair work mandated by this chapter. At the conclusion of the repair, the claimant may proceed with filing an action for violation of the applicable standard or for a claim of inadequate repair, or both, including all applicable damages available under Section 944.
927. If the applicable statute of limitations has otherwise run during this process, the time period for filing a complaint or other legal remedies for violation of any provision of this title, or for a claim of inadequate repair, is extended from the time of the original claim by the claimant to 100 days after the repair is completed, whether or not the particular violation is the one being repaired. If the builder fails to acknowledge the claim within the time specified, elects not to go through this statutory process, or fails to request an inspection within the time specified, the time period for filing a complaint or other legal remedies for violation of any provision of this title is extended from the time of the original claim by the claimant to 45 days after the time for responding to the notice of claim has expired. If the builder elects to attempt to enforce its own non-adversarial procedure in lieu of the procedure set forth in this chapter, the time period for filing a complaint or other legal remedies for violation of any provision of this part is extended from the time of the original claim by the claimant to 100 days after either the completion of the builder's alternative non-adversarial procedure, or 100 days after the builder's alternative non-adversarial procedure is deemed unenforceable, whichever is later.
928. If the builder has invoked this chapter and completed a repair, prior to filing an action, if there has been no previous mediation between the parties, the homeowner or his or her legal representative shall request mediation in writing. The mediation shall be limited to four hours, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation will occur within 15 days after the request for mediation is received and shall occur at a mutually convenient location within the county where the action is pending. In the event that a mediation is used at this point, any applicable statutes of limitations shall be tolled from the date of the request to mediate until the next court day after the mediation is completed, or the 100-day period, whichever is later.
929. (a) Nothing in this chapter prohibits the builder from making only a cash offer and no repair. In this situation, the homeowner is free to accept the offer, or he or she may reject the offer and proceed with the filing of an action. If the latter occurs, the standards of the other chapters of this title shall continue to apply to the action.
- (b) The builder may obtain a reasonable release in exchange for the cash payment. The builder may negotiate the terms and conditions of any reasonable release in terms of scope and consideration in conjunction with a cash payment under this chapter.
930. (a) The time periods and all other requirements in this chapter are to be strictly construed, and, unless extended by the mutual agreement of the parties in accordance with this chapter, shall govern the rights and obligations under this title. If a builder fails to act in accordance with this section within the timeframes mandated, unless extended by the mutual agreement of the parties as evidenced by a post claim written confirmation by the affected homeowner demonstrating that he or she has knowingly and voluntarily extended the statutory timeframe, the claimant may proceed with filing an action. If this occurs, the standards of the other chapters of this title shall continue to apply to the action.
- (b) If the claimant does not conform with the requirements of this chapter, the builder may bring a motion to stay any subsequent court action or other proceeding until the requirements of this chapter have been satisfied. The court, in its discretion, may award the prevailing party on such a motion, his or her attorney's fees and costs in bringing or opposing the motion.
931. If a claim combines causes of action or damages not covered by this part, including, without limitation, personal injuries, class actions, other statutory remedies, or fraud-based claims, the claimed unmet standards shall be

administered according to this part, although evidence of the property in its unrepaired condition may be introduced to support the respective elements of any such cause of action. As to any fraud-based claim, if the fact that the property has been repaired under this chapter is deemed admissible, the trier of fact shall be informed that the repair was not voluntarily accepted by the homeowner. As to any class action claims that address solely the incorporation of a defective component into a residence, the named and unnamed class members need not comply with this chapter.

932. Subsequently discovered claims of unmet standards shall be administered separately under this chapter, unless otherwise agreed to by the parties. However, in the case of a detached single family residence, in the same home, if the subsequently discovered claim is for a violation of the same standard as that which has already been initiated by the same claimant and the subject of a currently pending action, the claimant need not reinstate the process as to the same standard. In the case of an attached project, if the subsequently discovered claim is for a violation of the same standard for a connected component system in the same building as has already been initiated by the same claimant, and the subject of a currently pending action, the claimant need not reinstate this process as to that standard.
933. If any enforcement of these standards is commenced, the fact that a repair effort was made may be introduced to the trier of fact. However, the claimant may use the condition of the property prior to the repair as the basis for contending that the repair work was inappropriate, inadequate, or incomplete, or that the violation still exists. The claimant need not show that the repair work resulted in further damage nor that damage has continued to occur as a result of the violation.
934. Evidence of both parties' conduct during this process may be introduced during a subsequent enforcement action, if any, with the exception of any mediation. Any repair efforts undertaken by the builder, shall not be considered settlement communications or offers of settlement and are not inadmissible in evidence on such a basis.
935. To the extent that provisions of this chapter are enforced and those provisions are substantially similar to provisions in Section 1375 of the Civil Code, but an action is subsequently commenced under Section 1375 of the Civil Code, the parties are excused from performing the substantially similar requirements under Section 1375 of the Civil Code.
936. Each and every provision of the other chapters of this title apply to general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals to the extent that the general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals caused, in whole or in part, a violation of a particular standard as the result of a negligent act or omission or a breach of contract. In addition to the affirmative defenses set forth in Section 945.5, a general contractor, subcontractor, material supplier, design professional, individual product manufacturer, or other entity may also offer common law and contractual defenses as applicable to any claimed violation of a standard. All actions by a claimant or builder to enforce an express contract, or any provision thereof, against a general contractor, subcontractor, material supplier, individual product manufacturer, or design professional is preserved. Nothing in this title modifies the law pertaining to joint and several liability for builders, general contractors, subcontractors, material suppliers, individual product manufacturer, and design professionals that contribute to any specific violation of this title. However, the negligence standard in this section does not apply to any general contractor, subcontractor, material supplier, individual product manufacturer, or design professional with respect to claims for which strict liability would apply.
937. Nothing in this title shall be interpreted to eliminate or abrogate the requirement to comply with Section 411.35 of the Code of Civil Procedure or to affect the liability of design professionals, including architects and architectural firms, for claims and damages not covered by this title.
938. This title applies only to new residential units where the purchase agreement with the buyer was signed by the seller on or after January 1, 2003.

CHAPTER 5 - PROCEDURE

941. (a) Except as specifically set forth in this title, no action may be brought to recover under this title more than 10 years after substantial completion of the improvement but not later than the date of recordation of a valid notice of completion.
- (b) As used in this section, "action" includes an action for indemnity brought against a person arising out of that person's performance or furnishing of services or materials referred to in this title, except that a cross-complaint for indemnity may be filed pursuant to subdivision (b) of Section 428.10 of the Code of Civil Procedure in an action which has been brought within the time period set forth in subdivision (a).
- (c) The limitation prescribed by this section may not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to make a claim or bring an action.
- (d) Sections 337.15 and 337.1 of the Code of Civil Procedure do not apply to actions under this title.
- (e) Existing statutory and decisional law regarding tolling of the statute of limitations shall apply to the time periods for filing an action or making a claim under this title, except that repairs made pursuant to Chapter 4 (commencing with Section 910), with the exception of the tolling provision contained in Section 927, do not extend the period for filing an action, or restart the time limitations contained in subdivision (a) or (b) of Section 7091 of the Business and Professions Code. If a builder arranges for a contractor to perform a repair pursuant to Chapter 4 (commencing with Section 910), as to the builder the time period for calculating the statute of limitation in subdivision (a) or (b) of Section 7091 of the Business and Professions Code shall pertain to the substantial completion of the original construction and not to the date of repairs under this title.
- The time limitations established by this title do not apply to any action by a claimant for a contract or express contractual provision.

Causes of action and damages to which this chapter does not apply are not limited by this section.

942. In order to make a claim for violation of the standards set forth in Chapter 2 (commencing with Section 896), a homeowner need only demonstrate, in accordance with the applicable evidentiary standard, that the home does not meet the applicable standard, subject to the affirmative defenses set forth in Section 945.5. No further showing of causation or damages is required to meet the burden of proof regarding a violation of a standard set forth in Chapter 2 (commencing with Section 896), provided that the violation arises out of, pertains to, or is related to, the original construction.
943. (a) Except as provided in this title, no other cause of action for a claim covered by this title or for damages recoverable under Section 944 is allowed. In addition to the rights under this title, this title does not apply to any action by a claimant to enforce a contract or express contractual provision, or any action for fraud, personal injury, or violation of a statute. Damages awarded for the items set forth in Section 944 in such other cause of action shall be reduced by the amounts recovered pursuant to Section 944 for violation of the standards set forth in this title.
- (b) As to any claims involving a detached single-family home, the homeowner's right to the reasonable value of repairing any nonconformity is limited to the repair costs, or the diminution in current value of the home caused by the nonconformity, whichever is less, subject to the personal use exception as developed under common law.
- 944. If a claim for damages is made under this title, the homeowner is only entitled to damages for the reasonable value of repairing any violation of the standards set forth in this title, the reasonable cost of repairing any damages caused by the repair efforts, the reasonable cost of repairing and rectifying any damages resulting from the failure of the home to meet the standards, the reasonable cost of removing and replacing any improper repair by the builder, reasonable relocation and storage expenses, lost business income if the home was used as a principal place of a business licensed to be operated from the home, reasonable investigative costs for each established violation, and all other costs or fees recoverable by contract or statute.**
945. The provisions, standards, rights, and obligations set forth in this title are binding upon all original purchasers and their successors-in-interest. For purposes of this title, associations and others having the rights set forth in Section 383 of the Code of Civil Procedure shall be considered to be original purchasers and shall have standing to enforce the provisions, standards, rights, and obligations set forth in this title.
- 945.5 A builder, general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, under the principles of comparative fault pertaining to affirmative defenses, may be excused, in whole or in part, from any obligation, damage, loss, or liability if the builder, general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, can demonstrate any of the following affirmative defenses in response to a claimed violation:
- (a) To the extent it is caused by an unforeseen act of nature which caused the structure not to meet the standard. For purposes of this section an "unforeseen act of nature" means a weather condition, earthquake, or manmade event such as war, terrorism, or vandalism, in excess of the design criteria expressed by the applicable building codes, regulations, and ordinances in effect at the time of original construction.
- (b) To the extent it is caused by a homeowner's unreasonable failure to minimize or prevent those damages in a timely manner, including the failure of the homeowner to allow reasonable and timely access for inspections and repairs under this title. This includes the failure to give timely notice to the builder after discovery of a violation, but does not include damages due to the untimely or inadequate response of a builder to the homeowner's claim.
- (c) To the extent it is caused by the homeowner or his or her agent, employee, general contractor, subcontractor, independent contractor, or consultant by virtue of their failure to follow the builder's or manufacturer's recommendations, or commonly accepted homeowner maintenance obligations. In order to rely upon this defense as it relates to a builder's recommended maintenance schedule, the builder shall show that the homeowner had written notice of these schedules and recommendations and that the recommendations and schedules were reasonable at the time they were issued.
- (d) To the extent it is caused by the homeowner or his or her agent's or an independent third party's alterations, ordinary wear and tear, misuse, abuse, or neglect, or by the structure's use for something other than its intended purpose.
- (e) To the extent that the time period for filing actions bars the claimed violation.
- (f) As to a particular violation for which the builder has obtained a valid release.
- (g) To the extent that the builder's repair was successful in correcting the particular violation of the applicable standard.
- (h) As to any causes of action to which this statute does not apply, all applicable affirmative defenses are preserved.

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

Seller's Initials (_____)

Buyer's Initials (_____) (_____)