



**NEW CONSTRUCTION RESIDENTIAL PURCHASE
AGREEMENT AND JOINT ESCROW INSTRUCTIONS**
Use Only When A Residence Is To Be Constructed By Close Of Escrow
(C.A.R. Form NCPA, Revised 1/06)

Date _____, at _____, California.

1. OFFER:

- A. THIS IS AN OFFER FROM** _____ ("Buyer").
- B. FOR THE PURCHASE OF** the following described real estate together with the dwelling to be erected thereon and further described as: Lot/Unit No. _____, Phase No. _____, Plan/Elevation _____, Tract No. _____, in a Standard Subdivision, Planned Unit Development, Condominium, (which will be created in a Condominium Plan) Recorded in Book _____ of Maps at page _____ official records of _____ County, California, Address _____ ("Property").
- C. THE PURCHASE PRICE** offered is _____ Dollars \$_____.
- D. CLOSE OF ESCROW** shall occur _____ Days After Acceptance, or on _____ (date) ("Closing Date"). However, escrow shall close no later than **10 Days** After Buyer receives notice from Seller of the issuance of a certificate of occupancy from the applicable local governmental entity. If escrow does not close on or before the Closing Date, Seller shall, within **15 Days** After the Closing Date, order all of Buyer's deposits refunded to Buyer (except for liquidated damages paid to Seller pursuant to paragraph 21). In no event shall Buyer be obligated to close escrow more than 1 year after Acceptance, unless, after Acceptance, Buyer and Seller agree in writing to a closing date beyond 1 year after Acceptance.

2. FINANCING: Obtaining the loans below is a contingency of this Agreement. Buyer shall act diligently and in good faith to obtain the designated loans. Obtaining deposit, down payment and closing costs is **not a contingency**.

- A. BUYER HAS GIVEN A DEPOSIT TO THE AGENT SUBMITTING THE OFFER** \$ _____
(or to _____) by Personal Check, or _____, which shall be held uncashed until Acceptance and then deposited within **3 business days** after Acceptance with Escrow Holder, or with Seller (provided that Seller has obtained a bond or bonds meeting the requirements of Business and Professions Code §§11013.2(c) or 11013.4(b) or (c) and Department of Real Estate Regulation §2791.2). Buyer represents that deposited funds are good and shall not be changed without Seller's consent.
- B. FIRST LOAN IN THE AMOUNT OF:** \$ _____
(1) CONVENTIONAL: NEW First Deed of Trust in favor of LENDER, encumbering the Property, securing a note payable at maximum interest of _____% fixed rate, or _____% initial adjustable rate with a maximum interest rate cap of _____%, balance due in _____ years. Buyer shall pay loan fees/points not to exceed _____.
(2) FHA, VA: (The following terms only apply to the FHA or VA loan that is checked.) Seller shall pay (i) _____% discount points, (ii) other fees not allowed to be paid by Buyer, not to exceed \$ _____, and (iii) the cost of lender-required repairs not otherwise provided for in this Agreement, not to exceed \$ _____.
(Actual loan amount may increase if mortgage insurance premiums, funding fees or closing costs are financed.)
- C. ADDITIONAL FINANCING TERMS:** \$ _____
 Seller financing (C.A.R. Form SFA-11) _____
- D. BALANCE OF PURCHASE PRICE:** (not including costs of obtaining loans and other closing costs) to be deposited with Escrow Holder within sufficient time to close escrow. \$ _____
- E. TOTAL PURCHASE PRICE:** \$ _____

NOTICE TO BUYER, INCREASED PURCHASE PRICE: IF YOU SELECT UPGRADES AS PROVIDED IN PARAGRAPH 6, YOUR TOTAL PURCHASE PRICE WILL INCREASE BY THE AMOUNT OF UPGRADES SELECTED.

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



Reviewed by _____ Date _____

- F. **LOAN CONTINGENCY** shall remain in effect until the designated loans are funded (or within _____ **Days** After Acceptance, Buyer shall give Seller written notice of Buyer's election to remove or waive the loan contingency or cancel this Agreement). If Buyer cancels under this paragraph, Seller shall return all of Buyer's funds deposited with Seller to Buyer.
- G. **LOAN APPLICATIONS; PREQUALIFICATION:** For new financing, within 5 (or _____) **Days** After Acceptance, Buyer shall provide Seller a letter from a lender or mortgage loan broker acceptable to Seller stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified for the new loan indicated above. If Buyer fails to provide such letter within that time, Seller may cancel this Agreement in writing, in which event Seller shall return all of Buyer's funds deposited with Seller to Buyer.
- H. **ALL CASH OFFER:** If this is an all cash offer, Buyer shall, within 5 (or _____) **Days** After Acceptance, provide Seller written verification of sufficient funds to close this transaction. Seller may cancel this Agreement in writing within 5 **Days** After: (i) time to provide verification expires, if Buyer fails to provide verification, or (ii) receipt of verification, if Seller reasonably disapproves it. If Seller cancels under this paragraph, Seller shall return all Buyer's funds deposited with Seller to Buyer.

3. **CLOSING AND OCCUPANCY:**

- A. Buyer does, does not intend to occupy Property as Buyer's primary residence.
- B. Occupancy of the Property shall be delivered to Buyer at _____ AM PM, on the date of Close Of Escrow, no later than _____ **Days** After Close Of Escrow, or _____.
- C. Property shall be vacant, unless otherwise agreed in writing. If transfer of title and occupancy do not occur at the same time, Buyer and Seller are advised to (i) enter into a written occupancy agreement and (ii) consult with their insurance advisors.
- D. At Close Of Escrow, Seller assigns to Buyer any assignable warranty rights for items included in the sale and shall provide any available copies of such warranties. Brokers cannot and will not determine the assignability of any warranties.
- E. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys and/or means to operate all locks, mailboxes, security systems, alarms and garage door openers.

4. **ALLOCATION OF COSTS** (If checked):

ESCROW, TITLE AND CLOSING COSTS:

- A. Buyer Seller shall pay escrow fee. _____
Escrow Holder shall be _____.
- B. Buyer Seller shall pay for **owner's** title insurance policy in favor of Buyer as specified in paragraph 14.
Owner's title policy to be issued by _____.
(Buyer shall pay for any title insurance policy insuring Buyer's **Lender**, unless otherwise agreed.)
- C. Buyer Seller shall pay county transfer tax or transfer fee. _____
- D. Buyer Seller shall pay city transfer tax or transfer fee. _____
- E. Buyer Seller shall pay Homeowners' Association ("HOA") transfer fees. _____
- F. Buyer Seller shall pay HOA document preparation fees. _____

OTHER COSTS:

- G. Buyer Seller shall pay _____.

5. **PURCHASE MONEY DISTRIBUTIONS TO THIRD PARTIES:** Pursuant to Department of Real Estate Regulation §2791(b), certain distributions and charges may be made against Buyer's deposits to Seller. These charges under Regulation §2791(b), and the Seller's estimates of such charges, are set forth below:

Credit Reports _____ Preliminary Title Reports _____
 Escrow Services _____ Loan Processing Fees _____
 Appraisals _____

6. **OPTIONAL ITEMS:**

- A. **SELECTIONS:** Buyer agrees to make any color and optional item selections, if applicable, from the choices offered by Seller or Seller's agents within 15 **Days** After such choices are offered. If Buyer does not make such selections within said time period, Seller may make such selection, which shall be final. Any selection of color or optional items by Buyer shall not cause a delay in the Close Of Escrow.
- B. **UPGRADES; INCREASE IN PURCHASE PRICE; TREATMENT OF OPTION DEPOSIT:** If, subsequent to the execution of this Agreement, Buyer requests any changes or extras from Seller, an Options and Upgrades addendum, a Copy of which is provided with this Agreement [**Note to Seller: For property sold subject to a public report, you must use the Options and Upgrades amendment provided with this NCPA or submit to, and have approval for use from, the Department of Real Estate for any other options and upgrades amendment you intend to use**], shall be executed by Buyer and Seller, and Buyer shall deposit into escrow a cash deposit against the agreed cost of such changes ("Option Deposit"). The Option Deposit shall be held in escrow and be paid to Seller at closing. If escrow does not close and Seller deems Buyer is in default, disposition of the Option Deposit shall be made in accordance with the provisions of paragraph 21 of this Agreement, unless otherwise agreed. In the event of Seller default, any Option Deposit paid pursuant to this paragraph shall be returned to Buyer.

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

Reviewed by _____ Date _____



7. COMPLETION OF PROPERTY:

- A. Seller agrees to complete construction of the Property and file a notice of completion thereon on or before 1 year after Acceptance of this Agreement, provided that Seller shall in no event be responsible for any delay due to acts of God, strike, labor dispute or unavailability or shortage of materials necessary to complete construction of the Property.
B. Seller agrees to complete in a good and workmanlike manner the improvements upon the Property, furnishing labor and materials. Such improvements shall be constructed substantially in conformance with the plans and specifications on file with, and approved by, the appropriate governmental authority.
C. If construction cannot be completed within 1 year after Acceptance of this Agreement due to circumstances beyond Seller's reasonable control, then either party may terminate this Agreement in writing and Buyer shall be entitled to the refund of all deposits paid within 15 Days thereof.

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

- A. [] (If checked) FINAL PUBLIC REPORT: A public report is required to be delivered to Buyer prior to the execution of this Agreement.
B. [] (If checked) NO PUBLIC REPORT REQUIRED: No public report is required.
C. [] (If checked) CONDITIONAL PUBLIC REPORT: If the Property is subject to a Conditional Public Report under the Business and Professions Code, escrow will not close, funds will not be released from the escrow, and any interest contracted for and the subject of the escrow will not be conveyed until a current Final Public Report is delivered to Buyer. Furthermore, the entire sum of money paid or advanced by Buyer shall be returned to Buyer if the Final Public Report has not been issued within 6 months of the date of issuance of the Conditional Public Report or the Buyer is dissatisfied with the Final Public Report because of a change pursuant to Business and Professions Code §11012.
D. [] (If checked) AMENDED PUBLIC REPORT: An amended public report is required to be delivered to Buyer prior to the execution of this Agreement.

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

Table with 4 columns: Category, Type, Thickness, R-Value. Rows include Exterior Walls, Ceilings, Interior Walls, and Other.

10. WARRANTY:

- A. (1) SELLER WARRANTY: (Applies UNLESS paragraph 10A(2) is checked.) Seller warrants the Property against defective materials and workmanship for a period of 1 year from the date of occupancy ("Seller's Warranty"), provided that Seller receives notice of such defect(s) within this 1-year period.
OR (2) [] WARRANTY TO BE PROVIDED: (APPLIES ONLY IF CHECKED) At Close Of Escrow, Seller shall provide Buyer with a limited warranty ("Seller's Warranty") against defective materials and workmanship, which will be evidenced by the documents delivered with this Agreement.
B. Seller shall not be liable for, or have any obligation to provide, warranty services with respect to any defect expressly noted by Buyer at Close Of Escrow.
C. THE SELLER'S WARRANTY IS PROVIDED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS, AND IN LIEU OF ANY STRICT LIABILITY OF SELLER IN TORT, TO THE EXTENT SUCH LIABILITY MAY BE DISCLAIMED UNDER CALIFORNIA LAW.
D. WHETHER OR NOT SELLER WARRANTS ANY ASPECT OF THE PROPERTY, SELLER IS OBLIGATED TO DISCLOSE KNOWN MATERIAL FACTS, AND TO MAKE OTHER DISCLOSURES REQUIRED BY LAW.
E. Buyer and Seller understand and acknowledge that Brokers or Referral Licensee shall not be liable for any breach of this paragraph.

11. ATTACHED DISCLOSURES:

If checked, Buyer acknowledges receipt of the following disclosures:

- Public Report, Site Report, Seller's Warranty, Utility Disclosures, Water Heater, Model Plan, Bonded Debt, Notice of Special Tax, Smoke Detector, Industrial, Commercial, Airport Zone, Zone Report, Property Disclosure Statement, HOA Documents, Transportation Corridors.

Buyer's Initials () ()

Seller's Initials () ()

Reviewed by _____ Date _____



12. DISCLOSURES: Within the time specified in paragraph 15, Seller shall (i) disclose if Property is located in any zone identified in paragraph 12A and provide any other information (including a Natural Hazard Disclosure Statement) required for those zones, and (ii) if applicable, take the actions specified in paragraphs 12B and 12C. Buyer, within the time specified in paragraph 15, shall then investigate the disclosures and other information provided to Buyer, and the data base in paragraph 12D, and take the action specified in paragraph 15.

A. NATURAL HAZARD ZONES: Special Flood Hazard Areas; Potential Flooding (Inundation) Areas; Very High Fire Hazard Severity Zones; State Fire Responsibility Areas; Earthquake Fault Zones; Seismic Hazard Zones; or any other federal, state, or locally designated zone for which disclosure is required by Law.

B. (If checked) CONDOMINIUM/Common Interest Subdivision: Property is a unit in a condominium, planned development, or other common interest subdivision. Seller shall provide to Buyer copies of covenants, conditions and restrictions; articles of incorporation; bylaws and other governing documents; statement regarding limited enforceability of age restrictions, if applicable; copies of most current financial statements distributed; statement indicating current regular, special and emergency dues and assessments, any unpaid assessment, and additional amounts due from Seller or Property, any approved changes to regular, special or emergency dues or assessments; and any other documents required by Law.

C. ADDITIONAL DISCLOSURES: Seller shall provide Buyer with the following additional disclosures: _____

D. DATA BASE DISCLOSURE: Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer's inspection contingency period. Brokers do not have expertise in this area.)

E. PROPOSITION 65 WARNING: MATERIALS INCLUDED IN THE CONSTRUCTION OF THIS HOUSE WILL EXPOSE YOU TO FORMALDEHYDE, A SUBSTANCE KNOWN TO CAUSE CANCER. FURTHER INFORMATION MAY BE OBTAINED FROM THE BUILDER/SELLER.

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

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

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

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

13. TRANSFER DISCLOSURE STATEMENT AND OTHER DISCLOSURES WITH CANCELLATION RIGHTS: (This paragraph is applicable only if the Property is subject to Article 1.5 of the Civil Code, commencing with Civil Code §1102. A transfer is exempt from Article 1.5 if, among other exemptions, the transfer is preceded by furnishing the transferee a copy of a public report pursuant to Business and Professions Code §11018.1 or the transfer can be made without a public report pursuant to Business and Professions Code §11010.4.)

A. Within the time specified in paragraph 15, if required by Law, a Real Estate Transfer Disclosure Statement ("TDS"), disclosure regarding industrial use (Property is in or affected by a zone or district allowing manufacturing, commercial or airport use) and military ordnance disclosure shall be completed and delivered to Buyer, who shall return Signed Copies to Seller.

B. In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer (including those made in a TDS) of which Buyer is otherwise unaware, Seller shall promptly provide a subsequent or amended disclosure, in writing, covering those items.

C. Seller shall (i) make a good faith effort to obtain a disclosure notice from any local agencies that levy a special tax on the Property pursuant to the Mello-Roos Community Facilities Act, and (ii) promptly deliver to Buyer any such notice made available by those agencies.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

Reviewed by _____ Date _____



- D. If a TDS, industrial use disclosure, military ordnance disclosure, Mello-Roos disclosure notice, or a subsequent or amended disclosure is delivered to Buyer after the offer is Signed, Buyer shall have the right to cancel this Agreement within **3 Days After** delivery in person, or **5 Days After** delivery by deposit in the mail, by giving written notice of cancellation to Seller or Seller's agent.

14. TITLE AND VESTING:

- A. Within the time specified in paragraph 15, Buyer shall be provided a current preliminary (title) report (which is only an offer by the title insurer to issue a policy of title insurance, and may not contain every item affecting title). Buyer shall provide written notice to Seller in accordance with, and within the time specified in, paragraph 15.
- B. At Close Of Escrow, Buyer shall receive a grant deed conveying title including, unless reserved by Seller, oil, gas, mineral and water rights, if currently owned by Seller. Title shall be subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters that are of record or disclosed to Buyer prior to Close Of Escrow, unless disapproved in writing by Buyer within the time specified in paragraph 15. However, title shall not be subject to any liens against the Property, except for those specified in this Agreement. Title shall vest as designated in Buyer's supplemental escrow instructions. **THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES.**
- C. Buyer shall receive a CLTA/ALTA Homeowner's Policy of Title Insurance, if available for the Property. If not, Buyer shall receive a standard coverage owner's policy (CLTA or ALTA-R with regional exceptions). A title company, at Buyer's request, can provide information about availability, desirability, coverage and cost of various title insurance coverages. If Buyer desires a policy other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and pay any increase in costs.

15. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: Any removal or waiver of contingencies, or cancellation under this paragraph needs to be in writing. The following time periods may only be extended, altered, modified or changed by mutual written agreement. [NOTE TO BUYER AND SELLER: THIS PARAGRAPH 15 DOES NOT APPLY TO THE DELIVERY OF THE PUBLIC REPORT REQUIRED UNDER PARAGRAPH 8 IF THE PROPERTY IS SOLD SUBJECT TO A PUBLIC REPORT. SEE PARAGRAPH 8 FOR THE DELIVERY REQUIREMENTS FOR THE PUBLIC REPORT.]

- A. **SELLER HAS: 5 (or _____) Days** After Acceptance, if not previously provided or if not provided with this Agreement, to order, request or complete, and **2 Days** After receipt (or completion) to provide to Buyer, all reports, disclosures and information for which Seller is responsible under paragraphs 10, 11, 12, 13, and 14. **BUYER HAS 5 (or _____) Days** After receipt of each of the above items to review the report, disclosure or other item and, in writing, remove the applicable contingency or cancel this Agreement.
- B. **BUYER HAS: 5 (or _____) Days** After Acceptance to complete all Inspections, investigations, and review of reports and other applicable information (including those concerning the registered sex offender data base (paragraph 12D)), for which Buyer is responsible or that Buyer receives from Seller and, in writing, remove the applicable contingency or cancel this Agreement.
- C. **IF, WITHIN THE TIME SPECIFIED, BUYER DOES NOT GIVE SELLER WRITTEN NOTICE REMOVING THE CONTINGENCIES (INCLUDING THE LOAN CONTINGENCY PURSUANT TO PARAGRAPH 2F), SELLER MAY CANCEL THIS AGREEMENT IN WRITING PROVIDED BUYER HAS FIRST BEEN GIVEN NOTICE TO PERFORM.** The notice to perform shall be in writing and signed by Seller, and shall give Buyer at least 24 hours, or until the previous agreed-upon time limit, whichever occurs last, to perform. If Seller cancels under this paragraph, Seller shall return all of Buyer's funds deposited with Seller to Buyer. Notwithstanding the expiration of the time specified, Buyer retains the right to give Seller written notice removing the contingency or cancelling the Agreement at any time prior to receiving Seller's written cancellation. Once Seller receives Buyer's written removal of all contingencies, Seller may not cancel this Agreement pursuant to this paragraph.
- D. **EFFECT OF REMOVAL:** For any particular contingency or cancellation right that Buyer removes, with respect to that contingency or cancellation right, Buyer shall conclusively be deemed to have: **(i)** completed all Inspections, investigations, and review of reports and other applicable information and disclosures; **(ii)** assumed all liability, responsibility and expense for repairs or corrections, or for inability to obtain financing if the contingency pertains to financing, unless Seller has agreed in writing to unconditionally take the action requested by Buyer; and **(iii)** elected to proceed with the transaction.

16. CHANGES IN CONSTRUCTION FROM MODEL: Buyer acknowledges that Seller's models may not represent exactly the Property, which could be due to changes in design and components made after the construction of the models. Buyer also acknowledges that Seller reserves the right to make changes mandated by building inspectors or other governmental Uniform Building Code enforcement officials, and that Buyer's consent shall be required only if such changes are material or substantial in nature. If Buyer does not consent, Buyer shall have the right to cancel this Agreement in writing and to recover all deposits paid. Acceptance of title by Buyer at Close Of Escrow shall satisfy all consent requirements.

17. ENTRY UPON PROPERTY AND POSSESSION:

- A. Buyer agrees to cooperate with Seller in the construction of the Property in accordance with the terms of this Agreement. Buyer understands that, in order to allow work to progress in an orderly fashion, no interference with the work may be permitted. Because of requirements of the California and Federal Occupational and Safety and Health Acts, as well as insurance requirements of Seller and its subcontractors, Buyer further understands and agrees that Buyer may not enter upon the construction site. Should Buyer or Buyer's guests or agents visit the Property prior to Close Of Escrow, Buyer agrees to indemnify and hold Seller harmless from any and all liability, claims, demands, damages and costs arising from, or related to, Buyer's or Buyer's guests' or agents' entry upon the Property.

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

Reviewed by _____ Date _____



Property Address: _____ Date: _____

- B. After this Agreement is fully executed and during the term of the escrow, neither Buyer nor Buyer's agent may enter upon the Property for the purpose of showing the Property to any prospective purchaser thereof from Buyer.
 - C. After this Agreement is fully executed and during the term of the escrow, Buyer shall not place any signs on, about or near the Property without the prior written consent of Seller.
 - D. Buyer understands and agrees that possession of the Property shall be given only after the recordation of the grant deed from Seller to Buyer and that no custom work may be performed by Buyer on the Property until after the Close Of Escrow.
- 18. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final inspection of the Property accompanied by Seller within **5 (or _____) Days** prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely for the purpose of preparing a list of corrective work, if any, which may be necessary. Seller shall provide Buyer with at least **3 Days** notice of the date on which the Property is to be inspected and shall have the right to accompany Buyer on such inspection. Buyer's failure to make the final inspection on the agreed date, the existence of minor defects in the dwelling, or any corrective work agreed to be performed by Seller pursuant to this paragraph shall not cause a delay in the Close Of Escrow or entitle Buyer to withhold any portion of the purchase price. Seller shall, prior to or after the Close Of Escrow, proceed diligently to complete all corrective work agreed to and acknowledged by Buyer and Seller in writing in a reasonably prompt manner in accordance with Seller's Warranty.
- 19. CANCELLATION OF SALE/ESCROW; RETURN OF DEPOSITS:** If Buyer or Seller gives written NOTICE OF CANCELLATION pursuant to rights duly exercised under the terms of this Agreement, Buyer and Seller agree to Sign mutual instructions to cancel the sale and escrow and release deposits to the party entitled to the funds. **Except as provided elsewhere in this Agreement, release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. A party may be subject to a civil penalty of up to \$1,000 for refusal to sign such instructions, if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).**
- 20. RETENTION OF BUYER DEPOSITS IN THE EVENT OF BUYER DEFAULT:** In the event Seller has used Buyer's deposits pending consummation of this Agreement under authorization of Business and Professions Code §11013.2(c) or §11013.4, Seller shall immediately, upon alleging Buyer's default, transmit to Escrow Holder funds equal to all of Buyer's deposits so used.
- 21. LIQUIDATED DAMAGES: IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY BY REASON OF DEFAULT OF BUYER, SELLER MAY PURSUE ANY REMEDY IN LAW OR EQUITY THAT IT MAY HAVE AGAINST BUYER ON ACCOUNT OF THE DEFAULT; PROVIDED, HOWEVER, THAT BY PLACING THEIR INITIALS HERE, BUYER _____ / _____ AND SELLER _____ / _____ AGREE THAT:**
- A. THE SUMS PAID ON DEPOSIT PURSUANT TO PARAGRAPH 2 HEREOF PLUS ANY AMOUNTS PAID FOR ADDITIONAL ITEMS, EXTRAS AND/OR CUSTOMER SELECTED MATERIALS ORDERED BY BUYER ("PURCHASE MONEY DEPOSIT") SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO SELLER IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY BECAUSE OF A DEFAULT BY BUYER.
 - B. THE PAYMENT OF SUCH LIQUIDATED DAMAGES TO SELLER SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF SELLER ON ACCOUNT OF THE DEFAULT OF BUYER.
 - C. LIQUIDATED DAMAGES SHALL BE PAYABLE TO SELLER OUT OF BUYER'S DEPOSIT TOWARD PURCHASE OF THE PROPERTY ACCORDING TO THE FOLLOWING PROCEDURES:
 - (1) SELLER SHALL GIVE WRITTEN NOTICE ("SELLER'S NOTICE AND DEMAND"), IN THE MANNER PRESCRIBED BY SECTION 116.340 OF THE CODE OF CIVIL PROCEDURE FOR SERVICE IN A SMALL CLAIMS ACTION, TO ESCROW HOLDER AND TO BUYER THAT BUYER IS IN DEFAULT UNDER THE CONTRACT AND THAT SELLER IS DEMANDING THAT ESCROW HOLDER REMIT THE PURCHASE MONEY DEPOSIT TO SELLER AS LIQUIDATED DAMAGES UNLESS, WITHIN 20 DAYS, BUYER GIVES ESCROW HOLDER BUYER'S WRITTEN OBJECTION TO DISBURSEMENT OF PURCHASE MONEY AS LIQUIDATED DAMAGES ("BUYER'S OBJECTION").
 - (2) BUYER HAS A PERIOD OF 20 DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND IN WHICH TO GIVE ESCROW HOLDER BUYER'S OBJECTION.
 - (3) IF BUYER FAILS TO GIVE ESCROW HOLDER BUYER'S OBJECTION WITHIN 20 DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND; (A) ESCROW HOLDER SHALL PROMPTLY REMIT THE AMOUNT DEMANDED TO SELLER; AND (B) SELLER IS RELEASED FROM ANY OBLIGATION TO SELL THE PROPERTY TO BUYER.
 - (4) IF BUYER GIVES ESCROW HOLDER BUYER'S OBJECTION WITHIN 20 DAYS FROM THE DATE OF RECEIPT OF SELLER'S NOTICE AND DEMAND, THEN THE DETERMINATION AS TO WHETHER SELLER IS ENTITLED TO THE DISBURSEMENT OF PURCHASE MONEY AS LIQUIDATED DAMAGES, AND EVERY OTHER CAUSE OF ACTION THAT HAS ARISEN BETWEEN BUYER AND SELLER UNDER THIS AGREEMENT SHALL BE DECIDED IN ACCORDANCE WITH PARAGRAPH 22 OF THIS AGREEMENT.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

Reviewed by _____ Date _____



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

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

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

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

22. DISPUTE RESOLUTION:

A. MEDIATION: Buyer and Seller agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action, subject to paragraphs 22C and D below. If any party commences an action based on a dispute or claim to which this paragraph applies, without first attempting to resolve the matter through mediation, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.

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

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

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

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

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

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

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

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

(7) THE ARBITRATION SHALL CONCLUDE PROMPTLY AND TIMELY.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

Reviewed by _____ Date _____



(8) THE ARBITRATOR(S) ARE AUTHORIZED TO PROVIDE ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR EQUITY FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF THE ARBITRATION. JUDGMENT UPON THE DECISION RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED INTO ANY COURT HAVING PROPER JURISDICTION.

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

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISIONS TO NEUTRAL ARBITRATION."

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

C. EXCLUSIONS FROM MEDIATION AND ARBITRATION: The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; (iv) any matter that is within the jurisdiction of a probate, small claims, or bankruptcy court; and (v) an action for bodily injury or wrongful death, or any right of action to which Code of Civil Procedure §337.1 or §337.15 applies. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction or other provisional remedies, shall not constitute a violation of the mediation and arbitration provisions.

D. BROKERS; REFERRAL LICENSEE: Buyer and Seller agree to mediate and arbitrate disputes or claims involving either or both Brokers or Referral Licensee, provided either or both Brokers or Referral Licensee shall have agreed to such mediation or arbitration prior to, or within a reasonable time after, the dispute or claim is presented to Brokers or Referral Licensee. Any election by either or both Brokers or Referral Licensee to participate in mediation or arbitration shall not result in Brokers or Referral Licensee being deemed parties to the Agreement.

23. NO TRANSFER DURING ESCROW: Buyer hereby represents that Buyer is buying the Property for Buyer's own account. This Agreement and the related escrow may not be assigned or otherwise transferred by Buyer voluntarily or by operation of Law, without the written consent of Seller, and any attempt to do so shall be null, void, of no effect, and a default by Buyer under this Agreement. Escrow Holder is and shall be instructed by Seller not to assist or participate in any way in the consummation of any so called "double escrows." Buyer further acknowledges that Buyer will not attempt to sell or advertise the Property until after the Close Of Escrow.

24. DESTRUCTION OF PROPERTY: If the Property is destroyed or materially damaged prior to Close Of Escrow, then upon the election of Buyer or Seller, any deposit made by Buyer shall be returned to Buyer and this Agreement and the escrow shall terminate, and both parties shall be discharged of all liability and obligations under this Agreement and the escrow instructions.

25. PRORATIONS AND PROPERTY TAXES: Unless otherwise agreed in writing, real property taxes and assessments, interest, HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow. Prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due, shall be assumed by Buyer WITHOUT CREDIT toward the purchase price. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller. TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Exceptions: _____

26. WITHHOLDING TAXES: Buyer and Seller agree to execute and deliver any instrument, affidavit, statement or instruction reasonably necessary to comply with federal (FIRPTA) and California withholding Law, if required (such as C.A.R. Forms AS and AB).

27. EQUAL HOUSING OPPORTUNITY: The Property is sold in compliance with federal, state and local anti-discrimination Law.

28. ATTORNEY FEES: In any action, proceeding or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller may be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 22A.

Buyer's Initials (_____) (_____) _____

Seller's Initials (_____) (_____) _____

Reviewed by _____ Date _____



29. SELECTION OF SERVICE PROVIDERS: If Brokers give Buyer or Seller referrals to persons, vendors, or service or product providers ("Providers"), Brokers do not guarantee the performance of any of those Providers. Buyer and Seller may select ANY Providers of their own choosing.

30. TIME OF THE ESSENCE; ENTIRE CONTRACT; CHANGES: Time is of the essence. All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. This Agreement may not be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.

31. SEVERABILITY: If any term, condition or provision of this Agreement is declared illegal or invalid for any reason by a court of competent jurisdiction, or arbitrator, the remaining terms, conditions and provisions shall, nevertheless, remain in full force and effect.

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

33. DEFINITIONS: As used in this Agreement:

- A. **"Acceptance"** means the time the offer or final counter offer is accepted in writing by the other party, in accordance with this Agreement or the terms of the final counter offer.
- B. **"Agreement"** means the terms and conditions of this New Construction Residential Purchase Agreement and Joint Escrow Instructions and any counter offer and addenda.
- C. **"Days"** means calendar days, unless otherwise required by Law.
- D. **"Days After"** means the specified number of calendar Days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
- E. **"Close Of Escrow"** means the date the grant deed or other evidence of transfer of title is recorded. If the scheduled close of escrow falls on a Saturday, Sunday or legal holiday, then the close of escrow date shall be the next business day after the scheduled close of escrow date.
- F. **"Copy"** means copy by any means including photocopy, NCR, facsimile and electronic.
- G. **"Law"** means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
- H. **"Signed"** means either a handwritten or Electronic Signature.
- I. **Singular and Plural** terms each include the other, when appropriate.
- J. **"Electronic Copy" or "Electronic Signature"** means, as applicable, a Copy or Signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either party to modify or alter the content or integrity of the Agreement without the knowledge and consent of the other.

34. AGENCY:

A. **DISCLOSURE: Unless exempt,** Buyer and Seller each acknowledge receipt of a form titled "Disclosure Regarding Real Estate Agency Relationships" (such as C.A.R. Form AD-11).

B. **POTENTIALLY COMPETING BUYERS AND SELLERS:** Buyer understands that Broker representing Buyer may also represent other potential buyers, who may consider, make offers on or ultimately acquire the Property. Seller understands that Buyer may consider, make offers on or purchase other properties similar to the Property. Buyer and Seller acknowledge and consent to Broker(s)' representation of such potential buyers and sellers before, during and after Broker(s)' representation of Buyer or Seller.

C. (If checked) **REFERRAL LICENSEE:** _____ (Print Firm Name) is a Referral Licensee only. Buyer and Seller acknowledge and agree that Referral Licensee has merely introduced Buyer to the Property and does not represent Buyer or Seller in this transaction. Buyer further acknowledges and agrees that any agency relationship with Referral Licensee, whether existing under a written or oral agreement or by implication, is terminated for this Property as of the date of Buyer's signature on this Agreement. Referral Licensee is not a party to the Agreement between Buyer and Seller.

D. **AGENCY CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction:
Listing Agent: _____ (Print Firm Name) is the agent of (check one):
 the Seller exclusively; or both the Buyer and Seller.
Selling Agent: _____ (Print Firm Name) (if not same as Listing Agent) is the agent of (check one): the Buyer exclusively; or the Seller exclusively; or both the Buyer and Seller.
Real Estate Brokers are not parties to the Agreement between Buyer and Seller.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

Reviewed by _____ Date _____



35. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:

- A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use, along with any related counter offers and addenda and any additional mutual instructions, to close the transaction: 1, 2, 4, 5, 6, 8, 14, 15, 19, 20, 21, 23, 25, 26, 30, 32, 33, 35, 37 and 38.** The terms and conditions of the Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provisions upon Escrow Holder's request. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms reasonably necessary to complete this transaction if provided by Escrow Holder.
- B. A Copy of this Agreement shall be delivered to Escrow Holder within 3 business days after Acceptance (or _____).** **Escrow will be deemed open when Escrow Holder has Signed an acknowledgement of receipt of a Copy of this accepted Agreement.** Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures, as defined in this Agreement, as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs the Agreement.
- C. Brokers and Referral Licensee are a party to the escrow for the sole purpose of compensation pursuant to paragraph 37. Seller hereby irrevocably assigns to Brokers and Referral Licensee compensation specified in paragraph 37 from Seller's proceeds, and irrevocably instructs Escrow Holder to disburse those funds to Brokers at Close Of Escrow. Compensation instructions can be amended or revoked only with the written consent of Brokers.**
- D. IF THE PROPERTY IS SUBJECT TO A PUBLIC REPORT OR EXEMPT FROM A PUBLIC REPORT PURSUANT TO BUSINESS AND PROFESSIONS CODE §11010.4, THE FOLLOWING ADDITIONAL ESCROW INSTRUCTIONS APPLY:**
 - (1) BLANKET ENCUMBRANCE:** Not as a condition of Seller's duty to complete construction under paragraph 7, but solely for the benefit of Buyer, the escrow shall not close, funds shall not be released from escrow, and title shall not be conveyed to Buyer, until all of the following conditions have been met: **(i)** Seller has complied with the purchase money handling requirements of Business and Professions Code §§11013, 11013.1, 11013.2 or 11013.4, as applicable; and **(ii)** Buyer has been provided a policy of title insurance showing that the Property is free and clear of any blanket encumbrances as defined in §11013. For purposes of compliance with §11013.2(a), a release from a blanket encumbrance resulting from a deed of trust or mortgage shall require satisfaction with either of the following: **(a)** an instrument has been duly recorded unconditionally reconveying and releasing the Property from the lien or charge of such deed of trust; or **(b)** Buyer is notified that an agreement or demand constituting a release agreement as defined in Department of Real Estate Regulation §2791.1(b)(2)(A) has been duly deposited with Escrow Holder and is available to Buyer on request for each deed of trust, and Buyer will be provided with a policy of title insurance insuring Buyer against loss by reason of such deed of trust.
 - (2) COMMON INTEREST SUBDIVISION:** (If checked) The Property is in a common interest subdivision and the attached Common Interest Subdivision Supplemental Escrow Instructions are made a part of this Agreement. **[Note to Seller: For property sold subject to a public report, you must use the Common Interest Subdivision Supplemental Escrow Instructions provided with this NCPA-11 or submit to, and have approval for use from, the Department of Real Estate for any other supplemental escrow instructions you intend to use.]**
 - (3)** If escrow does not close within 1 year after Acceptance of this Agreement, and the failure to close escrow is not due to the default of Buyer, escrow is to be cancelled and all funds in escrow immediately returned to Buyer upon Buyer's request.
 - (4)** Subject to the requirements of Civil Code §§1675(c) or (d), 1676, 1677 and 1678, if funds deposited in escrow by Buyer have been disbursed on Seller's instructions as permitted by Department of Real Estate Regulation §2791, the funds expended shall be immediately reimbursed to escrow by Seller upon Seller's failure to perform within 1 year after Acceptance of this Agreement, and these funds immediately returned to Buyer from escrow.
 - (5)** Escrow shall not close until Escrow Holder has received written notice from a title insurance company that each and every encumbrance, including without limitation, any mortgage or deed of trust, filed of record prior to the time of recording of the Declaration of Covenants, Conditions and Restrictions has been either **(i)** fully reconveyed or **(ii)** expressly subordinated to the Declaration of Covenants, Conditions and Restrictions.
 - (6)** If the Property is a newly converted condominium subject to Civil Code §1134, Buyer has acknowledged receipt of either a statement listing all substantial defects or malfunctions or a statement of disclaimer and the required rescission period has expired pursuant to Civil Code §1134.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

Reviewed by _____ Date _____



Property Address: _____ Date: _____

36. TERMS AND CONDITIONS OF OFFER: This is an offer to purchase the Property on the above terms and conditions. All paragraphs with spaces for initials by Buyer and Seller are incorporated in this Agreement only if initialed by all parties. If at least one but not all parties initial, a counter offer is required until agreement is reached. Buyer understands that Listing Agent has no authority to execute this Agreement. A binding contract will not be formed unless and until this Agreement is Signed by Seller. Unless Acceptance of offer is Signed by Seller, and a Signed Copy delivered in person, by mail or facsimile, and personally received by Buyer, or by _____, who is authorized to receive it, by (date) _____, at _____ AM PM, the offer shall be deemed revoked and Buyer's deposit shall be returned. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the above confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy may be Signed in two or more counterparts, all of which shall constitute one and the same writing.

BUYER _____ Date _____ BUYER _____ Date _____

(Print name) (Print name)

(Address)

37. COMPENSATION: Seller agrees to pay compensation as follows:

A. BROKER COMPENSATION:

(1) To Listing Broker (Firm Name), _____, as specified in the written agreement between Listing Agent and Seller.

(2) To Selling Broker (Firm Name), _____, \$ _____ or _____ percent of the purchase price.

B. (Applies only if checked) REFERRAL LICENSEE COMPENSATION: to _____, Referral Licensee, \$ _____ or _____ percent of the purchase price.

C. PAYABLE: (i) On recordation of the deed or other evidence of title; (ii) if completion of sale is prevented by default of Seller, upon Seller's default; or (iii) if completion of sale is prevented by default of Buyer, only if and when Seller collects damages from Buyer, by suit or otherwise, and then in an amount equal to one-half of the damages recovered, but not to exceed the above compensation, after first deducting title and escrow expenses and the expenses of collection, if any. In any action, proceeding or arbitration relating to the payment of such compensation, the prevailing party shall be entitled to reasonable attorney fees and costs, except as provided in paragraph 22A.

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

If checked: **SUBJECT TO ATTACHED COUNTER OFFER, DATED** _____.

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

SELLER _____ Date _____ SELLER _____ Date _____

(Print name) (Print name)

(Address)

(____ / ____) **ACKNOWLEDGMENT OF RECEIPT:** Buyer or authorized agent acknowledges receipt of Signed Acceptance on (date) (Initials) _____, at _____ AM PM.

Buyer's Initials (____) (____)

Seller's Initials (____) (____)

Reviewed by _____ Date _____



Property Address: _____ Date: _____

Brokers and Referral Licensee are not parties to the rights or obligations between Buyer and Seller under this Agreement. Agency relationships (or, in the case of Referral Licensee, termination of Agency Relationship) are confirmed as above.

Receipt for deposit is acknowledged:

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

By (Agent) _____ DRE Lic. # _____ Date _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

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

By (Agent) _____ DRE Lic. # _____ Date _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

Referral Licensee (Firm Name) _____ DRE Lic. # _____

By (Agent) _____ DRE Lic. # _____ Date _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

Escrow Holder Acknowledgment:
 Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, a deposit in the amount of \$ _____),
 counter offer numbers _____ and _____,
 _____, and agrees to act as Escrow Holder subject to paragraph 35 of
 this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.
 The date of Acceptance of the Agreement as between Buyer and Seller is _____.
 Escrow Holder _____ Escrow # _____
 By _____ Date _____
 Address _____ Phone/Fax/E-mail _____
 Escrow Holder is licensed by the California Department of Corporations, Insurance, Real Estate, License # _____

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

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EQUAL HOUSING OPPORTUNITY