



# ALREADY-BUILT SUBDIVISION PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTION

Use only when a residence has been completed and is subject to a Public Report  
(An already-built subdivision may be referred to as an existing subdivision by the DRE)  
(C.A.R. Form ABSPA, Revised 6/23)

Date Prepared: \_\_\_\_\_

## 1. OFFER:

- A. **THIS IS AN OFFER FROM** \_\_\_\_\_ (“Buyer”).
- B. **THE PROPERTY** to be acquired is 18754 White Moon Drive, situated  
in Morgan Hill (City), Santa Clara (County), California, 95037 (Zip Code),  
Assessor’s Parcel No(s). \_\_\_\_\_ (“Property”).  
(Postal/Mailing address may be different from city jurisdiction. Buyer is advised to investigate.)
- C. **THE TERMS OF THE PURCHASE ARE SPECIFIED BELOW AND ON THE FOLLOWING PAGES.**
- D. Buyer and Seller are referred to herein as the “Parties.” Brokers and Agents are **not** Parties to this Agreement.

## 2. AGENCY:

- A. **DISCLOSURE:** The Parties each acknowledge receipt of a “Disclosure Regarding Real Estate Agency Relationships” (C.A.R. Form AD) if represented by a real estate licensee. Buyer’s Agent is not legally required to give to Seller’s Agent the AD form Signed by Buyer. Seller’s Agent is not legally obligated to give to Buyer’s Agent the AD form Signed by Seller.
- B. **CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction.
- Seller’s Brokerage Firm** \_\_\_\_\_ License Number \_\_\_\_\_  
Is the broker of (check one): ☐ the Seller; or ☐ both the Buyer and Seller (Dual Agent).  
**Seller’s Agent** \_\_\_\_\_ License Number \_\_\_\_\_  
Is (check one): ☐ the Seller’s Agent (Salesperson or broker associate); or ☐ both the Buyer’s and Seller’s Agent (Dual Agent).
- Buyer’s Brokerage Firm** Reward Realty License Number 01933390  
Is the broker of (check one): ☐ the Buyer; or ☐ both the Buyer and Seller (Dual Agent).  
**Buyer’s Agent** Caroline Hobbs License Number 01901869  
Is (check one): ☐ the Buyer’s Agent (Salesperson or broker associate); or ☐ both the Buyer’s and Seller’s Agent (Dual Agent).
- C. ☐ More than one Brokerage represents ☐ Seller, ☐ Buyer. See, Additional Broker Acknowledgement (C.A.R. Form ABA).
- D. **POTENTIALLY COMPETING BUYERS AND SELLERS:** The Parties each acknowledge receipt of a ☒ “Possible Representation of More than One Buyer or Seller - Disclosure and Consent” (C.A.R. Form PRBS).
- E. ☐ (If checked) **REFERRAL LICENSEE:** \_\_\_\_\_ (print Firm Name) is a Referral Licensee only and shall be compensated \$ \_\_\_\_\_ or \_\_\_\_\_ % of the Purchase Price. Buyer and Seller acknowledge 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 part to this Agreement between Buyer and Seller. **Note to Referral Licensee: Do not confirm agency if checking this paragraph. If you become an Agent in the transaction add a Confirmation of Real Estate Agency Relationships at that time (C.A.R. Form AC).**

3. **TERMS OF PURCHASE AND ALLOCATION OF COSTS:** The items in this paragraph are contractual terms of the Agreement. Referenced paragraphs provide further explanation. This form is 19 pages. The Parties are advised to read all 19 pages.

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
A	5, 5B (cash)	<b>Purchase Price</b>	\$ _____	<input type="checkbox"/> All Cash
B	5A(3)	<b>Close Of Escrow (COE)</b>	____ Days after Acceptance OR on _____ (date) (mm/dd/yyyy)	
C	43A	<b>Expiration of Offer</b>	3 calendar days after all Buyer Signature(s) or _____ (date) at 5PM or _____ <input type="checkbox"/> AM/ <input type="checkbox"/> PM	
D(1)	5A(1)	<b>Initial Deposit Amount</b>	\$ _____ (____ % of purchase price) (% number above is for calculation purposes and is not a contractual term)	Delivered to Escrow (or <input type="checkbox"/> Seller) within 3 (or _____) business days after Acceptance by wire transfer OR <input type="checkbox"/> Personal Check OR <input type="checkbox"/> _____
D(2)	5A(2)	<input type="checkbox"/> <b>Increased Deposit</b> (Money placed into escrow after the initial deposit. Use form DID at time increased deposit is made.)	\$ _____ (____ % of purchase price) (% number above is for calculation purposes and is not a contractual term)	Upon removal of all contingencies OR <input type="checkbox"/> _____ (date) OR <input type="checkbox"/> _____
E(1)	5C(1)	<b>Loan Amount(s):</b> First Interest Rate Points  If FHA or VA checked, Deliver list of lender required repairs	\$ _____ (____ % of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate • not to exceed _____ % • Buyer to pay up to _____ points to obtain rate above 17 (or _____) Days after Acceptance	Conventional or, if checked, <input type="checkbox"/> FHA (Forms FVAC/HID attached) <input type="checkbox"/> VA (Form FVAC attached) <input type="checkbox"/> Seller Financing <input type="checkbox"/> Other: _____

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	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
E(2)	5C(2)	Additional Financed Amount Interest Rate Points	\$ _____ (_____% of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate • not to exceed _____% • Buyer to pay up to _____ points to obtain rate above	Conventional or, if checked, <input type="checkbox"/> Seller Financing <input type="checkbox"/> Other: _____
E(3)	7A	Occupancy Type	Primary, or if checked, <input type="checkbox"/> Secondary <input type="checkbox"/> Investment	
F	5D	Balance of Down Payment	\$ <u>0.00</u>	
PURCHASE PRICE TOTAL			\$ _____	
G(1)	5E	Seller Credit, if any, to Buyer	<input type="checkbox"/> \$ _____ (_____% of purchase price) (% number above is for calculation purposes and is not a contractual term)	Seller credit to be applied to closing costs OR <input type="checkbox"/> Other: _____
G(2)	ADDITIONAL FINANCE TERMS: _____			
G(3)	19	<input type="checkbox"/> Seller agrees to pay the obligation of Buyer to compensate Buyer's Broker under a separate agreement (C.A.R. Form SPBB attached). Seller's Broker's offer, if any, to compensate Buyer's Broker is unaffected unless Otherwise Agreed.		
H(1)	5B	Verification of All Cash (sufficient funds)	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(2)	6A	Verification of Down Payment and Closing Costs	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(3)	6B	Verification of Loan Application	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
I	Intentionally Left Blank			
J	11	Public Report Status	<input type="checkbox"/> Final Public Report <input type="checkbox"/> Conditional Public Report <input type="checkbox"/> Amended/Renewed Public Report	If Conditional Public Report is checked: Final Public Report shall be issued within <input type="checkbox"/> 6 months or <input type="checkbox"/> 30 months of the date of issuance of the Conditional Public Report.
K	17	Final Verification of Condition	5 (or _____) Days prior to COE	
L	24	Assignment Request	17 (or _____) Days after Acceptance	
M	8	CONTINGENCIES	TIME TO REMOVE CONTINGENCIES	CONTINGENCY REMOVED
M(1)	8A	Loan(s)	17 (or _____) Days after Acceptance	<input type="checkbox"/> No loan contingency
M(2)	8B	Appraisal: Appraisal contingency based upon appraised value at a minimum of purchase price or <input type="checkbox"/> \$ _____	17 (or _____) Days after Acceptance	<input type="checkbox"/> No appraisal contingency Removal of appraisal contingency does not eliminate appraisal cancellation rights in FVAC.
M(3)	8C, 14	Investigation of Property	17 (or _____) Days after Acceptance	<b>REMOVAL OR WAIVER OF CONTINGENCY:</b> Any contingency in M(1)-M(8) may be removed or waived by checking the applicable box above or attaching a Contingency Removal (C.A.R. Form CR) and checking the applicable box therein. Removal or Waiver at time of offer is against Agent advice. See paragraph 8I. <input type="checkbox"/> CR attached
		Informational Access to Property	17 (or _____) Days after Acceptance Buyer's right to access the Property for informational purposes is <b>NOT</b> a contingency, does <b>NOT</b> create additional cancellation rights, and applies even if contingencies are removed.	
M(4)	8D, 16A	Review of Seller Documents	17 (or _____) Days after Acceptance, or 5 Days after Delivery, whichever is later	
M(5)	8E, 11	Review of Public Report	17 (or _____) Days after Acceptance, or 5 Days after Delivery, whichever is later	
M(6)	8F, 15A	Preliminary ("Title") Report	17 (or _____) Days after Acceptance or 5 Days after Delivery, whichever is later	
M(7)	8G, 12F	Common Interest Disclosures required by Civil Code § 4525 or this Agreement	17 (or _____) Days after Acceptance, or 5 Days after Delivery, whichever is later	
M(8)	8H, 9B(6)	Review of leased or liened items (Such as for solar panels or propane tanks or PACE or HERO liens)	17 (or _____) Days after Acceptance, or 5 Days after Delivery, whichever is later	
N		Possession	Time for Performance	Additional Terms
N(1)		Delivery of Possession (unless N(2) is checked)	Upon notice of recordation On COE date	

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<b>N(2)</b>	7A	<b>Occupied units by tenants or anyone other than Seller</b>	<input type="checkbox"/> Tenant Occupied Property Addendum (C.A.R. Form TOPA) attached	Seller shall disclose to Buyer If occupied by tenants or persons other than Seller, and attach TOPA in a counter offer if not part of Buyer's offer.
<b>O</b>	<b>Intentionally Left Blank</b>			
<b>P</b>		<b>Documents/Fees/Compliance</b>	<b>Time for Performance</b>	
<b>P(1)</b>	16A	Seller Delivery of Documents	7 (or _____) Days after Acceptance	
<b>P(2)</b>	20C	Sign and return Escrow Holder General Provisions, Supplemental Instructions	5 (or _____) Days after Delivery	
<b>P(3)</b>	12F(2)	Time to pay fees for ordering HOA Documents	3 (or _____) Days after Acceptance	
<b>P(4)</b>	30	Evidence of representative authority	3 Days after Acceptance	
<b>Q</b>	<b>Items Included and Excluded</b>			
<b>Q(1)</b>	9	<b>Items Included - All items specified in Paragraph 9B are included and the following, if checked:</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <input type="checkbox"/> Stove(s), oven(s), stove/oven combo(s);  <input type="checkbox"/> Refrigerator(s);  <input type="checkbox"/> Wine Refrigerator(s);  <input type="checkbox"/> Washer(s);  <input type="checkbox"/> Dryer(s);  <input type="checkbox"/> Dishwasher(s);  <input type="checkbox"/> Microwave(s);  <b>Additional Items Included:</b>  <input type="checkbox"/> _____  <input type="checkbox"/> _____ </div> <div style="width: 30%;"> <input type="checkbox"/> Video doorbell(s);  <input type="checkbox"/> Security camera equipment;  <input type="checkbox"/> Security system(s)/alarm(s), other than separate video doorbell and camera equipment;  <input type="checkbox"/> Smart home control devices;  <input type="checkbox"/> Wall mounted brackets for video or audio equipment;  <input type="checkbox"/> _____  <input type="checkbox"/> _____ </div> <div style="width: 30%;"> <input type="checkbox"/> Above-ground pool(s) / <input type="checkbox"/> spa(s);  <input checked="" type="checkbox"/> Bathroom mirrors, unless excluded below;  <input type="checkbox"/> Electric car charging systems and stations;  <input type="checkbox"/> Potted trees/shrubs;  <input type="checkbox"/> _____  <input type="checkbox"/> _____ </div> </div>		
<b>Q(2)</b>		<b>Excluded Items:</b> <input type="checkbox"/> _____; <input type="checkbox"/> _____; <input type="checkbox"/> _____;		
<b>R</b>	<b>Allocation of Costs</b>			
	<b>Paragraph #</b>	<b>Item Description</b>	<b>Who Pays (if Both is checked, cost to be split equally unless Otherwise Agreed)</b>	<b>Additional Terms</b>
<b>R(1)</b>	12B	Natural Hazard Zone Disclosure Report, including tax information	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	<input type="checkbox"/> Environmental <input type="checkbox"/> Other _____ <input type="checkbox"/> Provided by: _____
<b>R(2)</b>	20C	Escrow Fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____ <input type="checkbox"/> Each to pay their own fees	Escrow Holder: _____
<b>R(3)</b>	15G	Owner's title insurance policy	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	Title Company (If different from Escrow Holder): _____
<b>R(4)</b>		Buyer's Lender title insurance policy	Buyer	Unless Otherwise Agreed, Buyer shall purchase any title insurance policy insuring Buyer's lender.
<b>R(5)</b>		County transfer tax, fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
<b>R(6)</b>		City transfer tax, fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
<b>R(7)</b>	12F(2)	HOA fee for preparing disclosures	Seller	
<b>R(8)</b>		HOA certification fee	Buyer	
<b>R(9)</b>		HOA transfer fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
<b>R(10)</b>		Private transfer fees	Seller, or if checked, <input type="checkbox"/> Buyer <input type="checkbox"/> Both _____	
<b>R(11)</b>		_____ fees or costs	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
<b>R(12)</b>		_____ fees or costs	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
<b>R(13)</b>		_____ Report	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
<b>R(14)</b>		_____ Report	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
<b>R(15)</b>	10	Home warranty plan: _____ _____	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____ <input type="checkbox"/> Buyer waives home warranty plan	Cost not to exceed \$ _____ Issued by: _____



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<b>S</b>	13	<b>INSULATION INFORMATION:</b> Exterior Walls: Type _____ Thickness _____ R-Value _____ Ceilings: Type _____ Thickness _____ R-Value _____ Interior Walls: Type _____ Thickness _____ R-Value _____ Other _____: Type _____ Thickness _____ R-Value _____
<b>T</b>	38, 39	<b>SELLER ESTIMATES FOR THIRD PARTY CHARGES:</b> Credit Reports _____ Preliminary Title Reports _____ Escrow Services _____ Appraisals _____ Loan Processing Fees _____
<b>U</b>	34	<b>SELLER'S WARRANTY BEING PROVIDED:</b> Standard Warranty
<b>V</b>	<b>OTHER TERMS:</b> 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. <b>Note to Seller: You must submit any addenda form(s) you intend to attach this Agreement to, and have them be accepted by, the DRE.</b> _____ _____ _____	

**4. PROPERTY ADVISORIES AND DISCLOSURES:** (check all that apply)

**A. BUYER AND SELLER ADVISORIES:** (Note: All Advisories below are provided for reference purposes only and are not intended to be incorporated into this Agreement.)

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Buyer's Investigation Advisory (C.A.R. Form BIA) | <input checked="" type="checkbox"/> Fair Housing and Discrimination Advisory (C.A.R. Form FHDA)  |
| <input checked="" type="checkbox"/> Wire Fraud Advisory (C.A.R. Form WFA)            | <input checked="" type="checkbox"/> Cal. Consumer Privacy Act Advisory (C.A.R. Form CCPA)<br>(Parties may also receive a privacy disclosure from their own Agent.) |
| <input type="checkbox"/> Wildfire Disaster Advisory (C.A.R. Form WFDA)               | <input type="checkbox"/> Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)  |
| <input type="checkbox"/> Trust Advisory (C.A.R. Form TA)                             | <input type="checkbox"/> Short Sale Information and Advisory (C.A.R. Form SSIA)  |
| <input type="checkbox"/> REO Advisory (C.A.R. Form REO)                              | <input type="checkbox"/> Probate Advisory (C.A.R. Form PA)   |
| <input type="checkbox"/> Other: _____  | <input type="checkbox"/> Other: _____  |

**B. ATTACHED DISCLOSURES:**

- (1) If checked, Buyer acknowledges receipt of the following disclosures:
- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Final Public Report  | <input type="checkbox"/> Conditional Public Report            | <input type="checkbox"/> Model Plan/Property Description |
| <input type="checkbox"/> Zone Report  | <input type="checkbox"/> Amended/Renewed Public Report        | <input type="checkbox"/> Site Report                     |
| <input type="checkbox"/> Bonded Debt  | <input type="checkbox"/> Property Disclosure Statement        | <input type="checkbox"/> Seller's Warranty               |
| <input type="checkbox"/> Notice of Special Tax  | <input type="checkbox"/> HOA Documents                        | <input type="checkbox"/> Utility Disclosures             |
| <input type="checkbox"/> Smoke Detector   | <input type="checkbox"/> Water Heater                         | <input type="checkbox"/> Transportation Corridors        |
| <input type="checkbox"/> Newly converted condominium  | <input type="checkbox"/> Industrial, Commercial, Airport Zone |  |
| <input type="checkbox"/> DRE 2790.9 (for properties for completed or occupied more than 3 years prior to a public report) |   |  |
| <input type="checkbox"/> _____  |   |  |
- (2) **ADDITIONAL DISCLOSURES:** Seller shall provide Buyer with the following additional disclosures: \_\_\_\_\_

**5. ADDITIONAL TERMS AFFECTING PURCHASE PRICE:** Buyer represents that funds will be good when deposited with Escrow Holder.

**A. DEPOSIT:**

- (1) **INITIAL DEPOSIT:** Buyer shall deliver deposit directly to the party selected in **paragraph 3D(1)**. If being delivered to Seller, Seller must have obtained a bond or bonds meeting the requirements of B&P Code §§ 11013.2(c) or 11013.4(b) or (c), and DRE Regulation 2791.2. If Seller has not obtained such bond(s), then deposit shall be delivered directly to Escrow. **Note to Seller: If the purchase agreement is signed under the authority of a conditional Public Report, all funds must be impounded and held in a neutral escrow depository per B&P Code §§ 11013.4(a) or 11013.2(a).**
- (2) **INCREASED DEPOSIT:** Increased deposit (**paragraph 3D(2)**) to be delivered to Escrow Holder in the same manner as the Initial Deposit. If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount by signing a new liquidated damages clause (C.A.R. Form DID) at the time the increased deposit is delivered to Escrow Holder.
- (3) **RETURN OF DEPOSIT FOR SELLER FAILURE TO CLOSE:** If Seller is unable to close on or before the time specified in **paragraph 3B**, Seller shall, within **15 Days** after the time specified in **paragraph 3B**, order all of Buyer's deposits, including all third-party charges (including but not limited to those specified in **paragraphs 38 and 39**) refunded to Buyer (except for liquidated damages paid to Seller pursuant to **paragraph 40**, if applicable). Buyer's right to cancel based on Close Of Escrow is separately established in **paragraph 16G**.
- (4) **RETENTION OF DEPOSIT:** **Paragraph 40**, if initialed by all Parties or otherwise incorporated into this Agreement, specifies a remedy for Buyer's default. Buyer and Seller are advised to consult with a qualified California real estate attorney: (i) Before adding any other clause specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase. Any such clause shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code; and (ii) Regarding possible liability and remedies if Buyer fails to deliver the deposit.

**B. ALL CASH OFFER:** If an all cash offer is specified in **paragraph 3A**, no loan is needed to purchase the Property. This Agreement is NOT contingent on Buyer obtaining a loan. Buyer shall, within the time specified in **paragraph 3H(1)**, Deliver written verification of funds sufficient for the purchase price and closing costs.

**C. LOAN(S):**

- (1) **FIRST LOAN:** This loan will provide for conventional financing **UNLESS** FHA, VA, Seller Financing (C.A.R. Form SFA), or Other is checked in **paragraph 3E(1)**.
- (2) **ADDITIONAL FINANCED AMOUNT:** If an additional financed amount is specified in **paragraph 3E(2)**, that amount will provide for conventional financing **UNLESS** Seller Financing (C.A.R. Form SFA), or Other is checked in **paragraph 3E(2)**.
- (3) **BUYER'S LOAN STATUS:** Buyer authorizes Seller and Seller's Authorized Agent to contact Buyer's lender(s) to determine the status of any Buyer's loan specified in **paragraph 3E**, or any alternate loan Buyer pursues, whether or not a contingency of this Agreement. If the contact information for Buyer's lender(s) is different from that provided under the terms of **paragraph 6B**, Buyer shall Deliver the updated contact information within **1 Day** of Seller's request.



- (4) **FHA/VA: If FHA or VA is checked in paragraph 3E(1),** a FHA/VA amendatory clause (C.A.R. Form FVAC) shall be incorporated and Signed by all Parties. Buyer shall, within the time specified in **paragraph 3E(1),** Deliver to Seller written notice (C.A.R. Form RR or AEA) (i) of any lender requirements that Buyer requests Seller to pay for or otherwise correct or (ii) that there are no lender requirements. Notwithstanding Seller's agreement that Buyer may obtain FHA or VA financing, Seller has no obligation to pay or satisfy any or all lender requirements unless agreed in writing.
- D. BALANCE OF PURCHASE PRICE (DOWN PAYMENT) (including all-cash funds)** to be deposited with Escrow Holder pursuant to Escrow Holder instructions.
- E. LIMITS ON CREDITS TO BUYER:** Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender, if any, and made at Close Of Escrow. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit from Seller shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.
- 6. ADDITIONAL FINANCING TERMS:**
- A. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Written verification of Buyer's down payment and closing costs may be made by Buyer or Buyer's lender or loan broker pursuant to **paragraph 6B.**
- B. VERIFICATION OF LOAN APPLICATIONS:** Buyer shall Deliver to Seller, within the time specified in **paragraph 3H(3)** a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in **paragraph 3E.** If any loan specified in **paragraph 3E** is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate.
- C. BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including, but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price, and to sell to Buyer in reliance on Buyer's specified financing. Buyer shall pursue the financing specified in this Agreement, even if Buyer also elects to pursue an alternative form of financing. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in this Agreement but shall not interfere with closing at the purchase price on the COE date (**paragraph 3B**) even if based upon alternate financing. Buyer's inability to obtain alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.
- 7. CLOSING AND POSSESSION:**
- A. OCCUPANCY:** If Buyer intends to occupy as a primary or secondary residence as indicated in **paragraph 3E(3)** and unless Otherwise Agreed, such as in C.A.R. Form TOPA: (i) the unit Buyer intends to occupy shall be vacant at the time possession is delivered to Buyer, and (ii) if the Property contains more than one unit, within **3 Days** after Acceptance Buyer shall give Seller written notice of which unit Buyer intends to occupy. Occupancy may impact available financing. **Seller shall disclose to Buyer if occupied by tenants or persons other than Seller, and attach C.A.R. Form TOPA in a counter offer if not part of Buyer's offer.**
- B. CONDITION OF PROPERTY ON CLOSING; AND STATEMENT OF DEFECTS PER DRE REGULATIONS 2790.8 AND 2790.9; EXISTING SUBDIVISION INTEREST DISCLOSURE** (For properties that have been either completed or occupied more than 3 years prior to a public report application being filed with the DRE, the Seller disclosure shall be on the for specified in DRE Regulation 2790.9):
- (1) **Condition:** Unless Otherwise Agreed: (i) the Property shall be delivered "**As-Is**" in its PRESENT physical condition as of the date of Acceptance; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow or at the time possession is delivered to Buyer, if not on the same date. If items are not removed when possession is delivered to Buyer, all items shall be deemed abandoned. Buyer, after first Delivering to Seller written notice to remove the items within **3 Days**, may pay to have such items removed or disposed of and may bring legal action, as per this Agreement, to receive reasonable costs from Seller.
- (2) **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller and Agents may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had all required permits issued and/or finalized.**
- C. At Close Of Escrow:** (i) Seller assigns to Buyer any assignable warranty rights for items included in the sale; and (ii) Seller shall Deliver to Buyer available Copies of any such warranties. Agents cannot and will not determine the assignability of any warranties.
- D. Seller shall, on Close Of Escrow unless Otherwise Agreed and even if Seller remains in possession, provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems, intranet and Internet-connected devices included in the purchase price, garage door openers, and all items included in either **paragraph 3Q** or **9**. If the Property is a condominium or located in a common interest development, Seller shall be responsible for securing or providing any such items for Association amenities, facilities, and access. Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.**
- 8. CONTINGENCIES AND REMOVAL OF CONTINGENCIES:**
- A. LOAN(S):**
- (1) This Agreement is, **unless otherwise specified in paragraph 3M(1) or an attached CR form,** contingent upon Buyer obtaining the loan(s) specified. If contingent, Buyer shall act diligently and in good faith to obtain the designated loan(s). **If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan and Buyer is able to satisfy lender's non-appraisal conditions for closing the loan.**
- (2) Buyer is advised to investigate the insurability of the Property as early as possible, as this may be a requirement for lending. Buyer's ability to obtain insurance for the Property, including fire insurance, is part of Buyer's Investigation of Property contingency. Failure of Buyer to obtain insurance may justify cancellation based on the Investigation contingency but not the loan contingency.
- (3) Buyer's contractual obligations regarding deposit, balance of down payment and closing costs **are not contingencies** of this Agreement, unless Otherwise Agreed.
- (4) If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
- (5) **NO LOAN CONTINGENCY:** If "No loan contingency" is checked in **paragraph 3M(1),** obtaining any loan specified is NOT a contingency of this Agreement. If Buyer does not obtain the loan specified, and as a result is unable to purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

**B. APPRAISAL:**

- (1) This Agreement is, **unless otherwise specified in paragraph 3M(2) or an attached CR form**, contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the amount specified in **paragraph 3M(2)**, without requiring repairs or improvements to the Property. Appraisals are often a reliable source to verify square footage of the subject Property. However, the ability to cancel based on the measurements provided in an appraisal falls within the Investigation of Property contingency. The appraisal contingency is solely limited to the value determined by the appraisal. For any cancellation based upon this appraisal contingency, Buyer shall Deliver a Copy of the written appraisal to Seller, upon request by Seller.
- (2) **NO APPRAISAL CONTINGENCY:** If "No appraisal contingency" is checked in **paragraph 3M(2)**, then Buyer may not use the loan contingency specified in **paragraph 3M(1)** to cancel this Agreement if the sole reason for not obtaining the loan is that the appraisal relied upon by Buyer's lender values the property at an amount less than that specified in **paragraph 3M(2)**. If Buyer is unable to obtain the loan specified solely for this reason, Seller may be entitled to Buyer's deposit or other legal remedies.
- (3) ☒ **Fair Appraisal Act:** The Parties acknowledge receipt of the attached Fair Appraisal Act Addendum (C.A.R. Form FAAA).

**C. INVESTIGATION OF PROPERTY:** This Agreement is, as specified in **paragraph 3M(3)**, contingent upon Buyer's acceptance of the condition of, and any other matter affecting, the Property.

**D. REVIEW OF SELLER DOCUMENTS:** This Agreement is, as specified in **paragraph 3M(4)**, contingent upon Buyer's review and approval of Seller's documents required in **paragraph 16A**.

**E. REVIEW OF PUBLIC REPORT:** This Agreement is, as specified in **paragraph 3M(5)**, contingent upon Buyer's review and approval of the Public Report specified in **paragraph 3J** and signing DRE form RE 614E, "Receipt for Public Report."

**F. TITLE:**

- (1) This Agreement is, as specified in **paragraph 3M(6)**, contingent upon Buyer's ability to obtain the title policy provided for in **paragraph 15G** and on Buyer's review of a current Preliminary Report and items that are disclosed or observable even if not on record or not specified in the Preliminary Report, and satisfying Buyer regarding the current status of title. Buyer is advised to review all underlying documents and other matters affecting title, including, but not limited to, any documents or deeds referenced in the Preliminary Report and any plotted easements.
- (2) Buyer has **5 Days** after receipt to review a revised Preliminary Report, if any, furnished by the Title Company and cancel the transaction if the revised Preliminary Report reveals material or substantial deviations from a previously provided Preliminary Report.

**G. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES (IF APPLICABLE):** This Agreement is, as specified in **paragraph 3M(7)**, contingent upon Buyer's review and approval of Common Interest Disclosures required by Civil Code § 4525 and under **paragraph 12F** ("CI Disclosures").

**H. BUYER REVIEW OF LEASED OR LIENED ITEMS CONTINGENCY:** Buyer's review of and ability and willingness to assume any lease, maintenance agreement or other ongoing financial obligation, or to accept the Property subject to any lien, disclosed pursuant to **paragraph 9B(6)**, is, as specified in **paragraph 3M(8)**, a contingency of this Agreement. Any assumption of the lease shall not require any financial obligation or contribution by Seller. Seller, after first Delivering a Notice to Buyer to Perform, may cancel this Agreement if Buyer, by the time specified in **paragraph 3M(8)**, refuses to enter into any necessary written agreements to accept responsibility for all obligations of Seller-disclosed leased or lienied items.

**I. REMOVAL OR WAIVER OF CONTINGENCIES WITH OFFER:** **Buyer shall have no obligation to remove a contractual contingency unless Seller has provided all required documents, reports, disclosures, and information pertaining to that contingency.** If Buyer does remove a contingency without first receiving all required information from Seller, Buyer is relinquishing any contractual rights that apply to that contingency. **If Buyer removes or waives any contingencies without an adequate understanding of the Property's condition or Buyer's ability to purchase, Buyer is acting against the advice of Agent.**

**J. REMOVAL OF CONTINGENCY OR CANCELLATION:**

- (1) **For any contingency specified in paragraph 3M, 8, or elsewhere, Buyer shall, within the applicable period specified, remove the contingency or cancel this Agreement.**
- (2) For the contingencies for review of Seller Documents, Preliminary Report, and Condominium/Planned Development Disclosures, Buyer shall, within the time specified in **paragraph 3M** or **5 Days** after Delivery of Seller Documents or CI Disclosures, whichever occurs later, remove the applicable contingency in writing or cancel this Agreement.
- (3) If Buyer does not remove a contingency within the time specified, Seller, after first giving Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), shall have the right to cancel this Agreement.

**9. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:**

**A. NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the Multiple Listing Service (MLS), flyers, marketing materials, or disclosures are NOT included in the purchase price or excluded from the sale unless specified in this paragraph or **paragraph 3Q** or as Otherwise Agreed. Any items included herein are components of the home and are not intended to affect the price. All items are transferred without Seller warranty.

**B. ITEMS INCLUDED IN SALE:**

- (1) All EXISTING fixtures and fittings that are attached to the Property;
- (2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances and appliances for which special openings or encasements have been made (whether or not checked in **paragraph 3Q**), window and door screens, awnings, shutters, window coverings (which includes blinds, curtains, drapery, shutters or any other materials that cover any portion of the window), attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment (including, but not limited to, any cleaning equipment such as motorized/automatic pool cleaners, pool nets, pool covers), garage door openers/remote controls, mailbox, in-ground landscaping, water features and fountains, water softeners, water purifiers, light bulbs (including smart bulbs) and all items specified as included in **paragraph 3Q**, **if currently existing at the time of Acceptance.** **Note:** If Seller does not intend to include any item specified as being included above because it is not owned by Seller, whether placed on the Property by Agent, stager or other third party, the item should be listed as being excluded in **paragraph 3Q(2)** or excluded by Seller in a counter offer.
- (3) Security System includes any devices, hardware, software, or control units used to monitor and secure the Property, including but not limited to, any motion detectors, door or window alarms, and any other equipment utilized for such purpose. If checked in **paragraph 3Q**, all such items are included in the sale, whether hard wired or not.

- (4) Home Automation (Smart Home Features) includes any electronic devices and features including, but not limited to, thermostat controls, kitchen appliances not otherwise excluded, and lighting systems, that are connected (hard wired or wirelessly) to a control unit, computer, tablet, phone, or other "smart" device. Any Smart Home devices and features that are physically affixed to the real property, and also existing light bulbs, are included in the sale. Buyer is advised to use **paragraph 3Q(1)** or an addendum to address more directly specific items to be included. Seller is advised to use a counter offer to address more directly any items to be excluded.
- (5) Non-Dedicated Devices: If checked in **paragraph 3Q**, all smart home and security system control devices are included in the sale, except for any non-dedicated personal computer, tablet, or phone used to control such features. Buyer acknowledges that a separate device and access to wifi or Internet may be required to operate some smart home features and Buyer may have to obtain such device after Close Of Escrow. Buyer is advised to change all passwords and ensure the security of any smart home features.
- (6) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller, within the time specified in **paragraph 3M(8)**, shall (i) disclose to Buyer if any item or system specified in **paragraph 3Q** or **9B** or otherwise included in the sale is leased, or not owned by Seller, or is subject to any maintenance or other ongoing financial obligation, or specifically subject to a lien or other encumbrance or loan, and (ii) Deliver to Buyer all written materials (such as lease, warranty, financing, etc.) concerning any such item.
- (7) Seller represents that all items included in the purchase price, unless Otherwise Agreed, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to **paragraph 9B(6)**, and (ii) are transferred without Seller warranty regardless of value. Seller shall cooperate with the identification of any software or applications and Buyer's efforts to transfer any services needed to operate any Smart Home Features or other items included in this Agreement, including, but not limited to, utilities or security systems.
- 10. ALLOCATION OF COSTS FOR INSPECTIONS, TESTS, REPORTS, AND CERTIFICATES:** Paragraph 3R(1) only determines who is to pay for the inspection, report, test, certificate or service mentioned; **it does not determine who is to pay for any work recommended or identified in any such document. Agreements for payment of required work should be specified elsewhere in paragraph 3R, or 3V, or in a separate agreement (such as C.A.R. Forms RR, RRRR, ADM or AEA).** Buyer shall choose the coverages, regardless of any optional coverages indicated, of the home warranty plan and Buyer shall pay any cost of that plan, chosen by Buyer, that exceeds the amount allocated to Seller in **paragraph 3R(15)**. Any reports in these paragraphs shall be Delivered in the time specified in **Paragraph 3P(1)**.
- 11. PUBLIC REPORT:** The following information describes the current status of the public report process specified in **paragraph 3J**.
- A. FINAL PUBLIC REPORT:** A public report is required to be delivered to Buyer prior to the execution of this Agreement.
- B. CONDITIONAL PUBLIC REPORT:** If the Property is subject to a Conditional Public Report under the B&P Code, escrow will not close, funds will not be released from the escrow, and any interest contracted for and the subject of the escrow will not be conveyed until a current Final Public Report is delivered to Buyer. Furthermore, the entire sum of money paid or advanced by Buyer shall be returned to Buyer under B&P Code § 11013.4(a) or 11013.2(a) if (i) the Final Public Report has not been issued within time specified in **paragraph 3J**. Buyer has the ability to cancel the Agreement if the Final Public Report has not been issued unless a conditional public report is renewed for another 6 months, or (ii) the Buyer is dissatisfied with the Final Public Report because of a change pursuant to B&P Code § 11012.
- C. AMENDED/RENEWED PUBLIC REPORT:** An amended/renewed public report is required to be delivered to Buyer prior to execution of this Agreement.
- 12. DISCLOSURES:**
- A. Statement of Defects:**
- (1) As required by DRE Regulation 2790.8, Seller shall complete and provide an "Existing Subdivision Interest Disclosure Statement" form specified in DRE Regulation 2790.9 ("ESI Disclosure") to Buyer as soon as practicable before the transfer of title.
- (2) If any ESI Disclosure is Delivered to Buyer after the offer is Signed, Buyer shall have the right to cancel this Agreement within **3 Days** after Delivery in person or **5 Days** after Delivery by deposit in the mail, or by an electronic record or email satisfying the Uniform Electronic Transactions Act (UETA), by giving written notice of cancellation to Seller or Seller's Agent.
- (3) Seller is obligated to disclose information in the ESI Disclosure based on Seller's actual knowledge, after making a reasonable effort to obtain such information, whether derived from Seller's own investigation and inspection of the Existing Subdivision Interest or from written reports prepared by third parties retained by Seller to perform inspections.
- (4) Seller shall amend any information in an ESI Disclosure after the ESI Disclosure is provided to Buyer, if the information in the ESI Disclosure is or becomes materially inaccurate and the Seller has actual knowledge of the inaccuracy. Seller is otherwise not required to amend the ESI Disclosure once it has been provided to Buyer. If the amended ESI Disclosure shows that the original ESI Disclosure was inaccurate or has become inaccurate in any material respect, Buyer shall have the right to cancel this Agreement within **3 Days** after Delivery in person or **5 Days** after Delivery by deposit in the mail, or by an electronic record or email satisfying the Uniform Electronic Transactions Act (UETA), by giving written notice of cancellation to Seller or Seller's Agent.
- B. NATURAL HAZARD ZONES:** Seller shall, within the time specified in **paragraph 3P(1)**, disclose if Property is located in any of the following: 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 local designated zone for which disclosure is required by Law.
- C. WITHHOLDING TAXES:** Buyer and Seller hereby instruct Escrow Holder to withhold the applicable required amounts to comply with federal and California withholding Laws and forward such amounts to the Internal Revenue Service and Franchise Tax Board, respectively. However, no federal withholding is required if, prior to Close Of Escrow, Seller Delivers (i) to Buyer and Escrow Holder a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law (FIRPTA); **OR** (ii) to a qualified substitute (usually a title company or an independent escrow company) a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law **AND** the qualified substitute Delivers to Buyer and Escrow Holder an affidavit signed under penalty of perjury (C.A.R. Form QS) that the qualified substitute has received the fully completed Seller's affidavit and the Seller states that no federal withholding is required; **OR** (iii) to Buyer other documentation satisfying the requirements under Internal Revenue Code § 1445 (FIRPTA). No withholding is required under California Law if, prior to Close Of Escrow, Escrow Holder has received sufficient documentation from Seller that no withholding is required, and Buyer has been informed by Escrow Holder.



- D. MEGAN'S LAW DATABASE DISCLOSURE:** Notice: Pursuant to § 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](http://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 Agent are required to check this website. If Buyer wants further information, Agent recommends that Buyer obtain information from this website during Buyer's investigation contingency period. Agents do not have expertise in this area.)
- E. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Website. (Neither Seller nor Agent are required to check this website. If Buyer wants further information, Agent recommends that Buyer obtain information from this website during Buyer's investigation contingency period. Agents do not have expertise in this area.)
- F. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**
- (1) Seller shall, within the time specified in **paragraph 3P(1)**, disclose to Buyer whether the Property is a condominium or is located in a planned development, other common interest development, or otherwise subject to covenants, conditions, and restrictions (C.A.R. Form SPQ or ESD).
  - (2) If the Property is a condominium or is located in a planned development or other common interest development with a HOA, Seller shall, within the time specified in **paragraph 3P(3)**, order from, and pay any required fee for the following items to, the HOA (C.A.R. Form HOA-IR): (i) Copies of any documents required by Law (C.A.R. Form HOA-RS); (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; (v) the names and contact information of all HOAs governing the Property; (vi) pet restrictions; and (vii) smoking restrictions ("CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Seller shall, as directed by Escrow Holder, deposit funds into escrow or direct to HOA or management company to pay for any of the above.
- G. SOLAR POWER SYSTEMS:** For properties with any solar panels or solar power systems, Seller shall, within the time specified in **paragraph 3P(1)**, Deliver to Buyer all known information about the solar panels or solar power system. Seller may use the Solar Advisory and Questionnaire (C.A.R. Form SOLAR).
- H. NATURAL AND ENVIRONMENTAL HAZARDS:** Seller shall, within the time specified in **paragraph 3P(1)**, if required by Law: (i) Deliver to Buyer the earthquake guide and environmental hazards booklet, and for all residential property with 1-4 units and any manufactured or mobile home built before January 1, 1960, fully complete and Deliver the Residential Earthquake Risk Disclosure Statement; and (ii) even if exempt from the obligation to provide a NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
- I. PROPOSITION 65 WARNING**  
**MATERIALS INCLUDED IN THE CONSTRUCTION OF THIS HOUSE WILL EXPOSE YOU TO FORMALDEHYDE, A SUBSTANCE KNOWN TO CAUSE CANCER. FURTHER INFORMATION MAY BE OBTAINED FROM THE BUILDER/SELLER.**  
 The following information is intended to explain the warning furnished by Seller of this home for exposures to formaldehyde, a substance known to the State of California to cause cancer. The exposures are caused by materials of which the house is or will be built.  
 The United States Environmental Protection Agency, the California Air Resources Board, and other agencies have measured the presence of formaldehyde in the indoor air of homes in California. Levels of formaldehyde that present a significant cancer risk have been measured in most homes. Formaldehyde is present in the air because it is emitted by a variety of building materials and home products purchased by Seller from materials suppliers. These materials include carpeting, pressed wood products, insulation, plastics, and glues.  
 This home, if constructed prior to entering into this Agreement, has not been tested, and if constructed after entering into this Agreement, will not be tested. Most homes that have been tested elsewhere do contain formaldehyde, although the concentrations vary from home to home with no obvious explanation for the differences. One of the problems is that many suppliers of building materials and home products do not provide information on chemical ingredients to builders. In the absence of specific information on these homes, and in light of the materials used in their construction, Seller believes that a warning is necessary.  
 Buyer may have further questions about these issues. Seller is willing to share any further information Seller has obtained and will provide, upon request, a list of known materials suppliers that may be contacted for further information, and whether any inquiry has been made by Seller.
- J. KNOWN MATERIAL FACTS:** Seller shall, within the time specified in **paragraph 3P(1)**, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including, but not limited to, known insurance claims within the past five years, or provide Buyer with permission to contact insurer to get such information (C.A.R. Form ARC), and make any and all other disclosures required by Law.
- 13. 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, and is specified in **paragraph 3S**.
- 14. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**
- A.** Buyer shall, within the time specified in **paragraph 3M(3)**, have the right, at Buyer's expense unless Otherwise Agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations").
  - B.** Buyer Investigations include, but are not limited to:
    - (1) Inspections regarding any physical attributes of the Property or items connected to the Property, such as:
      - (A) A general home inspection.
      - (B) An inspection for lead-based paint and other lead-based paint hazards.



- (C) An inspection specifically for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2).
- (D) Any other specific inspections of the physical condition of the land and improvements.
- (2) Investigations of any other matter affecting the Property, other than those that are specified as separate contingencies. Buyer Investigations include, but are not limited to, an investigation of the availability and cost of general homeowner's insurance, flood insurance and fire insurance. See, Buyer's Investigation Advisory (C.A.R. Form BIA) for more.
- C. Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations, except for minimally invasive testing required to prepare a Pest Control Report, which shall not include any holes or drilling through stucco or similar material; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- D. Seller shall make the Property available for all Buyer Investigations. Seller is not obligated to move any existing personal property. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is delivered to Buyer. Buyer shall, (i) by the time specified in **paragraph 3M(3)**, complete Buyer Investigations and satisfy themselves as to the condition of the Property, and either remove the contingency or cancel this Agreement, and (ii) by the time specified in **paragraph 3M(3)** or **3 Days** after receipt of any Investigation report, whichever is later, give Seller at no cost, complete Copies of all such reports obtained by Buyer, which obligation shall survive the termination of this Agreement. This Delivery of Investigation reports shall not include any appraisal, except an appraisal received in connection with an FHA or VA loan.
- E. **Buyer indemnity and Seller protection for entry upon the Property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.
- 15. TITLE AND VESTING:**
- A. Buyer shall, within the time specified in **paragraph 3P(1)**, be provided a current Preliminary Report by the person responsible for paying for the title policy in **paragraph 3R(3)**. If Buyer is responsible for paying, Buyer shall act diligently and in good faith to obtain such Preliminary Report within the time specified. The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities.
- B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing. For any lien or matter not being transferred upon sale, Seller will take necessary action to deliver title free and clear of such lien or matter.
- C. Seller shall within **7 Days** after request, give Escrow Holder necessary information to clear title.
- D. Seller shall, within the time specified in **paragraph 3P(1)**, disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- E. If Buyer is a legal entity and the Property purchase price is at least \$300,000 and the purchase price is made without a bank loan or similar form of external financing, a Geographic Targeting Order (GTO) issued by the Financial Crimes Enforcement Network, U.S. Department of the Treasury, requires title companies to collect and report certain information about the Buyer, depending on where the Property is located. Buyer agrees to cooperate with the title company's effort to comply with the GTO.
- F. Buyer shall, after Close Of Escrow, receive a recorded grant deed or any other conveyance document required to convey title (For example, for stock cooperative or tenancy in common, respectively, an assignment of stock certificate or assignment of seller's interest in the real property), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's vesting instructions. The recording document shall contain Buyer's post-closing mailing address to enable Buyer's receipt of the recorded conveyance document from the County Recorder. **THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.**
- G. Buyer shall receive a "ALTA/CLTA Homeowner's Policy of Title Insurance" or equivalent policy of title insurance, if applicable to the type of property and buyer. Escrow Holder shall request this policy. If a ALTA/CLTA Homeowner's Policy of Title Insurance is not offered, Buyer shall receive a CLTA Standard Coverage policy unless Buyer has chosen another policy and instructed Escrow Holder in writing of the policy chosen and agreed to pay any increase in cost. Buyer should consult with the Title Company about the availability, and difference in coverage, and cost, if any, between a ALTA/CLTA Homeowner's Policy and a CLTA Standard Coverage policy and other title policies and endorsements. Buyer should receive notice from the Title Company on its Preliminary (Title) Report of the type of coverage offered. If Buyer is not notified on the Preliminary (Title) Report or is not satisfied with the policy offered, and Buyer nonetheless removes the contingency for Review of the Preliminary Report, Buyer will receive the policy as specified in this paragraph.
- 16. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).**
- A. **SELLER DELIVERY OF DOCUMENTS:** Seller shall, within the time specified in **paragraph 3P(1)**, Deliver to Buyer all reports, disclosures and information ("Reports") for which Seller is responsible as specified in **paragraphs 9B(6), 10, 12A, 12B, 12C, 12F, 12G, 12H, 12J, 15A, 15D, 32, 33, and 36**. This paragraph does not apply to the delivery of the Public Report. See **paragraphs 3J and 11** for Public Report delivery requirements.

**B. BUYER REVIEW OF DOCUMENTS; REPAIR REQUEST; CONTINGENCY REMOVAL OR CANCELLATION**

- (1) Buyer has the time specified in **paragraph 3** to: (i) perform Buyer Investigations; review all disclosures, Reports, lease documents to be assumed by Buyer pursuant to **paragraph 9B(6)**, and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and (ii) Deliver to Seller Signed Copies of Statutory and Other Disclosures Delivered by Seller in accordance with **paragraph 12**.
- (2) Buyer may, within the time specified in **paragraph 3M(3)**, request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to Buyer's requests (C.A.R. Form RR or RRRR). If Seller does not agree or does not respond, Buyer is not contractually entitled to have the repairs or other requests made and may only cancel based on contingencies in this Agreement.
- (3) Buyer shall, by the end of the times specified in **paragraph 3M** (or as Otherwise Agreed), Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement (C.A.R. Form CR or CC). However, if any report, disclosure, or information for which Seller is responsible, is not Delivered within the time specified in **paragraph 3P(1)**, then Buyer has **5 Days** after Delivery of any such items, or the times specified in **paragraph 3M(4-8)**, whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement. If Delivery of any Report occurs after a contractual contingency pertaining to that Report has already been waived or removed, the Delivery of the Report does not revive the contingency.
- (4) **Continuation of Contingency:** Even after the end of the time specified in **paragraph 3L** and before Seller cancels, if at all, pursuant to **paragraph 16C**, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to **paragraph 16C(1)**.

**C. SELLER RIGHT TO CANCEL:**

- (1) **SELLER RIGHT TO CANCEL; BUYER CONTINGENCIES:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
- (2) **SELLER RIGHT TO CANCEL; BUYER CONTRACT OBLIGATIONS:** Seller, after first Delivering to Buyer a Notice to Buyer to Perform, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by **paragraph 3D(1)** or **3D(2)** or if the funds deposited pursuant to **paragraph 3D(1)** or **3D(2)** are not good when deposited; (ii) Deliver updated contact information for Buyer's lender(s) as required by **paragraph 5C(3)**; (iii) Deliver a notice of FHA or VA costs or terms, if any, as specified by **paragraph 5C(4)** (C.A.R. Form RR); (iv) Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by **paragraph 5B** or **6A**; (v) Deliver a letter as required by **paragraph 6B**; (vi) In writing assume or accept leases or liens specified in **paragraph 8H**; (vii) Cooperate with the title company's effort to comply with the GTO as required by **paragraph 15E**; (viii) Sign or initial a separate liquidated damages form for an increased deposit as required by **paragraph 5A(2)** and **40**; (ix) Provide evidence of authority to Sign in a representative capacity as specified in **paragraph 30**; or (x) Perform any additional Buyer contractual obligation(s) included in this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer and other expenses already paid by Escrow Holder pursuant to this Agreement prior to Seller's cancellation.
- (3) **SELLER RIGHT TO CANCEL; SELLER CONTINGENCIES:** Seller may cancel this Agreement by good faith exercise of any Seller contingency included in this Agreement, or Otherwise Agreed, so long as that contingency has not already been removed or waived in writing.

**D. BUYER RIGHT TO CANCEL:**

- (1) **BUYER RIGHT TO CANCEL; SELLER CONTINGENCIES:** If, by the time specified in this Agreement, Seller does not Deliver to Buyer a removal of the applicable contingency or cancellation of this Agreement, then Buyer, after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, including fees and expenses incurred by Buyer and other expenses already paid by Escrow Holder pursuant to this Agreement prior to Buyer's cancellation.
- (2) **BUYER RIGHT TO CANCEL; SELLER CONTRACT OBLIGATIONS:** If, by the time specified, Seller has not Delivered any item specified in **paragraph 3P(1)** or Seller has not performed any Seller contractual obligation included in this Agreement by the time specified, Buyer, after first Delivering to Seller a Notice to Seller to Perform, may cancel this Agreement.
- (3) **BUYER RIGHT TO CANCEL; BUYER CONTINGENCIES:** Buyer may cancel this Agreement by good faith exercise of any Buyer contingency included in **paragraph 8**, or Otherwise Agreed, so long as that contingency has not already been removed in writing.

- E. NOTICE TO BUYER OR SELLER TO PERFORM:** The Notice to Buyer to Perform or Notice to Seller to Perform shall: (i) be in writing; (ii) be Signed by the applicable Buyer or Seller; and (iii) give the other Party at least **2 Days** after Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A Notice to Buyer to Perform or Notice to Seller to Perform may not be Delivered any earlier than **2 Days** prior to the Scheduled Performance Day to remove a contingency or cancel this Agreement or meet an obligation specified in **paragraph 16**, whether or not the Scheduled Performance Day falls on a Saturday, Sunday or legal holiday. If a Notice to Buyer to Perform or Notice to Seller to Perform is incorrectly Delivered or specifies a time less than the agreed time, the notice shall be deemed invalid and void, and Seller or Buyer shall be required to Deliver a new Notice to Buyer to Perform or Notice to Seller to Perform with the specified timeframe.

**F. EFFECT OF REMOVAL OF CONTINGENCIES:**

- (1) **REMOVAL OF BUYER CONTINGENCIES:** If Buyer removes any contingency or cancellation rights, unless Otherwise Agreed, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of Reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for the non-delivery of any Reports, disclosures or information outside of Seller's control and for any Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.
- (2) **REMOVAL OF SELLER CONTINGENCIES:** If Seller removes any contingency or cancellation rights, unless Otherwise Agreed, Seller shall conclusively be deemed to have: (i) satisfied themselves regarding such contingency, (ii) elected to proceed with the transaction; and (iii) given up any right to cancel this Agreement based on such contingency.

- G. DEMAND TO CLOSE ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a Demand to Close Escrow (C.A.R. Form DCE). The DCE shall: (i) be Signed by the applicable Buyer or Seller; and (ii) give the other Party at least **3 Days** after Delivery to close escrow. A DCE may not be Delivered any earlier than **3 Days** prior to the Scheduled Performance Day for the Close Of Escrow. If a DCE is incorrectly Delivered or specifies a time less than the agreed time, the DCE shall be deemed invalid and void, and Seller or Buyer shall be required to Deliver a new DCE.
- H. EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign and Deliver mutual instructions to cancel the sale and escrow and release deposits, if any, to the Party entitled to the funds, less (i) fees and costs paid by Escrow Holder on behalf of that Party, if required by this Agreement; and (ii) any escrow fee charged to that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. **A release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. A Party may be subject to a civil penalty of up to \$1,000 for refusal to Sign cancellation instructions if no good faith dispute exists as to which Party is entitled to the deposited funds (Civil Code § 1057.3). Note: Neither Agents nor Escrow Holder are qualified to provide any opinion on whether either Party has acted in good faith or which Party is entitled to the deposited funds. Buyer and Seller are advised to seek the advice of a qualified California real estate attorney regarding this matter.**
- 17. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final inspection of the Property accompanied by Seller within the time specified in **paragraph 3K**, 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 notice at least **3 Days** prior to 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 welling, 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.
- 18. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless Otherwise Agreed, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, Seller rental payments, HOA regular assessments due 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. Seller shall pay any HOA special or emergency assessments due prior to Close Of Escrow. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special or emergency assessments that are due after Close Of Escrow. Property will be reassessed upon change of ownership. Any supplemental tax bills delivered to Escrow Holder prior to closing shall be prorated and paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). Seller agrees all service fees, maintenance costs and utility bills will be paid current up and through the date of Close Of Escrow. **TAX BILLS AND UTILITY BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.** Prorations shall be made based on a 30-day month. Any exceptions shall be specified in **paragraph 3V**.
- 19. BROKERS AND AGENTS:**
- A. COMPENSATION:** Seller or Buyer, or both, as applicable, agree to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer. If Seller agrees to pay Buyer's Broker (see **paragraph 3G(3)**), Seller shall be entitled to a copy of the portion of the written compensation agreement between Buyer and Buyer's Broker identifying the compensation to be paid. See C.A.R. Form SPBB for further information.
- B. SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Agent: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or off site unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Agent; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.
- C. REFERRAL LICENSEE COMPENSATION:** (If checked in **paragraph 2E**), Seller or Buyer, agree that Referral Licensee shall be compensated the amount specified in **paragraph 2E**. **Note to Referral Licensee: Agency relationships can be established by conduct notwithstanding the classification as a referral licensee in the Agreement.**
- 20. 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 escrow: **paragraphs 1, 3A, 3B, 3D-G, 3P(2), 3R, 3V, 5A(1-2) 5D, 5E, 10, 12C, 12F(2), 15 (except 15D), 16H, 18, 19A, 20, 24, 27, 29, 30, 43, 44, and paragraph 3 of the Real Estate Brokers Section.** If a Copy of the separate compensation agreement(s) provided for in **paragraph 19A** or **paragraph C of the Real Estate Brokers Section** is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this 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.



**B. IF 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:** For the benefit of Buyer, the escrow shall not close, funds shall not be released from escrow, and title shall not be conveyed to Buyer, until all of the following conditions have been met: (i) Seller has complied with the purchase money handling requirements of B&P Code §§ 11013, 11013.1, 11013.2, or 11013.4, as applicable; and (ii) Buyer has been provided a policy of title insurance showing that the Property is free and clear of any blanket encumbrances as defined in § 11013. For purposes of compliance with § 11013.2(a), a release from a blanket encumbrance resulting from a deed of trust or mortgage shall require satisfaction with either of the following: (a) an instrument has been duly recorded unconditionally reconveying and releasing the Property from the lien or charge of such deed of trust; or (b) Buyer is notified that an agreement or demand constituting a release agreement as defined in DRE Regulation 2791.1(b)(2)(A) has been duly deposited with Escrow Holder and is available to Buyer on request for each deed of trust, and Buyer will be provided with a policy of title insurance insuring Buyer against loss by reason of such deed of trust.
- (2) **COMMON INTEREST SUBDIVISION:** The Property is in a common interest subdivision and the attached Condominium Conversion And Existing Subdivision Supplemental Escrow Instructions (C.A.R. Form CEEL) are made a part of this Agreement. **Note to Seller: For property subject to a public report, you must use the Condominium Conversion and Existing Subdivision Supplemental Escrow Instructions provided with this ABSPA or for any other supplemental escrow instructions you intend to use you must submit them to, and have them be accepted by, the DRE.**
- (3) If escrow does not close within 1 year after Acceptance of this Agreement, and Buyer and Seller have not extended the closing date in writing, and the failure to close escrow is not due to the default of Buyer, escrow is to be cancelled and all funds in escrow immediately returned to Buyer upon Buyer's request.
- (4) Subject to the requirements of Civil Code §§ 1675(c) or (d), 1676, 1677, and 1678, if funds deposited in escrow by Buyer have been disbursed on Seller's instructions as permitted by DRE Regulation 2791, the funds expended by Seller shall be reimbursed to escrow within **15 Days** after Seller's failure to perform within 1 year after Acceptance of this Agreement, and Buyer and Seller have not extended the closing date in writing, and those funds shall be immediately returned to Buyer from escrow.
- (5) Escrow shall not close until Escrow Holder has received written notice from a title insurance company that each and every encumbrance, including without limitation, any mortgage or deed of trust, filed of record prior to the time of recording of the Declaration of Covenants, Conditions, and Restrictions has either (i) fully reconveyed or (ii) expressly subordinated to the Declaration of Covenants, Conditions, and Restrictions.
- (6) For properties that have been either completed or occupied more than 3 years prior to a public report application being filed with the DRE, the Seller disclosure shall be on the form specified in DRE Regulation 2790.9.

**C.** Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder. 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 shall Sign and return Escrow Holder's general provisions or supplemental instructions within the time specified in **paragraph 3P(2)**. Buyer and Seller shall execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within **3 Days**, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by **paragraphs 3, 8, 10, 12**, or elsewhere in this Agreement.

**D.** A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within **3 Days** after Acceptance. 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 this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title Company when received from Seller, if a separate company is providing title insurance. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under **paragraph 12C**, Escrow Holder shall deliver to Buyer, Buyer's Agent, and Seller's Agent a Qualified Substitute statement that complies with federal Law. If Escrow Holder's Qualified Substitute statement does not comply with federal law, the Parties instruct escrow to withhold all applicable required amounts under **paragraph 12C**.

**E.** Agents are not a party to the escrow except for the sole purpose of receiving compensation pursuant to **paragraph 19A and paragraph 3 of the Real Estate Brokers Section**. If a Copy of the separate compensation agreement(s) provided for in either of those paragraphs is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). Buyer and Seller irrevocably assign to Brokers compensation specified in **paragraph 19A**, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.

**F.** Buyer and Seller acknowledge that Escrow Holder may require invoices for expenses under this Agreement. Buyer and Seller, upon request by Escrow Holder, within **3 Days** or within a sufficient time to close escrow, whichever is sooner, shall provide any such invoices to Escrow Holder.

**G.** Upon receipt, Escrow Holder shall provide Buyer, Seller, and each Agent verification of Buyer's deposit of funds pursuant to **paragraphs 5A(1) and 5A(2)**. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify each Agent: (i) if Buyer's initial or any additional deposit or down payment is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.

**H.** A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within **3 Days** after mutual execution of the amendment.

**21. SELECTION OF SERVICE PROVIDERS:** Agents do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Agent or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.

**22. MULTIPLE LISTING SERVICE ("MLS"):** Agents are authorized to report to the MLS that an offer has been accepted and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS. Buyer acknowledges that: (i) any pictures, videos, floor plans (collectively, "Images") or other information about the Property that has been or will be inputted into the MLS or internet portals, or both, at the instruction of Seller or in compliance with MLS rules, will not be removed after Close Of Escrow; (ii) California Civil Code § 1088(c) requires the MLS to maintain such Images and information for at least three years and as a result they may be displayed or circulated on the Internet, which cannot be controlled or removed by Seller or Agents; and (iii) Seller, Seller's Agent, Buyer's Agent, and MLS have no obligation or ability to remove such Images or information from the Internet.



- 23. ATTORNEY FEES AND COSTS:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in **paragraph 41A**.
- 24. ASSIGNMENT/NOMINATION:** Buyer shall have the right to assign all of Buyer's interest in this Agreement to Buyer's own trust or to any wholly owned entity of Buyer that is in existence at the time of such assignment. Otherwise, Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee. Such consent shall not be unreasonably withheld. Prior to any assignment, Buyer shall disclose to Seller the name of the assignee and the amount of any monetary consideration between Buyer and assignee. Buyer shall provide assignee with all documents related to this Agreement including, but not limited to, the Agreement and any disclosures. If assignee is a wholly owned entity or trust of Buyer, that assignee does not need to re-sign or initial all documents provided. Whether or not an assignment requires seller's consent, at the time of assignment, assignee shall deliver a letter from assignee's lender that assignee is prequalified or preapproved as specified in **paragraph 6B**. Should assignee fail to deliver such a letter, Seller, after first giving Assignee an Notice to Buyer to Perform, shall have the right to terminate the assignment. Buyer shall, within the time specified in **paragraph 3L**, Deliver any request to assign this Agreement for Seller's consent. If Buyer fails to provide the required information within this time frame, Seller's withholding of consent shall be deemed reasonable. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless Otherwise Agreed by Seller (C.A.R. Form AOA). Parties shall provide any assignment agreement to Escrow Holder within 1 Day after the assignment. Any nomination by Buyer shall be subject to the same procedures, requirements, and terms as an assignment as specified in this paragraph.
- 25. 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.
- 26. EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
- 27. DEFINITIONS and INSTRUCTIONS:** The following words are defined terms in this Agreement, shall be indicated by initial capital letters throughout this Agreement, and have the following meaning whenever used:
- A. **"Acceptance"** means the time the offer or final counter offer is fully executed, in writing, by the recipient Party and is Delivered to the offering Party or that Party's Authorized Agent.
  - B. **"Agent"** means the Broker, salesperson, broker-associate or any other real estate licensee licensed under the brokerage firm identified in **paragraph 2B**.
  - C. **"Agreement"** means this document and any counter offers and any incorporated addenda or amendments, collectively forming the binding agreement between the Parties. Addenda and amendments are incorporated only when Signed and Delivered by all Parties.
  - D. **"As-Is"** condition: Seller shall disclose known material facts and defects as specified in this Agreement. Buyer has the right to inspect the Property and, within the time specified, request that Seller make repairs or take other corrective action, or exercise any contingency cancellation rights in this Agreement. Seller is only required to make repairs specified in this Agreement or as Otherwise Agreed.
  - E. **"Authorized Agent"** means an individual real estate licensee specified in the Real Estate Broker Section.
  - F. **"C.A.R. Form"** means the most current version of the specific form referenced or another comparable form agreed to by the Parties.
  - G. **"Close Of Escrow"**, including "COE", means the date the grant deed, or other evidence of transfer of title, is recorded for any real property, or the date of Delivery of a document evidencing the transfer of title for any non-real property transaction.
  - H. **"Copy"** means copy by any means including photocopy, facsimile and electronic.
  - I. **Counting Days** is done as follows unless Otherwise Agreed: (1) The first Day after an event is the first full calendar date following the event, and ending at 11:59 pm. For example, if a Notice to Buyer to Perform (C.A.R. form NBP) is Delivered at 3 pm on the 7th calendar day of the month, or Acceptance of a counter offer is personally received at 12 noon on the 7th calendar day of the month, then the 7th is Day "0" for purposes of counting days to respond to the NBP or calculating the Close Of Escrow date or contingency removal dates and the 8th of the month is Day 1 for those same purposes. (2) All calendar days are counted in establishing the first Day after an event. (3) All calendar days are counted in determining the date upon which performance must be completed, ending at 11:59 pm on the last day for performance ("Scheduled Performance Day"). (4) After Acceptance, if the Scheduled Performance Day for any act required by this Agreement, including Close Of Escrow, lands on a Saturday, Sunday, or Legal Holiday, the performing party shall be allowed to perform on the next day that is not a Saturday, Sunday or Legal Holiday ("Allowable Performance Day"), and ending at 11:59 pm. "Legal Holiday" shall mean any holiday or optional bank holiday under Civil Code §§ 7 and 7.1 and any holiday under Government Code § 6700. (5) For the purposes of COE, any day that the Recorder's office in the County where the Property is located is closed or any day that the lender or Escrow Holder under this Agreement is closed, the COE shall occur on the next day the Recorder's office in that County, the lender, and the Escrow Holder are open. (6) COE is considered Day 0 for purposes of counting days Seller is allowed to remain in possession, if permitted by this Agreement.
  - J. **"Day"** or **"Days"** means calendar day or days. However, delivery of deposit to escrow is based on business days.
  - K. **"Deliver", "Delivered" or "Delivery"** of documents, unless Otherwise Agreed, means and shall be effective upon personal receipt of the document by Buyer or Seller or their Authorized Agent. Personal receipt means (i) a Copy of the document, or as applicable, link to the document, is in the possession of the Party or Authorized Agent, regardless of the Delivery method used (i.e. e-mail, text, other), or (ii) an Electronic Copy of the document, or as applicable, link to the document, has been sent to any of the designated electronic delivery addresses specified in the Real Estate Broker Section on page 16. After Acceptance, Agent may change the designated electronic delivery address for that Agent by, in writing, Delivering notice of the change in designated electronic delivery address to the other Party. Links could be, for example, to DropBox or GoogleDrive or other functionally equivalent program. If the recipient of a link is unable or unwilling to open the link or download the documents or otherwise prefers Delivery of the documents directly, Recipient of a link shall notify the sender in writing, within **3 Days** after Delivery of the link (C.A.R. Form RFR). In such case, Delivery shall be effective upon Delivery of the documents and not the link. Failure to notify sender within the time specified above shall be deemed consent to receive, and Buyer opening, the document by link.
  - L. **"DRE"** means the Department of Real Estate.
  - M. **"Electronic Copy" or "Electronic Signature"** means, as applicable, an electronic copy or signature complying with California Law. Unless Otherwise Agreed, Buyer and Seller agreed to the use of Electronic Signatures. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
  - N. **"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.
  - O. **"Legally Authorized Signer"** means an individual who has authority to Sign for the principal as specified in **paragraph 43** or **paragraph 44**.

Property Address: 18754 White Moon Drive, Morgan Hill, CA 95037 Date: \_\_\_\_\_

- P. "Otherwise Agreed" means an agreement in writing, signed by both Parties and Delivered to each.
- Q. "Repairs" means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
- R. "Sign" or "Signed" means either a handwritten or Electronic Signature on an original document, Copy or any counterpart.
28. **TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the terms and conditions herein. The individual Liquidated Damages and Arbitration of Disputes paragraphs are incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a Counter Offer or addendum. **If at least one but not all Parties initial, a Counter Offer is required until agreement is reached.** Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance and to market the Property for backup offers after Acceptance. The Parties have read and acknowledge receipt of a Copy of the offer and agree to the 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. By signing this offer or any document in the transaction, the Party Signing the document is deemed to have read the document in its entirety.
29. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as Otherwise Agreed, this Agreement shall be interpreted, and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**
30. **LEGALLY AUTHORIZED SIGNER:** Wherever the signature or initials of the Legally Authorized Signer identified in **paragraph 43** or **44** appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Legally Authorized Signer **(i)** represents that the entity for which that person is acting already exists and is in good standing to do business in California and **(ii)** shall Deliver to the other Party and Escrow Holder, within the time specified in **paragraph 3P(4)**, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code § 18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).
31. **DOCUMENTATION TO SUBSEQUENT PURCHASERS:** Buyer is instructed to give any subsequent purchasers all documents related to the sale and purchase that Buyer receives from Seller.
32. **MAINTENANCE RECOMMENDATIONS:** Provided with the Agreement are Copies of all builder maintenance and preventative maintenance recommendations.
33. **MANUFACTURED PRODUCTS MAINTENANCE AND LIMITED WARRANTIES:** Provided with the Agreement are Copies of all manufactured products maintenance, preventative maintenance, and limited warranty information.
34. **SELLER'S STANDARD WARRANTY:**
- A. Seller **(i)** warrants the Property against defective materials and for the minimum periods of time established by Civil Code § 896 and **(ii)** warrants fit and finish items specified in Civil Code § 900 for one year. Seller's Standard Warranty only applies if Seller receives notice of such defect(s) within the warranty period. Items or defects that were inspected and approved under **paragraph 16** or thereafter, minor settling cracks, damage caused by Buyer or movers, or damage due to alterations or additions made other than by Seller, are excluded from Seller's Standard Warranty. For defects that are covered by the Seller's Standard Warranty, Seller will, within a reasonable time, at Seller's option repair or replace any covered defect in the Property.
  - B. Seller shall not be liable for, or have any obligation to provide, warranty services with respect to any defect expressly accepted by Buyer at Close Of Escrow.
  - C. THE SELLER'S STANDARD WARRANTY IS PROVIDED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OF FITNESS, AND IN LIEU OF ANY STRICT LIABILITY OF SELLER IN TORT, TO THE EXTENT SUCH LIABILITY MAY BE DISCLAIMED UNDER CALIFORNIA LAW. THE SELLER'S STANDARD WARRANTY ALSO EXCLUDES LIABILITY FOR CONSEQUENTIAL DAMAGES TO THE EXTENT THAT SUCH LIABILITY MAY BE DISCLAIMED UNDER CALIFORNIA LAW.
  - D. WHETHER OR NOT SELLER WARRANTS ANY ASPECT OF THE PROPERTY, SELLER IS OBLIGATED TO DISCLOSE KNOWN MATERIAL FACTS, AND TO MAKE OTHER DISCLOSURES REQUIRED BY LAW.
  - E. Buyer and Seller understand and acknowledge that Brokers or Referral Licensee shall not be liable for any breach of this paragraph.

**35. BUILDER LIMITED CONTRACTUAL WARRANTIES:** Provided with this Agreements are Copies of all builder limited contractual warranties not specified in **paragraph 34** of this Agreement or elsewhere in writing.  
**PROCEDURES FOR ACTIONS ON CONSTRUCTION DEFECTS AND ESCROW INSTRUCTION:** This sale is governed by Civil Code §§ 895-945.5 and all of the terms of **paragraph 36** apply.

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

**B. Escrow Holder Instruction:** By signing this document, the Parties are instructing Escrow Holder to insert in the deed the language specified in quotes in **paragraph 36A** above.

**C. ☐ If not previously provided to Buyer, or separately provided as an addendum to this Agreement, attached to the Agreement is a Copy of California Civil Code §§ 895-945.5 (C.A.R. Document SB 800). (NOTE: REALTORS® may obtain a copy in the EPubs library in zipForm®.)**

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

Buyer's Initials \_\_\_\_\_/\_\_\_\_\_

Seller's Initials \_\_\_\_\_/\_\_\_\_\_

**E. AGENT FOR NOTICE:** Claims and requests for information relating to construction defect allegations made pursuant to Chapter 4 of Title 7 of Part 2 of Division 2 of the California Civil Code commencing with § 910 may be made to the following person at the following address: \_\_\_\_\_.  
By initialing here, Buyer and Seller acknowledge that each has read and understands this paragraph

Buyer's Initials \_\_\_\_\_/\_\_\_\_\_

Seller's Initials \_\_\_\_\_/\_\_\_\_\_

**36. NON-ADVERSARIAL PROCEDURE OF CALIFORNIA CIVIL CODE:** Seller elects to engage in the non-adversarial procedure set forth in California Civil Code § 914 for construction defect claims, unless initialed in this paragraph. If initialed here, Seller opts out and Buyer and Seller agree to be bound by the alternative procedure, set forth in the attached Addendum.

Buyer's Initials \_\_\_\_\_/\_\_\_\_\_

Seller's Initials \_\_\_\_\_/\_\_\_\_\_

**WARNING: DO NOT INITIAL HERE UNLESS BOTH PARTIES INTEND TO OPT OUT OF NON-ADVERSARIAL PROCEDURES**

- 37. PURCHASE MONEY DISTRIBUTIONS TO THIRD PARTIES:** Pursuant to DRE Regulation 2791(b), certain distributions and charges may be made against Buyer's deposits to Seller. These charges under Regulation 2791(b), and the Seller estimates of such charges, are set forth in **paragraph 3T**.
- 38. RETENTION OF BUYER DEPOSITS IN THE EVENT OF BUYER DEFAULT:** In the event Seller has used Buyer's deposits pending consummation of this Agreement, Seller shall immediately, upon alleging Buyer's default, transmit to Escrow Holder funds equal to all of Buyer's deposits so used.

**39. 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 PARAGRAPHS 3D AND 7A 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 IS 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 CONSTITUTED 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: (i) ESCROW HOLDER SHALL PROMPTLY REMIT THE AMOUNT DEMANDED TO SELLER; AND (ii) 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 PARAGRAPHS 41 AND 42 OF THIS AGREEMENT.**
  - (5) IF THE DETERMINATION AS TO WHETHER SELLER IS ENTITLED TO THE DISBURSEMENT OF PURCHASE MONEY AS LIQUIDATED DAMAGES IS REFERRED TO ARBITRATION, ANY FEE TO INITIATE ARBITRATION SHALL BE PAID BY SELLER, BUT THE COST OF ARBITRATION SHALL ULTIMATELY BE BORNE AS DETERMINED BY THE ARBITRATOR.**

**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 1: CIVIL CODE § 1675(D) IS APPLICABLE TO THIS PROVISION. § 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.**

**NOTE 2: IF THE PROPERTY IS AN ATTACHED RESIDENTIAL CONDOMINIUM LOCATED WITHIN A STRUCTURE OF 10 OR MORE RESIDENTIAL CONDOMINIUM UNITS AND PARTIES HAVE AGREED TO LIQUIDATED DAMAGES IN THIS ADDENDUM, SELLER'S RETENTION OF ANY AMOUNT IN EXCESS OF 3 PERCENT OF THE PURCHASE PRICE SHALL BE SUBJECT TO CALIFORNIA CIVIL CODE § 1675(F).**

#### **40. MEDIATION:**

- A. The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. The mediation shall be conducted through the C.A.R. Real Estate Mediation Center for Consumers ([www.consumermediation.org](http://www.consumermediation.org)) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Agents(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. Mediation fees, if any, shall be divided equally among the Parties involved, and shall be recoverable under the prevailing party attorney fees clause. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.**

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



- B. **ADDITIONAL MEDIATION TERMS:** (i) Exclusions from this mediation agreement are specified in paragraph 42B; (ii) The obligation to mediate does not preclude the right of either Party to seek a preservation of rights under paragraph 42C; and (iii) Agent's rights and obligations are further specified in paragraph 42D. These terms apply even if the Arbitration of Disputes paragraph is not initialed.

**41. ARBITRATION OF DISPUTES:**

- A. **THE PARTIES AGREE THAT ANY CONTROVERSY BETWEEN THEM REGARDING LIQUIDATED DAMAGES, TERMINATION OF THIS AGREEMENT BEFORE CLOSE OF ESCROW, BUYER'S INTEREST IN THE PROPERTY OF 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, 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 THE 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 ARBITRATION DO NOT SPECIFY A DATE BY WHICH THE ARBITRATION MUST COMMENCE, THEN IT SHALL COMMENCE ON A DATE AGREED TO BY THE PARTIES. IF THE PARTIES CANNOT AGREE ON AN ARBITRATION COMMENCEMENT DATE, IT SHALL COMMENCE ON THE DATE DETERMINED BY THE ARBITRATOR(S).**
  - (6) **THE ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH RULES AND PROCEDURES WHICH ARE REASONABLE AND FAIR TO BUYER AND SELLER. THE AMERICAN ARBITRATION ASSOCIATION COMMERCIAL RULES OF ARBITRATION IN EFFECT AS OF THE DATE OF THIS AGREEMENT SHALL BE DEEMED IN COMPLIANCE WITH THIS REQUIREMENT.**
  - (7) **THE ARBITRATION SHALL CONCLUDE PROMPTLY AND TIMELY.**
  - (8) **THE ARBITRATOR(S) ARE AUTHORIZED TO PROVIDE ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR EQUITY FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF THE ARBITRATION**
  - (9) **JUDGMENT UPON THE DECISION RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED INTO ANY COURT HAVING PROPER JURISDICTION.**
- B. **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court; (ii) 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; and (iii) an unlawful detainer action.
- C. **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, provided the filing party concurrent with, or immediately after such filing, makes a request to the court for a stay of litigation pending any applicable mediation or arbitration proceeding; or (iii) the filing of a mechanic's lien.
- D. **AGENTS; REFERRAL LICENSEE:** Neither Agents nor Referral Licensee shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Agent(s) or Referral Licensee participating in mediation or arbitration shall not be deemed a party to this Agreement.
- E. **"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' PROVISION TO NEUTRAL ARBITRATION."**

**Buyer's Initials \_\_\_\_\_/\_\_\_\_\_**

**Seller's Initials \_\_\_\_\_/\_\_\_\_\_**

#### 42. BUYER'S OFFER

- A. EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless by the date and time specified in **paragraph 3C**, the offer is Signed by Seller and a Copy of the Signed offer is Delivered to Buyer or Buyer's Authorized Agent. **Seller has no obligation to respond to an offer made.**
- B. ☐ ENTITY BUYERS:** (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)
- (1) One or more Buyers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or other entity.
  - (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 30** for additional terms.
  - (3) The name(s) of the Legally Authorized Signer(s) is/are: \_\_\_\_\_.
  - (4) If a trust, identify Buyer as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust).
  - (5) If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: \_\_\_\_\_.
- C.** The ABSPA has 19 pages. Buyer acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

#### BUYER SIGNATURE(S):

(Signature) By, \_\_\_\_\_ Date: \_\_\_\_\_  
Printed name of BUYER: \_\_\_\_\_  
☐ Printed Name of Legally Authorized Signer: \_\_\_\_\_ Title, if applicable, \_\_\_\_\_

(Signature) By, \_\_\_\_\_ Date: \_\_\_\_\_  
Printed name of BUYER: \_\_\_\_\_  
☐ Printed Name of Legally Authorized Signer: \_\_\_\_\_ Title, if applicable, \_\_\_\_\_

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

#### 43. ACCEPTANCE

- A. ACCEPTANCE OF OFFER:** Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions. Seller has read and acknowledges receipt of a Copy of this Agreement and authorizes Agent to Deliver a Signed Copy to Buyer.
- Seller's acceptance is subject to the attached Counter Offer or Back-Up Offer Addendum, or both, checked below.** Seller shall return and include the entire agreement with any response.
- ☐ **Seller Counter Offer** (C.A.R. Form SCO or SMCO)  
☐ **Back-Up Offer Addendum** (C.A.R. Form BUO)
- Note to Seller: For any counter offer or back-up addendum you intend to use with this Agreement, you must submit them to, and have them be accepted by, the DRE.**
- B. ☐ Entity Sellers:** (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure form (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)
- (1) One or more Sellers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or other entity.
  - (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 30** for additional terms.
  - (3) The name(s) of the Legally Authorized Signer(s) is/are: \_\_\_\_\_.
  - (4) If a trust, identify Seller as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust).
  - (5) If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: \_\_\_\_\_.

- C.** The ABSPA has 19 pages. Seller acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

#### SELLER SIGNATURE(S):

(Signature) By, \_\_\_\_\_ Date: \_\_\_\_\_  
Printed name of SELLER: \_\_\_\_\_  
☐ Printed Name of Legally Authorized Signer: \_\_\_\_\_ Title, if applicable, \_\_\_\_\_

(Signature) By, \_\_\_\_\_ Date: \_\_\_\_\_  
Printed name of SELLER: \_\_\_\_\_  
☐ Printed Name of Legally Authorized Signer: \_\_\_\_\_ Title, if applicable, \_\_\_\_\_

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

**OFFER NOT ACCEPTED:** \_\_\_\_\_ / \_\_\_\_\_ No Counter Offer is being made. This offer was not accepted by Seller \_\_\_\_\_ (date)  
Seller's Initials



**REAL ESTATE BROKERS SECTION:**

1. **Real Estate Agents are not parties to the Agreement between Buyer and Seller.**
2. **Agency relationships are confirmed as stated in paragraph 2.**
3. **Cooperating Broker Compensation:** Seller's Broker agrees to pay Buyer's Broker and Buyer's Broker agrees to accept, out of Seller's Broker's proceeds in escrow, the amount specified in the MLS, provided Buyer's Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Seller's Broker and Buyer's Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.
4. **Presentation of Offer:** Pursuant to the National Association of REALTORS® Standard of Practice 1-7, if Buyer's Agent makes a written request, Seller's Agent shall confirm in writing that this offer has been presented to Seller.
5. **Agents' Signatures and designated electronic delivery address:**

**A. Buyer's Brokerage Firm** Reward Realty Lic. # 01933390  
 By Caroline Hobbs Lic. # 01901869 Date \_\_\_\_\_  
 By \_\_\_\_\_ Lic. # \_\_\_\_\_ Date \_\_\_\_\_  
 Address 17500 Depot St Suite 120 City Morgan Hill State CA Zip 95037  
 Email caroline@rewardrealty.org Phone # (650) 440-0050  
☐ More than one agent from the same firm represents Buyer. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.  
☐ More than one brokerage firm represents Buyer. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.

**Designated Electronic Delivery Address(es) (check all that apply):**
☐ Email above ☐ Text to Phone # above ☐ Alternate: \_\_\_\_\_

**B. Seller's Brokerage Firm** \_\_\_\_\_ Lic. # \_\_\_\_\_  
 By \_\_\_\_\_ Lic. # \_\_\_\_\_ Date \_\_\_\_\_  
 By \_\_\_\_\_ Lic. # \_\_\_\_\_ Date \_\_\_\_\_  
 Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Email \_\_\_\_\_ Phone # \_\_\_\_\_  
☐ More than one agent from the same firm represents Seller. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.  
☐ More than one brokerage firm represents Seller. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.

**Designated Electronic Delivery Address(es) (To be filled out by Seller's Agent) (check all that apply):**
☐ Email above ☐ Text to Phone # above ☐ Alternate: \_\_\_\_\_

**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 20** of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised by \_\_\_\_\_ that the date of Acceptance of the Agreement is \_\_\_\_\_

Escrow Holder \_\_\_\_\_ Escrow # \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

Phone/Fax/E-mail \_\_\_\_\_

Escrow Holder has the following license number # \_\_\_\_\_

☐ Department of Financial Protection and Innovation, ☐ Department of Insurance, ☐ Department of Real Estate.

**PRESENTATION OF OFFER:** \_\_\_\_\_ / \_\_\_\_\_ Seller's Brokerage Firm presented this offer to Seller on \_\_\_\_\_ (date).  
 Agent or Seller Initials