

**TOWN OF LOS GATOS
DEPARTMENT OF PARKS AND PUBLIC WORKS
41 MILES DRIVE, LOS GATOS, CA 95030**

REQUEST FOR PROPOSALS

Property Sale

**APN 529-29-034
“Dittos Lane”**

PROPOSAL SUBMITTAL DEADLINE:

DATE: January 13, 2017

TIME: 3:00 PM

LOCATION: 110 East Main Street, Los Gatos, CA
Town Manager’s Office

PROJECT MANAGER: Kay Winer
Assistant Town Manager



RFP

REQUEST FOR PROPOSAL

1. INTRODUCTION

The Town of Los Gatos (“Town”) is requesting proposals from qualified buyers to purchase the property identified as APN 529-29-034 and known as “Dittos Lane.”

This sale is made “as is.” The Town makes no warranty as to the potential future use of the property.

This property was purchased by the former Los Gatos Redevelopment Agency (“Agency”) for development of below market rate housing. The Agency was unsuccessful in developing the project in partnership with a private developer. The property has been and is currently vacant.

The Town will evaluate proposals for two factors independently: 1) the ability of the offer to maximize the financial return to the Town and 2) the potential of the offer to impact the Town’s below market residential needs.

More detailed information on the project is included in Attachment A.

2. ATTACHMENTS

The attachments below are included with this Request for Proposals (“RFP”). The items identified with an asterisk (*) must be completed, signed by the appropriate representative of the company, and returned with the submittal.

Attachment A – RFP Requirements

Attachment B – Proposer’s Information Form

Attachment C – Purchase Agreement

3. INSTRUCTIONS TO PROPOSERS

3.1 Pre-proposal Conference: TBD

3.2 Examination of Proposal Documents.

The submission of a proposal shall be deemed a representation and certification by the Proposer that they:

3.2.1 Have carefully read and fully understand the information that was provided by the Town to serve as the basis for submission of this proposal.

3.2.2 Represent that all information contained in the proposal is true and correct.

3.2.3 Did not, in any way, collude, conspire to agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms or conditions of this proposal.

3.2.4 Acknowledge that the Town has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Proposer,

and Proposer hereby grants the Town permission to make these inquiries, and to provide any and all related documentation in a timely manner.

3.3 No request for modification of the proposal shall be considered after its submission on grounds that Proposer was not fully informed of any fact or condition.

3.4 Questions.

Any questions by the Proposer regarding this RFP or the project must be put in writing and received by the Town no later than 3:00 p.m. on January 9, 2017. Correspondence shall be addressed to:

Kay Winer
Assistant Town Manager
110 East Main Street
Los Gatos, CA, 95030
Telephone: (408) 399-6834
E-mail: kwiner@losgatosca.gov (Preferred)

The Town shall not be responsible for nor be bound by any oral instructions, interpretations, or explanations issued by the Town or its representatives.

Responses from the Town to questions by any Proposer will be communicated in writing to all recipients of this RFP. Questions received after the date and time stated above will not be accepted, and will be returned to sender/s without response.

3.5 Addenda.

Any addenda issued by Town shall be in writing, shall become a part of this RFP, and shall be acknowledged and responded to by Proposer.

3.6 Submission of Proposals:

All proposals shall be submitted to:

Kay Winer
Assistant Town Manager
110 East Main Street
Los Gatos, CA, 95030
Telephone: (408) 399-6834

Proposals must be delivered no later than 3:00 pm on **January 13, 2017**. All proposals received after that time will not be accepted.

The Proposer shall submit its proposal via email as a PDF attachment with the email subject line: **Dittos Lane RFP**. Verification of receipt of proposal is the responsibility of the submitting firm.

3.7 Withdrawal of Proposals.

A Proposer may withdraw its proposal at any time before the expiration of the time for submission of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

4. RIGHTS OF THE TOWN OF LOS GATOS

This RFP does not commit the Town to enter into a contract, nor does it obligate the Town to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract. The Town reserves the right to:

- Make the selection based on its sole discretion;
- Reject any and all proposals;
- Issue subsequent Requests for Proposals;
- Postpone opening proposals for its own convenience;
- Remedy errors in the Request for Proposals process;
- Accept other than the highest monetary value offer;
- Waive informalities and irregularities in the Proposals; and/or
- Enter into an agreement with another Proposer in the event the originally selected Proposer defaults or fails to execute an agreement with the Town.

An agreement shall not be binding or valid with the Town unless and until it is executed by authorized representatives of the Town and of the Proposer.

5. RFP TIMELINE

The Town intends to select a firm within sixty days following the submission deadline. The Town may, at its own discretion, conduct interviews and other evaluations of some, all, or none of the applicants prior to selection. The Town will select the firm that best meets the needs of the Town.

Prospective Buyers to the RFP shall agree, by and in the submission of the proposal, to hold the terms of their submission for up to a total of sixty (60) days from the due date and time for the submission of proposals. The proposal shall be accompanied by a letter of committal, signed by the Buyer or an individual authorized to enter into contracts on behalf of the buyer. The letter of committal shall state that the offer is effective for a minimum of sixty (60) calendar days from the deadline for the submission of proposals and shall provide for up to one, thirty (30) day extension.

6. PURCHASE AND SALE AGREEMENT

The successful buyer shall be required to enter into a Purchase and Sale Agreement in substantially the same form as the document attached hereto as Attachment C to this RFP.

7. RIGHTS OF THE TOWN

The Town reserves the right to reject any or all proposals or to waive any informality, irregularity or minor defect if deemed to be in the best interest of the Town.

8. PUBLIC NATURE OF PROPOSAL MATERIAL

Responses to this RFP become the exclusive property of the Town of Los Gatos. At such time as the Town awards a contract, all proposals received in response to this RFP become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are defined by the Proposer as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary." The Town shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as "Confidential," "Trade Secret," or "Proprietary," or if disclosure, in the Town's sole discretion, is required under the California Public Records Act as addressed below. Any proposal which contains language

purporting to render all or significant portions of the proposal “Confidential,” “Trade Secret,” or “Proprietary” shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the Town of Los Gatos may determine, in its sole discretion that the information that a Proposer submits is not a trade secret. If a request is made for information marked “Confidential,” “Trade Secret,” or “Proprietary,” the Town shall provide the Proposer who submitted the information reasonable notice to allow the Proposer to seek protection from disclosure by a court of competent jurisdiction, at the Proposer's sole expense.

9. COLLUSION

By submitting a proposal, each Proposer represents and warrants that its proposal is genuine and made in the interest of or on behalf of any person not named therein; that the Proposer has not directly induced or solicited any other person to submit a sham proposal or any other person to refrain from submitting a proposal; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

10. DISQUALIFICATION

Factors, such as, but not limited to, any of the following, may disqualify a proposal without further consideration:

- Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms or conditions of this proposal;
- Any attempt to improperly influence any member of the evaluation team;
- Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the Town;
- Evidence of incorrect information submitted as part of the proposal;
- Evidence of Proposer’s inability to successfully complete the responsibilities and obligations of the proposal; and
- Proposer’s default under any previous agreement with the Town.

11. NON-CONFORMING PROPOSAL

A proposal shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from or to a proposal may be sufficient grounds for non-acceptance of the proposal, at the sole discretion of the Town.

12. GRATUITIES

No person shall offer, give or agree to give any Town employee any gratuity, discount or offer of employment in connection with the award of contract by the Town. No Town employee shall solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a Town contract.

ATTACHMENT A RFP REQUIREMENTS

A. PROPERTY INFORMATION

The former Redevelopment Agency (“Agency”) for the Town of Los Gatos purchased the Dittos Lane property to increase development of below market housing. The Agency attempted to develop multiple units on the property in partnership with a private developer, and the project was not successful. A sample of historical documents for the property are available on the Town’s website for review at <http://www.losgatosca.gov/2359/Dittos-Lane>. These documents are exemplary of the history of the property. Prospective buyers shall conduct their own due diligence on the property.

Ingress and Egress – Access to the property may be limited by topography, easements, lack of easements, insufficient easements, or other factors. The Town makes no warranty as to property access.

Subsurface Rights Excluded – This RFP does not include any conveyance of subsurface rights in the real property. To the Town’s knowledge, any oil, gas, other hydrocarbon substances and minerals of any kind or character in, on, or thereunder, are reserved in the deeds of record and the Town has no ownership of or ability to convey said rights.

Development Rights – The Town makes no warranty or commitment to the past or future development rights of the property. Any future development on the property will be subject to all Federal, State, and Local laws and requirements with no preferential consideration based on current ownership.

B. RFP OVERVIEW

The Town will compare its opportunity to maximize the financial return to the Town in comparison with the ability to increase the number of available below market residential units. The Town will accept proposals in two formats:

- 1) Market rate proposals for acquisition of the property “as is.”
- 2) Proposals to develop the property for below market residential use.

The Proposer may submit proposals on either one of the formats per Section C.2. below.

Subject to the terms and conditions of this RFP, individuals or corporations interested in purchasing the property shall submit a proposal with executed originals of the documents required by or Attachments to this RFP.

Within thirty (30) days of the Notice of Award the successful Buyer(s) shall sign a Purchase and Sale Agreement substantially in compliance with the Purchase and Sale Agreement attached as Attachment C.

By signing and submitting a proposal, each Buyer acknowledges that it has made a careful study of the RFP, the incorporated documents and the property, and has fully assured itself as to the conditions of the property offered. By signing and submitting its proposal, the Buyer agrees to all terms and conditions of this RFP.

C. REQUIRED SUBMITTALS

The following submittals shall be included as part of the Proposal:

1. Proposers Information Form (Attachment B)
2. Letter of Commitment for one of the two following options:
 - a. Market Rate purchase of the property, including the offer price. No conditions shall be acceptable in this letter of commitment; or
 - b. Below Market Housing purchase of the property, including the offer price and outlining, in detail the project size, number and type of residential units, level of affordability, project pro forma, and any other information necessary for the Town to evaluate the proposal.
3. Financial Stability - Buyer shall identify all proposed funding sources to be utilized for the acquisition of the buildings. The Buyer shall submit a Letter of Credit from a financial institution (*e.g.* bank), or other institution listed as a funding source. The documents submitted shall demonstrate that the Buyer has sufficient assets available, or access to sufficient credit, to acquire the property in the timeframe proposed. The Buyer shall submit a plan for securing all necessary financing to complete the purchase of the property or properties under this RFP.
4. Good Faith Deposit - At time of the Proposal, the Buyer shall submit certified check in the amount of \$5,000. Personal checks are not considered an acceptable form of Good Faith Deposit.

If the successful Buyer withdraws its Proposal, fails to make payment in full as set forth herein, fails to execute the required documents, or otherwise fails to reasonably cooperate in the conveyance of the Property as required by this RFP or by applicable law, then the certified check as applicable, shall be forfeited to the Town.

The Town will return the certified check of those applicants whose proposal is rejected by the Town, upon signing a Purchase and Sale Agreement with successful buyer.

Proposals determined by the Town to be incomplete, not properly endorsed or otherwise contrary to these instructions may be rejected. The Town will not accept conditional proposals, except as specifically expressly allowed by this RFP.

The Town reserves the right to reject any or all Proposals and to determine the Proposal deemed in its best interest. The Town reserves the right to waive any informalities, irregularities or minor defects, or allow a buyer to correct them to the extent allowed by law. The Town will award the sale of the property to the responsible and responsive buyer based on the evaluation and award process described in this RFP. The Town reserves the right to not award the sale of the property or evaluate the proposals solely on the basis of the highest price. Selection of the successful Buyer shall be based on the buyer's responsiveness to the requirements and conditions described in this RFP, financial stability, and the proposed price as deemed to be in the best interest of the Town.

ATTACHMENT B
Proposer's Information Form

PROPOSER (please print): _____

Address: _____

1st Contact person (Name): _____

Title: _____ Office Tel: _____

Direct/Cell: _____ Fax: _____

Email: _____

2nd Contact person (Name): _____

Title: _____ Office Tel: _____

Direct/Cell: _____ Fax: _____

Email: _____

Proposer, if selected, intends to carry on the business as (check one):

Individual Joint Venture Partnership Corporation

Year incorporated? _____ In what state? _____

When authorized to do business in California?): _____

Other (explain): _____

ADDENDA

To assure that all Proposers have received each addendum, check the appropriate box(es) below. Failure to acknowledge receipt of an addendum/addenda may be considered an irregularity in the Proposal:

Addendum number(s) received:

1 2 3 4 5 6

_____ No Addendum/Addenda Were Received (check and initial)

PROPOSER’S SIGNATURE

No proposal shall be accepted which has not been signed in ink in the appropriate space below:

By signing below, the submission of a proposal shall be deemed a representation and certification by the Proposer that they have investigated all aspects of the RFP, that they are aware of the applicable facts pertaining to the RFP process, its procedures and requirements, and they have read and understand the RFP. No request for modification of the proposal shall be considered after its submission on the grounds that the Proposer was not fully informed as to any fact or condition.

**(1) If Proposer is *INDIVIDUAL*,
sign here:**

Proposer’s Signature

Proposer’s typed name and title

Date: _____

**(2) If Proposer is *PARTNERSHIP* or
JOINT VENTURE, at least (2) Partners
or each of the Joint Venturers
shall sign here:**

Partnership or Joint Venture Name
(type or print)

Signature

Name of Member of the Partnership or Joint
Venture (type or print)

Date: _____

Signature

Name of Member of the Partnership or Joint
Venture Name (type or print)

Date: _____

(3) If Proposer is a CORPORATION, the duly authorized officer(s) shall sign as follows:

The undersigned certify that they are respectively:

_____ (Title)

and _____ (Title)
of the corporation named below; that they are designated to sign the Proposal Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

Corporation Name (type or print)

Signature

Name of Member of the Corporation (type or print)

Date: _____

Signature

Name of Member of the Corporation (type or print)

Date: _____

Attachment C



CALIFORNIA ASSOCIATION OF REALTORS®

COMMERCIAL PROPERTY PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(NON-RESIDENTIAL) (C.A.R. Form CPA, Revised 4/13)

Date: _____

1. OFFER:

A. THIS IS AN OFFER FROM _____ ("Buyer").

Individual(s), A Corporation, A Partnership, An LLC, An LLP, or Other _____.

B. THE REAL PROPERTY TO BE ACQUIRED is described as _____ Sample _____, Assessor's Parcel No. _____, situated in _____, County of _____, California, ("Property").

C. THE PURCHASE PRICE offered is _____ (Dollars \$ _____).

D. CLOSE OF ESCROW shall occur on _____ (date) (or _____ Days After Acceptance).

2. AGENCY:

A. POTENTIALLY COMPETING BUYERS AND SELLERS: Buyer and Seller each acknowledge receipt of a disclosure of the possibility of multiple representation by the Broker representing that principal. This disclosure may be part of a listing agreement, buyer-representation agreement or separate document (C.A.R. Form DA). Buyer understands that Broker representing Buyer may also represent other potential buyers, who may consider, make offers on or ultimately acquire the Property. Seller understands that Broker representing Seller may also represent other sellers with competing properties of interest to this Buyer.

B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:

Listing Agent _____ (Print Firm Name) is the agent of (check one): the Seller exclusively; or both the Buyer and Seller.

Selling Agent _____ (Print Firm Name) (if not same as Listing Agent) is the agent of (check one): the Buyer exclusively; or the Seller exclusively; or both the Buyer and Seller. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.

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

A. INITIAL DEPOSIT: Deposit shall be in the amount of _____ \$ _____

(1) Buyer shall deliver deposit directly to Escrow Holder by personal check, electronic funds transfer, Other _____ within 3 business days after acceptance (or Other _____);

OR (2) (If checked) Buyer has given the deposit by personal check (or _____) to the agent submitting the offer (or to _____), made payable to _____ . The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder (or into Broker's trust account) within 3 business days after Acceptance (or Other _____).

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

C. LOAN(S):

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

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

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

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

D. ADDITIONAL FINANCING TERMS: _____

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

F. PURCHASE PRICE (TOTAL): _____ \$ _____

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

H. LOAN TERMS:

(1) LOAN APPLICATIONS: Within 7 (or _____) Days After Acceptance, Buyer shall Deliver to Seller a letter from lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in 3C above. (If checked, letter attached.)

(2) LOAN CONTINGENCY: Buyer shall act diligently and in good faith to obtain the designated loan(s). Obtaining the loan(s) specified above is a contingency of this Agreement unless otherwise agreed in writing. Buyer's contractual obligations to obtain

Buyer's Initials (_____) (_____)

© 2013, California Association of REALTORS®, Inc.

Seller's Initials (_____) (_____)

Reviewed by _____ Date _____

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COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 1 OF 10)



Property Address: _____ Date: _____

and provide deposit, balance of down payment and closing costs are not contingencies of this Agreement.

(3) LOAN CONTINGENCY REMOVAL:

(i) Within 17 (or _____) Days After Acceptance, Buyer shall, as specified in Paragraph 17, in writing remove the loan contingency or cancel this Agreement;

OR (ii) (If checked) _____ the loan contingency shall remain in effect until the designated loans are funded.

(4) _____ NO LOAN CONTINGENCY (If checked): Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

I. APPRAISAL CONTINGENCY AND REMOVAL: This Agreement is (or, if checked, _____ is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the specified purchase price. If there is a loan contingency, Buyer's removal of the loan contingency shall be deemed removal of this appraisal contingency (or, _____ if checked, Buyer shall, as specified in paragraph 17B(3), in writing remove the appraisal contingency or cancel this Agreement within 17 (or _____) Days After Acceptance). If there is no loan contingency, Buyer shall, as specified in paragraph 17B(3), in writing remove the appraisal contingency or cancel this Agreement within 17 (or _____) Days After Acceptance.

J. _____ ALL CASH OFFER (If checked): Buyer shall, within 7 (or _____) Days After Acceptance, Deliver to Seller written verification of sufficient funds to close this transaction. (If checked, _____ verification attached.)

K. BUYER STATED FINANCING: Seller has relied on Buyer's representation of the type of financing specified (including but not limited to, as applicable, amount of down payment, contingent or non contingent loan, or all cash). If Buyer seeks alternate financing, (i) Seller has no obligation to cooperate with Buyer's efforts to obtain such financing, and (ii) Buyer shall also pursue the financing method specified in this Agreement. Buyer's failure to secure alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

4. ALLOCATION OF COSTS (if checked): Unless otherwise specified in writing, this paragraph only determines who is to pay for the inspection, test or service ("Report") mentioned; it does not determine in the report who is to pay for any work recommended or identified in the Report.

A. INSPECTIONS AND REPORTS:

- (1) _____ Buyer _____ Seller shall pay for sewer connection, if required by Law prior to Close Of Escrow _____ .
(2) _____ Buyer _____ Seller shall pay to have septic or private sewage disposal system inspected _____ .
(3) _____ Buyer _____ Seller shall pay to have domestic wells tested for water potability and productivity _____ .
(4) _____ Buyer _____ Seller shall pay for a natural hazard zone disclosure report prepared by _____ .
(5) _____ Buyer _____ Seller shall pay for the following inspection or report _____ .
(6) _____ Buyer _____ Seller shall pay for the following inspection or report _____ .

B. GOVERNMENT REQUIREMENTS AND RETROFIT:

- (1) _____ Buyer _____ Seller shall pay for smoke detector installation and/or water heater bracing, if required by Law. Prior to Close Of Escrow, Seller shall provide Buyer a written statement of compliance in accordance with state and local Law, unless exempt.
(2) _____ Buyer _____ Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards, inspections and reports if required as a condition of closing escrow under any Law.
(3) _____ Buyer _____ Seller shall pay for installation of approved fire extinguisher(s), sprinkler(s), and hose(s), if required by Law, which shall be installed prior to Close Of Escrow. Prior to Close Of Escrow Seller shall provide Buyer a written statement of compliance, if required by Law.

C. ESCROW AND TITLE:

- (1) _____ Buyer _____ Seller shall pay escrow fee _____ .
Escrow Holder shall be _____ .
(2) _____ Buyer _____ Seller shall pay for owner's title insurance policy specified in paragraph 16E _____ .
Owner's title policy to be issued by _____ .
(Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

D. OTHER COSTS:

- (1) _____ Buyer _____ Seller shall pay County transfer tax or transfer fee _____ .
(2) _____ Buyer _____ Seller shall pay City transfer tax or transfer fee _____ .
(3) _____ Buyer _____ Seller shall pay Owners' Association (OA) transfer fee _____ .
(4) _____ Buyer _____ Seller shall pay OA document preparation fees _____ .
(5) _____ Buyer _____ Seller shall pay for _____ .
(6) _____ Buyer _____ Seller shall pay for _____ .

5. CLOSING AND POSSESSION:

A. Seller-Occupied or Vacant Units: Possession shall be delivered to Buyer at 5pm or _____ AM _____ PM, _____ on the date of Close Of Escrow; _____ on _____ ; or _____ no later than _____ Days After Close Of Escrow. If transfer of title and occupancy do not occur at the same time, Buyer and Seller are advised to: (i) enter into a written occupancy agreement (C.A.R. Form PAA, paragraph 2); and (ii) consult with their insurance and legal advisors.

B. Tenant Occupied Units: Possession and occupancy, subject to the rights of tenants under existing leases, shall be delivered to Buyer on Close Of Escrow.

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 warranties. Brokers cannot and will not determine the assignability of any warranties.

D. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys and/or means to operate all locks, mailboxes, security systems, alarms and garage door openers. If the Property is a unit in a condominium or located in a common-interest subdivision, Buyer may be required to pay a deposit to the Owners' Association ("OA") to obtain keys to accessible OA facilities.

6. SECURITY DEPOSITS: Security deposits, if any, to the extent they have not been applied by Seller in accordance with any rental agreement and current Law, shall be transferred to Buyer on Close Of Escrow. Seller shall notify each tenant, in compliance with the Civil Code.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

Reviewed by _____ Date _____



Property Address: _____ Date: _____

7. SELLER DISCLOSURES:

- A. **ENERGY DISCLOSURE:** Seller shall provide Buyer, at least 24 hours prior to execution of this Agreement, the Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and the Facility Summary for the building as required by Public Resources Code Section 25402.10 and California Code of Regulations, Title 20, Sections 1680 through 1685. This requirement is effective for a building with total gross floor area square footage as follows: more than 50,000 square feet, July 1, 2013; more than 10,000 square feet and up to 50,000 square feet, January 1, 2014; and at least 5,000 square feet up to 10,000 square feet, July 1, 2014. For more information, see <http://www.energy.ca.gov/ab1103/index.html>
- B. **NATURAL AND ENVIRONMENTAL DISCLOSURES:** Seller shall, within the time specified in paragraph 17, if required by Law: (i) Deliver to Buyer earthquake guides (and questionnaire) and environmental hazards booklet; (ii) even if exempt from the obligation to provide an 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.
- C. **ADDITIONAL DISCLOSURES:** Within the time specified in paragraph 17, Seller shall Deliver to Buyer, in writing, the following disclosures, documentation and information:
 - (1) **RENTAL SERVICE AGREEMENTS:** (i) All current leases, rental agreements, service contracts, and other agreements pertaining to the operation of the Property; and (ii) a rental statement including names of tenants, rental rates, period of rental, date of last rent increase, security deposits, rental concessions, rebates, or other benefits, if any, and a list of delinquent rents and their duration. Seller represents that no tenant is entitled to any concession, rebate, or other benefit, except as set forth in these documents.
 - (2) **INCOME AND EXPENSE STATEMENTS:** The books and records, including a statement of income and expense for the 12 months preceding Acceptance. Seller represents that the books and records are those maintained in the ordinary and normal course of business, and used by Seller in the computation of federal and state income tax returns.
 - (3) **TENANT ESTOPPEL CERTIFICATES:** (If checked) Tenant estoppel certificates (C.A.R. Form TEC) completed by Seller or Seller's agent, and signed by tenants, acknowledging: (i) that tenants' rental or lease agreements are unmodified and in full force and effect (or if modified, stating all such modifications); (ii) that no lessor defaults exist; and (iii) stating the amount of any prepaid rent or security deposit.
 - (4) **SURVEYS, PLANS AND ENGINEERING DOCUMENTS:** Copies of surveys, plans, specifications and engineering documents, if any, in Seller's possession or control.
 - (5) **PERMITS:** If in Seller's possession, Copies of all permits and approvals concerning the Property, obtained from any governmental entity, including, but not limited to, certificates of occupancy, conditional use permits, development plans, and licenses and permits pertaining to the operation of the Property.
 - (6) **STRUCTURAL MODIFICATIONS:** Any known structural additions or alterations to, or the installation, alteration, repair or replacement of, significant components of the structure(s) upon the Property.
 - (7) **GOVERNMENTAL COMPLIANCE:** Any improvements, additions, alterations or repairs made by Seller, or known to Seller to have been made, without required governmental permits, final inspections, and approvals.
 - (8) **VIOLATION NOTICES:** Any notice of violations of any Law filed or issued against the Property and actually known to Seller.
 - (9) **MISCELLANEOUS ITEMS:** Any of the following, if actually known to Seller: (i) any current pending lawsuit(s), investigation(s), inquiry(ies), action(s), or other proceeding(s) affecting the Property, or the right to use and occupy it; (ii) any unsatisfied mechanic's or materialman's lien(s) affecting the Property; and (iii) that any tenant of the Property is the subject of a bankruptcy.
- C. **WITHHOLDING TAXES:** Within the time specified in paragraph 17A, to avoid required withholding Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law, (C.A.R. Form AS or QS).
- 8. **ENVIRONMENTAL SURVEY** (If checked): Within _____ Days After Acceptance, Buyer shall be provided a phase one environmental survey report paid for and obtained by Buyer Seller. Buyer shall then, as specified in paragraph 17, remove this contingency or cancel this Agreement.
- 9. **SUBSEQUENT DISCLOSURES:** In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer of which Buyer is otherwise unaware, Seller shall promptly Deliver a subsequent or amended disclosure or notice in writing, covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies disclosed in reports ordered and paid for by Buyer.
- 10. **CHANGES DURING ESCROW:**
 - A. Prior to Close Of Escrow, Seller may only engage in the following acts, ("Proposed Changes"), subject to Buyer's rights in paragraph 17: (i) rent or lease any vacant unit or other part of the premises; (ii) alter, modify, or extend any existing rental or lease agreement; (iii) enter into, alter, modify or extend any service contract(s); or (iv) change the status of the condition of the Property.
 - B. At least 7 (or _____) Days prior to any Proposed Changes, Seller shall Deliver written notice to Buyer of any Proposed Changes.
- 11. **CONDOMINIUM/PLANNED UNIT DEVELOPMENT DISCLOSURES:**
 - A. **SELLER HAS:** 7 (or _____) Days After Acceptance to disclose to Buyer whether the Property is a condominium, or located in a planned unit development or other common interest subdivision.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)



Property Address: _____ Date: _____

- B. If Property is a condominium, or located in a planned unit development or other common interest subdivision, Seller has **3** (or _____) Days After Acceptance to request from the OA (C.A.R. Form HOA): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the OA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of OA minutes for regular and special meetings; and (v) the names and contact information of all OA's governing the Property. (Collectively, "CI Disclosures.") Seller shall itemize and deliver to Buyer all CI Disclosures received from the OA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 17.

12. ITEMS INCLUDED AND EXCLUDED:

- A. **NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the MLS, flyers or marketing materials are not included in the purchase price or excluded from the sale unless specified in 12B or C.

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 systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, private integrated telephone systems, air coolers/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water softeners, water purifiers, security systems/alarms.
- (3) A complete inventory of all personal property of Seller currently used in the operation of the Property and included in the purchase price shall be delivered to Buyer within the time specified in paragraph 17.
- (4) Seller represents that all items included in the purchase price are, unless otherwise specified, owned by Seller. Within the time specified in paragraph 17, Seller shall give Buyer a list of fixtures not owned by Seller.
- (5) Seller shall deliver title to the personal property by Bill of Sale, free of all liens and encumbrances, and without warranty of condition.
- (6) As additional security for any note in favor of Seller for any part of the purchase price, Buyer shall execute a UCC-1 Financing Statement to be filed with the Secretary of State, covering the personal property included in the purchase, replacement thereof, and insurance proceeds.

C. ITEMS EXCLUDED FROM SALE: _____

- 13. CONDITION OF PROPERTY:** Unless otherwise agreed: (i) Property is sold (a) in its **PRESENT physical ("as-is") condition as of the date of Acceptance** and (b) **subject to Buyer's investigation rights**; (ii) The Property including pool, spa, landscaping and grounds, is to be maintained in substantially, the same condition as of the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Seller by Close Of Escrow.

- A. Seller warrants that the Property is legally approved as _____ units.
- B. **Seller shall, within the time specified in paragraph 17, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, AND MAKE ANY AND ALL OTHER DISCLOSURES REQUIRED BY LAW.**
- C. **Seller has the right to inspect the Property and, as specified in paragraph 17, based upon information discovered in those inspections: (i) cancel this Agreement; or (ii) request that seller make Repairs or take other action.**

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

- A. Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 17B. Within the time specified in paragraph 17B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards; (ii) inspect for wood destroying pests and organisms; (iii) review the registered sex offender database; (iv) confirm the insurability of Buyer and the Property; and (v) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA). Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- B. Seller shall make the Property available for all Buyer Investigations. Buyer shall (i) as specified in paragraph 17B, complete Buyer Investigations and, either remove the contingency or cancel this Agreement, and (ii) give Seller, at no cost, complete Copies of all Investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
- C. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is made available to Buyer.
- D. **Buyer indemnity and Seller protection for entry upon property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs of Buyer's Investigations. 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 or cancellation of this Agreement and Close Of Escrow.

15. SELLER DISCLOSURES: ADDENDA; ADVISORIES; OTHER TERMS:

- A. **Seller Disclosures (if checked):** Seller shall, within the time specified in paragraph 17A, complete and provide Buyer with a: Seller Property Questionnaire (C.A.R. Form SPQ) OR Supplemental Contractual and Statutory Disclosure (C.A.R. Form SSD)
- B. **Addenda (if checked):** Addendum # _____ (C.A.R. Form ADM)

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

Reviewed by _____ Date _____



Sample

Property Address: _____ Date: _____

- Wood Destroying Pest Inspection and Allocation of Cost Addendum (C.A.R. Form WPA)
- Purchase Agreement Addendum (C.A.R. Form PAA)
- Short Sale Addendum (C.A.R. Form SSA)
- Buyer Intent to Exchange Supplement (C.A.R. Form BES)
- Septic, Well and Property Monument Addendum (C.A.R. Form SWPI)
- Other
- Seller Intent to Exchange Supplement (C.A.R. Form SES)

C. **Advisories (If checked):**

- Probate Advisory (C.A.R. Form PAK)
- Trust Advisory (C.A.R. Form TA)
- Buyer's Inspection Advisory (C.A.R. Form BIA)
- Statedwide Buyer and Seller Advisory (C.A.R. Form SBSA)
- REO Advisory (C.A.R. Form REO)

D. **Other Terms:** _____

16. **TITLE AND VESTING:**

- A. Within the time specified in paragraph 17, Buyer shall be provided a current preliminary title report, which shall include a search of the General Index, Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information. The preliminary report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the preliminary report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 17B.
- 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: (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.
- C. Within the time specified in paragraph 17, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.
- E. Buyer shall receive a standard coverage owner's CLTA policy of title insurance. An ALTA policy or the addition of endorsements may provide greater coverage for Buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, survey requirements, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and pay any increase in cost.

17. **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 HAS: 7 (or _____) Days** After Acceptance to deliver to Buyer all reports, disclosures and information for which Seller is responsible under paragraphs 4, 7A, B and C, 11A, 12B(3) and (4), 13B, 15A and B and 16. Buyer may give Seller a Notice to Seller to Perform (C.A.R. Form NSP) if Seller has not Delivered the items within the time specified.
- B. **(1) BUYER HAS: 17 (or _____) Days** After Acceptance, unless otherwise agreed in writing, to:
 - (i) complete all Buyer Investigations; approve all disclosures, reports and other applicable information, which Buyer receives from Seller; and (ii) approve all other matters affecting the Property (including information specified in paragraph 7 and insurability of Buyer and the Property).
 - (2) Within the time specified in 17B(1), Buyer may 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.
 - (3) Within the time specified in 17B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller either (i) a removal of the applicable contingency (C.A.R. Form CR), or (ii) a cancellation (C.A.R. Form CC) of this Agreement based upon a remaining contingency or Seller's failure to Deliver the specified items. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in 17A, then Buyer has **5 (or _____) Days** After Delivery of any such items, or the time specified in 17B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.
 - (4) **Continuation of Contingency:** Even after the end of the time specified in 17B(1) and before Seller cancels this Agreement, if at all, pursuant to 17C, Buyer retains the right to either (i) in writing remove remaining contingencies, or (ii) cancel this Agreement based upon a remaining contingency or Seller's failure to Deliver the specified items. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to 17C(1).

C. **SELLER RIGHT TO CANCEL:**

- (1) **Seller right to Cancel; Buyer Contingencies:** If, within the time specified in this Agreement, Buyer does not, in writing, Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP) may cancel this Agreement. In such event, Seller shall authorize return of Buyer's deposit.
- (2) **Seller right to Cancel; Buyer Contract Obligations:** Seller, after first Delivering to Buyer a NBP may cancel this Agreement for any of the following reasons: (i) if Buyer fails to deposit funds as required by 3A or 3B; (ii) if the funds deposited pursuant to 3A or 3B are not good when deposited; (iii) if Buyer fails to provide a letter as required by 3H; (iv) if Buyer fails to provide verification as required by 3G or 3J; or (v) if Seller reasonably disapproves of the verification provided by 3G or 3J. In such event, Seller shall authorize return of Buyer's deposit.
- (3) **Notice To Buyer To Perform:** The NBP shall: (i) be in writing; (ii) be signed by Seller; and (iii) give Buyer at least **2 (or _____) Days** After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP may not be Delivered any earlier than **2 Days** Prior to the expiration of the applicable time for Buyer to remove a contingency or cancel this Agreement or meet an obligation specified in 17C(2).

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

Reviewed by _____ Date _____



Property Address: _____ Date: _____

- D. **EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES:** If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in a separate written agreement between Buyer and Seller, Buyer shall with regard to that contingency or cancellation right conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections, or for inability to obtain financing.
- E. **CLOSE OF ESCROW:** Before Seller or Buyer may cancel this Agreement for failure of the other party to close escrow pursuant to this Agreement, Seller or Buyer must first Deliver to the other a demand to close escrow (C.A.R. Form DCE).
- F. **EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, Buyer and Seller agree to Sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. **Release of funds will require mutual Signed release instructions from Buyer and Seller, judicial decision or arbitration award. A Buyer or Seller may be subject to a civil penalty of up to \$1,000 for refusal to sign such instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).**
- 18. **REPAIRS:** Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of receipts and statements to Buyer prior to final verification of condition.
- 19. **ENVIRONMENTAL HAZARD CONSULTATION:** Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Broker(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Broker(s) has/have made no representation concerning the existence, testing, discovery, location and evaluation off/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation off/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property.
- 20. **AMERICANS WITH DISABILITIES ACT:** The Americans With Disabilities Act ("ADA") prohibits discrimination against individuals with disabilities. The ADA affects almost all commercial facilities and public accommodations. The ADA can require, among other things, that buildings be made readily accessible to the disabled. Different requirements apply to new construction, alterations to existing buildings, and removal of barriers in existing buildings. Compliance with the ADA may require significant costs. Monetary and injunctive remedies may be incurred if the Property is not in compliance. A real estate broker does not have the technical expertise to determine whether a building is in compliance with ADA requirements, or to advise a principal on those requirements. Buyer and Seller are advised to contact an attorney, contractor, architect, engineer or other qualified professional of Buyer's or Seller's own choosing to determine to what degree, if any, the ADA impacts that principal or this transaction.
- 21. **FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final inspection of the Property within 5 (or _____) Days Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 13; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).
- 22. **PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are a current lien. 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 assessments that are a current lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller. **TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.** Prorations shall be made based on a 30-day month.
- 23. **SELECTION OF SERVICE PROVIDERS:** Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
- 24. **MULTIPLE LISTING SERVICE/PROPERTY DATA SYSTEM:** If Broker is a participant of a Multiple Listing Service ("MLS") or Property Data System ("PDS"), Broker is authorized to report to the MLS or PDS a pending sale and, upon Close Of Escrow, the terms of this transaction to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS or PDS.
- 25. **EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
- 26. **ATTORNEY FEES:** 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 34A.
- 27. **DEFINITIONS:** As used in this Agreement:
 - A. **"Acceptance"** means the time the offer or final counter offer is accepted in writing by a party and is delivered to and personally received by the other party or that party's authorized agent in accordance with the terms of this offer or a final counter offer.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

Reviewed by _____ Date _____



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- B. "C.A.R. Form" means the specific form referenced or another comparable form agreed to by the parties.
- C. "Close Of Escrow" means the date the grant deed, or other evidence of transfer of title, is recorded.
- D. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.
- E. "Days" means calendar days. However, after Acceptance, the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
- F. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
- G. "Days Prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
- H. "Deliver", "Delivered" or "Delivery", regardless of the method used (i.e. messenger, mail, email, fax, other), means and shall be effective upon (i) personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in paragraph D of the section titled Real Estate Brokers on page 10;
- OR (ii) if checked, per the attached addendum (C.A.R. Form RDN).
- I. "Electronic Copy" or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other.
- J. "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.
- K. "Repairs" means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
- L. "Signed" means either a handwritten or electronic signature on an original document, Copy or any counterpart.
- 28. **ASSIGNMENT:** Buyer shall not assign all or any part of Buyer's interests in this Agreement without first having obtained the written consent of Seller. Such consent shall not be unreasonably withheld, unless otherwise agreed in writing. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement.
- 29. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon, and inure to the benefit of, Buyer and Seller and their respective successors and assigns, except as otherwise provided herein.
- 30. **COPIES:** Seller and Buyer each represent that Copies of all reports, documents, certificates, approvals and other documents that are furnished to the other are true, correct and unaltered Copies of the original documents, if the originals are in the possession of the furnishing party.
- 31. **BROKERS:**
 - A. **BROKER COMPENSATION:** Seller or Buyer, or both, as applicable, agrees to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
 - B. **BROKERAGE:** Neither Buyer nor Seller has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as specified in this Agreement, in connection with any act relating to the Property, including, but not limited to, inquiries, introductions, consultation and negotiations leading to this Agreement. Buyer and Seller each agree to indemnify, defend, and hold the other, the Brokers specified herein and their agents, harmless from and against any costs, expenses or liability for compensation claimed inconsistent with the warranty and representations in this paragraph.
 - C. **SCOPE OF BROKER DUTY:** Buyer and Seller acknowledge and agree that: Brokers: (i) do not decide what price Buyer should pay or Seller should accept; (ii) do not guarantee the condition of the Property (iii) do not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) shall not be responsible for identifying defects that are not known to Brokers(s); (v) shall not be responsible for inspecting public records or permits concerning the title or use of the Property; (vi) shall not be responsible for identifying location of boundary lines or other items affecting title; (vii) shall not be responsible for verifying square footage, representations of others or information contained in inspection reports, MLS or PDS, advertisements, flyers or other promotional material, unless otherwise agreed in writing; (viii) shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller in the course of this representation; and (ix) 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.
- 32. **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 relating counter offers and addenda, and any additional mutual instructions to close the escrow: 1, 3, 4, 6, 7C, 15B and D, 16, 17F, 22, 27, 31A, 32, 37, 40 and paragraph D of the section titled Real Estate Brokers on page 10. If a Copy of the separate compensation agreement(s) provided for in paragraph 31A, or paragraph D of the section titled Real Estate Brokers on page 10 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out of Buyer's or Seller's funds, or both, as applicable, the respective Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not specifically referenced above in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provisions upon Escrow Holder's request. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow.
 - B. A Copy of this Agreement shall be delivered to Escrow Holder within 3 business days after Acceptance (or _____). Escrow holder shall provide Seller's Statement of Information to Title company when received from Seller. Buyer and Seller

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

Reviewed by _____ Date _____



Property Address: _____ Date: _____

authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs the Agreement.

- C. Brokers are a party to the Escrow for the sole purpose of compensation pursuant to paragraph 31A and paragraph D of the section titled Real Estate Brokers on page 10. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 31A, respectively, and irrevocably instructs 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. Escrow Holder shall immediately notify Brokers: (i) if Buyer's initial or any additional deposit is not made pursuant to this Agreement or is not good at time of deposit with Escrow Holder; or (ii) if either Buyer or Seller instruct Escrow Holder to cancel escrow.
- D. 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 2 business days after mutual execution of the amendment.

33. **LIQUIDATED DAMAGES:** If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award.

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

34. **DISPUTE RESOLUTION:**

A. **MEDIATION:** Buyer and Seller agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. Buyer and Seller also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the parties involved. 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. Exclusions from this mediation agreement are specified in paragraph 34C.

B. **ARBITRATION OF DISPUTES:**

Buyer and Seller agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. Buyer and Seller also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the parties mutually agree to a different arbitrator. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 34C.

"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 _____ / _____

C. **ADDITIONAL MEDIATION AND ARBITRATION TERMS:**

- (1) **EXCLUSIONS:** The following matters shall be excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver or violation of the mediation and arbitration provisions.
- (2) **BROKERS:** Brokers shall not be obligated or compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to the Agreement.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

Reviewed by _____ Date _____



Sample

Property Address: _____ Date: _____

- 35. **GOVERNING LAW:** This Agreement shall be governed by the Laws of the state of California.
- 36. **TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initiated by all parties or if incorporated by mutual agreement in a counter offer on 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. 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.
- 37. **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. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**
- 38. **AUTHORITY:** Any person or persons signing this Agreement represent(s) that such person has full power and authority to bind that person's principal, and that the designated Buyer and Seller has full authority to enter into and perform this Agreement. Entering into this Agreement, and the completion of the obligations pursuant to this contract, does not violate any Articles of Incorporation, Articles of Organization, By Laws, Operating Agreement, Partnership Agreement or other document governing the activity of either Buyer or Seller.
- 39. **EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit shall be returned, unless the offer is Signed by Seller, and a Copy of the Signed offer is personally received by Buyer, or by _____, who is authorized to receive it by 5:00 PM on the third Day after this offer is signed by Buyer (OR, if checked by _____ (date), at _____ AM PM).
Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the above confirmation of agency relationships.

Buyer _____
 By _____ Date _____
 Print name _____
 Address _____ City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

Buyer _____
 By _____ Date _____
 Print name _____
 Address _____ City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

Notice Address, If Different _____
 Additional Signature Addendum attached (C.A.R. Form ASA).

- 40. **ACCEPTANCE OF OFFER:** Seller warrants that Seller is the owner of the Property, or has the authority to execute this Agreement. Seller accepts the above offer, agrees to sell the Property on the above terms and conditions, and agrees to the above confirmation of agency relationships. Seller has read and acknowledges receipt of a Copy of this Agreement, and authorizes Broker to deliver a Signed Copy to Buyer.
 (If checked) **SUBJECT TO ATTACHED COUNTER OFFER, DATED** _____

Seller _____
 By _____ Date _____
 Print name _____
 Address _____ City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

Seller _____
 By _____ Date _____
 Print name _____
 Address _____ City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

Notice Address, If Different _____
 Additional Signature Addendum attached (C.A.R. Form ASA).

(_____ / _____) **Confirmation of Acceptance:** A Copy of Signed Acceptance was personally received by Buyer or Buyer's
 (Initials) authorized agent on (date) _____ at _____ AM PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.

Buyer's Initials (_____) (_____)

Seller's Initials (_____) (_____)

Reviewed by _____	Date _____
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Sample

Property Address: _____ Date: _____

REAL ESTATE BROKERS:

- A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.
- B. Agency relationships are confirmed as stated in paragraph 2 above.
- C. If specified in paragraph 3A(2), Agent who submitted offer for Buyer acknowledges receipt of deposit.
- D. **COOPERATING BROKER COMPENSATION:** Listing Broker agrees to pay Cooperating Broker (**Selling Firm**) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow: (i) the amount specified in the MLS or PDS, provided Cooperating Broker is a Participant of the MLS or PDS in which the property is offered for sale or a reciprocal MLS or PDS; or (ii) (if checked) the amount specified in a separate written agreement (C.A.R. Form CBC) between Listing Broker and Cooperating Broker. Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.

Real Estate Broker (Selling Firm) _____ BRE Lic. # _____
 By _____ BRE Lic. # _____ Date _____
 Address _____ City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

Real Estate Broker (Listing Firm) _____ BRE Lic. # _____
 By _____ BRE Lic. # _____ Date _____
 Address _____ City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, a deposit in the amount of \$ _____), counter offer(s) numbered _____ and Other _____, and agrees to act as Escrow Holder subject to paragraph 32 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions, if any.

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

Escrow Holder _____ Escrow # _____
 By _____ Date _____
 Address _____
 Phone/Fax/E-mail _____

Escrow Holder is licensed by the California Department of Corporations, Insurance, Real Estate. License # _____

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

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

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