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County of Santa Clara
22CV404957
Reviewed By: R. Cachux

1 HALL GRIFFIN LLP
HOWARD D. HALL, State Bar No. 145024
2 *hdhall@hallgriffin.com*
JEREMY T. KATZ, State Bar No. 267361
3 *jkatz@hallgriffin.com*
1851 East First Street, 10th Floor
4 Santa Ana, California 92705-4052
Telephone: (714) 918-7000
5 Facsimile: (714) 918-6996

6 Attorneys for Plaintiffs ORANGE COAST
TITLE COMPANY OF NORTHERN
7 CALIFORNIA and REAL ADVANTAGE
TITLE INSURANCE COMPANY
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SANTA CLARA**

11 22CV404957

12 ORANGE COAST TITLE COMPANY
OF NORTHERN CALIFORNIA and
13 REAL ADVANTAGE TITLE
INSURANCE COMPANY,
14

15 Plaintiffs,

16 vs.

17 TAM CONG TRUONG; BE TY THI LE;
QUAN THANH HAN; and DOES 1-10,
18 inclusive,

19 Defendants.
20
21

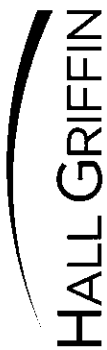
CASE NO.

COMPLAINT FOR

- 1. **FRAUD**
- 2. **CONSTRUCTIVE TRUST**
- 3. **UNJUST ENRICHMENT/MONEY HAD AND RECEIVED**
- 4. **PENAL CODE § 484**
- 5. **ACTUAL FRAUDULENT TRANSFER**
- 6. **CONSTRUCTIVE FRAUDULENT TRANSFER**
- 7. **AIDING AND ABETTING**
- 8. **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
- 9. **DECLARATORY RELIEF**

22 Plaintiffs ORANGE COAST TITLE COMPANY OF NORTHERN CALIFORNIA
23 (“OCTCNC”) and REAL ADVANTAGE TITLE INSURANCE COMPANY (“RATIC”)
24 (collectively, “Plaintiffs”) hereby allege as follows:

25 1. Defendant **Tam Truong** (“Truong”) is a San Jose Police Officer who
26 fraudulently convinced an escrow officer to remove a deed of trust from her preliminary
27 report of title after he opened escrow to refinance that very deed of trust. Then, to seize
28 upon the fraudulent opportunity, Truong quickly acted to sell this real property located at



1 **3002 Plumstead Way, San Jose, CA** (the “Plumstead Property”) using the amended
2 preliminary report of title that did not contain the deed of trust. Because of his conniving,
3 Truong obtained approximately **\$538,725.09** (the “Ill-Gotten Proceeds”) which should
4 have been paid to satisfy the deed of trust that remains as a valid lien against the Plumstead
5 Property. Truong then conspired with Defendants **Be Ty Thi Le** (“Le”) and **Quan Thanh**
6 **Han** (“Han”) to hide the Ill-Gotten Proceeds by purchasing a new home located at **2689**
7 **Flintwood Court, San Jose, CA** (the “Flintwood Property”) using the Ill-Gotten Proceeds
8 and debt. Defendant Han subsequently pulled non-existent equity from the Flintwood
9 Property. As a result of the fraud and theft by Defendants Truong, Le, and Han
10 (collectively “Defendants”), Plaintiffs have been injured since they have paid, and will
11 continue to pay, substantial amounts to keep the deed of trust current, and may be required
12 to pay the remaining principal if Defendants fail to pay off and satisfy that deed of trust.

13 **JURISDICTION AND VENUE**

14 2. Jurisdiction for this matter properly lies with this Court because the amount
15 in controversy is greater than \$25,000, and Defendants are located and/or reside and/or do
16 business in California.

17 3. Venue is proper in this Court because the acts alleged herein took place in,
18 and the real property at issue is located in the County of Santa Clara, California.

19 **PARTIES**

20 4. Plaintiff OCTCNC is, and at all times was, a California corporation doing
21 business in Santa Clara County, California.

22 5. Plaintiff RATIC is, and at all times was, a California corporation doing
23 business in Santa Clara County, California.

24 6. Defendant Truong is, and at all relevant times was, an individual residing in
25 Santa Clara County, California. Plaintiffs are informed and believe and based thereon
26 allege that for material times described herein, Truong was a Police Officer with the San
27 Jose Police Department, and that he was promoted to the rank of Sergeant in September
28 2022.

1 7. Based on information and belief, Defendant Le is, and at all relevant times
2 was, an individual residing in Santa Clara County, California. Plaintiffs are informed and
3 believe that Defendant Le is the wife of Truong.

4 8. Based on information and belief, Defendant Han is, and at all relevant times
5 was, an individual residing in Santa Clara County, California. Plaintiffs are informed and
6 believe that Defendant Han is related to Truong.

7 9. Defendants DOES 1 through 10, inclusive, are fictitious names of
8 Defendants whose true names and capacities are, at this time, unknown to Plaintiffs and
9 are unknown individuals or business entities doing business in Santa Clara County who
10 were involved in the transaction described below. Plaintiff does not know the true names
11 and capacities of Defendants sued herein as DOES 1 through 100, and therefore sues these
12 defendants by such fictitious names. Plaintiffs are informed and believe, and thereon
13 allege, that each of these fictitiously named defendants are responsible in some manner for
14 the actions and damages described herein, and that Plaintiffs damages as herein alleged
15 were proximately caused by their conduct.

16 10. All of the above-named Defendants were in some way employees, agents,
17 servants, contractors, co-conspirators, alter-ego and/or joint venture of the other
18 Defendants, and in doing the things alleged herein acted within the course and scope of
19 such agency, employment, alter-ego and/or in furtherance of the joint venture. Each of the
20 Defendant's acts alleged herein was done with the permission and consent of each of the
21 other Defendants.

22 11. Plaintiffs are informed and believe and thereon allege that the Defendants,
23 and each of them, aided and abetted, encouraged, and rendered substantial assistance to the
24 other Defendants in breaching their obligations to Plaintiffs, as alleged herein. In taking
25 actions as alleged herein to aid and abet and substantially assist the commission of these
26 wrongful acts and other wrongdoings complained of, each of the Defendants acted with
27 awareness of its primary wrongdoing and realized that his or its conduct would
28

1 substantially assist the accomplishment of the wrongful conduct, wrongful goals and
2 wrongdoing.

3 **GENERAL ALLEGATION**

4 12. Plaintiffs are informed and believe and based thereon allege that Defendant
5 Truong had served as an Officer in the San Jose Police Department (“SJPD”) for more
6 than a decade when the events alleged herein occurred, and he was promoted to the rank of
7 Sergeant in the SJPD in September 2022. Given his positions of importance in the SJPD,
8 Truong is certainly aware of the Values of the SJPD, which include “Integrity”, and the
9 SJPD Mission, which includes “To prevent, suppress, and investigate crimes”. Rather than
10 uphold these principles, as shown below Truong *committed* a crime of theft by fraud,
11 hardly consistent with the value of “Integrity” or “to prevent, suppress ... crimes”.

12 13. On April 14, 2015, Truong filed for Chapter 7 bankruptcy. Plaintiffs are
13 informed and believe and based thereon allege that Truong’s bankruptcy filing was
14 precipitated by his ownership and operation of a private security business then known as
15 Training and Protective Services (“TAPS”) in San Jose and surrounding areas.

16 14. In his bankruptcy filing, Truong listed assets that he then owned, including:
17 (a) 2 homes in San Jose – including his residence, the Plumstead Property; (b) 3 homes in
18 Salt Lake City, Utah; and (c) one additional home in Salt Lake City jointly owned by
19 Truong and Defendant Quan T. Han, bringing the total of owned homes to six (6).

20 15. Truong acquired the Plumstead Property in August 2006, with financing
21 provided via a mortgage loan from PHH. Specifically, Truong borrowed \$548,000 from
22 PHH Mortgage (the “PHH Note”) and secured his promise to repay that debt by giving
23 PHH a Deed of Trust against the Plumstead Property (the “PHH Deed of Trust”). A true
24 and correct copy of the PHH Deed of Trust recorded on August 1, 2006 as Document No.
25 19041938 in the Official Records of the County of Santa Clara, California is attached
26 hereto as **Exhibit A** and is incorporated herein by reference.

27 16. Truong retained ownership of his residence, the Plumstead Property,
28 throughout the bankruptcy. The Bankruptcy Court entered a Discharge Order dated

1 January 13, 2017, by which Truong’s personal obligation for the PHH Note was
2 eliminated. The Discharge Order did not void the PHH Deed of Trust, however.

3 17. Following his bankruptcy discharge, Defendant Truong was aware that he
4 still had to make payments to PHH to keep the PHH Deed of Trust current and to avoid
5 foreclosure of the Plumstead Property, and he continued to make those payments for more
6 than four (4) years.

7 18. In fact, in or around January 2021, while he was current on his payments
8 secured by PHH Deed of Trust, Truong opened escrow for a refinance loan transaction for
9 the PHH Deed of Trust. Plaintiff OCTCNC served as escrow for that prospective
10 refinance loan, and Fe Adriano served as the escrow officer for Plaintiff OCTCNC.

11 19. In this refinance escrow, Defendant Truong told Fe Adriano that he needed
12 the PHH Deed of Trust removed from the preliminary report of title for the Plumstead
13 Property. He provided her with documentation from his completed bankruptcy and
14 pointed her to sections to convince her that the PHH Deed of Trust was discharged.

15 20. Plaintiffs are informed and believe and based thereon allege that Truong
16 exploited his position of trust as Police Officer in the SJPd to impress upon Fe Adriano
17 that he was knowledgeable of bankruptcy matters and the function of the Discharge Order,
18 and that his request to remove the PHH Deed of Trust was correct, lawful and should be
19 followed. From his position of authority, Truong convinced Fe Adriano that the PHH
20 Deed of Trust should be removed from the preliminary report of title, and she did remove
21 that lien and issued an amended preliminary report of title that did not contain the PHH
22 Deed of Trust.

23 21. After he received the amended preliminary report of title (which did not
24 contain the PHH Deed of Trust), Defendant Truong abandoned his effort to refinance the
25 PHH Deed of Trust, in or around April 2021.

26 22. Instead, Truong quickly listed the Plumstead Property for sale to take
27 advantage of the fraudulent advantage he created by causing the PHH Deed of Trust to be
28 exorcised from the amended preliminary report of title.

1 23. Thus, on or about June 21, 2021, Truong once more entered escrow, but this
2 time to sell the Plumstead Property to Anh Chau. Plaintiff OCTCNC was escrow for the
3 sale of the Plumstead Property. Fe Adriano again served as the escrow officer for Plaintiff
4 OCTCNC.

5 24. Truong was required, as a condition of his sale of the Plumstead Property to
6 Anh Chau, to fully repay all then-existing liens recorded against the Plumstead Property.
7 Truong knew he was obligated to remove all then-existing liens from title to the Plumstead
8 Property as a condition for his sale to Anh Chau.

9 25. Truong specifically requested that Fe Adriano serve as the escrow officer
10 again, and requested that she use the amended preliminary prepared in the previous
11 refinance escrow, so as to take advantage of his prior misrepresentations to Fe Adriano
12 about the effect of his bankruptcy discharge. He again used his position of trust and
13 authority as a SJPD Police Officer to fraudulently convince Fe Adriano that the PHH Deed
14 of Trust no longer encumbered the Plumstead Property.

15 26. In or around July 2021, Truong completed the sale of the Plumstead Property
16 to Anh Chau. A true and correct copy of the Grant Deed recorded on July 22, 2021 as
17 Document No. 25038078 in the Official Records of the County of Santa Clara, California
18 is attached hereto as **Exhibit B** and is incorporated herein by reference.

19 27. Because Fe Adriano believed the PHH Deed of Trust had been discharged by
20 the Bankruptcy Discharge Order (as Truong led her to believe), the lien established by the
21 PHH Deed of Trust was not paid off with the escrow funds generated by Truong’s sale of
22 the Plumstead Property. Instead, Truong received the Ill-Gotten Proceeds (approximately
23 \$538,725.09) from the sale to which he was not entitled to receive, and which should have
24 been used to pay off the PHH Deed of Trust.

25 28. Plaintiff RATIC issued an owner’s policy of title insurance to Anh Chau in
26 connection with Defendant Truong’s sale of the Plumstead Property. That policy does not
27 exclude the PHH Deed of Trust from coverage.

28 ///

1 29. Even though Truong had already sold the Plumstead Property to Anh Chau,
 2 he continued to pay on the PHH Deed of Trust for two months, to allow him time to buy a
 3 new home with the Ill-Gotten Proceeds without being detected, and further demonstrating
 4 that Truong knew that the bankruptcy discharge *did not* exonerate the lien on the
 5 Plumstead Property.

6 30. Specifically, Truong stopped paying on the PHH Deed of Trust in October
 7 2021, the same month he acquired the Flintwood Property. Truong and Defendants Le and
 8 Han completed their purchase of the Flintwood Property on October 1, 2021. A true and
 9 correct copy of the Grant Deed recorded on October 1, 2021 as Document No. 25119444
 10 in the Official Records of Santa Clara County, California (“Flintwood Grant Deed”) is
 11 attached hereto as **Exhibit C** and is incorporated herein by reference.

12 31. Plaintiffs are informed and believe and based thereon allege that the Ill-
 13 Gotten Proceeds from the sale of the Plumstead Property were used by Defendants to
 14 acquire the Flintwood Property. Further, Plaintiffs are informed and believe and based
 15 thereon allege that Defendant Le and Defendant Han did not contribute funds towards the
 16 purchase of the Flintwood Property.

17 32. In or around March 2022, Defendants Truong and Le purchased Defendant
 18 Han’s one-third interest in the Flintwood Property for approximately \$424,000, despite
 19 there not being any equity in the Flintwood Property. Via this sale, Defendant Han
 20 extracted non-existent equity from the Flintwood Property, to further hide those funds
 21 from creditors. A true and correct copy of the Grant Deed recorded on March 17, 2022 as
 22 Document No. 25262887 in the Official Records of Santa Clara County, California is
 23 attached hereto as **Exhibit D** and is incorporated herein by reference.

24 33. Since Truong ceased making payments on the PHH Deed of Trust in October
 25 2021, the PHH Deed of Trust has gone into default and PHH has threatened to commence
 26 non-judicial foreclosure against the Plumstead Property. To avoid foreclosure, Plaintiffs
 27 have recently paid the sum of \$35,597.49 to reinstate the PHH Deed of Trust, said amount
 28 constituting interest and charges owed on the PHH Deed of Trust since Defendant Truong

1 ceased making payments in October 2021. Additionally, Plaintiffs will continue to pay
2 \$2,460.36 per month to prevent another default on the PHH Deed of Trust, until
3 Defendants pay the Ill-Gotten Proceeds (and more) to satisfy and secure the release of the
4 PHH Deed of Trust.

5 **FIRST CAUSE OF ACTION**

6 **FRAUD**

7 (Against ALL DEFENDANTS)

8 34. Plaintiffs hereby incorporate by reference the allegations contained in the
9 preceding Paragraphs as though fully set forth herein.

10 35. The elements of actionable fraud are (1) misrepresentation (false
11 representation, concealment, or non-disclosure); (2) knowledge of falsity (scienter); (3)
12 intent to induce reliance; (4) justifiable reliance; and (5) resulting damages.

13 36. Defendant Truong represented to OCTCNC’s escrow officer, Fe Adriano,
14 that the PHH Deed of Trust no longer encumbered the Plumstead Property and that he
15 needed it removed from title for the Plumstead Property. Defendant Truong claimed that
16 the PHH Deed of Trust was discharged because of his bankruptcy. He provided Fe
17 Adriano with documentation from his bankruptcy and directed her to specific pages in an
18 attempt to convince her that it was discharged. Furthermore, he told her the PHH Deed of
19 Trust was removed from his credit report, so it should also be removed from the
20 preliminary report of title. These statements were made during Fe Adriano’s work on the
21 escrows for both the refinance transaction and the sale of Plumstead Property, and
22 Defendant Truong encouraged Fe Adriano to use the amended preliminary report of title
23 from the prior refinance for his sale of the Plumstead Property in the subsequent escrow.

24 37. At all times relevant herein, Defendant Truong knew that the PHH Deed of
25 Trust still encumbered the Plumstead Property and was not voided by the Discharge Order.
26 This is seen not only by the fact that he continued payments for more than four (4) years
27 post-discharge, but also because he opened escrow to refinance the PHH Deed of Trust in
28

1 January 2021. Truong even kept paying on the allegedly “discharged” PHH Deed of Trust
 2 for two months *after* he sold the Plumstead Property.

3 38. Truong intended to induce Plaintiffs to rely on the falsity of his
 4 representations that the PHH Deed of Trust no longer encumbered the Plumstead Property.
 5 Once he learned that the amended report of preliminary title omitted the PHH Deed of
 6 Trust, Truong immediately abandoned his effort to refinance that very deed of trust and he
 7 instead set off on a fraudulent course to sell the property, without paying the (wrongfully
 8 omitted) PHH Deed of Trust, so that he could abscond with the Ill-Gotten Proceeds.

9 39. Plaintiffs were justified in relying on Defendant Truong’s representations.
 10 As a law enforcement officer, and specifically as a San Jose Police Officer, Truong knew
 11 he held sway over Fe Adriano and that his requests would be received by her as lawful,
 12 correct and legitimate, and that as a member of the public served by Police Officers, she
 13 would rightfully rely upon his representations regarding the operation of the Discharge
 14 Order. Further, Truong had spent nearly two years in bankruptcy and was familiar with
 15 how bankruptcy worked, and he directed Fe Adriano to certain pages within the
 16 bankruptcy documents and his credit report to show her that the lien had been voided
 17 (when in fact it had not). In his successful attempt to hoodwink Fe Adriano into removing
 18 the PHH Deed of Trust from the amended preliminary report of title, Truong developed
 19 and exploited his position of governmental authority and his bankruptcy experience to
 20 induce Fe Adriano to reasonably rely upon his representations.

21 40. Truong’s actions described herein have substantially injured Plaintiffs, as
 22 they have paid and continue to pay substantial monies to keep current the PHH Deed of
 23 Trust, as alleged above, which should have been paid off by Truong using the Ill-Gotten
 24 Proceeds. Plaintiffs will incur substantial additional damages if they are required to pay
 25 the principal owed on the PHH Deed of Trust, all due to Defendants’ receipt and
 26 possession of the Ill-Gotten Proceeds.

27 41. Plaintiffs are informed and believe and based thereon allege that: (a)
 28 Defendants Le and Han conspired with Truong in his fraud; (b) both of them were aware

1 of Truong’s fraud in obtaining the Ill-Gotten Proceeds as they knew that he continued to
2 pay on the PHH Deed of Trust after his bankruptcy, and (c) they helped him further the
3 fraud by hiding the Ill-Gotten Proceeds through their purchase of the Flintwood Property
4 despite a lack of contribution from Defendants Le and Han.

5 42. Plaintiffs are informed and believe and based thereon allege that Defendants
6 further conspired to defraud Plaintiffs by transferring Defendant Han’s interest in the
7 Flintwood Property to Defendants Truong and Le for \$424,000 when there was no equity
8 in the Flintwood Property. Plaintiffs are informed and believe and based thereon allege
9 that this \$424,000 was a portion of the Ill-Gotten Proceeds that were used to purchase the
10 Flintwood Property. By removing the non-existent equity, Defendants attempt to make
11 themselves and the Flintwood Property judgment proof.

12 43. Plaintiffs are informed and believe and based thereon allege that Defendants
13 are all co-conspirators, which subjects them to liability to Plaintiffs for fraud.

14 44. Given the foregoing, Plaintiffs demand that Defendants pay an amount equal
15 to what the Plaintiffs will be required to pay to satisfy all amounts paid by Plaintiffs to
16 avoid PHH foreclosing on the Property, and all amounts owed and accruing on the PHH
17 Deed of Trust since October 1, 2021 (when Truong ceased making required monthly
18 payments), plus interest accruing at the legal rate upon such amount(s).

19 45. Defendant Truong planned and engaged in the misrepresentations alleged
20 herein with malice, oppression, and fraud as those terms are defined by Civil Code §3294,
21 entitling Plaintiffs to an award of punitive damages.

22 **SECOND CAUSE OF ACTION**

23 **CONSTRUCTIVE TRUST**

24 (Against ALL DEFENDANTS)

25 46. Plaintiffs hereby incorporate by reference the allegations contained in the
26 preceding Paragraphs as though fully set forth herein.

27 47. Truong wrongfully obtained the Ill-Gotten Proceeds from the sale of the
28 Plumstead Property.

1 48. Defendants purchased the Flintwood Property using the Ill-Gotten Proceeds.

2 49. Defendant Truong and Defendant Le currently own the Flintwood Property.

3 50. As such, Plaintiffs request that a constructive trust be imposed on the
4 Flintwood Property for their benefit, for the purpose of preserving the Ill-Gotten Proceeds
5 so those funds can be applied to satisfy the PHH Deed of Trust, and to prevent a gross
6 windfall to Defendants.

7 **THIRD CAUSE OF ACTION**

8 **UNJUST ENRICHMENT/MONEY HAD AND RECEIVED**

9 (Against DEFENDANT TRUONG)

10 51. Plaintiffs hereby incorporate by reference the allegations contained in the
11 preceding Paragraphs as though fully set forth herein.

12 52. “A cause of action for money had and received is stated if it is alleged [that]
13 the defendant “is indebted to the plaintiff in a certain sum ‘for money had and received by
14 the defendant for the use of the plaintiff. The claim is viable wherever one person has
15 received money which belongs to another, and which in equity and good conscience
16 should be paid over to the latter.” *Avidor v. Sutter’s Place, Inc.* (2013) 212 Cal.App.4th
17 1439, 1454.

18 53. Defendant Truong received the Ill-Gotten Proceeds to which he was not
19 entitled to own or possess.

20 54. Defendant Truong has been unjustly enriched in the amount of the Ill-Gotten
21 Proceeds.

22 55. It would be unconscionable and against fundamental principles of justice,
23 equity, and good conscience for Defendant Truong to retain the Ill-Gotten Proceeds, as the
24 Ill-Gotten Proceeds are required to satisfy the PHH Deed of Trust.

25 56. Therefore, Plaintiffs request that Defendant Truong pay an amount equal to
26 what Plaintiffs will be required to pay to satisfy all amounts owed and accruing on the
27 PHH Deed of Trust since October 1, 2021 (when Defendant Truong ceased making
28 required monthly payments), including any and all amounts Plaintiffs may be required to

1 pay to satisfy the principal, penalties and charges owed on the PHH Deed of Trust, plus
2 interest accruing at the legal rate upon such amount(s).

3 **FOURTH CAUSE OF ACTION**

4 **PENAL CODE § 484**

5 (Against ALL DEFENDANTS)

6 57. Plaintiffs hereby incorporate by reference the allegations contained in the
7 preceding Paragraphs as though fully set forth herein.

8 58. Penal Code § 484 provides “Every person [...] who shall knowingly and
9 designedly, by any false or fraudulent representation or pretense, defraud any other person
10 of money, labor or real or personal property, or who causes or procures others to report
11 falsely of his or her wealth [...] obtains credit and thereby fraudulently gets or obtains
12 possession of money or property [...] is guilty of theft.”

13 59. Defendant Truong fraudulently misrepresented that the PHH Deed of Trust
14 was voided through bankruptcy.

15 60. As a result of his fraudulent misrepresentations, Defendant Truong received
16 the Ill-Gotten Proceeds to which he was not entitled.

17 61. Defendants Le and Han conspired with Defendant Truong in his fraudulent
18 representations because they were aware of his fraudulent representations as they knew he
19 received money to which he was not entitled. Furthermore, they helped him to hide the Ill-
20 Gotten Proceeds by purchasing the Flintwood Property with it.

21 62. Defendant Truong knew that he was not entitled to the Ill-Gotten Proceeds.
22 Defendants Le and Han knew that they were not entitled to use the Ill-Gotten Proceeds.

23 63. Therefore, Defendants are all guilty of theft and have violated Penal Code §
24 484.

25 64. Under Cal. Penal Code § 496, treble damages and an award of attorneys’
26 fees are available for any violation constituting theft, including theft such as is found in
27 Penal Code § 484, all related to and resulting from the Ill-Gotten Proceeds.

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1 65. Plaintiffs have incurred, and will continue to incur, substantial attorneys’
2 fees and costs in prosecuting this action (all subject to proof at trial).

3 66. Therefore, Plaintiffs request that Defendants be required to pay to Plaintiffs
4 the Ill-Gotten Proceeds, treble damages, and attorneys’ fees pursuant to Cal. Penal Code §
5 496.

6 **FIFTH CAUSE OF ACTION**
7 **ACTUAL FRAUDULENT TRANSFER**
8 **(Against ALL DEFENDANTS)**

9 67. Plaintiffs hereby incorporate by reference the allegations contained in the
10 preceding Paragraphs as though fully set forth herein.

11 68. An actual fraudulent transfer is when “a transfer is made or obligation
12 incurred by a debtor is actually fraudulent as to a creditor, whether the creditor’s claim
13 arose before or after the transfer was made or the obligation was incurred, if the debtor
14 made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud
15 any creditor of the debtor.” Cal. Civ. Code § 3439.04(a).

16 69. Defendant Truong used the Ill-Gotten Proceeds (which should have been
17 used to pay off the PHH Deed of Trust) to purchase the Flintwood Property when he sold
18 the Plumstead Property.

19 70. The Flintwood Grant Deed lists Defendant Truong, Defendant Le, and
20 Defendant Han as the purchasers of the Flintwood Property.

21 71. Further, a few months after purchasing the Flintwood Property, despite there
22 being a lack of equity in the Flintwood Property, Defendant Han transferred his interest in
23 the Flintwood Property to Defendant Truong and Defendant Le for approximately
24 \$424,000.

25 72. Plaintiffs are informed and believe and based thereon allege that the
26 \$424,000 taken out of the Flintwood Property constitutes a portion of the Ill-Gotten
27 Proceeds and was moved out of the Flintwood Property to take it further out of creditors’
28 (such as Plaintiffs’) reach. Clearly, Defendants intended to defraud Plaintiffs.

1 73. Plaintiffs therefore seek imposition of an injunction prohibiting Defendants
2 Truong and Le from transferring the Flintwood Property pursuant to Cal. Civ. Code §
3 3439.07. Plaintiffs also seek an injunction be imposed prohibiting Defendant Han from
4 further transferring the \$424,000 pursuant to Cal. Civ. Code § 3439.07.

5 **SIXTH CAUSE OF ACTION**
6 **CONSTRUCTIVE FRAUDULENT TRANSFER**
7 (against ALL DEFENDANTS)

8 74. Plaintiffs hereby incorporate by reference the allegations contained in the
9 preceding Paragraphs as though fully set forth herein.

10 75. A constructive fraudulent transfer is when a transfer is made or an obligation
11 is incurred by a debtor as to a creditor “if the debtor made the transfer or incurred the
12 obligation without receiving a reasonably equivalent value in exchange for the transfer or
13 obligation and the debtor [...] (2) intended to incur, or believed or reasonably should have
14 believed that he would incur, debts beyond his ability to pay, or (3) was insolvent at that
15 time or became insolvent as a result of the transfer.” *Cal. Civ. Code* §§ 3439.04(b),
16 3439.05.

17 76. Plaintiffs are informed and believe and based thereon allege that Defendants
18 purchased the Flintwood Property using the Ill-Gotten Proceeds, and that Defendants Le
19 and Han did not contribute any consideration to the purchase of the Flintwood Property.

20 77. Plaintiffs therefore seek that imposition of an injunction prohibiting
21 Defendants Truong and Le from transferring the Flintwood Property pursuant to Cal. Civ.
22 Code § 3439.07. Plaintiffs also seek an injunction be imposed prohibiting Defendant Han
23 from further transferring the \$424,000 pursuant to Cal. Civ. Code § 3439.07.

24 **SEVENTH CAUSE OF ACTION**
25 **AIDING AND ABETTING**
26 (Against DEFENDANTS LE AND HAN)

27 78. Plaintiffs hereby incorporate by reference the allegations contained in the
28 preceding Paragraphs as though fully set forth herein.

1 79. One who aids and abets the commission of a tort is liable if he or she “knows
2 the other’s conduct constitutes a breach of duty and gives substantial assistance or
3 encouragement to the other to so act or gives substantial assistance to the other in
4 accomplishing a tortious result and the person’s own conduct, separately considered,
5 constitutes a breach of duty to the third person.” *Saunders v. Superior Court* (1994) 27
6 Cal.App.4th 832, 846.

7 80. Plaintiffs are informed and believe and based thereon allege that Defendants
8 Le and Han knew of Defendant Truong’s fraud, and that they gave substantial assistance to
9 Defendant Truong in hiding the Ill-Gotten Proceeds in the purchase of the Flintwood
10 Property.

11 81. Defendants Le and Han therefore owe Plaintiffs an amount equal to the
12 amount Plaintiffs have paid and will be required to pay to satisfy the PHH Deed of Trust,
13 including any and all amounts Plaintiffs may be required to pay to fully satisfy the PHH
14 Deed of Trust.

15 **EIGHTH CAUSE OF ACTION**
16 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR**
17 **DEALING**
18 (Against DEFENDANT TROUNG)

19 82. Plaintiff hereby incorporates by reference the allegations contained in the
20 preceding paragraphs as though fully set forth herein.

21 83. The covenant of good faith and fair dealing, implied by law in every
22 contract, exists to prevent one contracting party from unfairly frustrating the other’s
23 party’s right to receive the benefits of the agreement actually made.

24 84. Defendant Truong entered into an escrow agreement with OCTCNC.

25 85. Defendant Truong unfairly interfered with and frustrated OCTCNC’s right to
26 receive the benefit of the escrow agreement by representing to and instructing the escrow
27 officer to remove the PHH Deed of Trust from the title record as he claimed it no longer
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1 encumbered the Plumstead Property and was avoided through bankruptcy, even though he
2 Truong knew such representations were false.

3 86. Plaintiffs were harmed by Defendant Truong’s conduct in that Plaintiffs have
4 paid, and continue to make payments owed on the PHH Deed of Trust. Plaintiffs will
5 incur substantial additional damages if they are required to pay off the principal, fees and
6 charges owed on the PHH Deed of Trust.

7 87. Plaintiffs request Defendant Truong be required to pay all amounts necessary
8 to fully compensate Plaintiffs for that which Plaintiffs will be required to pay in interest,
9 principal, fees and charges if they must satisfy the PHH Deed of Trust.

10 **NINTH CAUSE OF ACTION**

11 **INJUNCTIVE RELIEF/DECLARATORY RELIEF**

12 (Against ALL DEFENDANTS)

13 88. Plaintiffs hereby incorporate by reference the allegations contained in the
14 preceding Paragraphs as though fully set forth herein.

15 89. An actual controversy has arisen and now exists between Defendants and
16 Plaintiffs as to the Ill-Gotten Proceeds.

17 90. Plaintiffs contend that without a declaration from the Court, Defendant will
18 not pay the Ill-Gotten Proceeds to pay off and satisfy the PHH Deed of Trust.

19 91. Defendant Truong retained the Ill-Gotten Proceeds with the full knowledge
20 that he owed the Ill-Gotten Proceeds to clear the PHH Deed of Trust from the Plumstead
21 Property, and that the Plumstead Property was encumbered by a deed of trust, yet he failed
22 to pay off that Deed of Trust and secure a Reconveyance.

23 92. Plaintiffs are informed and believe and based thereon allege that Defendants
24 Le and Han used the Ill-Gotten Proceeds to purchase a house with the full knowledge that
25 Defendant Truong owed the Ill-Gotten Proceeds to pay off the PHH Deed of Trust that
26 remains against the Plumstead Property.

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1 93. Plaintiffs request a declaration that Defendants were unjustly enriched, and
2 that Defendants, jointly and severally, owe the Ill-Gotten Proceeds to Plaintiffs and PHH
3 until the PHH Deed of Trust is satisfied and reconveyed.

4 94. Plaintiffs seek an injunction preventing Defendant Han from further
5 transferring the \$424,000 pursuant to Cal. Civ. Code § 3439.07;

6 95. Plaintiffs also seek an injunction preventing Defendants from transferring or
7 refinancing the Flintwood Property unless the proceeds from such transfer or refinance are
8 used to pay repay the Ill-Gotten Proceeds.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE, DEFENDANTS** pray for judgment as follows:

- 11 1. Compensatory damages in the amount to be determined at trial but which is no
- 12 less than the Ill-Gotten Proceeds (\$538,725.09);
- 13 2. The imposition of a constructive trust on the Flintwood Property;
- 14 3. A declaration by the Court that Defendants, and each of them, were unjustly
- 15 enriched and owe Plaintiffs an amount to be determined at trial but which is no
- 16 less than the Ill-Gotten Proceeds (\$538,725.09);
- 17 4. An injunction preventing Defendant Truong and Defendant Le from transferring
- 18 the Flintwood Property pursuant to Cal. Civ. Code § 3439.07;
- 19 5. An injunction preventing Defendant Han from further transferring the \$424,000
- 20 pursuant to Cal. Civ. Code § 3439.07;
- 21 6. Treble damages pursuant to Cal. Penal Code § 496;
- 22 7. An award of punitive damages against Defendant Truong;
- 23 8. Costs of Suit;
- 24 9. Attorney’s fees pursuant to Cal. Penal Code § 496; and

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10. Any further relief that the Court may deem just and equitable.

DATED: September 29, 2022

HALL GRIFFIN LLP

By: 

Howard D. Hall

Jeremy T. Katz

Attorneys for Plaintiffs ORANGE COAST TITLE
COMPANY OF NORTHERN CALIFORNIA and
REAL ADVANTAGE TITLE INSURANCE
COMPANY



EXHIBIT A

Lender's address is 538 Broadhollow Rd, Melville, NY 11747

(D) "Trustee" is ~~Dundee~~ Commonwealth

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (388) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated July 25, 2006

The Note states that Borrower owes Lender Five Hundred Forty Eight Thousand and No/100 Dollars (U.S. \$548,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than August 1, 2046

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input checked="" type="checkbox"/> Other(s) [specify] |

PREPAYMENT RIDER

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

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(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County _____ of Santa Clara _____ :

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

Parcel ID Number: 673-19-021 which currently has the address of
3002 PLUMSTEAD WAY [Street]
San Jose [City], California 95148 [Zip Code]
("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

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of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

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in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10

days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

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the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

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attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage

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Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or

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any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict

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shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

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requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

24. Substitute Trustee. Lender, at its option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Security Instrument is recorded and the name and address of the successor trustee. Without conveyance of the Property, the successor trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by Applicable Law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

25. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

 _____ (Seal)
TAM TRUONG -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

State of California
County of *Santa Clara*

On *July 25, 2006*

TAM TRUONG

} ss.
before me, *Jonathan Chiem, Notary Public*
personally appeared

, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) are subscribed to
the within instrument and acknowledged to me that ~~he~~/she/they executed the same in ~~his~~/her/their authorized
capacity(ies), and that by ~~his~~/her/their signature(s) on the instrument the person(s) or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



J Chiem (Seal)

Exhibit "A"

All that certain real property situated in the County of Santa Clara, State of California, described as follows:

(City of San Jose)

Lot 87, as shown on that certain Map entitled Tract No. 5047, which Map was filed for record in the Office of the recorder of the County of Santa Clara, State of California, on August 9, 1971, in Book 288 of Maps, Page(s) 14 and 15.

EXCEPTING THEREFROM the underground water rights with no right of surface entry granted to City of San Jose, a Municipal Corporation, by Instrument recorded August 12, 1971, in Book 9460 of Official Records, Page 261.

Assessor's Parcel Number **673-19-025**

ADJUSTABLE RATE RIDER

(12-MTA Index - Payment and Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this 25th day of July, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to American Home Mortgage

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:

3002 PLUMSTEAD WAY, San Jose, CA 95148

(Property Address)

THIS RIDER CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. BECAUSE MY INTEREST RATE WILL CHANGE MORE FREQUENTLY THAN MY MONTHLY PAYMENT, AND BECAUSE THERE ARE LIMITATIONS ON MY MONTHLY PAYMENT INCREASES, THE AMOUNT OF MY MONTHLY PAYMENT MAY NOT FULLY PAY THE INTEREST THAT ACCRUES. AS A RESULT, THE PRINCIPAL AMOUNT I MUST REPAY COULD BE LARGER THAN THE AMOUNT I ORIGINALLY BORROWED, BUT NOT MORE THAN 125.000% OF THE ORIGINAL AMOUNT (OR \$ 685,000.00). MY INTEREST RATE CAN NEVER EXCEED THE LIMIT STATED IN THE NOTE AND RIDER. A BALLOON PAYMENT MAY BE DUE AT MATURITY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

Interest will be charged on unpaid Principal until the full amount has been paid. I will pay interest at a yearly rate of 1.000 % until July 31, 2006, and the initial monthly payment provided for in the Note will be based on this rate. Commencing August 1, 2006, I will pay interest at a yearly rate of 7.082 %. Thereafter, the interest rate I will pay may change in accordance with Section 4 of the Note.

Section 4 of the Note provides for changes in the interest rate and monthly payment as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may further change on the 1st day of September, 2006, and on that day every month thereafter. Each such date on which my interest rate could change is called a "Change Date."

(B) The Index

On each Change Date, my interest rate will be based on an Index. The "Index" is the Twelve-Month Average, determined as set forth below, of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H. 15)" (the "Monthly Yields"). The Twelve-Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12.

The most recent Index figure available as of the date 15 days before each Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Interest Rate Change

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and 650 Thousandths percentage points 2.650 % ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-thousandth of one percentage point (0.001%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. In the event a new Index is selected, pursuant to paragraph 4(B), a new Margin will be determined. The new Margin will be the difference between the average of the old Index for the most recent three year period which ends on the last date the Index was available plus the Margin on the last date the old Index was available and the average of the new Index for the most recent three year period which ends on that date (or if not available for such three year period, for such time as it is available). This difference will be rounded to the next higher 1/8 of 1%.

(D) Interest Rate Limit

My interest rate will never be greater than 9.950 % ("Cap"), except that following any sale or transfer of the property which secures repayment of this Note after the first interest rate Change Date, the maximum interest rate will be the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of such sale or transfer.

(E) Payment Change Dates

Effective every year commencing September 1st, 2007, and on the same date each twelfth month thereafter ("Payment Change Date"), the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the projected Principal balance I am expected to owe as of the Payment Change Date in full on the maturity date at the interest rate that will become effective one month prior to the Payment Change Date in substantially equal payments. The result of this calculation is the new amount of my monthly

payment, subject to Section 4(F) below, and I will make payments in the new amount until the next Payment Change Date unless my payments are changed earlier under Section 4(H) of the Note.

(F) Monthly Payment Limitations

Unless Section 4(H) and 4(I) below apply, the amount of my new monthly payment, beginning with a Payment Change Date, will be limited to 7 ½% more or less than the amount I have been paying. This payment cap applies only to the principal and interest payment and does not apply to any escrow payments Lender may require under the Security Instrument.

(G) Changes in My Unpaid Principal Due to Negative Amortization or Accelerated Amortization

Since my initial monthly payment will be based on the Initial Rate, which may be different than the Subsequent Rate, my initial monthly payment could be less or greater than the amount of the interest portion (the "Interest Portion") of the monthly principal and interest payment that would be sufficient to repay the unpaid Principal I owe in full on the maturity date in substantially equal payments. Additionally, since my payment amount changes less frequently than the interest rate and since the monthly payment is subject to the payment limitations described in Section 4(F), my monthly payment could be less or greater than the amount of the Interest Portion. For each month that the monthly payment is less than the Interest Portion, the Note Holder will subtract the monthly payment from the amount of the Interest Portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the current interest rate. For each month that the monthly payment is greater than the Interest Portion, the Note Holder will apply the excess towards a principal reduction of the Note.

(H) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed a maximum amount equal to 125.000% of the principal amount originally borrowed. In the event my unpaid Principal would otherwise exceed that 125.000% limitation, I will begin paying a new monthly payment until the next Payment Change Date notwithstanding the 7 ½% annual payment increase limitation. The new monthly payment will be an amount which would be sufficient to repay my then unpaid Principal in full on the maturity date at the interest rate in effect one month prior to the payment due date in substantially equal payments.

(I) Required Full Monthly Payment

On the Five anniversary of the due date of the first monthly payment, and on that same day every Five year thereafter, the monthly payment will be adjusted without regard to the payment cap limitation in Section 4(F).

(J) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the title and telephone number of a person who will answer any questions I may have regarding the notice.

(K) Failure to Make Adjustments

If for any reason Note Holder fails to make an adjustment to the interest rate or payment amount as described in this Note, regardless of any notice requirement, I agree that Note Holder may, upon discovery of such failure, then make the adjustment as if they had been made on time. I also agree not to hold Note Holder responsible for any damages to me which may result from Note

Holder's failure to make the adjustment and to let the Note Holder, at its option, apply any excess monies which I may have paid to partial prepayment of unpaid Principal.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Section 18 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser. If all or any part of the Property or any interest in the Property is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Agreement or other obligations related to the Note or other loan document is acceptable to Lender, (c) Assuming party executes Assumption Agreement acceptable to Lender at its sole choice and discretion, which Agreement may include an increase to Cap as set forth below and (d) payment of Assumption Fee if requested by Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption, and Lender may increase the maximum interest rate limit to the higher of the Cap or 5 percentage points greater than the interest rate in effect at the time of the transfer. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender has entered into a written assumption agreement with transferee and formally releases Borrower.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider. Borrower agrees to execute any document necessary to reform this Agreement to accurately reflect the terms of the Agreement between Borrower and Beneficiary or if the original Note, Trust Deed or other document is lost, mutilated or destroyed.



TAM TRUONG

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

EXHIBIT B

APN: 673-19-025

Dated: July 12, 2021



Tam Truong

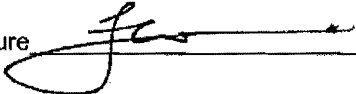
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

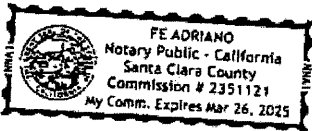
State of California
County of Santa Clara

On July 12, 2021 before me, Fe Adriano, Notary Public, personally appeared **Tam Truong** who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



MAIL TAX STATEMENTS AS DIRECTED ABOVE

Exhibit "A"

Lot 87, as shown on that certain Map entitled Tract No. 5047, in the City of San Jose, County of Santa Clara, State of California, which Map was filed for record in the Office of the County Recorder of said County, on August 9, 1971, in Book 288 of Maps, Page(s) 14 and 15.

Excepting therefrom the underground water rights with no right of surface entry granted to City of San Jose, a Municipal Corporation, by Instrument recorded August 12, 1971, in Book 9460 of Official Records, Page 261.

EXHIBIT C

****This document was electronically submitted to Santa Clara County for recording****

25119444

Regina Alcomendras
Santa Clara County - Clerk-Recorder
10/01/2021 08:31 AM

Titles: 1 Pages: 3
Fees: \$21.00
Tax: \$5170.00
Total: \$5191.00

RECORDING REQUESTED BY:
Chicago Title Company

When Recorded Mail Document and Tax Statement To:
Quan Thanh Han and Tam Cong Truong and Be Ty Thi Le
2689 Flintwood Court
San Jose, CA 95148

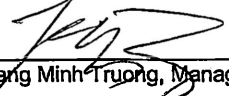
SPACE ABOVE THIS LINE FOR RECORDER'S USE

Escrow Order No.: FWPS-2996212708A
Property Address: 2689 Flintwood Court,
San Jose, CA 95148
APN/Parcel ID(s): 649-15-062

Exempt from fee per GC 27388.1(a)(2); This document is a transfer that is subject to Documentary Transfer Tax.

GRANT DEED

The undersigned grantor(s) declare(s)


Khang Minh Truong, Manager

- This transfer is exempt from the documentary transfer tax.
 - The documentary transfer tax is \$1,292.50 and San Jose City Conveyance Tax is \$3,877.50 and is computed on:**
 - the full value of the interest or property conveyed.
 - the full value less the liens or encumbrances remaining thereon at the time of sale.
- The property is located in the **City of San Jose**.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, 7 Trees Investment Properties, LLC, a Utah limited liability company, who acquired title as 7 Trees Investment Properties, LLC, a California limited liability company

hereby GRANT(S) to Quan Thanh Han, a single man and Tam Cong Truong and Be Ty Thi Le, husband and wife as joint tenants

the following described real property in the City of San Jose, County of Santa Clara, State of California:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

PROPERTY COMMONLY KNOWN AS: 2689 Flintwood Court, San Jose, CA 95148

MAIL TAX STATEMENTS AS DIRECTED ABOVE

GRANT DEED
(continued)

APN/Parcel ID(s): 649-15-062

Dated: September 28, 2021

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

7 Trees Investment Properties, LLC, a Utah limited liability company

BY: [Signature]
Khang Minh Truong, Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Santa Clara

On Sept. 28, 2021 before me, D. HONG, Notary Public,
(here insert name and title of the officer)

personally appeared KHANG MINH TRUONG,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]
Signature

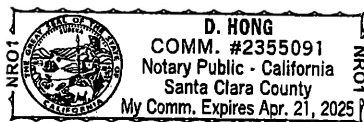




EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 649-15-062

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOT 21, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "TRACT NO. 5048", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON JUNE 1, 1972 IN BOOK 302 OF MAPS AT PAGE(S) 23, 24 AND 25.

EXCEPTING THEREFROM THE UNDERGROUND WATER OR RIGHTS THERETO WITH NO RIGHT OF SURFACE ENTRY, AS GRANTED TO SAN JOSE WATER WORKS, A CALIFORNIA CORPORATION RECORDED ON JUNE 8, 1972, IN BOOK 9870 OF OFFICIAL RECORDS, PAGE 600.

EXHIBIT D

****This document was electronically submitted to Santa Clara County for recording****

25262887

Regina Alcomendras
Santa Clara County - Clerk-Recorder
03/17/2022 03:12 PM

Titles: 1 Pages: 3
Fees: \$21.00
Tax: \$1865.60
Total: \$1886.60

RECORDING REQUESTED BY:
Orange Coast Title Company of Northern California

When Recorded Mail Document To:
Tam Cong Truong and Be Ty Thi Le
2689 Flintwood Court
San Jose, CA 95148

Escrow No.: 520-SCC-22100404-64-FA
Title No.: 520-2310573-60

APN: 649-15-062

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

The undersigned grantor(s) declare(s) that the DOCUMENTARY TRANSFER TAX is: \$466.40, City Tax is \$1,399.20

- This transfer is exempt from the documentary transfer tax.
- The documentary transfer tax is computed on:**
 - computed on full value of property conveyed, or
 - computed on full value less value of liens or encumbrances remaining at time of sale,
 - OR transfer is EXEMPT from tax for the following reason

T. Truong _____
 Signature of declarant or agent determining tax Firm Name

- The property is located in the City of San Jose

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Quan Thanh Han, a single man and Tam Cong Truong and Be Ty Thi Le, husband and wife as Joint Tenants

hereby GRANT(S) to

Tam Cong Truong and Be Ty Thi Le, husband and wife as joint tenants

the following described real property in the County of Santa Clara, State of California:

See Exhibit A attached hereto and made a part hereof.

Commonly known as: 2689 Flintwood Court, San Jose, CA 95148

Exempt from the fee per GC 27388.1 (a) (2); This document is subject to Documentary Transfer Tax.

MAIL TAX STATEMENTS AS DIRECTED ABOVE

APN: 649-15-062
Dated: March 11, 2022

[Signature]
Quan Thanh Han

[Signature]
Tam Cong Truong

[Signature]
Be Ty Thi Le

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara

On MARCH 12, 2021 before me, FE ADRIANO, Notary Public,

personally appeared **Quan Thanh Han, Tam Cong Truong and Be Ty Thi Le** who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)

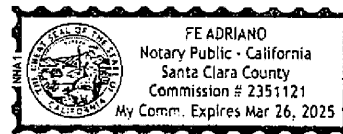


Exhibit "A"

Lot 21, as shown upon that certain Map entitled "Tract No. 5048", in the City of San Jose , County of Santa Clara, State of California, which Map was filed for record on June 1, 1972, in Book 302, of Maps at Pages(s) 23, 24 and 25, in the Office of the County Recorder of said County.

Excepting therefrom the underground water or rights thereto with no right of surface entry, as granted to San Jose water works, a California Corporation recored on June 8, 1972, in Book 9870 of Official Records, Page 600.