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Corwyn Ha'o

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

11 CORWYN HA'O, an individual,  
12 Plaintiff,  
13 v.  
14 WENDY NAERBO, an individual; and  
15 SURF DEL MAR TWO, LLC, a Florida  
16 limited liability company; and DOES 1-10,  
17 inclusive,  
Defendants.

Case No.  
**Corwyn Ha'o's Complaint for:**  
**(1) Fraud;**  
**(2) Breach of Contract; and**  
**(3) Breach of the Implied Covenant of**  
**Good Faith and Fair Dealing**

18 Plaintiff Corwyn Ha'o ("Ha'o") hereby alleges as follows:

19 **JURISDICTION AND VENUE**

20 1. Jurisdiction for this matter properly lies with this Court because the amount  
21 in controversy is within the jurisdictional limits of the Superior Court of the State of  
22 California for an unlimited civil case. Further, all parties are located in, reside in, and/or  
23 conduct business in San Diego County, California.

24 2. Venue is proper in this Court because all parties conducted business related  
25 to this action in San Diego County, California. Further, most of the underlying events that  
26 form the bases of this action occurred in San Diego County, California.

27 ///

28 ///

**PARTIES**

1  
2 3. Ha’o is now, and at all relevant times was, an individual who resides in San  
3 Diego County, California, and is in good legal standing to bring this action. Ha’o is the  
4 former owner of certain real property located at 3995 Via de la Valle, Del Mar, California  
5 92014 (the “Property”).

6 4. Wendy Naerbo (“Naerbo”) is now, and at all relevant times was, an  
7 individual who resided in San Diego County, California. Naerbo purchased the Property  
8 from Ha’o and owned the Property from on or about June 30, 2021 to December 21, 2022.

9 5. Surf Del Mar Two, LLC (“Surf Del Mar”) is now, and at all relevant times  
10 was, a Florida limited liability company with its principal place of business in Florida.  
11 Naerbo transferred the Property to Surf Del Mar on or about December 21, 2022. Surf Del  
12 Mar currently owns the Property. Naerbo and Surf Del Mar are collectively referred to  
13 herein as “Defendants.”

14 6. Ha’o does not know the true names or capacities of the defendants sued  
15 herein as DOES 1-10, inclusive, and will amend this complaint to allege such facts as  
16 soon as they are ascertained. Ha’o is informed and believes that Defendants and the  
17 defendants named as DOES 1-10, and each of them, are and acted as the agents, partners,  
18 co-venturers, shareholders, directors, employees, servants, and/or alter egos of each other.  
19 By virtue of such capacities, these defendants, and each of them, are legally responsible  
20 for the conduct, acts and omissions alleged herein. When the true names and identities of  
21 the defendants named fictitiously herein as DOES 1-10, become known to Ha’o, Ha’o will  
22 amend this complaint to insert such true names and capacities.

**GENERAL ALLEGATIONS**

23  
24 7. Ha’o incorporates herein by this reference paragraphs 1 through 6 of this  
25 complaint as if set forth in full.

26 8. This dispute arises from Defendants’ fraudulent scheme to purchase the  
27 Property from Ha’o ultimately for the benefit of Surf Cup Sports, LLC (“Surf Cup”). Due  
28 to a years-long contentious dispute between Ha’o and his community against the City of

1 San Diego and Surf Cup regarding the proper use of the land previously known as the Del  
2 Mar Polo Fields (the “Polo Fields”), Defendants knew that Ha’o would not even entertain  
3 an offer on the Property—which adjoins the Polo Fields—from Surf Cup. Naerbo acted as  
4 a strawman, making several misrepresentations regarding her identity and the intended use  
5 of the Property, and purchased the Property only to transfer it shortly thereafter to Surf  
6 Del Mar—an affiliate and/or subsidiary of Surf Cup. As a result, Ha’o was manipulated  
7 into transferring the Property to the very people he has been fighting against for years.

8 ***Background Years-Long Dispute Regarding Allowable Uses of the Polo Fields***

9 9. Critical context to Defendants’ fraudulent scheme is the extensive dispute  
10 Ha’o and his community have been involved in for years against the City of San Diego  
11 and Surf Cup regarding the extended uses of the Polo Fields, which they, and other related  
12 parties, assert are in violation of the Polo Field’s Corporate Grant Deed (the “Grant  
13 Deed”). What was once an open park space used for playing polo has now turned into an  
14 attraction for sports tournaments and other related events, which has brought a disruptive  
15 amount of people, cars, and noise into the neighborhood. Ha’o and his community have  
16 fought for years to limit these nuisances to preserve the peace they once enjoyed.

17 10. In or about 1983, the Polo Fields were transferred to the City of San Diego  
18 through the Grant Deed. The Grant Deed provided that the City of San Diego would “keep  
19 and preserve the land as open space in its natural condition as near as possible to maintain  
20 it as a rural, public open space.” The Grant Deed limited the uses of the Polo Fields to  
21 passive non-commercial recreational uses (e.g., picnicking, walking, hiking, and similar  
22 activities) and active non-commercial uses “not involving large assemblages of people or  
23 automobiles,” with reasonable support facilities for such uses.

24 11. In or about 1986, the City of San Diego approved a 26-year lease with the  
25 Rancho Santa Fe Polo Club for the development of polo facilities.

26 12. In or about 1992, the Rancho Santa Fe Polo Club subleased the Polo Fields  
27 to Surf Cup for use for a youth soccer tournament and other related activities. However,  
28

1 throughout the following years, additional tournaments and other events were added,  
2 drawing large crowds, noise, and traffic into Ha’o’s community.

3 13. In 2015, the City of San Diego solicited proposals for a new lease to the  
4 Polo Fields. Surf Cup offered to sublease the Polo Fields and after a legal battle related to  
5 CEQA issues, the City of San Diego accepted Surf Cup’s lease.

6 14. In February 2022, the City of San Diego allowed Surf Cup to vastly increase  
7 the activities on the Polo Fields by entering into a License Agreement with the San Diego  
8 Wave’s women’s soccer team (the “Wave”).

9 15. Under the License Agreement, the Wave can hold practices, tournaments,  
10 and camps, and may construct a soccer training facility complete with offices, storage, and  
11 locker rooms. The License Agreement even goes so far as referencing the construction of  
12 a stadium on the adjacent property.

13 16. In accordance with the License Agreement, Surf Cup has already  
14 significantly reconstructed the Polo Fields by widening entrances and roads, bringing in  
15 fill material and relocated soil, grading, and adding concrete pads, fences, walkways,  
16 ramps, stairs, and retaining walls, amongst other things.

17 17. Due to these rapid and unwelcome changes, the surrounding community  
18 (namely, the governing homeowners’ association) initiated an ongoing unrelated lawsuit  
19 whereby they assert that these extended uses violate the Polo Field’s Grant Deed by  
20 bringing in “large assemblage of people [and] automobiles” that destroys its status as a  
21 “rural, public open space.”

22 18. Ultimately, Ha’o has witnessed the neighboring Polo Fields transform from  
23 a quiet park to a busy stadium complex in the past few years and has passionately fought  
24 against these changes in order to preserve what he could of the once natural space. As a  
25 result of the significant strife caused to Ha’o by this dispute, Ha’o had little choice but to  
26 sell the Property.

27 ///

28 ///

***Naerbo Purchases the Property Through Misrepresentations***

19. The Property consists of two acres of land that Ha’o used for a home and horse stables. The Property adjoins the Polo Fields.

20. It was critical to Ha’o that he locate a buyer that would use the Property in a manner like his and would not contribute to Surf Cup’s ongoing violations of the Grant Deed or further disrupt the community. Ha’o wanted to ensure that his passions for preserving open spaces for his community and playing polo carried on through the next owner of the Property to ultimately protect the Property against the encroaching changes around it.

21. While seeking to purchase the Property, Naerbo represented to Ha’o that she was an equestrian and that she intended to use the Property as a horse property. These representations made Naerbo an attractive buyer to Ha’o.

22. At the same time, Ha’o had other higher competing offers for the Property.

23. Ha’o decided to sell the Property to Naerbo based on her representations.

24. On or about May 10, 2021, Ha’o and Naerbo entered into a California Residential Purchase Agreement and Joint Escrow Instructions, and its related addendums (the “Purchase Agreement”), which transferred the Property to Naerbo for \$2,900,000. A true and correct copy of the Purchase Agreement is attached as **Exhibit 1**.

***Naerbo Then Transfers the Property to Surf Del Mar—An Entity Related to Surf Cup***

25. Shortly thereafter, on or about December 21, 2022, Naerbo transferred the Property to Surf Del Mar—coincidentally, also for \$2,900,000.

26. Upon hearing about this transfer, Ha’o conducted a further investigation into the matter and discovered that Surf Del Mar is an affiliate and/or subsidiary of Surf Cup.

27. To make matters worse, Ha’o also discovered that Naerbo is, in fact, the partner of Surf Cup’s Vice President, Rob Haskell.

28. It is now clear that Naerbo’s representations regarding her identity and intended use of the Property were false and made to obtain the Property for the benefit of Surf Del Mar, and ultimately, for Surf Cup.

1 29. Pursuant to Section 22(A) of the Purchase Agreement, the parties (Ha’o and  
2 Naerbo) agreed to mediate any dispute or claim arising between them out of the Purchase  
3 Agreement before resorting to court action. On March 21, 2024, Ha’o sent Naerbo a letter  
4 requesting a mediation with respect to her participation in this fraudulent scheme (the  
5 “Request for Mediation”). A true and correct copy of the Request for Mediation is  
6 attached as **Exhibit 2**. Naerbo did not respond to the Request for Mediation. This suit  
7 follows.

8 **FIRST CAUSE OF ACTION**

9 (Fraud Against Defendants)

10 30. Ha’o incorporates herein by this reference paragraphs 1 through 29 of this  
11 complaint as if set forth in full.

12 31. Defendants schemed, facilitated, and participated in an intentional,  
13 wrongful, malicious course of conduct by, among other things, making misrepresentations  
14 to induce Ha’o to accept Naerbo’s offer on the Property and executing a sham transfer  
15 shortly thereafter—all to conceal the true identity of the Property’s buyer and ensure that  
16 Surf Cup ultimately gained possession of it.

17 32. Naerbo made numerous misrepresentations to Ha’o when seeking to  
18 purchase the Property, including, but not limited to, that she was an equestrian and that  
19 she intended to use the Property as a horse property.

20 33. Naerbo knew these representations were false when she made them as she  
21 had no intention of retaining the Property but was operating as a strawman for Surf Del  
22 Mar and, ultimately, Surf Cup, and thus intended to defraud Ha’o. Defendants had to  
23 make these misrepresentations and conceal the true identity of the Property’s buyer as  
24 they knew that Ha’o would otherwise object to the Property being transferred to an  
25 affiliate and/or subsidiary of Surf Cup.

26 34. Ha’o justifiably relied on Defendants’ misrepresentations.

27 35. At the time of the here-in described misrepresentations and concealment,  
28 Ha’o was ignorant of the falsity of Defendants’ misrepresentations and believed them to

1 be true. Had Ha'o been aware of Defendants' true intentions in purchasing the Property at  
2 the time he negotiated the Purchase Agreement, he would not have sold the Property to  
3 Naerbo.

4 36. Defendants' misrepresentations and concealment harmed Ha'o by, among  
5 other things, causing Ha'o to forego several other higher competing offers on the  
6 Property.

7 37. As a direct and proximate result of Defendants' fraud, Ha'o has been  
8 harmed in an amount subject to proof at trial, but exceeding the jurisdictional minimum,  
9 plus attorneys' fees and costs as recoverable under Section 25 of the Purchase Agreement  
10 and applicable law.

11 38. Ha'o is informed and believes, on that basis alleges, that Defendants'  
12 conduct was done with the intention of causing injury to Ha'o, and was fraudulent,  
13 willful, wanton, and malicious, so as to justify an award of exemplary and punitive  
14 damages. Ha'o is further informed and believes, and on that basis alleges, that Defendants  
15 perpetrated the above-described acts in bad faith, in a knowing, willful, malicious and  
16 fraudulent manner and with the intent and purpose of advancing their own gain at the  
17 expense of Ha'o's rights and interests, and that Defendants failed to cooperate with Ha'o  
18 to prevent the losses alleged above, but rather, concealed materials facts and lied to Ha'o  
19 thereby assuring Ha'o's damages would be maximized.

## 20 **SECOND CAUSE OF ACTION**

### 21 (Breach of Contract Against Naerbo)

22 39. Ha'o incorporates herein by this reference paragraphs 1 through 38 of this  
23 complaint as if set forth in full.

24 40. The Purchase Agreement constitutes a valid and enforceable contract  
25 between Ha'o, on the one hand, and Naerbo, on the other hand.

26 41. Ha'o has performed, or attempted to perform, all materials elements and  
27 conditions of the Purchase Agreement except for those acts that have been prevented,  
28 delayed, or excused by the acts or omissions of Naerbo.

1 42. All conditions required for Naerbo to perform had occurred prior to the  
2 breach.

3 43. Naerbo breached her obligations under the Purchase Agreement by making  
4 misrepresentations regarding her identity and intended use of the Property and concealing  
5 the true identity of the Property's buyer.

6 44. Ha'o was harmed by Naerbo's breach of the Purchase Agreement. This  
7 breach was a substantial factor in causing Ha'o's harm.

8 45. As a direct and proximate result of Naerbo's breach, Ha'o has incurred  
9 damages in an amount to be proven at trial, but exceeding the jurisdictional minimum,  
10 plus attorneys' fees and costs recoverable under Section 25 of the Purchase Agreement  
11 and applicable law.

12 **THIRD CAUSE OF ACTION**

13 (Breach of the Implied Covenant of Good Faith and Fair Dealing Against Naerbo)

14 46. Ha'o incorporates herein by this reference paragraphs 1 through 45 of this  
15 complaint as if set forth in full.

16 47. In every contract or agreement there is an implied covenant of good faith  
17 and fair dealing. This implied promise means that each party will not do anything to  
18 unfairly interfere with the right of any other party to receive the benefits of the contract.

19 48. The Purchase Agreement constitutes a valid and enforceable contract  
20 between Ha'o, on the one hand, and Naerbo on the other hand.

21 49. Ha'o has performed, or attempted to perform, all material elements and  
22 conditions of the Purchase Agreement except for those acts that have been prevented,  
23 delayed, or excused by the acts or omissions of Naerbo.

24 50. All conditions required for Naerbo to perform had occurred prior to the  
25 breach.

26 51. Naerbo breached the covenant of good faith and fair dealing by acting in  
27 such a manner as to deprive Ha'o of the benefits of its bargain. Such deprivation occurred  
28 as a result of the acts and omissions complained of throughout, including Naerbo's



1 misrepresentations regarding her identity and intended use of the Property and her overall  
2 concealment of Surf Cup as the true buyer of the Property.

3 52. Accordingly, Naerbo did not act fairly and in good faith.

4 53. Ha'o was harmed by the breach of the covenant of good faith and fair  
5 dealing. This breach was a substantial factor in causing Ha'o's harm.

6 54. As a direct and proximate result of Naerbo's breach, Ha'o has incurred  
7 damages in an amount subject to proof at trial, but exceeding the jurisdictional minimum,  
8 plus attorneys' fees and costs recoverable under Section 25 of the Purchase Agreement  
9 and applicable law.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, based on the foregoing, Ha'o prays for judgment as follows:

- 12 1. For damages in an amount subject to proof at trial;
- 13 2. For allowable interest at the legal rate;
- 14 3. For punitive damages;
- 15 4. For reasonable attorneys' fees to the extent recoverable by contract, law, or  
16 statute;
- 17 5. For costs of suit; and
- 18 6. For such further and other relief as the Court deems just and proper.

19  
20 Dated: April 18, 2024

SNELL & WILMER L.L.P.

21  
22 By: 

23 Jeffrey M. Singletary  
24 Kevin M. Brown  
25 Alexis N. Flores  
26 Attorneys for Plaintiff Corwyn Ha'o  
27  
28

# **EXHIBIT 1**



CALIFORNIA ASSOCIATION OF REALTORS®

SELLER LICENSE TO REMAIN IN POSSESSION ADDENDUM (C.A.R. Form SIP, Revised 12/17)

This is an addendum to the Purchase Agreement, or Counter Offer No. or Other, dated May 10, 2021, on property known as 3995 Via de la Valle, Del Mar, CA 92014-4301 ("Property"), between Wendy Naerbo ("Buyer"), and Corwyn M Hao ("Seller").

This Addendum is intended to grant Seller a license to remain in possession of, and use, the Property after the Close Of Escrow. It is intended for short-term occupancy (i.e. 29 days or less). If occupancy is intended to be for 30 Days or longer, use Residential Lease After Sale (C.A.R. Form RLAS). Note: Local rent control or other Law regarding tenant's rights may impact Buyer's and Seller's rights and obligations. Close Of Escrow shall be day "0" for the purposes of counting days for the term of this license to remain in possession.

1. TERM: Seller is granted a license to remain in possession of Property for 30 calendar days After Close Of Escrow (or to (date)) until AM/ PM. Seller has no right to remain in possession beyond this term and may be responsible for court awarded damages if Seller does remain.

2. CONSIDERATION:

A. In consideration for Seller agreeing to sell to Buyer and Buyer agreeing to allow Seller to remain in possession After Close of Escrow, Seller agrees to pay Buyer a non-refundable License Fee for the term specified in 1 of \$1.00 per Day (or ). Seller shall deposit such funds with escrow holder prior to Close Of Escrow or such funds shall be withheld from Seller's proceeds. At Close Of Escrow, all consideration will be released to Buyer (or held in escrow). If Seller vacates the Property prior to the end of the term in paragraph 1, no portion of the consideration will be returned to Seller unless otherwise agreed in writing.

B. LATE CHARGE/NSF CHECKS: If any payment from Seller to Buyer is required outside of escrow, and any such payment is not received by Buyer within 5 (or ) Days After date due, Seller shall pay to Buyer an additional sum of \$ as a Late Charge. If a check is returned for non-sufficient funds ("NSF"), Seller shall pay to Buyer \$25.00 as an NSF charge. Seller and Buyer agree that these charges represent a fair and reasonable estimate of the costs Buyer may incur by reason of Seller's late or NSF payment. Buyer's acceptance of any Late Charge or NSF fee shall not constitute a waiver as to any default by Seller.

3. SELLER'S OBLIGATIONS FOR CONDITION OF PROPERTY:

A. MAINTENANCE: Seller shall maintain the Property, including pool, spa, landscaping and grounds, and all personal property included in the sale in substantially the same condition as on the date of Acceptance of the Agreement or as modified by the Agreement. Except as provided in the Agreement, Seller shall not make alterations to the Property without Buyer's written consent.

B. DELIVERY OF POSSESSION: Seller shall deliver the Property in the condition and on the terms provided in the Agreement.

C. DELIVERY OF POSSESSION FEE: In addition to the license fee specified in paragraph 2, Seller agrees to deposit with escrow holder, or such funds shall be withheld from Seller's proceeds, a Delivery of Possession fee in the amount of \$. At Close Of Escrow, this fee will be released to Buyer (or held in escrow). Within 5 Days after delivery of possession to Buyer, Buyer shall return the Delivery of Possession fee to Seller if the Property is delivered to Buyer (i) in the condition specified in paragraphs 3A and B and (ii) on the date specified in paragraph 1.

4. UTILITIES: Seller agrees to pay for all utilities and services, and the following charges: except, which shall be paid for by Buyer.

5. ENTRY: Seller shall make Property available to Buyer for the purpose of entering to make necessary or agreed repairs, or to supply necessary or agreed services, or to show Property to prospective or actual purchasers, tenants, mortgagees, lenders, appraisers or contractors. Buyer and Seller agree that 24 hours notice (oral or written) shall be reasonable and sufficient notice. In an emergency, Buyer may enter Property at any time without prior notice.

6. KEYS: Seller shall provide keys to the Property as required in the Agreement, at Close Of Escrow or (if checked) at the end of the Term of this Seller License to Remain in Possession.

7. ASSIGNMENT; SUBLETTING: Seller shall not assign or sublet all or any part of the Property, or assign or transfer this license to remain in possession of the Property. Any assignment, subletting or transfer of the Property by voluntary act of Seller, by operation of Law or otherwise, without Buyer's prior written consent shall give Buyer the right to terminate Seller's license to possession.

8. INSURANCE: Seller's personal property (including vehicles) is not insured by Buyer, and, if applicable, not by the owner's association, against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause. Seller is advised to carry Seller's own insurance to protect Seller from such loss and to contact its own insurance carrier to discuss available options.

9. WAIVER: The waiver of any breach shall not be construed as a continuing waiver of the same or any subsequent breach.

10. OTHER TERMS AND CONDITIONS/SUPPLEMENTS:

By signing below Buyer and Seller acknowledge that each has read, understands, has received a copy of and agrees to the terms of this Seller License to Remain in Possession Addendum.

Date 6/3/2021 DocuSigned by: Corwyn Hao Seller Corwyn M Hao FAB4D4D677BB47E... Buyer Wendy Naerbo

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SIP REVISED 12/17 (PAGE 1 OF 1)

SELLER IN POSSESSION ADDENDUM (SIP PAGE 1 OF 1)



CALIFORNIA ASSOCIATION OF REALTORS®

SELLER COUNTER OFFER No. 1
May not be used as a multiple counter offer.
(C.A.R. Form SCO, Revised 11/14)



Date May 12, 2021

This is a counter offer to the: [X] Purchase Agreement, [ ] Buyer Counter Offer No. \_\_\_\_, or [ ] Other \_\_\_\_ ("Offer"),
dated May 10, 2021, on property known as 3995 Via de la Valle, Del Mar, CA 92014-4301 ("Property"),
between Wendy Naerbo ("Buyer")
and Corwyn M Hao ("Seller").

- 1. TERMS: The terms and conditions of the above referenced document are accepted subject to the following:
A. Paragraphs in the Offer that require initials by all parties, but are not initialed by all parties, are excluded from the final agreement unless specifically referenced for inclusion in paragraph 1C of this or another Counter Offer or an addendum.
B. Unless otherwise agreed in writing, down payment and loan amount(s) will be adjusted in the same proportion as in the original Offer, but deposit amount(s) shall remain unchanged from the original Offer.

C. OTHER TERMS:

1. Purchase price to be \$2,900,000.

2. Close of escrow to be 30 days.

3. Seller to have the option to stay in possession for 30 days at \$1/day. SIP to be completed prior to full contingency removal.

4. Rate and terms of loan to be prevailing.

5. 7A to be removed from the contract.

D. The following attached addenda are incorporated into this Seller Counter offer: [ ] Addendum No. \_\_\_\_

- 2. EXPIRATION: This Seller Counter Offer shall be deemed revoked and the deposits, if any, shall be returned:
A. Unless by 5:00pm on the third Day After the date it is signed in paragraph 4 (if more than one signature then, the last signature date)(or by 3:00 [ ] AM [X] PM on 05/12/2021 (date)) (i) it is signed in paragraph 5 by Buyer and (ii) a copy of the signed Seller Counter Offer is personally received by Seller or Elizabeth Reed, who is authorized to receive it.
B. OR If Seller withdraws it anytime prior to Acceptance (CAR Form WOO may be used).
C. OR If Seller accepts another offer prior to Buyer's Acceptance of this counter offer.
3. MARKETING TO OTHER BUYERS: Seller has the right to continue to offer the Property for sale. Seller has the right to accept any other offer received, prior to Acceptance of this Counter Offer by Buyer as specified in 2A and 5. In such event, Seller is advised to withdraw this Seller Counter Offer before accepting another offer.

4. OFFER: SELLER MAKES THIS COUNTER OFFER ON THE TERMS ABOVE AND ACKNOWLEDGES RECEIPT OF A COPY.

Seller Cory Hao Corwyn M Hao Date 05/12/2021

5. ACCEPTANCE: I/we accept the above Seller Counter Offer (if checked [ ] SUBJECT TO THE ATTACHED COUNTER OFFER)

Buyer Wendy Naerbo Date 5/12/2021

CONFIRMATION OF ACCEPTANCE:

(EK / ) (Initials) Confirmation of Acceptance: A Copy of Signed Acceptance was personally received by Seller, or Seller's authorized agent as specified in paragraph 2A on (date) 5/12/2021 at [ ] AM/ [ ] PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Seller or Seller's authorized agent whether or not confirmed in this document.

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SELLER COUNTER OFFER (SCO PAGE 1 OF 1)

MAY 12 2021



MAY 12 2021

Complete



CALIFORNIA ASSOCIATION OF REALTORS®

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (C.A.R. Form RPA-CA, Revised 12/18)

Date Prepared: 05/10/2021

1. OFFER:

- A. THIS IS AN OFFER FROM Wendy Naerbo ("Buyer").
B. THE REAL PROPERTY to be acquired is 3995 Via De La Valle, Del Mar, CA 92014, situated in Del Mar (City), San Diego (County), California, 92014 (Zip Code), Assessor's Parcel No. 302-090-3000 ("Property").
C. THE PURCHASE PRICE offered is Two Million, Seven Hundred Fifty Thousand Dollars \$ 2,750,000.00
D. CLOSE OF ESCROW shall occur on (date) or 21 Days After Acceptance.
E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.

2. AGENCY:

- A. DISCLOSURE: The Parties each acknowledge receipt of a Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
B. CONFIRMATION: The following agency relationships are confirmed for this transaction:
Seller's Brokerage Firm Berkshire Hathaway Home Service License Number 01317331
Is the broker of (check one): [X] the seller, or both the buyer and seller. (dual agent)
Seller's Agent Elizabeth Reed License Number 00950978
Is (check one): [X] the Seller's Agent. (salesperson or broker associate) both the Buyer's and Seller's Agent. (dual agent)
Buyer's Brokerage Firm Fontaine Realty Group, INC License Number 02071737
Is the broker of (check one): [X] the buyer, or both the buyer and seller. (dual agent)
Buyer's Agent Ron Fontaine License Number 01458173
Is (check one): [X] the Buyer's Agent. (salesperson or broker associate) both the Buyer's and Seller's Agent. (dual agent)

C. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

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

- A. INITIAL DEPOSIT: Deposit shall be in the amount of \$ 75,000.00
(1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, [ ] cashier's check, [ ] personal check, [ ] other within 3 business days after Acceptance (or );
OR (2) [ ] Buyer Deposit with Agent: Buyer has given the deposit by personal check (or ) to the agent submitting the offer (or to ), made payable to . The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or ). Deposit checks given to agent shall be an original signed check and not a copy.

(Note: Initial and increased deposits checks received by agent shall be recorded in Broker's trust fund log.)

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

If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder.

- C. [ ] ALL CASH OFFER: No loan is needed to purchase the Property. This offer is NOT contingent on Buyer obtaining a loan. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or [ ] Buyer shall, within 3 (or ) Days After Acceptance, Deliver to Seller such verification.

D. LOAN(S):

- (1) FIRST LOAN: in the amount of \$ 2,200,000.00
This loan will be conventional financing OR [ ] FHA, [ ] VA, [ ] Seller financing (C.A.R. Form SFA), [ ] assumed financing (C.A.R. Form AFA), [ ] Other . This loan shall be at a fixed rate not to exceed % or, [ ] an adjustable rate loan with initial rate not to exceed %. Regardless of the type of loan, Buyer shall pay points not to exceed % of the loan amount.
(2) [ ] SECOND LOAN in the amount of \$
This loan will be conventional financing OR [ ] Seller financing (C.A.R. Form SFA), [ ] assumed financing (C.A.R. Form AFA), [ ] Other . This loan shall be at a fixed rate not to exceed % or, [ ] an adjustable rate loan with initial rate not to exceed %. Regardless of the type of loan, Buyer shall pay points not to exceed % of the loan amount.
(3) FHA/VA: For any FHA or VA loan specified in 3D(1), Buyer has 17 (or ) Days After Acceptance to Deliver to Seller written notice (C.A.R. Form FVA) of any lender-required repairs or costs that Buyer requests Seller to pay for or otherwise correct. Seller has no obligation to pay or satisfy lender requirements unless agreed in writing. A FHA/VA amendatory clause (C.A.R. Form FVAC) shall be a part of this Agreement.

E. ADDITIONAL FINANCING TERMS:

- F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE in the amount of \$ 475,000.00 to be deposited with Escrow Holder pursuant to Escrow Holder instructions.

- G. PURCHASE PRICE (TOTAL): \$ 2,750,000.00

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

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- H. **VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Buyer (or Buyer's lender or loan broker pursuant to paragraph 3J(1)) shall, within 3 (or     ) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. ( Verification attached.)
- I. **APPRAISAL CONTINGENCY AND REMOVAL:** This Agreement is (or  is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 14B(3), in writing, remove the appraisal contingency or cancel this Agreement within 17 (or     ) Days After Acceptance.
- J. **LOAN TERMS:**
  - (1) **LOAN APPLICATIONS:** Within 3 (or     ) Days After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate. ( Letter attached.)
  - (2) **LOAN CONTINGENCY:** Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above is a contingency of this Agreement unless otherwise agreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs are not contingencies of this Agreement.
  - (3) **LOAN CONTINGENCY REMOVAL:** Within 21 (or 10) Days After Acceptance, Buyer shall, as specified in paragraph 14, in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
  - (4)  **NO LOAN CONTINGENCY:** Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.
  - (5) **LENDER LIMITS ON BUYER CREDITS:** Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.
- K. **BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price and to sell to Buyer in reliance on Buyer's covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.
- 4. **SALE OF BUYER'S PROPERTY:**
  - A. This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer.
  - OR B.  This Agreement and Buyer's ability to obtain financing are contingent upon the sale of property owned by Buyer as specified in the attached addendum (C.A.R. Form COP).
- 5. **ADDENDA AND ADVISORIES:**
  - A. **ADDENDA:**

<input type="checkbox"/> Addendum #	(C.A.R. Form ADM)
<input type="checkbox"/> Back Up Offer Addendum (C.A.R. Form BUO)	<input type="checkbox"/> Court Confirmation Addendum (C.A.R. Form CCA)
<input type="checkbox"/> Septic, Well and Property Monument Addendum (C.A.R. Form SWPI)	
<input type="checkbox"/> Short Sale Addendum (C.A.R. Form SSA)	<input type="checkbox"/> Other
  - B. **BUYER AND SELLER ADVISORIES:**

<input checked="" type="checkbox"/> Buyer's Inspection Advisory (C.A.R. Form BIA)	
<input type="checkbox"/> Probate Advisory (C.A.R. Form PA)	<input type="checkbox"/> Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
<input type="checkbox"/> Trust Advisory (C.A.R. Form TA)	<input type="checkbox"/> REO Advisory (C.A.R. Form REO)
<input type="checkbox"/> Short Sale Information and Advisory (C.A.R. Form SSIA)	<input type="checkbox"/> Other
- 6. **OTHER TERMS:** Buyer to purchase property in "as-is" condition

7. **ALLOCATION OF COSTS**

A. **INSPECTIONS, REPORTS AND CERTIFICATES:** Unless otherwise agreed in writing, this paragraph only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report.

- (1)  Buyer  Seller shall pay for a natural hazard zone disclosure report, including tax  environmental  Other: \_\_\_\_\_ prepared by \*MyNHD \*\*Best Value\*\*
- (2)  Buyer  Seller shall pay for the following Report Termite Inspection Report prepared by Carmel Valley Pest Control
- (3)  Buyer  Seller shall pay for the following Report \_\_\_\_\_ prepared by \_\_\_\_\_

B. **GOVERNMENT REQUIREMENTS AND RETROFIT:**

- (1)  Buyer  Seller shall pay for smoke alarm and carbon monoxide device installation and water heater bracing, if required by Law. Prior to Close Of Escrow ("COE"), Seller shall provide Buyer written statement(s) of compliance in accordance with state and local Law, unless Seller is exempt.

Buyer's Initials WV

Seller's Initials CH

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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 2 OF 10)



Property Address: 3995 Via De La Valle, Del Mar, CA 92014

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- (2) (i)  Buyer  Seller shall pay the cost of compliance with any other minimum mandatory government inspections and reports if required as a condition of closing escrow under any Law.
- (ii)  Buyer  Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards required as a condition of closing escrow under any Law, whether the work is required to be completed before or after COE.
- (iii) Buyer shall be provided, within the time specified in paragraph 14A, a copy of any required government conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of this sale of the Property.

C. ESCROW AND TITLE:

- (1) (a)  Buyer  Seller shall pay escrow fee Each to pay their own share
- (b) Escrow Holder shall be Seller's choice
- (c) The Parties shall, within 5 (or     ) Days After receipt, sign and return Escrow Holder's general provisions.
- (2) (a)  Buyer  Seller shall pay for owner's title insurance policy specified in paragraph 13E customary
- (b) Owner's title policy to be issued by Seller's choice
- (Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

D. OTHER COSTS:

- (1)  Buyer  Seller shall pay County transfer tax or fee \_\_\_\_\_
- (2)  Buyer  Seller shall pay City transfer tax or fee \_\_\_\_\_
- (3)  Buyer  Seller shall pay Homeowners' Association ("HOA") transfer fee \_\_\_\_\_
- (4) Seller shall pay HOA fees for preparing documents required to be delivered by Civil Code §4525.
- (5)  Buyer  Seller shall pay HOA fees for preparing all documents other than those required by Civil Code §4525.
- (6) Buyer to pay for any HOA certification fee.
- (7)  Buyer  Seller shall pay for any private transfer fee \_\_\_\_\_
- (8)  Buyer  Seller shall pay for \_\_\_\_\_
- (9)  Buyer  Seller shall pay for \_\_\_\_\_
- (10)  Buyer  Seller shall pay for the cost, not to exceed \$ \_\_\_\_\_, of a standard (or  upgraded) one-year home warranty plan, issued by \_\_\_\_\_, with the following optional coverages:  Air Conditioner  Pool/Spa  Other: \_\_\_\_\_

Buyer is informed that home warranty plans have many optional coverages in addition to those listed above. Buyer is advised to investigate these coverages to determine those that may be suitable for Buyer.

OR  Buyer waives the purchase of a home warranty plan. Nothing in this paragraph precludes Buyer's purchasing a home warranty plan during the term of this Agreement.

8. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:

A. NOTE TO BUYER AND SELLER: Items listed as included or excluded in the MLS, flyers or marketing materials are not included in the purchase price or excluded from the sale unless specified in paragraph 8 B or C.

B. ITEMS INCLUDED IN SALE: Except as otherwise specified or disclosed,

- (1) All EXISTING fixtures and fittings that are attached to the Property;
- (2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water features and fountains, water softeners, water purifiers, security systems/alarms and the following if checked:  all stove(s), except \_\_\_\_\_;  all refrigerator(s) except \_\_\_\_\_;  all washer(s) and dryer(s), except \_\_\_\_\_;
- (3) The following additional items: 1
- (4) Existing integrated phone and home automation systems, including necessary components such as intranet and Internet-connected hardware or devices, control units (other than non-dedicated mobile devices, electronics and computers) and applicable software, permissions, passwords, codes and access information, are ( are NOT) included in the sale.
- (5) LEASED OR LIENED ITEMS AND SYSTEMS: Seller shall, within the time specified in paragraph 14A, (i) disclose to Buyer if any item or system specified in paragraph 8B or otherwise included in the sale is leased, or not owned by Seller, or specifically subject to a lien or other encumbrance, and (ii) Deliver to Buyer all written materials (such as lease, warranty, etc.) concerning any such item. Buyer's ability to assume any such lease, or willingness to accept the Property subject to any such lien or encumbrance, is a contingency in favor of Buyer and Seller as specified in paragraph 14B and C.
- (6) Seller represents that all items included in the purchase price, unless otherwise specified, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to 8B(5) and \_\_\_\_\_, and (ii) are transferred without Seller warranty regardless of value.

C. ITEMS EXCLUDED FROM SALE: Unless otherwise specified, the following items are excluded from sale: (i) audio and video components (such as flat screen TVs, speakers and other items) if any such item is not itself attached to the Property, even if a bracket or other mechanism attached to the component or item is attached to the Property; (ii) furniture and other items secured to the Property for earthquake purposes; and (iii) \_\_\_\_\_

\_\_\_\_\_ Brackets attached to walls, floors or ceilings for any such component, furniture or item shall remain with the Property (or  will be removed and holes or other damage shall be repaired, but not painted).

9. CLOSING AND POSSESSION:

- A. Buyer intends (or  does not intend) to occupy the Property as Buyer's primary residence.
- B. Seller-occupied or vacant property: Possession shall be delivered to Buyer: (i) at 6 PM or (  AM/  PM) on the date of Close Of Escrow; (ii)  no later than \_\_\_\_\_ calendar days after Close Of Escrow; or (iii)  at \_\_\_\_\_ AM/  PM on \_\_\_\_\_.

Buyer's Initials ( ) ( )

Seller's Initials (Ch) ( )



- C. **Seller remaining in possession After Close Of Escrow:** If Seller has the right to remain in possession after Close Of Escrow, (i) the Parties are advised to sign a separate occupancy agreement such as  C.A.R. Form SIP, for Seller continued occupancy of less than 30 days,  C.A.R. Form RLAS for Seller continued occupancy of 30 days or more; and (ii) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; and (iii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan.
  - D. **Tenant-occupied property: Property shall be vacant at least 5 (or \_\_\_ ) Days Prior to Close Of Escrow,** unless otherwise agreed in writing. **Note to Seller: If you are unable to deliver Property vacant in accordance with rent control and other applicable Law, you may be in breach of this Agreement.**
  - OR  **Tenant to remain in possession (C.A.R. Form TIP).**
  - E. At Close Of Escrow: Seller assigns to Buyer any assignable warranty rights for items included in the sale; and Seller shall Deliver to Buyer available Copies of any such warranties. Brokers cannot and will not determine the assignability of any warranties.
  - F. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems and intranet and Internet-connected devices included in the purchase price, and garage door openers. If the Property is a condominium or located in a common interest subdivision, Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.
- 10. STATUTORY AND OTHER DISCLOSURES (INCLUDING LEAD-BASED PAINT HAZARD DISCLOSURES) AND CANCELLATION RIGHTS:**
- A. (1) Seller shall, within the time specified in paragraph 14A, Deliver to Buyer: (i) if required by Law, a fully completed: Federal Lead-Based Paint Disclosures (C.A.R. Form FLD) and pamphlet ("Lead Disclosures"); and (ii) unless exempt, fully completed disclosures or notices required by sections 1102 et. seq. and 1103 et. seq. of the Civil Code ("Statutory Disclosures"). Statutory Disclosures include, but are not limited to, a Real Estate Transfer Disclosure Statement ("TDS"), Natural Hazard Disclosure Statement ("NHD"), notice or actual knowledge of release of illegal controlled substance, notice of special tax and/or assessments (or, if allowed, substantially equivalent notice regarding the Mello-Roos Community Facilities Act of 1982 and Improvement Bond Act of 1915) and, if Seller has actual knowledge, of industrial use and military ordnance location (C.A.R. Form SPQ or ESD).
  - (2) Any Statutory Disclosure required by this paragraph is considered fully completed if Seller has answered all questions and completed and signed the Seller section(s) and the Seller's Agent, if any, has completed and signed the Seller's Brokerage Firm section(s), or, if applicable, an Agent Visual Inspection Disclosure (C.A.R. Form AVID). Nothing stated herein relieves a Buyer's Brokerage Firm, if any, from the obligation to (i) conduct a reasonably competent and diligent visual inspection of the accessible areas of the Property and disclose, on Section IV of the TDS, or an AVID, material facts affecting the value or desirability of the Property that were or should have been revealed by such an inspection or (ii) complete any sections on all disclosures required to be completed by Buyer's Brokerage Firm.
  - (3) **Note to Buyer and Seller:** Waiver of Statutory and Lead Disclosures is prohibited by Law.
  - (4) Within the time specified in paragraph 14A, (i) Seller, unless exempt from the obligation to provide a TDS, shall, complete and provide Buyer with a Seller Property Questionnaire (C.A.R. Form SPQ); (ii) if Seller is not required to provide a TDS, Seller shall complete and provide Buyer with an Exempt Seller Disclosure (C.A.R. Form ESD).
  - (5) Buyer shall, within the time specified in paragraph 14B(1), return Signed Copies of the Statutory, Lead and other disclosures to Seller.
  - (6) In the event Seller or Seller's Brokerage Firm, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer, Seller shall promptly provide a subsequent or amended disclosure or notice, in writing, covering those items. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware, or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.**
  - (7) If any disclosure or notice specified in paragraph 10A(1), or subsequent or amended disclosure or notice is Delivered to Buyer after the offer is Signed, Buyer shall have the right to cancel this Agreement within **3 Days After Delivery** in person, or **5 Days After Delivery** by deposit in the mail, or by an electronic record satisfying the Uniform Electronic Transactions Act (UETA), by giving written notice of cancellation to Seller or Seller's agent.
  - B. **NATURAL AND ENVIRONMENTAL HAZARD DISCLOSURES AND OTHER BOOKLETS:** Within the time specified in paragraph 14A, Seller shall, if required by Law: (i) Deliver to Buyer earthquake guide(s) (and questionnaire), environmental hazards booklet, and home energy rating pamphlet; (ii) disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; and Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
  - C. **WITHHOLDING TAXES:** Within the time specified in paragraph 14A, to avoid required withholding, Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law (C.A.R. Form AS or QS).
  - D. **MEGAN'S LAW DATABASE DISCLOSURE:** Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov). Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer's inspection contingency period. Brokers do not have expertise in this area.)
  - E. **NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.
  - F. **CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**
    - (1) **SELLER HAS: 7 (or \_\_\_ ) Days After Acceptance** to disclose to Buyer if the Property is a condominium, or is located in a planned development or other common interest subdivision (C.A.R. Form SPQ or ESD).

Buyer's Initials WN ( ) ( )

Seller's Initials Ch ( ) ( )





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(2) If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has 3 (or \_\_\_) Days After Acceptance to request from the HOA (C.A.R. Form HOA1): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; and (v) the names and contact information of all HOAs governing the Property (collectively, "CI Disclosures"). (vi) private transfer fees; (vii) Pet fee restrictions; and (viii) smoking restrictions. Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 14B(3). The Party specified in paragraph 7, as directed by escrow, shall deposit funds into escrow or direct to HOA or management company to pay for any of the above.

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

A. Seller shall, within the time specified in paragraph 14A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.

B. Buyer has the right to conduct Buyer Investigations of the Property and, as specified in paragraph 14B, based upon information discovered in those investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.

C. Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.

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

A. Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 14B. Within the time specified in paragraph 14B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to: (i) a general physical inspection; (ii) an inspection specifically for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2); (iii) inspect for lead-based paint and other lead-based paint hazards; (iv) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA); (v) review the registered sex offender database; (vi) confirm the insurability of Buyer and the Property including the availability and cost of flood and fire insurance; and (vii) review and seek approval of leases that may need to be assumed by Buyer. Without Seller's prior written consent, Buyer shall neither make nor cause to be made: invasive or destructive Buyer Investigations, except for minimally invasive testing required to prepare a Pest Control Report; or inspections by any governmental building or zoning inspector or government employee, unless required by Law.

B. Seller shall make the Property available for all Buyer Investigations. Buyer shall (i) as specified in paragraph 14B, complete Buyer Investigations and either remove the contingency or cancel this Agreement, and (ii) give Seller, at no cost, complete Copies of all such Investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.

C. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is made available to Buyer.

D. Buyer indemnity and seller protection for entry upon property: Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

13. TITLE AND VESTING:

A. Within the time specified in paragraph 14, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 14B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities. Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information.

B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record (which Seller is obligated to pay off) unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.

C. Within the time specified in paragraph 14A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.

D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.

E. Buyer shall receive a CLTA/ALTA "Homeowner's Policy of Title Insurance", if applicable to the type of property and buyer. If not, Escrow Holder shall notify Buyer. A title company can provide information about the availability, coverage, and cost of other title policies and endorsements. If the Homeowner's Policy is not available, Buyer shall choose another policy, instruct Escrow Holder in writing and shall pay any notpage in cost.

Buyer's Initials ( ) ( )

Seller's Initials (CA) ( )

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CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 5 OF 10)



14. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).

A. SELLER HAS: 7 (or \_\_\_ ) Days After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 5, 6, 7, 8B(5), 10A, B, C, and F, 11A and 13A. If, by the time specified, Seller has not Delivered any such item, Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement.

B. (1) BUYER HAS: 17 (or 7 ) Days After Acceptance, unless otherwise agreed in writing, to: (i) complete all Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to paragraph 8B(5), and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and (ii) Deliver to Seller Signed Copies of Statutory and Lead Disclosures and other disclosures Delivered by Seller in accordance with paragraph 10A.

(2) Within the time specified in paragraph 14B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to (C.A.R. Form RRRR) Buyer's requests.

(3) By the end of the time specified in paragraph 14B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 14A, then Buyer has 5 (or \_\_\_ ) Days After Delivery of any such items, or the time specified in paragraph 14B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.

(4) Continuation of Contingency: Even after the end of the time specified in paragraph 14B(1) and before Seller cancels, if at all, pursuant to paragraph 14D, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 14D(1).

(5) Access to Property: Buyer shall have access to the Property to conduct inspections and investigations for 17 (or \_\_\_ ) Days After Acceptance, whether or not any part of the Buyer's Investigation Contingency has been waived or removed.

C.  REMOVAL OF CONTINGENCIES WITH OFFER: Buyer removes the contingencies specified in the attached Contingency Removal form (C.A.R. Form CR). If Buyer removes any contingency without an adequate understanding of the Property's condition or Buyer's ability to purchase, Buyer is acting against the advice of Broker.

D. SELLER RIGHT TO CANCEL:

(1) Seller right to Cancel; Buyer Contingencies: If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

(2) Seller right to Cancel; Buyer Contract Obligations: Seller, after first delivering to Buyer a NBP, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3A, or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited; (ii) Deliver a notice of FHA or VA costs or terms as required by paragraph 3D(3) (C.A.R. Form FVA); (iii) Deliver a letter as required by paragraph 3J(1); (iv) Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by paragraph 3C or 3H; (v) In writing assume or accept leases or liens specified in 8B5; (vi) Return Statutory and Lead Disclosures as required by paragraph 10A(5); or (vii) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 21B; or (viii) Provide evidence of authority to sign in a representative capacity as specified in paragraph 19. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

E. NOTICE TO BUYER OR SELLER TO PERFORM: The NBP or NSP shall: (i) be in writing; (ii) be signed by the applicable Buyer or Seller; and (iii) give the other Party at least 2 (or \_\_\_ ) Days After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP or NSP may not be Delivered any earlier than 2 Days Prior to the expiration of the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 14.

F. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES: If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in writing, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.

G. CLOSE OF ESCROW: Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: (i) be signed by the applicable Buyer or Seller; and (ii) give the other Party at least 3 (or \_\_\_ ) Days After Delivery to close escrow. A DCE may not be Delivered any earlier than 3 Days Prior to the scheduled close of escrow.

H. EFFECT OF CANCELLATION ON DEPOSITS: If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Except as specified below, release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. If either Party fails to execute mutual instructions to cancel escrow, one Party may make a written demand to Escrow Holder for the deposit. (C.A.R. Form BDRD or SDRD). Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within 10 Days After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursement of the deposit. Escrow Holder, at its discretion, may nonetheless require mutual cancellation instructions. A Party may be subject to a civil penalty of up to \$1,000 for refusal to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).

Buyer's Initials (UN) ( )

Seller's Initials (CA) ( )



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- 15. **FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property within 5 (or \_\_\_ ) Days Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 11; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).
- 16. **REPAIRS:** Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
- 17. **PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.
- 18. **BROKERS:**
  - A. **COMPENSATION:** Seller or Buyer, or both, as applicable, agree to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
  - B. **SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.
- 19. **REPRESENTATIVE CAPACITY:** If one or more Parties is signing this Agreement in a representative capacity and not for him/herself as an individual then that Party shall so indicate in paragraph 31 or 32 and attach a Representative Capacity Signature Disclosure (C.A.R. Form RCSD). Wherever the signature or initials of the representative identified in the RCSD appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Party acting in a representative capacity (i) represents that the entity for which that party is acting already exists and (ii) shall Deliver to the other Party and Escrow Holder, within 3 Days After Acceptance, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code §18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).
- 20. **JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**
  - A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3, 4B, 5A, 6, 7, 10C, 13, 14G, 17, 18A, 19, 20, 26, 29, 30, 31, 32 and paragraph D of the section titled Real Estate Brokers on page 10. If a Copy of the separate compensation agreement(s) provided for in paragraph 18A, or paragraph D of the section titled Real Estate Brokers on page 10 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 7C(1)(c). To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within 3 (or \_\_\_ ) Days, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 7, 10 or elsewhere in this Agreement.
  - B. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within 3 Days After Acceptance (or \_\_\_\_\_). Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title company when received from Seller. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 10C, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.

Buyer's Initials (WN) ( ) ( )  
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Seller's Initials (CA) ( ) ( )



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- C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 18A and paragraph D of the section titled Real Estate Brokers on page 10. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 18A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.
- D. Upon receipt, Escrow Holder shall provide Seller and Seller's Broker verification of Buyer's deposit of funds pursuant to paragraph 3A and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (i) if Buyer's initial or any additional deposit or down payment is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- E. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 3 Days after mutual execution of the amendment.

**21. REMEDIES FOR BUYER'S BREACH OF CONTRACT:**

- A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.
- B. LIQUIDATED DAMAGES: If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. If the Property is a dwelling with no more than four units, one of which Buyer intends to occupy, then the amount retained shall be no more than 3% of the purchase price. Any excess shall be returned to Buyer. Except as provided in paragraph 14H, release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. **AT THE TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM RID).**

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

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

**22. DISPUTE RESOLUTION:**

- A. MEDIATION: The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action through the C.A.R. Real Estate Mediation Center for Consumers ([www.consumermediation.org](http://www.consumermediation.org)) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the Parties involved. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED. Exclusions from this mediation agreement are specified in paragraph 22C.

**B. ARBITRATION OF DISPUTES:**

The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 22C.

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

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

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

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

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

- (1) EXCLUSIONS: The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.

Buyer's Initials \_\_\_\_\_  
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Seller's Initials CH \_\_\_\_\_

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- (2) **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- (3) **BROKERS:** Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to this Agreement.
- 23. **SELECTION OF SERVICE PROVIDERS:** Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
- 24. **MULTIPLE LISTING SERVICE ("MLS"):** Brokers are authorized to report to the MLS a pending sale and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS.
- 25. **ATTORNEY FEES:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 22A.
- 26. **ASSIGNMENT:** Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee. Such consent shall not be unreasonably withheld. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Seller. (C.A.R. Form AOOA).
- 27. **EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
- 28. **TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initiated by all Parties or if incorporated by mutual agreement in a counter offer or addendum. If at least one but not all Parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. The Parties have read and acknowledge receipt of a Copy of the offer and agree to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.
- 29. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**
- 30. **DEFINITIONS:** As used in this Agreement:
  - A. "Acceptance" means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this offer or a final counter offer.
  - B. "Agreement" means this document and any counter offers and any incorporated addenda, collectively forming the binding agreement between the Parties. Addenda are incorporated only when Signed by all Parties.
  - C. "C.A.R. Form" means the most current version of the specific form referenced or another comparable form agreed to by the parties.
  - D. "Close Of Escrow", including "COE", means the date the grant deed, or other evidence of transfer of title, is recorded.
  - E. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.
  - F. "Days" means calendar days. However, after Acceptance, the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
  - G. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
  - H. "Days Prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
  - I. "Deliver", "Delivered" or "Delivery", unless otherwise specified in writing, means and shall be effective upon: personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in the section titled Real Estate Brokers on page 10, regardless of the method used (i.e., messenger, mail, email, fax, other).
  - J. "Electronic Copy" or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
  - K. "Law" means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
  - L. "Repairs" means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
  - M. "Signed" means either a handwritten or electronic signature on an original document, Copy or any counterpart.
- 31. **EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by Ron Fontaine, who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by  3:00  AM/  PM, on May 11, 2021 (date)).

One or more Buyers is signing this Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-B) for additional terms.

Date 5/10/2021 BUYER Wendy Naerbo  
(Print name) Wendy Naerbo 8129CEA3024A460...

Date \_\_\_\_\_ BUYER \_\_\_\_\_  
(Print name) \_\_\_\_\_

Additional Signature Addendum attached (C.A.R. Form ASA).

Seller's Initials (CA) \_\_\_\_\_

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Date: May 10, 2021

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

(If checked) SELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMCO) DATED: 5/12/2021

One or more Sellers is signing this Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-S) for additional terms.

Date 5/12/2021 SELLER Corwyn Hao  
(Print name) Corwyn M Hao FAS4D4D6778B47E...

Date \_\_\_\_\_ SELLER \_\_\_\_\_  
(Print name) \_\_\_\_\_

Additional Signature Addendum attached (C.A.R. Form ASA).

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

**REAL ESTATE BROKERS:**

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

E. **PRESENTATION OF OFFER:** Pursuant to Standard of Practice 1-7, if Buyer's Broker makes a written request, Seller's Broker shall confirm in writing that this offer has been presented to Seller.

Buyer's Brokerage Firm Ron Fontaine **Fontaine Realty Group, INC** DRE Lic. # 02071737  
 By Ron Fontaine DRE Lic. # 01458173 Date 5/10/2021  
 By 8CAF86A67E414D3... DRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_  
 Address 2792 Gateway Road, Suite 103 City Carlsbad State CA Zip 92009  
 Telephone (760)519-1040 Fax \_\_\_\_\_ E-mail Ron@FontaineRealtyGroup.com  
 Seller's Brokerage Firm Elizabeth Reed **Berkshire Hathaway Home Service** DRE Lic. # 01317331  
 By Elizabeth Reed DRE Lic. # 00950978 Date 5/12/2021  
 By 37CCD46610B14FE... DRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_  
 Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

**ESCROW HOLDER ACKNOWLEDGMENT:**

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked,  a deposit in the amount of \$ \_\_\_\_\_), counter offer numbers \_\_\_\_\_  Seller's Statement of Information and \_\_\_\_\_, and agrees to act as Escrow Holder subject to paragraph 20 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

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

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

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

Address \_\_\_\_\_

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

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

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

**PRESENTATION OF OFFER:** (\_\_\_\_\_) Seller's Broker presented this offer to Seller on \_\_\_\_\_ (date).  
Broker or Designee Initials \_\_\_\_\_

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

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Buyer Acknowledges that page 10 is part of this Agreement ( WR ) (\_\_\_\_\_) Buyer's Initials

RPA-CA REVISED 12/18 (PAGE 10 of 10)

**CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 10 OF 10)**

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3995 Via De La



# **EXHIBIT 2**



# Snell & Wilmer

600 ANTON BLVD, SUITE 1400  
COSTA MESA, CA 92626-7689  
714.427.7000 P  
714.427.7799 F

Jeffrey M. Singletary  
(714) 427-7473  
jsingletary@swlaw.com

March 21, 2024

## ***VIA OVERNIGHT MAIL***

Ms. Wendy Naerbo  
3382 Calle Tres Vistas  
Encinitas, California 92024

### **Re: *Corwyn Ha'o adv. Wendy Naerbo, et al.* — Request for Mediation**

Dear Ms. Naerbo:

Corwyn Ha'o ("Mr. Ha'o") has engaged this law firm to take all appropriate action against you with respect to your unlawful actions in connection with the purchase of certain real property located at 3995 Via de la Valle, Del Mar, California 92014 (the "Property"). Mr. Ha'o relied on your representations that you would own and use the Property in a manner consistent with his ownership—namely, as a horse property—when entering into the California Residential Purchase Agreement and Joint Escrow Instructions dated May 10, 2021, and its related addendums (the "Purchase Agreement"). However, Mr. Ha'o has now discovered that those representations were false and made to obtain the Property for the benefit of Surf Del Mar Two, LLC ("Surf Del Mar"), and ultimately, for Surf Cup Sports, LLC ("Surf Cup"). Accordingly, Mr. Ha'o requests mediation with respect to your injurious misconduct pursuant to the terms of the Purchase Agreement. If you are represented by counsel, please let me know immediately and I will direct this letter and all future correspondence to your lawyer(s).

As you well know, Mr. Ha'o and his community have been involved in an extensive dispute with Surf Cup and other related parties regarding the proper use of the land previously known as the Del Mar Polo Fields (the "Polo Fields") that adjoins the Property. The City of San Diego has subleased the Polo Fields to Surf Cup, which in turn, has entered into a License Agreement with the San Diego Wave's women's professional soccer team—all of which violates the express covenants contained in the Polo Field's Grant Deed. Several lawsuits have been filed and are currently pending regarding this dispute. The community has fought for years to limit the use of the Polo Fields to passive non-commercial recreational uses not involving large assemblages of people or automobiles as explicitly provided for by the Grant Deed.



Ms. Wendy Naerbo  
March 21, 2024  
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As a result of the significant strife caused to Mr. Ha'o by the dispute, Mr. Ha'o had little choice but to sell the Property. However, it was critical to Mr. Ha'o that he locate a buyer that would use the Property in manner like his and would not contribute to Surf Cup's ongoing violations of the Grant Deed or further disrupt the community. When he sold the Property to you, Mr. Ha'o relied on your representations that you were an equestrian, that you intended to use the Property as a horse property, and that you were even considering using the Property to rescue horses.

However, all those representations were false and intended to deceive Mr. Ha'o. Mr. Ha'o was shocked to discover that you are, in fact, the partner of Surf Cup's Vice President, Rob Haskell. Indeed, you made those representations as part of a scheme to obtain the Property for the benefit of Surf Cup, as evidenced by your transfer of the Property on December 21, 2022, to Surf Del Mar—an entity related to Surf Cup. It is now clear that Mr. Ha'o has been falsely manipulated into transferring the Property to the very people that he has been fighting against for years.

But for these fraudulent misrepresentations, Mr. Ha'o would not have sold the Property to you. Mr. Ha'o has been fraudulently misled to his detriment. Indeed, Mr. Ha'o had a competing offer on the Property for over \$100,000 more than yours, which he turned down as a direct result of your fraudulent misrepresentations.

This letter serves as Mr. Ha'o's written request for mediation in accordance with the terms of the Purchase Agreement. Specifically, pursuant to Section 22(A) of the Purchase Agreement,

The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action through the C.A.R. Real Estate Mediation Center for Consumers ([www.consumermediation.org](http://www.consumermediation.org)) or through any other mediation provider or service mutually agreed to by the Parties.

[Purchase Agreement, § 22(A).]

Please contact me by no later than **April 1, 2024** to coordinate a mediation. If I do not hear from you by that time or if you do not want to mediate, Mr. Ha'o will pursue all available legal action against you, including initiating suit for, *inter alia*, fraud and breach of contract to recover all direct and consequential damages associated with your injurious misconduct, including punitive damages, interest, attorneys' fees and costs to the fullest extent permitted by law.

///

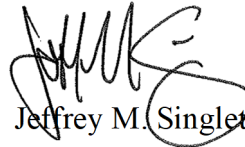
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Ms. Wendy Naerbo  
March 21, 2024  
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This letter is made without prejudice to or waiver of any rights, remedies, or defenses of Mr. Ha'o. Nothing herein shall be construed as an admission of any claim, allegation, or fact. All rights, remedies, claims, defenses, and privileges are reserved. Please feel free to contact me if you have any questions.

Very truly yours,

Snell & Wilmer



Jeffrey M. Singletary

4866-6095-1721