



RESIDENTIAL LISTING AGREEMENT (Exclusive Authorization and Right to Sell) (C.A.R. Form LA, Revised 10/02)

- 1. EXCLUSIVE RIGHT TO SELL: Dave Smith (Seller) hereby employs and grants Tuscany Realty, Inc. (Broker) beginning (date) November 22, 2003 and ending at 11:59 P.M. on (date) April 30, 2004 (Listing Period) the exclusive and irrevocable right to sell or exchange the real property in the City of Milpitas, County of Santa Clara, California, described as: 713 ARBOR WAY, Milpitas, CA 95035 (Property).
2. ITEMS EXCLUDED AND INCLUDED: Unless otherwise specified in a real estate purchase agreement, all fixtures and fittings that are attached to the Property are included, and personal property items are excluded, from the purchase price.
3. LISTING PRICE AND TERMS: A. The listing price shall be: Three Hundred Forty-Five Thousand Dollars Dollars (\$ 345,000.00). B. Additional Terms:
4. COMPENSATION TO BROKER: Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between Seller and Broker (real estate commissions include all compensation and fees to Broker).
A. Seller agrees to pay to Broker as compensation for services irrespective of agency relationship(s), either 5.000 percent of the listing price (or if a purchase agreement is entered into, of the purchase price), or \$ AND \$495 Transaction Fee, as follows:
(1) If Broker, Seller, cooperating broker or any other person procures a buyer(s) who offers to purchase the Property on the above price and terms, or on any price and terms acceptable to Seller during the Listing Period, or any extension.
(2) If Seller, within 45 calendar days (a) after the end of the Listing Period or any extension, or (b) after any cancellation of this Agreement, unless otherwise agreed, enters into a contract to sell, convey, lease or otherwise transfer the Property to anyone (Prospective Buyer) or that person's related entity: (i) who physically entered and was shown the Property during the Listing Period or any extension by Broker or a cooperating broker; or (ii) for whom Broker or any cooperating broker submitted to Seller a signed, written offer to acquire, lease, exchange or obtain an option on the Property. Seller, however, shall have no obligation to Broker under paragraph 4A(2) unless, not later than 3 calendar days after the end of the Listing Period or any extension or cancellation, Broker has given Seller a written notice of the names of such Prospective Buyers.
(3) If, without Broker's prior written consent, the Property is withdrawn from sale, conveyed, leased, rented, otherwise transferred or made unmarketable by a voluntary act of Seller during the Listing Period, or any extension.
B. If completion of the sale is prevented by a party to the transaction other than Seller, then compensation due under paragraph 4A shall be payable only if and when Seller collects damages by suit, arbitration, settlement or otherwise, and then in an amount equal to the lesser of one-half of the damages recovered or the above compensation, after first deducting title and escrow expenses and the expenses of collection, if any.
C. In addition, Seller agrees to pay Broker:
D. (1) Broker is authorized to cooperate with and compensate brokers participating through the multiple listing service(s) (MLS): (i) in any manner; OR (ii) (if checked) by offering MLS brokers: either percent of the purchase price or \$ (2) Broker is authorized to cooperate with and compensate brokers operating outside the MLS in any manner.
E. Seller hereby irrevocably assigns to Broker the above compensation from Seller's funds and proceeds in escrow. Broker may submit this agreement, as instructions to compensate Broker pursuant to paragraph 4A, to any escrow regarding the Property involving Seller and a buyer, Prospective Buyer or other transferee.
F. (1) Seller represents that Seller has not previously entered into a listing agreement with another broker regarding the Property, unless specified as follows: (2) Seller warrants that Seller has no obligation to pay compensation to any other broker regarding the Property unless the Property is transferred to any of the following individuals or entities: (3) If the Property is sold to anyone listed above during the time Seller is obligated to compensate another broker: (i) Broker is not entitled to compensation under this agreement; and (ii) Broker is not obligated to represent Seller in such transaction.

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Seller acknowledges receipt of copy of this page.

Seller's Initials ( ) ( )

Reviewed by Date



LA REVISED 10/02 (PAGE 1 OF 3)

RESIDENTIAL LISTING AGREEMENT-EXCLUSIVE (LA PAGE 1 OF 3)

- 5. **OWNERSHIP, TITLE AND AUTHORITY:** Seller warrants that: (i) Seller is the owner of the Property; (ii) no other persons or entities have title to the Property; and (iii) Seller has the authority to both execute this agreement and sell the Property. Exceptions to ownership, title and authority are as follows: \_\_\_\_\_.
- 6. **MULTIPLE LISTING SERVICE:** Information about this listing will (or  will not) be provided to the MLS of Broker's selection. All terms of the transaction, including financing, if applicable, will be provided to the selected MLS for publication, dissemination and use by persons and entities on terms approved by the MLS. Seller authorizes Broker to comply with all applicable MLS rules. MLS rules allow MLS data to be made available by the MLS to additional Internet sites unless Broker gives the MLS instructions to the contrary.
- 7. **SELLER REPRESENTATIONS:** Seller represents that, unless otherwise specified in writing, Seller is unaware of: (i) any Notice of Default recorded against the Property; (ii) any delinquent amounts due under any loan secured by, or other obligation affecting, the Property; (iii) any bankruptcy, insolvency or similar proceeding affecting the Property; (iv) any litigation, arbitration, administrative action, government investigation or other pending or threatened action that affects or may affect the Property or Seller's ability to transfer it; and (v) any current, pending or proposed special assessments affecting the Property. Seller shall promptly notify Broker in writing if Seller becomes aware of any of these items during the Listing Period or any extension thereof.
- 8. **BROKER'S AND SELLER'S DUTIES:** Broker agrees to exercise reasonable effort and due diligence to achieve the purposes of this agreement. Unless Seller gives Broker written instructions to the contrary, Broker is authorized to order reports and disclosures as appropriate or necessary and advertise and market the Property by any method and in any medium selected by Broker, including MLS and the Internet and, to the extent permitted by these media, control the dissemination of the information submitted to any medium. Seller agrees to consider offers presented by Broker, and to act in good faith to accomplish the sale of the Property by, among other things, making the Property available for showing at reasonable times and referring to Broker all inquiries of any party interested in the Property. Seller is responsible for determining at what price to list and sell the Property. **Seller further agrees to indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments and attorney fees arising from any incorrect information supplied by Seller, or from any material facts that Seller knows but fails to disclose.**
- 9. **DEPOSIT:** Broker is authorized to accept and hold on Seller's behalf any deposits to be applied toward the purchase price.
- 10. **AGENCY RELATIONSHIPS:**
  - A. **Disclosure:** If the Property includes residential property with one-to-four dwelling units, Seller shall receive a "Disclosure Regarding Agency Relationships" form prior to entering into this agreement.
  - B. **Seller Representation:** Broker shall represent Seller in any resulting transaction, except as specified in paragraph 4F.
  - C. **Possible Dual Agency With Buyer:** Depending upon the circumstances, it may be necessary or appropriate for Broker to act as an agent for both Seller and buyer, exchange party or one or more additional parties ("Buyer"). Broker shall, as soon as practicable, disclose to Seller any election to act as a dual agent representing both Seller and Buyer. If a Buyer is procured directly by Broker or an associate licensee in Broker's firm, Seller hereby consents to Broker acting as a dual agent for Seller and such Buyer. In the event of an exchange, Seller hereby consents to Broker collecting compensation from additional parties for services rendered, provided there is disclosure to all parties of such agency and compensation. Seller understands and agrees that: (i) Broker, without the prior written consent of Seller, will not disclose to Buyer that Seller is willing to sell the Property at a price less than the listing price; (ii) Broker, without the prior written consent of Buyer, will not disclose to Seller that Buyer is willing to pay a price greater than the offered price; and (iii) except for (i) and (ii) above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.
  - D. **Other Sellers:** Seller understands that Broker may have or obtain listings on other properties, and that potential buyers may consider, make offers on or purchase through Broker, property the same as or similar to Seller's Property. Seller consents to Broker's representation of sellers and buyers of other properties before, during and after the end of this agreement.
  - E. **Confirmation:** If the Property includes residential property with one-to-four dwelling units, Broker shall confirm the agency relationship described above, or as modified, in writing, prior to or concurrent with Seller's execution of a purchase agreement.
- 11. **SECURITY AND INSURANCE:** Broker is not responsible for loss of or damage to personal or real property, or person, whether attributable to use of a key safe/lockbox, a showing of the Property or otherwise. Third parties, including, but not limited to, appraisers, inspectors, brokers and prospective buyers, may have access to, and take videos and photographs of, the interior of the Property. Seller agrees: (i) to take reasonable precautions to safeguard and protect valuables that might be accessible during showings of the Property; and (ii) to obtain insurance to protect against these risks. Broker does not maintain insurance to protect Seller.
- 12. **KEYSAFE/LOCKBOX:** A key safe/lockbox is designed to hold a key to the Property to permit access to the Property by Broker, cooperating brokers, MLS participants, their authorized licensees and representatives, authorized inspectors, and accompanied prospective buyers. Broker, cooperating brokers, MLS and Associations/Boards of REALTORS® are **not** insured against injury, theft, loss, vandalism or damage attributed to the use of a key safe/lockbox. Seller does (or if checked  does not) authorize Broker to install a key safe/lockbox. If Seller does not occupy the Property, Seller shall be responsible for obtaining occupant(s)' written permission for use of a key safe/lockbox.
- 13. **SIGN:** Seller does (or if checked  does not) authorize Broker to install a FOR SALE/SOLD sign on the Property.
- 14. **EQUAL HOUSING OPPORTUNITY:** The Property is offered in compliance with federal, state and local anti-discrimination laws.
- 15. **ATTORNEY FEES:** In any action, proceeding or arbitration between Seller and Broker regarding the obligation to pay compensation under this agreement, the prevailing Seller or Broker shall be entitled to reasonable attorney fees and costs from the non-prevailing Seller or Broker, except as provided in paragraph 19A.
- 16. **ADDITIONAL TERMS:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- 17. **MANAGEMENT APPROVAL:** If an associate licensee in Broker's office (salesperson or broker-associate) enters into this agreement on Broker's behalf, and Broker or Manager does not approve of its terms, Broker or Manager has the right to cancel this agreement, in writing, within 5 days after its execution.
- 18. **SUCCESSORS AND ASSIGNS:** This agreement shall be binding upon Seller and Seller's successors and assigns.

Seller acknowledges receipt of copy of this page.

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

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



**19. DISPUTE RESOLUTION:**

**A. MEDIATION:** Seller and Broker agree to mediate any dispute or claim arising between them out of this agreement, or any resulting transaction, before resorting to arbitration or court action, subject to paragraph 19B(2) below. Paragraph 19B(2) below applies whether or not the arbitration provision is initialed. 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 commences an action without first attempting to resolve the matter through mediation, or 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.

**B. ARBITRATION OF DISPUTES: (1) Seller and Broker agree that any dispute or claim in Law or equity arising between them regarding the obligation to pay compensation under this agreement, which is not settled through mediation, shall be decided by neutral, binding arbitration, including and subject to paragraph 19B(2) below. 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, who shall render an award in accordance with substantive California Law. 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 III of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. Interpretation of this agreement to arbitrate shall be governed by the Federal Arbitration Act.**

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

**“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.”**

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

**20. ENTIRE CONTRACT:** All prior discussions, negotiations and agreements between the parties concerning the subject matter of this agreement are superseded by this agreement, which constitutes the entire contract and a complete and exclusive expression of their agreement, 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. This agreement and any supplement, addendum or modification, including any photocopy or facsimile, may be executed in counterparts.

**By signing below, Seller acknowledges that Seller has read, understands, accepts and has received a copy of this agreement.**

Seller \_\_\_\_\_ Date 11/22/2003  
Dave Smith

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Real Estate Broker (Firm) Tuscany Realty, Inc.

By (Agent) Anhtuan Le Date \_\_\_\_\_

Address 1451 McCarthy Blvd. City Milpitas State CA Zip 95035

Telephone \_\_\_\_\_ Fax (408) 383-9887 E-mail andy1@tuscanyRE.com

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Published by the California Association of REALTORS®

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_





Seller's Advisory (C.A.R. Form SA, Revised 10/01)

Property Address: 713 ARBOR WAY, Milpitas, CA 95035 ("Property")

1. INTRODUCTION: Selling property in California is a process that involves many steps. From start to finish, it could take anywhere from a few weeks to many months, depending upon the condition of your Property, local market conditions and other factors.

2. DISCLOSURES:

A. General Disclosure Duties: You must affirmatively disclose to the buyer, in writing, any and all known facts that materially affect the value or desirability of your Property.

B. Statutory Duties: (For one-to-four Residential Units):

- (1) You must timely prepare and deliver to the buyer, among other things, a Real Estate Transfer Disclosure Statement ("TDS"), and a Natural Hazard Disclosure Statement ("NHD").
(2) Depending upon the age and type of construction of your Property, you may also be required to provide and, in certain cases you can receive limited legal protection by providing, the buyer with booklets titled "The Homeowners Guide to Earthquake Safety," "The Commercial Property Owner's Guide to Earthquake Safety," "Protect Your Family From Lead in Your Home" and "Environmental Hazards: A Guide For Homeowners and Buyers."
(3) If you know that your property is: (i) located within one mile of a former military ordnance location; or (ii) in or affected by a zone or district allowing manufacturing, commercial or airport use, you must disclose this to the buyer.
(4) If the TDS, NHD, or lead, military ordnance, commercial zone or Mello-Roos disclosures are provided to a buyer after you accept that buyer's offer, the buyer will have 3 days after delivery (or 5 days if mailed) to terminate the offer...

C. Death and Other Disclosures: Many buyers consider death on real property to be a material fact in the purchase of property. In some situations, it is advisable to disclose that a death occurred or the manner of death. However, California Civil Code Section 1710.2 provides that you have no disclosure duty "where the death has occurred more than three years prior to the date the transferee offers to purchase, lease, or rent the real property, or [regardless of the date of occurrence] that an occupant of that property was afflicted with, or died from, Human T-Lymphotropic Virus Type III/Lymphadenopathy-Associated Virus."

D. Condominiums and Other Common Interest Subdivisions: If the Property is a condominium, townhouse, or other property in a common interest subdivision, you must provide to the buyer copies of the governing documents, the most recent financial statements distributed, and other documents required by law or contract.

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Seller's Initials ( ) ( )

Reviewed by Broker or Designee Date



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SELLER'S ADVISORY (SA-11 PAGE 1 OF 2)

**3. CONTRACT TERMS AND LEGAL REQUIREMENTS:**

- A. Contract Terms and Conditions:** A buyer may request, as part of the contract for the sale of your Property, that you pay for repairs to the Property and other items. Your decision on whether or not to comply with a buyer's requests may affect your ability to sell your Property at a specified price.
- B. Withholding Taxes:** Under federal and California tax laws, a buyer is required to withhold a portion of the purchase price from your sale proceeds for tax purposes unless you sign an affidavit of non-foreign status and California residency, or some other exemption applies and is documented.
- C. Prohibition Against Discrimination:** Discriminatory conduct in the sale of real property against individuals belonging to legally protected classes is a violation of the law.
- D. Government Retrofit Standards:** Unless exempt, you must comply with government retrofit standards, including, but not limited to, installing operable smoke detectors, bracing water heaters, and providing the buyer with corresponding written statements of compliance. Some city and county governments may impose additional retrofit standards, including, but not limited to, installing low-flow toilets and showerheads, gas shut-off valves, tempered glass, and barriers around swimming pools and spas. You should consult with the appropriate governmental agencies, inspectors, and other professionals to determine the retrofit standards for your Property, the extent to which your Property complies with such standards, and the costs, if any, of compliance.
- E. Legal, Tax and Other Implications:** Selling your Property may have legal, tax, insurance, title or other implications. You should consult an appropriate professional for advice on these matters.

**4. MARKETING CONSIDERATIONS:**

- A. Pre-Sale Considerations:** You should consider doing what you can to prepare your Property for sale, such as correcting any defects or other problems. Many people are not aware of defects in or problems with their own Property. One way to make yourself aware is to obtain professional home inspections prior to sale, both generally, and for wood destroying pests and organisms, such as termites. By doing this, you then have an opportunity to make repairs before your Property is offered for sale, which may enhance its marketability. Keep in mind, however, that any problems revealed by such inspection reports should be disclosed to the buyer (see "Disclosures" in paragraph 2 above). This is true even if the buyer gets his/her own inspections covering the same area. Obtaining inspection reports may also assist you during contract negotiations with the buyer. For example, if a pest control report has both a primary and secondary recommendation for clearance, you may want to specify in the purchase agreement those recommendations, if any, for which you are going to pay.
- B. Post-Sale Protections:** It is often helpful to provide the buyer with, among other things, a home protection/warranty plan for the Property. These plans will generally cover problems, not deemed to be pre-existing, that occur after your sale is completed. In the event something does go wrong after the sale, and it is covered by the plan, the buyer may be able to resolve the concern by contacting the home protection company.
- C. Safety Precautions:** Advertising and marketing your Property for sale, including, but not limited to, holding open houses, placing a key safe/lockbox, erecting FOR SALE signs, and disseminating photographs, video-tapes, and virtual tours of the premises, may jeopardize your personal safety and that of your Property. You are strongly encouraged to maintain insurance, and to take any and all possible precautions and safeguards to protect yourself, other occupants, visitors, your Property, and your belongings, including cash, jewelry, drugs, firearms and other valuables located on the Property against injury, theft, loss, vandalism, damage, and other harm.
- D. Expenses:** You are advised that you, not the Broker, are responsible for the fees and costs, if any, to comply with your duties and obligations to the buyer of your Property.

**5. OTHER ITEMS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Seller has read and understands this Advisory. By signing below, Seller acknowledges receipt of a copy of this document.

Seller \_\_\_\_\_ Date 11/22/03

Print Name Dave Smith

Seller \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_

Real Estate Broker Tuscany Realty, Inc. By \_\_\_\_\_

(Agent) Anhtuan Le

Address 1451 McCarthy Blvd. City Milpitas State CA Zip 95035

Telephone (408) 888-8168 Fax (408) 383-9887 E-mail andy1@tuscanyRE.com

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Reviewed by \_\_\_\_\_  
Broker or Designee \_\_\_\_\_ Date \_\_\_\_\_





**COOPERATING BROKER COMPENSATION  
AGREEMENT AND ESCROW INSTRUCTION**

(C.A.R. Form CBC, Revised 10/02)

**1. IDENTITY OF LISTING BROKER, PROPERTY AND SELLER:**

Tuscany Realty, Inc. ("Listing Broker") is a real estate broker who has entered into a written agreement for the marketing and sale or lease of the real property or manufactured home described as 713 ARBOR WAY, Assessor's Parcel No. \_\_\_\_\_, situated in Milpitas, County of Santa Clara, California ("Property") for Dave Smith ("Seller").

**2. IDENTITY OF COOPERATING (SELLING) BROKER AND BUYER:**

Century 21 El Camino ("Cooperating Broker") is a real estate broker licensed to practice real estate in California (or  if checked \_\_\_\_\_) and represents Frank Chan, Anna Lee ("Buyer") who has offered, is contemplating making an offer, or has entered into a contract, to purchase or lease the Property.

**3. LISTING BROKER COMPENSATION TO COOPERATING BROKER:**

Provided that: (i) the transaction between the principals closes, and (ii) Listing Broker receives compensation for the transaction, Listing Broker agrees to pay Cooperating Broker, and Cooperating Broker agrees to accept, compensation as follows: (check one)

A.  Property is listed in the \_\_\_\_\_ Multiple Listing Service ("MLS"), Cooperating Broker is a participant in the MLS or reciprocal Multiple Listing Service and accepts the offer of compensation published in the MLS as: 2.500 % of the selling (or leasing) price or \$ \_\_\_\_\_.

OR B.  Property is listed in the \_\_\_\_\_ Multiple Listing Service ("MLS"), Cooperating Broker is a participant in the MLS or reciprocal Multiple Listing Service and accepts the offer of compensation as modified below: \_\_\_\_\_ % of the selling (or leasing) price or \$ \_\_\_\_\_.

OR C.  Property is listed in the \_\_\_\_\_ Multiple Listing Service ("MLS"), Cooperating Broker is NOT a Participant in the MLS or reciprocal Multiple Listing Service. Cooperating Broker compensation shall be: \_\_\_\_\_ % of the selling (or leasing) price or \$ \_\_\_\_\_.

OR D.  Property is NOT listed with any Multiple Listing Service. Cooperating Broker compensation shall be: \_\_\_\_\_ % of the selling (or leasing) price or \$ \_\_\_\_\_.

**4. LISTING BROKER INSTRUCTION TO ESCROW HOLDER:**

Listing Broker and Cooperating Broker instruct Escrow Holder to disburse to Cooperating Broker the amount specified in paragraph 3, out of Listing Broker's proceeds in escrow, and upon Close Of Escrow of the Property. This compensation instruction can be amended or revoked only with the written consent of both Brokers. Escrow Holder shall immediately notify Brokers if either Broker instructs Escrow Holder to change the terms of this instruction.

**5. ACKNOWLEDGMENT:**

By signing below, the undersigned acknowledges that each has read, understands, accepts and has received a Copy of this Agreement.

Listing Broker (Firm) Tuscany Realty, Inc.

By (Agent) Anhtuan Le Date December 5, 2003

Address 1451 McCarthy Blvd. City Milpitas State CA Zip 95035

Telephone (408) 888-8168 Fax (408) 383-9887 E-mail andy@tuscanyRE.com

Cooperating Broker (Firm) Century 21 El Camino

By (Agent) \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_





DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS

(As required by the Civil Code) (C.A.R. Form AD-11, Revised 10/01)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller:

A Fiduciary duty of utmost care, integrity, honesty, and loyalty in dealing with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
(b) A duty of honest and fair dealing and good faith.
(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer:

A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
(b) A duty of honest and fair dealing and good faith.
(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer.
(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction.

This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on the reverse hereof. Read it carefully.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE.

[ ] BUYER [ ] SELLER Date Time [ ] AM [ ] PM

[ ] BUYER [ ] SELLER Date Time [ ] AM [ ] PM

AGENT By Date (Please Print) (Associate-Licensee or Broker Signature)

THIS FORM SHALL BE PROVIDED AND ACKNOWLEDGED AS FOLLOWS (Civil Code §2079.14):
• When the listing brokerage company also represents the Buyer, the Listing Agent shall give one AD-11 form to the Seller and one to the Buyer.
• When Buyer and Seller are represented by different brokerage companies, then the Listing Agent shall give one AD-11 form to the Seller and the Buyer's Agent shall give one AD-11 form to the Buyer and one AD-11 form to the Seller.

SEE REVERSE SIDE FOR FURTHER INFORMATION

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AD-11 REVISED 10/01 (PAGE 1 OF 1)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS (AD-11 PAGE 1 OF 1)

Reviewed by Broker or Designee Date



CHAPTER 2 OF TITLE 9 OF PART 4 OF DIVISION 3 OF THE CIVIL CODE

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (e) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (f) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent which becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property which constitutes or is improved with one to four dwelling units, any leasehold in this type of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (n) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (o) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.

(c) The confirmation required by subdivisions (a) and (b) shall be in the following form.

\_\_\_\_\_ is the agent of (check one):  the seller exclusively; or  both the buyer and seller.  
(Name of Listing Agent)

\_\_\_\_\_ is the agent of (check one):  the buyer exclusively; or  the seller exclusively; or  both the buyer and seller.  
(Name of Selling Agent if not the same as the Listing Agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure



CALIFORNIA  
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# ESTIMATED SELLER'S PROCEEDS

SELLER Dave Smith DATE January 9, 2004

PROPERTY ADDRESS 713 ARBOR WAY, Milpitas, CA 95035

This estimate is based on costs associated with \_\_\_\_\_ type of financing.

PROJECTED CLOSING DATE February 9, 2004 ESTIMATED SELLING PRICE \$ 345,000.00

**ESTIMATED COSTS:**

Escrow Fee	\$ <u>656.00</u>
Drawing, Recording, Notary	<u>250.00</u>
Title Insurance Policy	<u>1,308.00</u>
Documentary Transfer Tax:	
County	<u>379.00</u>
City	_____
Transfer Tax	_____
Prepayment Penalty	_____
Bene/Demand Fee	<u>75.00</u>
Prorated Interest (all loans)	<u>2,000.00</u>
Reconveyance Deed	<u>75.00</u>
Misc. Lender Fees	_____
Appraisal Fee	_____
VA/FHA Discount _____ Points	_____
Preparation of Documents	<u>200.00</u>
Misc. VA/FHA Fees	_____
Prorated Taxes	_____
Structural Pest Control Inspection	_____
Structural Pest Control Repairs	_____
Other Required Repairs	_____
Natural Hazard Disclosure Report	<u>125.00</u>
Home Protection Policy	<u>350.00</u>
Brokerage Fee	<u>15,525.00</u>
Buyer's Closing Costs	_____
Security Deposits	_____
Prorated Rents	_____
Administrative/Transaction Fee	<u>495.00</u>
Other Fees/Costs:	_____
_____	_____
_____	_____
_____	_____

**ESTIMATED TOTAL COSTS:** \$ 21,438.00

**ENCUMBRANCES (Approximate):**

First Trust Deed	\$ <u>277,800.00</u>
Second Trust Deed	_____
Bonds, Liens	_____
Other Encumbrances	_____
<b>TOTAL:</b>	\$ <u>277,800.00</u>
<b>GROSS EQUITY:</b>	\$ <u>67,200.00</u>

**APPROXIMATE CREDITS:**

Prorated Taxes	\$ _____
Prorated Insurance	_____
Impound Accounts	_____
Other: <u>NRCC For Buyer</u>	<u>(5,000.00)</u>
Other: _____	_____
<b>TOTAL:</b>	\$ <u>(5,000.00)</u>

**RECAP:**

<b>ESTIMATED SELLING PRICE:</b>	\$ <u>345,000.00</u>
<b>LESS:</b>	
Total Encumbrances	- <u>277,800.00</u>
Estimated Costs	- <u>21,438.00</u>
Sub-Total	\$ <u>45,762.00</u>
<b>PLUS:</b>	
Approximate Credits	+ <u>(5,000.00)</u>
<b>ESTIMATED SELLER'S PROCEEDS:</b>	\$ <u>40,762.00</u>
<b>LESS:</b>	
Purchase Money Note (If carried by Seller)	- _____
<b>PLUS:</b>	
Proceeds From Sale of Purchase Money Note	+ _____

**ESTIMATED SELLER'S CASH PROCEEDS:** \$ 40,762.00

This estimate, based upon the above projected selling price, type of financing and projected closing date, has been prepared to assist the Seller in computing his/her costs and proceeds. Lenders, title companies and escrow holders will vary in their charges. Expenses will also vary depending upon any required repairs, differences in unpaid loan balances, bond assessments, other liens, impound account, if any, and other items. Therefore, these figures cannot be guaranteed by the Broker or his/her representatives. All estimates and information are from sources believed reliable but not guaranteed.

I have read the above figures and acknowledge receipt of a copy of this form.

SELLER \_\_\_\_\_ Date \_\_\_\_\_  
Dave Smith

SELLER \_\_\_\_\_ Date \_\_\_\_\_

Real Estate Broker Firm Tuscany Realty, Inc.

Presented by Anhtuan Le

Address 1451 McCarthy Blvd.  
Milpitas, CA 95035

Phone (408) 888-8168

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REVISION DATE 10/2000

ESP-11 (PAGE 1 OF 1) Andy Anhtuan Le

Selection Realty 1900 McCarthy Blvd. Suite 101 Milpitas

CA 95035

**ESTIMATED SELLER'S PROCEEDS (ESP-11 PAGE 1 OF 1)**

Phone: (408)888-8490

Fax: (408)904-6051

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_  
Broker or Designee \_\_\_\_\_



T6618168.ZFX



HOMEOWNER ASSOCIATION INFORMATION REQUEST FOR COMMON INTEREST DEVELOPMENTS (C.A.R. Form HOA, Revised 10/02)

Property Address: 713 ARBOR WAY, Milpitas, CA 95035

Owner of Property: Dave Smith ("Seller")

Mailing address:

To: Homeowners' Association ("HOA")

Pursuant to California Civil Code §1368 and the request of Seller, within 10 calendar days from the date of this request, please provide Seller the items or information listed on page 2 at the mailing address indicated above, or (if checked) to

On page 2, please indicate whether the item is attached or not available, provide the information requested in the Explanation column or otherwise explain.

Requested by Seller:

Seller or Seller's Agent Date

The documents and information provided by the HOA referenced above were provided by:

(print name) Its (title)

By signing below, the undersigned acknowledges that each has read, understands and has received a copy of this Request.

Seller Dave Smith Date

Seller Date

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Reviewed by Date



HOMEOWNER ASSOCIATION INFORMATION REQUEST (HOA PAGE 1 OF 2)

## HOMEOWNER ASSOCIATION INFORMATION REQUEST FOR COMMON INTEREST DEVELOPMENTS

Item	HOA Response		
	Attached	Not Available	Explanation
Articles of Incorporation/Statement that HOA not incorporated			
CC&Rs			
Bylaws			
Rules and Regulations			
Age restrictions, if any			
Pro Forma Operating Budget, or summary including reserve study			
Financial Statement Review			
Assessment Enforcement Policy			
Insurance Summary			
Regular Assessment			
Special Assessment			
Emergency Assessment			
Other unpaid obligations of Seller			
Approved changes to assessments			
Preliminary list of defects			
Settlement Notice Regarding Common Area Defects			
Pending or anticipated claims or litigation by or against HOA			
Most recent 12 Months of HOA Minutes			
Number of designated parking spaces			
Location of parking spaces			
Number of designated storage spaces			
Location of storage spaces			
Any other document required by law			
Name and contact information of other HOAs governing property			
Other			

HOA \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_ Title \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

*Dave Smith*

Seller \_\_\_\_\_ Date \_\_\_\_\_

I acknowledge receipt of a copy of each item checked above. This document may be executed in counterparts.

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_





KEYSAFE/LOCKBOX ADDENDUM AND TENANT PERMISSION TO ACCESS PROPERTY (C.A.R. Form KLA, Revised 10/01)

The undersigned Seller Dave Smith ("Seller") has entered into an agreement with Tuscan Realty, Inc. ("Broker") dated 95035, to market for sale the real property located at 713 ARBOR WAY, Milpitas, CA 95035 ("Property").

1. DISCLOSURES REGARDING MARKETING AND SALE OF PROPERTY:

- A. A key safe/lockbox is designed to hold a key to the above Property, permitting access to the interior of the Property by Broker, other brokers and real estate licensees who are participants of the Multiple Listing Service(s) ("MLS"), authorized appraisers and inspectors, and accompanied persons interested in purchasing the Property. These individuals may take videos or photographs of the Property.
B. Broker, cooperating brokers and other real estate licensees, the MLS and Associations/Boards of REALTORS® are not insurers against injury, theft, loss, vandalism, damage or other harm whether through the use of a key safe/lockbox or other means. Broker does not maintain insurance to protect Seller or other occupants.
C. Broker recommends that Seller and other occupants of the property maintain insurance and take any and all possible precautions and safeguards to protect themselves, other occupants and visitors, their property and belongings, including cash, jewelry, drugs, firearms, and other valuables located on the Property.

2. SELLER PERMISSION FOR USE OF A KEYSAFE/LOCKBOX:

Seller hereby authorizes Broker to use a key safe/lockbox. If the Property is tenant-occupied, Seller is advised that tenant permission may be required and is recommended. Seller acknowledges receipt of a copy of this document.

Date Seller Dave Smith (Print Name)

3. TENANT PERMISSION TO ACCESS PREMISES:

I am the current tenant of the above referenced Property, and have read the disclosure statements above. In addition to any authority granted in the lease or rental agreement, I agree as follows:

- Broker may use a key safe/lockbox.
Broker may show premises as follows:

(For Single-Family Dwellings:) Broker may post a "FOR SALE/SOLD" sign on the Property.

Tenant acknowledges receipt of a copy of this document.

Date Tenant Frank Chan (Print Name)

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Reviewed by Broker or Designee Date

