

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
FULL BOARD SPECIAL MEETING
August 10, 2023
6:00 P.M.
CITY HALL, HEARING ROOM # 1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA 94612**

AGENDA

PUBLIC PARTICIPATION

The public may observe or participate in this meeting in many ways.

OBSERVE:

• To observe, the public may view the televised video conference by viewing KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99 and locating City of Oakland KTOP – Channel 10

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When: Aug 10, 2023 06:00 PM Pacific Time (US and Canada)

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PARTICIPATION/COMMENT:

There is one way to submit public comments:

• To participate/comment during the meeting, you must attend in-person.

Comments on all agenda items will be taken during public comment at the beginning of the meeting. Comments for items not on the agenda will be taken during open forum towards the end of the meeting.

If you have any questions, please email hearingsunit@oaklandca.gov

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD MEETING

1. CALL TO ORDER
2. ROLL CALL
3. WELCOME NEW BOARD MEMBERS
4. PUBLIC COMMENT
 - a. Comments on all agenda items will be taken at this time. Comments for items not on the agenda will be taken during open forum.
5. CONSENT ITEMS
 - a. Approval of Board Minutes, 7/27/2023 (pp. 3-9)
6. APPEALS*
 - a. T23-0019, Barragan v. Mead Holding LLC (pp. 51-152)
 - b. T19-0384, Salvador v. Fong (pp. 153-841)
7. RESOLUTION TO RECOMMEND AMENDMENT TO THE RENT ADJUSTMENT PROGRAM REGULATIONS (pp. 10-51)
8. INFORMATION AND ANNOUNCEMENTS
9. SCHEDULING AND REPORTS
10. OPEN FORUM
11. ADJOURNMENT

**Staff appeal summaries will be available on the Rent Adjustment Program's website and the City Clerk's office at least 48 hours prior to the meeting pursuant to O.M.C. 2.20.070.B and 2.20.090*

As a reminder, alternates in attendance (other than those replacing an absent board member) will not be able to take any action, such as with regard to the consent calendar.

Accessibility: Contact us to request disability-related accommodations, American Sign Language (ASL), Spanish, Cantonese, Mandarin, or another language interpreter at least five (5) business days before the event. Rent Adjustment Program (RAP) staff can be contacted via email at RAP@oaklandca.gov or via phone at (510) 238-3721. California relay service at 711 can also be used for disability-related accommodations.

Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en Español, Cantonés, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a RAP@oaklandca.gov o llame al (510) 238-3721 o 711 por lo menos cinco días hábiles antes de la reunión.

需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 RAP@oaklandca.gov 或致電 (510) 238-3721 或711 California relay service.

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
FULL BOARD SPECIAL MEETING**

July 27, 2023

5:30 P.M.

CITY HALL

1 FRANK H. OGAWA PLAZA, HEARING ROOM #1

OAKLAND, CA 94612

MINUTES

1. CALL TO ORDER

The Board meeting was administered in-person by B. Lawrence-McGowan from the Rent Adjustment Program (RAP), Housing and Community Development Department. B. Lawrence-McGowan explained the procedure for conducting the meeting. The HRRRB meeting was called to order by Chair Ingram at 5:46 p.m.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Vacant	Tenant			
D. WILLIAMS	Tenant	X		
J. DEBOER	Tenant Alt.	X		
M. GOOLSBY	Tenant Alt.			X
D. INGRAM	Undesignated	X		
C. OSHINUGA	Undesignated	X		
M. ESCOBAR	Undesignated			X
Vacant	Undesignated Alt.			
Vacant	Undesignated Alt.			
D. TAYLOR	Landlord	X		
K. BRODFUEHRER	Landlord			X
C. JACKSON	Landlord Alt.	X		
Vacant	Landlord Alt.			

Staff Present

Braz Shabrell

Susan Ma

Briana Lawrence-McGowan

Deputy City Attorney

Hearing Officer (RAP)

Administrative Analyst II (RAP)

3. WELCOME NEW BOARD MEMBERS

- a. Chair Ingram and fellow Board members welcomed new landlord alternate representative, Chris Jackson. Member Jackson briefly introduced himself.

4. ANNOUNCEMENT OF AGENDA ITEM CHANGES

- a. Chair Ingram announced that consent item 5b, the resolution for recommendation to amend the regulations, is being postponed. Additional edits are being made and the item will be re-introduced at a future meeting.

5. PUBLIC COMMENT

- a. No members of the public spoke during public comment.

6. CONSENT ITEMS

- a. Approval of Board Minutes, 7/13/2023: Member Williams moved to approve the Board Minutes from 7/13/2023. Member deBoer seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, D. Taylor, D. Williams, J. deBoer, C. Jackson
Nay: None
Abstain: None

The minutes were approved.

5. APPEALS*

- a. T21-0203, Smith v. MacIntyre

Appearances: Gregory Smith Tenant
Stuart MacIntyre Owner
Patrick MacIntyre Owner Representative

This case involved a tenant appeal of a Hearing Decision on the tenant’s petition—which contested numerous rent increases and alleged decreased housing services. The preliminary issue in this matter was whether there was good cause for the tenant’s failure to meet the appeal filing deadline. A hearing on the tenant’s petition was conducted and a decision was issued. The appeal was due within 20 days of that—however, the filing

deadline for the appeal was not met. The first issue that was presented to the Board was:

- 1.) Did the tenant petitioner have good cause for failure to meet the appeal filing deadline?

If there was good cause for the late filing, the Board could proceed with the appeal on the merits. If there was no good cause, the dismissal of the appeal could be upheld.

The merits of the appeal were whether the tenant should be relieved from a voluntary dismissal of prior cases that inadvertently resulted in the tenant's claims being time barred. The current petition was filed in November 2021—but the tenant had previously filed five other petitions over the course of the year leading up to the filing of this petition. The prior petitions were consolidated to a single case with the current petition on January 20, 2022. 11 days after the cases were consolidated, the petitioner filed a request to dismiss the five prior petitions—stating that the reason he wished to dismiss the other cases was to focus on the current petition because the prior petitions were redundant. The dismissal of the prior petitions ended up harming the petitioner, in that it resulted in the petitioner being time barred from contesting most of the rent increases listed. In the current petition, had the prior petitions not been dismissed, the petitioner's challenge to all prior rent increases would have been timely.

On appeal, the petitioner argues that he dismissed the prior petitions at the direction or guidance of the Hearing Officer—who informed the tenant that if he wanted to move forward with the hearing, he should dismiss the older petitions; and he was informed that all the information from the prior petitions would still be part of the record. The second and third issues that were presented to the Board were:

- 2.) Was the tenant misled or directed by staff to submit the request for dismissal?
- 3.) Is there good cause to relieve the tenant from the voluntary dismissal as it relates to the rent increases on the basis of mistake or excusable neglect?

If the petitioner was misled by staff and dismissed the prior petitions at the instruction of staff or on erroneous information from staff, the Board should consider whether it is in the interest of justice to let that serve as the basis for subsequently denying the plaintiff's claims as untimely. The fourth and

final issue that was presented to the Board was:

- 4.) Was it proper to exclude consideration of a notice of violation and other habitability related issues as they relate to the proper allowable rent for the unit, which was part of the Hearing Officer's determination?

The tenant contended that he was out of country when the original decision was rendered and that the only way he was able to file the appeal was because he sent an e-mail to the case analyst, Ms. Silveira, on April 24, 2023. The tenant argued that the case analyst sent the entire decision to him—and the following day, asked if he wanted to appeal. The tenant contended that he responded, but that he would not be back until May 22, 2023. The tenant argued that he had signed the consent to electronic service form; but that he did not receive the notice of incomplete appeal form via email, which would have informed him that the proof of service was missing. The tenant contended that he initially wrote that he would send the proof of service by May 28, 2023—but that he was planning to send it earlier.

The tenant argued that on the appeal form, it states that you have 15 days from the date that you submit the appeal to send the proof of service—and that this is what he was going by. The tenant contended that he made it within that timeframe because the proof of service was filed on May 23, which was 14 days from the date that he filed the appeal—which was May 9, 2023. The tenant argued he could have sent the proof of service by mail from another country; however, it states on the proof of service that it must be deposited in US mail—which is why he waited until he got back, which was still within those 15 days. The tenant contended that he was unaware that he had to submit the appeal and proof of service within 20 days from the date of the decision, which was April 26. The tenant argued that he sent RAP copies of his itinerary and plane tickets from those dates.

The tenant argued that he was denied his right to due process on numerous occasions by postponements, and that each time his right to due process was denied, it was based on a false statements made by the landlord's attorney—which were relied upon by Hearing Officer Lambert, without ascertaining the validity of these statements. The tenant contended that the case had been postponed based on statements surrounding the civil case proceeding, and that there were no other good causes given besides that. The tenant argued that shortly after receiving the order for consolidation, there was another postponement of the hearing that was scheduled for February 2022. The tenant contended that he requested for RAP not to further postpone the petitions, and that he spoke to Hearing Officer Lambert on several occasions. The tenant argued that he was

finally told that he could get a hearing within two weeks—however, he was also told that he would have to dismiss the prior five petitions as a condition, leaving only case T21-0203. The tenant contended that he was told that as soon as the dismissal form was received by RAP, Hearing Officer Lambert would schedule a hearing. The tenant argued that he told Hearing Officer Lambert that he believed dismissing the other five petitions would jeopardize his case—however, Hearing Officer Lambert assured him that all the documentation, dates, evidence, etc. of those five dismissed petitions would be in the case database and would be available to be referred to, cited, and relied upon in the hearing. The tenant argued that he trusted Hearing Officer Lambert and her assurances, and had no reason to doubt her—therefore, he followed her instructions and dismissed the five prior petitions. The tenant contended that January 31, 2023, he emailed the dismissal and Hearing Officer Lambert gave him a hearing instantly.

The tenant contended that the hearing was scheduled for February 15 and that he was present—but the other party wasn't. The tenant argued that Hearing Officer Lambert rescheduled the hearing for later that afternoon, but the landlord's attorney said they were not participating because the notice of violations would be dealt with in the civil proceeding. The tenant argued that Hearing Officer Lambert canceled the hearing, and never sent any formal paperwork regarding this. The tenant requested for the Board to consider reinstating and reactivating the dismissed petitions.

The owner representative contended that there was a civil case in this matter, that Mr. Smith was represented by an attorney throughout all of this, and that the attorney was informed of the decision—therefore, Mr. Smith had plenty of time to file the appeal. The owner representative argued that the tenant has filed many petitions and that this is serial abuse of his father, the property owner, who is 98 ½ years old. The owner representative contended that Mr. Smith is not their tenant—that Mr. Smith's mother was the tenant, and that he ended up there because he got kicked out of his home. The owner representative argued that their insurance company gave Mr. Smith around \$100,000.00, that he went to Japan for 3 months, and now he's back bringing up the same issues again. The owner representative contended that they do not consider Mr. Smith a tenant and that they do not consent to having the hearing go forth because the decisions have already been made.

The owner representative argued that there was a hearing and that the tenant's mother, through his sister, who has the power of attorney, agreed and paid the rent. The owner representative contended that after Mr. Smith received \$100,000, he went to Japan for 3 months and now he's coming back and attempting to take more bites of the apple. The owner representative contended that the tenant is claiming that the property was a

house and was converted into a multi-unit property without permits— however, this occurred 40-50 years ago, prior to his father owning the property. The owner representative argued that the changes that Mr. Smith wants to see are impossible because they won't be able to happen with anyone living at the property.

After parties' arguments, questions to the parties, and Board discussion, Vice Chair Oshinuga moved to determine that the tenant had good cause for the late appeal/proof of service filing. Member Williams seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, D. Taylor, D. Williams, J. deBoer
Nay: None
Abstain: C. Jackson

The motion was approved.

Vice Chair Oshinuga moved to find that staff provided advice that misled the tenant to dismiss the claims and based on this—there is good cause to reverse the dismissal and to bring back all of the tenant's dismissed claims. Member C. Jackson seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, C. Jackson, D. Taylor, D. Williams, J. deBoer
Nay: None
Abstain: None

The motion was approved.

Vice Chair Oshinuga moved to remand the case back to the Hearing Officer to consider all the issues raised in all of the petitions—excluding those matters that are precluded by the settlement agreement. In making their determination, the Hearing Officer must make findings to as whether the notice of violations are relevant regarding the rent increases and base rent—and include statute citations. The Hearing Officer is also to consider the tenant's son moving out when determining the proper rent amount and restitution. Member C. Jackson seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, C. Jackson, D. Taylor, D. Williams,
J. deBoer
Nay: None
Abstain: None

The motion was approved.

6. INFORMATION AND ANNOUNCEMENTS

- a. Briana Lawrence-McGowan informed the Board that the next Board meeting will start at 6:00 pm.
- b. Board Training Session—*The Brown Act*: Deputy City Attorney Braz Shabrell administered a Board training session. Topics discussed included but were not limited to:
 - The purpose of the Brown Act
 - Overview of the Brown Act
 - Who is subject to the act?
 - What counts as a meeting & meeting requirements
 - Types of prohibited communication
 - Agenda & Notice requirements
 - Public Testimony
 - Brown Act Violations

7. SCHEDULING AND REPORTS

- a. None

8. OPEN FORUM

- a. No members of the public spoke during open forum.

9. ADJOURMENT

- a. The meeting was adjourned at 7:36 p.m.

**CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND
RELOCATION BOARD (HRRRB)**

RESOLUTION NO. _____

INTRODUCED BY BOARD CHAIR DENARD INGRAM

RESOLUTION TO RECOMMEND AMENDMENT OF THE RENT ADJUSTMENT PROGRAM REGULATIONS TO (1) EXTEND AMORTIZATION PERIOD FOR MANDATORY SEISMIC RETROFITS TO 25 YEARS; (2) REDUCE ARGUMENT TIME TO SIX (6) MINUTES PER PARTY; (3) REMOVE APPEARANCE REQUIREMENT FOR APPELLANT AT APPEAL HEARINGS; (4) ALLOW NON-VOTING ALTERNATES TO PARTICIPATE IN BOARD MEETINGS IN NON-VOTING CAPACITY; (5) ADD GOOD CAUSE HEARINGS FOR FAILURE TO APPEAR AT HEARINGS; (6) CHANGE MEETING TIME TO 6 PM; (7) CODIFY EXISTING PROCEDURAL PRACTICES IN REGULATIONS; AND (8) MAKE OTHER CLARIFYING AND REORGANIZATION CHANGES

WHEREAS, the Housing, Residential Rent and Relocation Board may make recommendations to the City Council or appropriate City Council committee pertaining to Chapter 8.22 of the Oakland Municipal Code (O.M.C.) or City housing policy when requested to do so by the City Council or when the Board otherwise acts to do so, pursuant to O.M.C. 8.22.040 D.4; and

WHEREAS, on January 22, 2019, the City Council adopted Ordinance No. 13516, to require mandatory seismic evaluation and retrofit of certain multifamily residential buildings; and

WHEREAS, in Ordinance No. 13516, the City Council directed the Rent Board to revise the capital improvements amortization schedule in the Rent Program Regulations to provide an

amortization period for Mandatory Seismic Capital Improvements that conforms with the Rent Board's final motion passed during Item 5 of their July 9, 2015 meeting; and

WHEREAS, on June 21, 2022, the City Council adopted Ordinance No. 13695, which established a rent registry and requires evidence of registration before submitting an owner petition or an owner response to a tenant petition; and now, therefore, be it

WHEREAS, Rent Adjustment Program Regulation Section 8.22.120.I. provides that if an appellant fails to appear at an appeal hearing, the Board will consider the appeal dropped and will issue a decision dismissing the appeal, subject to the appellant showing good cause for the failure to appear; and

WHEREAS, Rent Adjustment Program Regulation section 8.22.120.D.2. provides that unless the Board or Appeal Panel votes otherwise, each party will have fifteen (15) minutes to present argument on or in opposition to the appeal; and

WHEREAS, on October 20, 2020, the City Council adopted Ordinance No. 13618 (Efficiency Ordinance), to among other things, streamline Rent Board meetings by allowing the Housing, Residential Rent and Relocation Board (Rent Board) to limit argument time for each party to six (6) minutes; and

WHEREAS, to make the appeal process more efficient and to minimize time commitment for parties to appeals, the Rent Board wishes to make appearances at appeals voluntary and reduce argument time to six (6) minutes per side; and

WHEREAS, Rent Adjustment Program Regulation section 8.22.100.B provides that if a petitioner fails to appear at a properly noticed mediation, the Hearing Officer may dismiss the case; and

WHEREAS, because mediations are voluntary, the Rent Board wishes to amend the regulations to allow parties who miss a mediation the opportunity to receive a hearing on the petition; and

WHEREAS, Rent Adjustment Program Regulation section 8.22.110.B provides that if a petitioner fails to appear at a properly noticed hearing, the Hearing Officer may dismiss the case;

WHEREAS, Rent Adjustment Program Regulation section 8.22.110 does not currently outline any good-cause relief for a party that fails to appear at a properly noticed hearing except through the appeal process; and

WHEREAS, either party can potentially wait an extended period of time for a scheduled appeal hearing just to address their good cause evidence, depending on the number of pending petitions; and

WHEREAS, significant wait times for either party to be able to present their good-cause evidence can, in some occasions, significantly impact the relief that can be granted by the Appeal

Body or by the Hearing Officer; and

WHEREAS, Rent Adjustment Program Regulation section 8.22.040 does not currently address Alternate Board Members and their participation in scheduled Board meetings unless they are filling in for regular members; and

WHEREAS, allow non-voting alternates to participate in board meetings would allow alternates to learn about the Rent Board in a non-voting capacity; and

WHEREAS, Rent Adjustment Program Regulation section 8.22.090.B.1 provides that A Tenant petition or response to an Owner petition is not considered filed unless the tenant submits evidence that the tenant is current on rent or lawfully withholding rent; and

WHEREAS, consistent with the Rent Board's recommendation to City Council to remove the current on rent requirement from the Rent Adjustment Ordinance, the Rent Board wishes to remove the requirement for the tenant be current on rent before filing a petition from the Rent Adjustment Regulations; and

WHEREAS, the Rent Board wishes to revise the Rent Adjustment Regulations to clarify rent board procedures from case precedents and codify them in regulations;

WHEREAS, the Housing, Residential Rent and Relocation Board seeks to ensure that all covered Oakland tenants and property owners have equitable access to the protections and relief provided by the Rent Adjustment Ordinance; now, therefore, be it

RESOLVED, That the Housing, Residential Rent and Relocation Board recommends the City Council amend the Rent Adjustment Program Regulations by adopting the attached amendments to the Rent Adjustment Regulations;

RESOLVED: That the Rent Board wishes to amend the Rent Adjustment Regulations consistent with these ordinance changes; and be it

FURTHER RESOLVED: That the Rent Board approves the attached Rent Adjustment Regulation amendments and forwards the attached regulation amendments to City Council for approval; and be it

Proposed Amendments to the Rent Adjustment Regulations Sections 8.22.020-040, 8.22.060, 8.22.070, 8.22.090-120, and Appendix A. (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

8.22.020 DEFINITIONS.

“Base occupancy level” means the number of tenants occupying the covered unit as principal residence as of June 16, 2020, with the owner’s knowledge, or allowed by the lease or rental agreement effective as of June 16, 2020, whichever is greater, except that, for units that had an initial rent established on or after June 17, 2020, “base occupancy level” means the number of tenants allowed by the lease or rental agreement entered into at the beginning of the current tenancy. When there is a new lease or rental agreement solely as a result of adding one or more additional occupants to the lease or rental agreement, the “beginning of the current tenancy” refers to the tenancy existing prior to the new lease or rental agreement regarding the additional occupant(s).

“Initial Base Rent” means the monthly rental rate during the initial term of tenancy. If the rental agreement provides for a period of “free” or discounted rent within its initial term, the initial base rent shall account for the “free” or discounted period. Notwithstanding any agreement to the contrary, the “rental rate” is the total lawful consideration (excluding the security deposit) charged by the owner in the initial term of the lease divided by the number of months in the lease term.

“Imputed interest” means ~~the average of the 10 year United States treasury bill rate and the 10 year LIBOR swap rate~~ for the quarter prior to the date the permits for the improvements were obtained plus an additional one and one-half percent, to be taken as simple interest. The Rent Program will post the quarterly interest rates allowable.

“Primary tenant” means a tenant who resides in a covered unit, is not an owner of record of the property, and charges rent to or receives rent from one or more subtenants in the covered unit.

“Principal Residence” means the one dwelling place where an individual primarily resides. Such occupancy does not require that the individual be physically present in the dwelling place at all times or continuously, but the dwelling place must be the individual’s usual or intended place of return. A Principal Residence is distinguishable from one kept primarily for secondary residential occupancy, such as a pied-a-terre or vacation home, or non-residential use, such as storage or commercial use. A determination of Principal Residence shall be based on the totality of circumstances, which may include, but are not limited to, the following factors: (1) whether the individual carries on basic living activities at the subject premises; (2) whether the individual maintains another dwelling and, if so, the amount of time that the individual spends at each dwelling place and indications, if any, that residence in one dwelling is temporary; (3) the subject premises are listed as the individual’s place of residence on any motor vehicle registration, driver’s license, voter registration, or with any other public agency, including Federal, State and local taxing authorities; (4) utilities are billed to and paid by the individual at the subject premises; (5) all or most of the individual’s personal possessions have been moved into the subject premises; (6) a homeowner’s tax exemption for the individual has not been filed for a different property; (7) the subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, family emergency, travel necessitated by employment or education, incarceration, or other reasonable temporary periods of absence.

“Staff” means the staff appointed by City Administrator to administer the Rent Adjustment Program.

“Subtenant,” for purposes of Regulation 8.22.025, means a tenant who resides with and pays rent to one or more primary tenants, rather than directly to the owner to whom the primary tenant(s) pay rent, for the housing services provided to the subtenant.

8.22.030 EXEMPTIONS.

A. Dwelling Units That Are Not Covered Units

1. In order to be a Covered Unit, the Owner must be receiving Rent in return for the occupancy of the dwelling unit.
 - a. Rent need not be cash, but can be in the form of “in-kind” services or materials that would ordinarily be the Owner’s responsibility.
 - i. For example, a person who lives in a dwelling unit and paints the premises, repairs damage, or upgrades the unit is considered to be paying Rent unless the person caused the damage.
 - b. Payment of some of expenses of the dwelling unit even though not all costs are paid is Rent.
 - i. Payment of all or a portion of the property taxes or insurance.
 - ii. Payment of utility costs that are not directly associated with the use of the unit occupied.
2. If California law determines that an “employee of the Owner”, including a manager who resides in the Owner’s property, is not a Tenant, then the dwelling unit occupied by such person is not subject to OMC Chapter 8.22 so long as the person is an employee and continues to reside in the unit.

B. Types of Dwelling Units Exempt

1. Subsidized units. Dwelling units whose rents are subsidized by a governmental unit, including the federal Section 8 voucher program.
2. Newly constructed dwelling units (receiving a certificate of occupancy after January 1, 1983).
 - a. Newly constructed units include legal conversions of uninhabited spaces not used by Tenants, such as:
 - i. Garages;
 - ii. Attics;
 - iii. Basements;
 - iv. Spaces that were formerly entirely commercial.
 - b. Any dwelling unit that is exempt as newly constructed under applicable interpretations of the new construction exemption pursuant to Costa-Hawkins (California Civil Code Section 1954.52).
 - c. Dwelling units not eligible for the new construction exemption include:
 - i. Live/work space where the work portion of the space was converted into a separate dwelling unit;
 - ii. Common area converted to a separate dwelling unit.
3. ~~Substantially rehabilitated buildings.~~
 - a. ~~In order to qualify for the substantial rehabilitation exemption, the rehabilitation work must be completed within a two (2) year period after the issuance of the building permit for the work unless the Owner demonstrates good cause for the work exceeding two (2) years.~~
 - b. ~~For the substantial rehabilitation exemption, the entire building must qualify for the exemption and not just individual units~~Reserved.
4. Dwelling Units Exempt Under Costa-Hawkins. Costa-Hawkins addresses dwelling units that are exempt under state law. The Costa Hawkins exemptions are contained at California Civil Code Section 1954.52. ~~The text of Costa Hawkins is attached as an appendix to OMC Chapter 8.22.~~

C. Certificates of Exemption

1. Whenever an Owner seeks a Certificate of Exemption the following procedures apply:
 - a. The petition cannot be decided on a summary basis and may only be decided after a hearing on the merits;

b. Staff may intervene in the matter for the purpose of better ensuring that all facts relating to the exemption are presented to the Hearing Officer;

c. In addition to a party's right to appeal, Staff or the Hearing Officer may appeal the decision to the Rent Board; and,

d. A Certificate of Exemption shall be issued in the format specified by Government Code Section 27361.6 for purposes of recording with the County Recorder.

2. In the event that a previously issued Certificate of Exemption is found to have been issued based on fraud, or mistake, or is no longer valid due to an intervening material change in law or circumstances, and thereby rescinded, the Staff shall record a rescission of the Certificate of Exemption against the affected real property with the County Recorder.

8.22.040 THE BOARD.

A. Meetings

1. Notice. Meetings shall be noticed and the agenda posted in accordance with the Ralph M. Brown Act (California Government Code Sections 54950, et. seq. (“Brown Act”) and Sunshine Ordinance (OMC Chapter 2.20).)
2. Regular Meetings. The Board or an Appeal Panel shall meet regularly on the second and fourth Thursdays of each month, unless cancelled. Rent Program staff is authorized to schedule these regular meetings either for the full Board or for an Appeal Panel.
3. Special Meetings. Meetings called by the Mayor or City Administrator, or meetings scheduled by the Board for a time and place other than regular meetings are to be designated Special Meetings. The agenda of Special Meetings shall be restricted to those matters for which the meeting was originally called and no additional matters may be added to the agenda.
4. Adjourned or Rescheduled Meetings. A meeting may be adjourned to a time and place to complete the agenda if voted by the Board members present. A rescheduled meeting may be held when a quorum cannot be convened for a regular meeting or when a quorum votes to substitute another time and/or place for a scheduled meeting. Notice of change of meeting time and/or place shall be sent to the City Clerk and absent Board members and provided in accordance with the Brown Act and Sunshine Ordinance.
5. Time of Meetings. Board meetings shall start at 7~~6~~ p.m. and end by 10:00 p.m. unless some other time is set in advance or the meeting is extended by a vote of the Board.
6. Location of Meetings. The Board meetings shall be held at City Hall, One Frank H. Ogawa Plaza, Oakland, CA 94612, unless otherwise designated.
7. Agenda. The agenda for each meeting shall be posted at such time and places as required by the Brown Act and Sunshine Ordinance.
8. Board meetings shall be conducted in accordance with “Robert’s Rules of Order (Newly Revised),” unless modified by these Regulations, requirements of the Brown Act or Sunshine Ordinance, or the Board.
9. Open to Public. The meetings shall be open to the public in accordance with the Brown Act and the Sunshine Ordinance, except for circumstances where the Brown Act or Sunshine Ordinance permits the Board to address a matter in closed session, such as litigation or personnel matters.
10. Board Vacations. The Board may schedule dates during the year when no regular Board meetings may be held so that the entire Board may take vacations. The Board must schedule vacation times at least two (2) months prior to the date of the vacation time.
11. Alternate Board Members. Alternate board members may participate in discussion and deliberations, but will only be allowed to vote when filling in for a regular member who is not

present or who has been excused from consideration of or voting on a matter by the Board.

B. Quorum and Voting

1. Four Board members constitutes a quorum of the Board.
2. Decisions of the Board. For the Board to make a decision on the first time a matter comes before the Board, the quorum must include at least one of each of the three categories of Board members (Tenant, residential rental property Owner, and one who is neither of the foregoing). If a matter cannot be decided because at least one of each of the three categories of Board members is not present, the matter will be considered a second time at a future meeting where the matter can be decided even if at least one member from each category is not present. A majority of the Board members present are required to make decisions, provided a quorum is present and sufficient members of each category are present.
3. A Board member who does not participate in a matter because of a conflict of interest or incompatible employment neither counts towards a quorum nor in calculating the number of Board members required to make a majority.
4. Special voting requirements for Just Cause for Eviction regulations enacted as part of partial settlement of *Kim v. City of Oakland*, Alameda County Superior Court Case No. RG03081362 (the "Settlement Regulations").

a. The special voting requirements set out in this subsection apply only to the Just Cause for Eviction regulations set out in Exhibit A.

b. The Settlement Regulations may be amended only by affirmative vote of at least five (5) members of the Rent Board, provided that at least one member from each class of Rent Board members (homeowner, landlord, and tenant) affirmatively votes to modify the Settlement Regulations.

c. Before the Board adopts any amendments to the Settlement Regulations, the Board must introduce the proposed amendments at a meeting, hold a public hearing at which members of the public and interested organizations, including the Rental Housing Association of Northern Alameda County, Inc. and Just Cause Oakland, are noticed, and the amendments can only be considered for adoption at a subsequent meeting.

d. After the introduction of proposed amendments to the Settlement Regulations, if the Board decides to further consider the adoption of the regulations and sets a public hearing to do so, the Board must also transmit the proposed amendments to the appropriate committee of the City Council so the City Council may have the option of commenting on or holding its own hearing before the Rent Board votes to adopt or reject the proposed amendments. If the Council elects not to comment on the proposed amendments or does not comment on them within 90 days after transmittal of the proposed amendments by the Rent Board, the Rent Board may proceed to vote on the proposed amendments.

C. Officers

1. The Board shall select a Chair from among the Board members who are neither tenants nor residential rental property owners. Each Appeal Panel shall be chaired by the member of that panel who is neither a tenant nor a residential rental property owner.
2. The Board may also select a Vice-Chair (who is neither a Tenant nor an Owner) to act as Chair in the Chair's absence.
3. The Officers shall serve one-year terms.
4. The Board shall elect Officers each year at the second meeting in February.
5. The Chair votes on matters as any other Board member.

D. Standing Committees

The Board may establish standing committees subject to prior approval of the City Council. A request to create a standing committee must include:

1. The staffing costs for the committee; and
2. The costs of complying with meeting noticing requirements.

8.22.060 NOTICE OF THE EXISTENCE OF CHAPTER 8.22 REQUIRED AT COMMENCEMENT OF TENANCY.

A. Providing Notice in Multiple Languages

1. The requirement to provide the Notice of the Existence of Chapter 8.22 Required at Commencement of Tenancy in multiple languages took effect on September 2~~4~~0, 2016 and only applies to new tenancies that commenced on or after that date.

2. No Owner will be penalized for failing to comply with this requirement until the later of sixty (60) days after the Rent Program makes a general announcement of the requirement or all the translations are available on the Rent Program website.

3. Until September 21, 2017, no Owner will be denied a Rent increase for failing to provide the notice in the required languages, unless:

a. the Tenant is proficient in one of the non-English languages specified in OMC 8.22.060 (Spanish or Chinese), and is not proficient in English;

or

b. the Owner negotiated the terms of the rental agreement in either Spanish or Chinese and failed to give the notice in that language.

8.22.070 RENT ADJUSTMENTS FOR OCCUPIED COVERED UNITS.

A. Purpose

This section sets forth the Regulations for a Rent adjustment exceeding the CPI Rent Adjustment and that is not authorized as an allowable increase following certain vacancies.

B. CPI and Banking Rent Adjustments

5. Rent History/"Banking"

(a) If a landlord chooses to increase rents less than the annual CPI Adjustment [formerly Annual Permissible Increase] permitted by the Ordinance, any remaining CPI Rent Adjustment may be carried over to succeeding twelve (12) month periods ("Banked"). However, the total of CPI Adjustments imposed in any one Rent increase, including the current CPI Rent Adjustment, may not exceed three times the allowable CPI Rent Adjustment on the effective date of the Rent Increase notice.

(b) Banked CPI Rent Adjustments may be used together with other Rent justifications, except Increased Housing Service Costs and Fair Return, because these justifications replace the current year's CPI increase.

(c) In no event may any banked CPI Rent Adjustment be implemented more than ten years after it accrues.

C. Justifications for a Rent Increase in Excess of the CPI Rent Adjustment or Banking

~~1. Regulations regarding~~ The justifications for a Rent increase in excess of the CPI Rent Adjustment or Banking are attached as Appendix A to these Regulations. The justifications are: banking; capital improvement costs; uninsured repair costs; increased housing service costs; **the rent increase is necessary to meet constitutional or fair return requirements**; additional occupant as defined by OMC 8.22.020; and Tenant does not reside in the unit as their principal residence; and the rent increase is necessary to meet constitutional or fair return requirements.

a. Capital Improvement Costs: Capital Improvement Costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements primarily must benefit the tenant rather than the landlord.

(1) Credit for capital improvements will only be given for those improvements which have been completed and paid for within the twenty-four (24) month period prior to the date the petition for a rent increase based on the improvements is filed.

(2) Eligible capital improvements include, but are not limited to, the following items:

1. Those improvements which primarily benefit the tenant rather than the landlord. (For example, the remodeling of a lobby would be eligible as a capital improvement, while the construction of a sign advertising the rental complex would not be eligible). However, the complete painting of the exterior of a building, and the complete interior painting of internal dwelling units are eligible capital improvement costs.

2. In order for equipment to be eligible as a capital improvement cost, such equipment

must be permanently fixed in place or relatively immobile (for example, draperies, blinds, carpet, sinks, bathtubs, stoves, refrigerators, and kitchen cabinets are eligible capital improvements. Hot plates, toasters, throw rugs, and hibachis would not be eligible as capital improvements).

3. Except as set forth in subsection 4, repairs completed in order to comply with the Oakland Housing Code may be considered capital improvements.

4. The following may not be considered as capital improvements:

a. Repairs for code violations may not be considered capital improvements if the Tenant proves the following:

i. That a repair was performed to correct a Priority 1 or 2 Condition that was not created by the Tenant, which may be demonstrated by any of the following:

(a) the condition was cited by a City Building Services Inspector as a Priority 1 or 2 Condition;

(b) the Tenant produces factual evidence to show that had the property or unit been inspected by a City Building Services Inspector, the Inspector would have determined the condition to be a Priority 1 or 2 Condition, but the Hearing Officer may determine that in order to decide if a condition is a Priority 1 or 2 Condition expert testimony is required, in which case the Hearing Officer may require such testimony.

ii. That the tenant

(a) informed the Owner of the condition in writing;

(b) otherwise proves that the landlord knew of the conditions, or

(c) proves that there were exceptional circumstances that prohibited the tenant from submitting needed repairs in writing; and

iii. That the Owner failed to repair the condition within a reasonable time after the Tenant informed Owner of the condition or the Owner otherwise knew of the condition.

iv. A reasonable time is determined as follows:

(a) If the condition was cited by a City Building Services Inspector and the Inspector required the repairs to be performed within a particular time frame, or any extension thereof, the time frame set out by the Inspector is deemed a reasonable time; or

(b) Ninety (90) days after the Owner received notice of the condition or otherwise learned of the condition is presumed a reasonable time unless either of the following apply:

(1) the violation remained unabated for ninety (90) days after the date of notice to the Owner and the Owner demonstrates timely, good faith efforts to correct the violation within the ninety the (90) days but such efforts were unsuccessful due to the nature of the work or circumstances beyond the Owner's control, or the delay was attributable to other good cause; or

(2) the Tenant demonstrated that the violation was an immediate threat to the health and safety of occupants of the property, [in which case] fifteen (15) business days is presumed a reasonable time unless:

(i) the Tenant proves a shorter time is reasonable based on the hazardous nature of the condition,

and the ease of correction, or
(ii) the Owner demonstrates timely, good faith efforts to correct the violation within the fifteen (15) business days after notice but such efforts were unsuccessful due to the nature of the work or circumstances beyond the Owner's control, or the delay was attributable to other good cause.

(c) If an Owner is required to get a building or other City permit to perform the work, or is required to get approval from a government agency before commencing work on the premises, the Owner's attempt to get the required permit or approval within the timelines set out in (i) and (ii) above shall be deemed evidence of good faith and the Owner shall not be penalized for delays attributable to the action of the approving government agency.

b. Deferred Maintenance. Costs for work or portion of work that could have been avoided by the landlord's exercise of reasonable diligence in making timely repairs after the landlord knew or should reasonably have known of the problem that caused the damage leading to the repair claimed as a capital improvement.

i. Among the factors that may be considered in determining if the landlord knew or should reasonably have known of the problem that caused the damage:

(a) Was the condition leading to the repairs outside the tenant's unit or inside the tenant's unit?

(b) Did the tenant notify the landlord in writing or use the landlord's procedures for notifying the landlord of conditions that might need repairs?

(c) Did the landlord conduct routine inspections of the property?

(d) Did the tenant permit the landlord to inspect the interior of the unit?

ii. Examples:

(a) A roof leaks and, after the landlord knew of the leak, did not timely repair the problem and leak causes ceiling or wall damage to units that could have been avoided had the landlord acted timely to make the repair. In this case, replacement of the roof would be a capital improvement, but the repairs to the ceiling or wall would not be.

(b) A problem has existed for an extended period of time visible outside tenants' units and could be seen from a reasonable inspection of the property, but the landlord or landlord's agents either had not inspected the property for an unreasonable period of time, or did not exercise due diligence in making such inspections. In such a case, the landlord should have reasonably known of the problem. Annual inspections may be considered a reasonable time period for inspections depending on the facts and circumstances of the property such as age, condition, and tenant complaints.

iii. Burden of Proof

(a) The tenant has the initial burden to prove that the landlord knew or should have reasonably known of the problem that caused the repair.

(b) Once a tenant meets the burden to prove the landlord knew or

should have reasonably known, the burden shifts to the landlord to prove that the landlord exercised reasonable diligence in making timely repairs after the landlord knew or should have known of the problem.

c. “Gold-plating” or “Over-improvements”

i. Examples:

(a) A landlord replaces a Kenmore stove with a Wolf range. In such a case, the landlord may only pass on the cost of the substantially equivalent replacement.

(b) A landlord replaces a standard bathtub with a jacuzzi bathtub. In such a case, the landlord may only pass on the cost of the substantially equivalent replacement.

ii. Burden of Proof

(a) The tenant has the initial burden to prove that the improvement is greater in character or quality than existing improvements.

(b) Once a tenant meets the burden to prove that the improvement is greater in character or quality than existing improvements, the burden shifts to the landlord to prove that the tenant approved the improvement in writing, the improvement brought the unit up to current building or housing codes, or the improvement did not cost more than a substantially equivalent replacement.

d. Use of a landlord's personal appliances, furniture, etc., or those items inherited or borrowed are not eligible for consideration as capital improvements.

e. Normal routine maintenance and repair of the rental until and the building is not a capital improvement cost, but a housing service cost. (For example: while the replacement of old screens with new screens would be a capital improvement).

f. Costs for which an Owner is reimbursed (e.g., insurance, court awarded damages, subsidies, tax credits, and grants) are not capital improvement costs.

(3) Rent Increases for Capital Improvement costs are calculated according to the following rules:

1. For mixed-use structures, only the percent of residential square footage will be applied in the calculations. The same principle shall apply to landlord-occupied dwellings (i.e., exclusion of landlord's unit).

2. Items determined to be capital improvements pursuant to Section 10.2.2. shall be amortized over the useful life of the improvement as set out in the Amortization Schedule attached as Exhibit 1 to these regulations and the total costs shall be amortized over that time period, unless the Rent increase using this amortization would exceed the Rent increase limits provided by O.M.C. 8.22.070 A2 or 3. Whenever a Capital Improvement Rent increase alone or with any other Rent increases noticed at the same time for a particular Unit exceeds the limits set by O.M.C. 8.22.070 A2 or 3, if the Owner elects to recover the portion of the Capital Improvement that causes the Rent Increase to exceed the limits set by O.M.C. 8.22.070 A2 or 3, the excess can only be recovered by extending the Capital Improvement's amortization period in yearly increments sufficient to cover the excess, and complying with any requirements to notice the Tenant of the extended amortization period with the initial Capital Improvement increase. The dollar amount of the rent increase justified by Capital Improvements shall be removed from the allowable rent at the end of the amortization period.

3. A monthly Rent increase for a Capital Improvement is determined as follows:

a. A maximum of seventy percent (70%) of the total cost for the Capital

Improvement (plus imputed interest calculated pursuant to the formula set forth in Regulation 8.22.020) may be passed through to the Tenant;

b. The amount of the Capital Improvement calculated in a. above is then divided equally among the Units that benefit from the Capital Improvement;

c. The monthly Rent increase is the amount of the Capital Improvement that may be passed through as determined above, divided by the number of months the Capital Improvement is amortized over for the particular Unit.

4. If a unit is occupied by an agent of the landlord, this unit must be included when determining the average cost per unit. (For example, if a building has ten (10) units, and one is occupied by a nonpaying manager, any capital improvement would have to be divided by ten (10), not nine (9), in determining the average rent increase). This policy applies to all calculations in the financial statement which involve average per unit figures.

5. Undocumented labor costs provided by the landlord cannot exceed 25% of the cost of materials.

6. Equipment otherwise eligible as a Capital Improvement will not be considered if a "use fee" is charged (i.e., coin-operated washers and dryers).

7. Where a landlord is reimbursed for Capital Improvements (i.e., insurance, court-awarded damages, subsidies, etc.), this reimbursement must be deducted from such Capital Improvements before costs are amortized and allocated among the units. For each improvement listed on a petition, the landlord must state whether a reimbursement or tax credit is or will be received for that improvement.

(4) In some cases, it is difficult to separate costs between rental units; common vs. rental areas; commercial vs. residential areas; or housing service costs vs. Capital Improvements. In these cases, the Hearing Officer will make a determination on a case-by-case basis.

(5) Interest on Failure to Reduce Capital Improvement Increase After End of Amortization Period.

1. If an Owner fails to reduce a Capital Improvement Rent increase in the month following the end of the amortization period for such improvement and the Tenant pays any portion of such Rent increase after the end of the amortization period, the Tenant may recover interest on the amount overpaid.

2. The applicable rate of interest for overpaid Capital Improvements shall be the rate specified by law for judgments pursuant to California Constitution, Article XV and any legislation adopted thereto and shall be calculated at simple interest.

(6) Documentation of improvement costs with proof of payment (i.e., invoices, receipts, and/or canceled checks) must be presented for all costs which are being used for justification of the proposed rent increase.

(7) Amortization of Capital Improvements. The following schedule shall be used to determine the amortization period of the capital improvement:

<u>IMPROVEMENT</u>	<u>YEARS</u>
<u>Air Conditioners</u>	10
<u>Appliances</u>	

Refrigerator	5
Stove	5
Garbage Disposal	5
Water Heater	5
Dishwasher	5
Microwave Oven	5
Washer/Dryer	5
Fans	5
<u>Cabinets</u>	10
<u>Carpentry</u>	10
<u>Counters</u>	10
<u>Doors</u>	10
Knobs	5
Screen Doors	5
<u>Earthquake Expenses</u>	
Architectural and Engineering Fees	5
Emergency Services	
Clean Up	5
Fencing and Security	5
Management	5
Tenant Assistance	5
<u>Structural Repair and Retrofitting</u>	
Foundation Repair	10

Foundation Replacement	20
Foundation Bolting	20
Iron or Steel Work	20
Masonry-Chimney Repair	20
Shear Wall Installation	10
<u>Seismic Retrofit</u>	<u>25</u>
<u>Electrical Wiring</u>	10
<u>Elevator</u>	20
<u>Fencing and Security</u>	
Chain	10
Block	10
Wood	10
<u>Fire Alarm System</u>	10
<u>Fire Sprinkler System</u>	20
<u>Fire Escape</u>	10
<u>Flooring/Floor Covering</u>	
Hardwood	10
Tile and Linoleum	5
Carpet	5
Carpet Pad	5
Subfloor	10
<u>Fumigation</u>	
Tenting	5
<u>Furniture</u>	5

<u>Automatic Garage Door Openers</u>	10
<u>Gates</u>	
Chain Link	10
Wrought Iron	10
Wood	10
<u>Glass</u>	
Windows	5
Doors	5
Mirrors	5
<u>Heating</u>	
Central	10
Gas	10
Electric	10
Solar	10
<u>Insulation</u>	10
<u>Landscaping</u>	
Planting	10
Sprinklers	10
Tree Replacement	10
<u>Lighting</u>	
Interior	10
Exterior	10

<u>Locks</u>	5
<u>Mailboxes</u>	10
<u>Meters</u>	10
<u>Plumbing</u>	
Fixtures	10
Pipe Replacement	10
Re-Pipe Entire Building	20
Shower Doors	5
<u>Painting</u>	
Interior	5
Exterior	5
<u>Paving</u>	
Asphalt	10
Cement	10
Decking	10
<u>Plastering</u>	10
<u>Pumps</u>	
Sump	10
<u>Railing</u>	10
<u>Roofing</u>	
Shingle/Asphalt	10
Built-Up, Tar, and Gravel	10
Tile and Linoleum	10
Gutters/Downspouts	10

<u>Security</u>	
Entry Telephone Intercom	10
Gates/Doors	10
Fencing	10
Alarms	10
<u>Sidewalks/Walkways</u>	10
<u>Stairs</u>	10
<u>Stucco</u>	10
<u>Tilework</u>	10
<u>Wallpaper</u>	5
<u>Window Coverings</u>	
Drapes	5
Shades	5
Screens	5
Awnings	5
Blinds/Miniblinds	5
Shutters	5

(8) The following describe five major hazard conditions classified as Priorities 1 & 2:

I. **MECHANICAL**

Priority 1

- A. Unvented heaters
- B. No combustion chamber, fire or vent hazard
- C. Water heaters in sleeping rooms, bathrooms
- D. Open gas lines, open flame heaters

Priority 2

- A. Damaged gas appliance
- B. Flame impingement, soot
- C. Crimped gas line, rubber gas connections
- D. Dampers in gas heater vent pipes, no separation or clearance, through or near combustibile surfaces
- E. Water heater on garage floor

II. PLUMBING

Priority 1

- A. Sewage overflow on surface

Priority 2

- A. Open sewers or waste lines
- B. Unsanitary, inoperative fixtures; leaking toilets
- C. T & P systems, newly or improperly installed

III. ELECTRICAL

Priority 1

- A. Bare wiring, open splices, unprotected knife switches, exposed energized electrical parts
- B. Evidence of overheated conductors including extension cords
- C. Extension cords under rugs

Priority 2

- A. Stapled cord wiring; extension cords
- B. Open junction boxes, switches, outlets
- C. Over-fused circuits
- D. Improperly added wiring

IV. STRUCTURAL

Priority 1

- A. Absence of handrail, loose, weakly-supported handrail
- B. Broken glass, posing potential immediate injury
- C. Hazardous stairs
- D. Collapsing structural members

Priority 2

- A. Garage wall separation
- B. Uneven walks, floors, tripping hazards
- C. Loose or insufficient supporting structural members
- D. Cracked glass, leaky roofs, missing doors (exterior) and windows
- E. Exit, egress requirements; fire safety

Note: Floor separation and stairway enclosures in multi-story handled on a case basis.

V. OTHER

Priority 1

- A. Wet garbage
- B. Open wells or unattended swimming pools
- C. Abandoned refrigerators
- D. Items considered by field person to be immediate hazards

- C. Significant quantity of debris
- D. Abandoned vehicles

Priority 2

- A. Broken-down fences or retaining walls
- B. High, dry weeds, next to combustible surfaces

Questions concerning permits, repairs and compliance schedules should be referred to code enforcement office of the City of Oakland -- (510) 238-3381.

b. Uninsured Repair Costs: Uninsured Repair Costs are costs for work done by a landlord or tenant to a rental unit or to the common area of the property or structure containing a rental unit which is performed to secure compliance with any state or local law as to repair damage resulting from, fire, earthquake, or other casualty or natural disaster, to the extent such repair is not reimbursed by insurance proceeds

(1) Uninsured Repair Costs are those costs incurred as a result of natural causes and casualty claims; it does not include improvement work or code correction work. Improvements work or code correction work will be considered either capital improvements or housing services, depending on the nature of the improvement.

(2) Increases justified by Uninsured Repair Costs will be calculated as Capital Improvement costs.

c. Increased Housing Service Costs: Increased Housing Service Costs are services provided by the landlord related to the use or occupancy of a rental unit, including, but not limited to, insurance, repairs, replacement maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service and employee services. Any repair cost that is the result of deferred maintenance, as defined in Appendix A, Section 10.2.28.22.070.C.1.a(2)(4)(b), cannot be considered a repair for calculation of Increased Housing Service Costs. Property tax is not considered a housing service cost.

(1) In determining whether there has been an increase in housing service costs, consider the annual operating expenses for the previous two years. (For example: if the rent increase is proposed in 1993, the difference in housing service costs between 1991 and 1992 will be considered.) The average housing service cost percentage (%) increase per month per unit shall be derived by dividing this difference by twelve (12) months, then by the number of units in the building and finally by the average gross operating income per month per unit (which is determined by dividing the gross monthly operating income by the number of units). Once the percentage increase is determined the percentage amount must exceed the allowable rental increase deemed by City Council. The total determined percentage amount is the actual percentage amount allowed for a rental increase.

(2) Any major or unusual housing service costs (i.e., a major repair which does not occur every year) shall be considered a capital improvement. However, any repair cost that is not eligible as a capital improvement because it is deferred maintenance pursuant to Appendix A, Section 10.2.28.22.070.C.1.a(2)(4)(b), may not be considered a repair for purposes of calculating Increased Housing Service Costs.

(3) Any item which has a useful life of one year or less, or which is not considered to be a capital improvement, will be considered a housing service cost (i.e., maintenance and repair).

(4) Individual housing service cost items will not be considered for special consideration. For example, PG&E increased costs will not be considered separately from other housing service costs.

(5) Documentation (i.e., bills, receipts, and/or canceled checks) must be presented for all costs

which are being used for justification of the proposed rent increase.

(6) Landlords are allowed up to 8% of the gross operating income of unspecified expenses (i.e., maintenance, repairs, legal and management fees, etc.) under housing service costs unless verified documentation in the form of receipts and/or canceled checks justify a greater percentage.

(7) If a landlord chooses to use 8% of his/her income for unspecified expenses, it must be applied to both years being considered under housing service cost (for example, 8% cannot be applied to 1980 and not 1981).

(8) An Increased Housing Service Costs increase may not be taken in the same year as a CPI increase because it replaces the current year's CPI increase.

~~1.8 A decrease in housing service costs (i.e., any items originally included as housing service costs such as water, garbage, etc.) is considered to be an increase in rent and will be calculated as such (i.e., the average cost of the service eliminated will be considered as a percentage of the rent). If a landlord adds service (i.e., cable TV, etc.) without increasing rent or covers costs previously paid by a tenant, this is considered to be a rent decrease and will be calculated as such.~~

~~1.9 The transfer of utility costs to the tenant by the landlord is not considered as part of the rent increase unless the landlord is designated in the original rental agreement to be the party responsible for such costs.~~

~~1.10 When more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units. Splitting the costs of utilities among tenants who live in separate units is prohibited by the Public Utilities Commission Code and Rule 18 of PG&E. The best way to remedy the bill is to install individual meters. If this is too expensive, then the property owner should pay the utility bill himself/herself and build the cost into the rent.~~

d. "Fair Return"

(1) Owners are entitled to the opportunity to receive a fair return. Ordinarily, a fair return will be measured by maintaining the net operating income (NOI) produced by the property in a base year, subject to CPI related adjustments. Permissible rent increases will be adjusted upon a showing that the NOI in the comparison year is not equal to the base year NOI.

(2) Maintenance of Net Operating Income (MNOI) Calculations

1. The base year shall be the calendar year 2014.
 - a. New owners are expected to obtain relevant records from prior owners.
 - b. Hearing officers are authorized to use a different base date, however, if an owner can demonstrate that relevant records were unavailable (e.g., in a foreclosure sale) or that use of base year 2014 will otherwise result in injustice.
2. The NOI for a property shall be the gross income less the following: property taxes, housing service costs, and the amortized cost of capital improvements. Gross income shall be the total of gross rents lawfully collectible from a property at 100%

occupancy, plus any other consideration received or receivable for, or in connection with, the use or occupancy of rental units and housing services. Gross rents collectible shall include the imputed rental value of owner-occupied units.

3. When an expense amount for a particular year is not a reasonable projection of ongoing or future expenditures for that item, said expense shall be averaged with the expense level for that item for other years or amortized or adjusted by the CPI or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses.

(3) Owners may present methodologies alternative to MNOI for assessing their fair return if they believe that an MNOI analysis will not adequately address the fair return considerations in their case. To pursue an alternative methodology, owners must first show that they cannot get a fair return under an MNOI analysis. They must specifically state in the petition the factual and legal bases for the claim, including any calculations.

e. Additional Occupants

As provided by O.M.C. 8.22.020, "Additional occupant," the addition of occupants above the base occupancy level, as defined by the Rent Adjustment Ordinance, allows an owner to petition to increase the rent by an amount up to 5% for each occupant above the base occupancy level. Such petitions must be filed within ninety (90) days of approval, or deemed approval as provided by O.M.C. 8.22.360.A.2.b, of the tenant's written request to add the occupant. No rent increase shall be granted for an additional occupant who is the spouse, registered domestic partner, parent, grandparent, child, adopted child, foster child, or grandchild of an existing tenant, or the legal guardian of an existing tenant's child or grandchild who resides in the unit, or a caretaker/attendant as required for a reasonable accommodation for an occupant with a disability.

Such rent increases must be reversed by the Owner if the additional occupancy level decreases, beginning with the most recently granted increase. Once a tenant provides written notice to the Owner of a decrease in the additional occupancy level and lists all current occupants, the Owner must provide written notice within fifteen (15) days to the tenant of the applicable reduced rent, effective as of the next regular rent due date occurring no sooner than thirty (30) days after the tenant's written notice.

If there are changes in occupancy following a tenant's request to add an occupant and, prior to the Owner's 15-day rent reduction notice deadline and the Owner issuing the notice, the additional occupancy level remains the same (e.g., a departing occupant is replaced), the Owner need not issue the rent reduction notice and the rent increase granted due to the prior additional occupant shall remain in effect, until and unless the additional occupancy level decreases. When the additional occupancy level remains the same following a change in occupancy, the Owner may not be granted a new additional occupant rent increase for any additional occupant that is added. The number of rent increases for additional occupants that currently apply to the rent may not exceed the additional occupancy level.

f. Tenant Not Residing in Unit as Principal Residence [Added May 5, 2021, but does not take effect until 3 months after the Local Emergency regarding the COVID-19 pandemic declared on March 9, 2020, is terminated by the City Council]

An Owner who seeks to impose a rent increase without limitation because the Tenant is not residing in the unit as their principal residence must petition for approval of the unrestricted rent increase based on a determination made pursuant to a hearing that the Tenant does not reside in the unit as their principal residence as of the date the petition is filed. The Hearing Officer shall not consider evidence in support of a petition that is obtained in violation of California Civil Code Section 1954 or the Oakland Tenant Protection Ordinance.

D. Rent Adjustment Based on Decreased Housing Services

1. A decrease in housing services costs (i.e., any items originally included as housing services costs such as water, garbage, etc.) is considered to be an increase in rent and will be calculated as such (i.e., the average cost of the service eliminated will be considered as a percentage of the rent). If a landlord adds service (i.e., cable TV, etc.) without increasing rent or covers costs previously paid by a tenant, this is considered to be a rent decrease and will be calculated as such.

2. The transfer of utility costs to the tenant by the landlord is not considered as part of the rent increase unless the landlord is designated in the original rental agreement to be the party responsible for such costs.

3. When more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units. Splitting the costs of utilities among tenants who live in separate units is prohibited by the Public Utilities Commission Code and Rule 18 of PG&E. The best way to remedy the bill is to install individual meters. If this is too expensive, then the property owner should pay the utility bill himself/herself and build the cost into the rent.

8.22.090 PETITION AND RESPONSE FILING PROCEDURES.

A. Filing Deadlines

1. In order for a document to meet the filing deadlines prescribed by OMC Chapter 8.22.090, documents must be received by the Rent Adjustment Program offices no later than 5 PM on the date the document is due. A postmark is not sufficient to meet the requirements of OMC Chapter 8.22.090. ~~Additional Regulations regarding electronic and facsimile filing will be developed when these filing methods become available at the Rent Adjustment Program.~~

2. Electronically filed documents must be received by the Rent Adjustment Program no later than 11:59 PM on the date the document is due.

B. Tenant Petition and Response Requirements

1. A Tenant petition or response to an Owner petition is not considered filed until the following has been submitted:

a. ~~Evidence that the Tenant is current on his or her Rent or is lawfully withholding Rent. For purposes of filing a petition or response, a statement under oath that a Tenant is current in his or her Rent or is lawfully withholding Rent is sufficient, but is subject to challenge at the hearing~~Reserved;

b. A substantially completed petition or response on the form prescribed by the Rent Adjustment Program, signed under oath; and

c. For Decreased Housing Services claims, organized documentation clearly showing the Housing Service decreases claimed **and the claimed value of the services, and detailing the calculations to which the documentation pertains.** Copies of documents should be submitted rather than originals. All documents submitted to the Rent Adjustment Program become permanent additions to the file.

d. Proof of service by first-class mail or in person of the tenant petition or response and any supporting documents on the owner.

2. Subtenant petitions described by Regulation 8.22.025 and Primary Tenant responses to them are subject to the tenant petition and response requirements in this section.

C. Owner Petition and Response Requirements

1. An Owner's petition or response to a petition is not considered filed until the following has been submitted:

a. Evidence that the Owner has paid his or her City of Oakland Business License Tax;

b. Evidence that the Owner has paid his or her Rent Program Service Fee or evidence that the unit is exempt from the fee;

c.

i. Evidence that the Owner has provided written notice, to all Tenants in each covered unit affected by the petition or response, of the existence and scope of the Rent Adjustment Program as required by OMC 8.22.060. For purposes of filing a petition or response, a statement that the Owner has provided the required notices is sufficient, but is subject to challenge at the hearing;

ii. After July 1, 2023, evidence of registration with the Rent Adjustment Program as required by O.M.C. 8.22.510 for each affected covered unit in the building prior to the petition or response being filed;

d. A substantially completed petition or response on the form prescribed by the Rent Adjustment Program, signed under oath;

e. **Organized documentation clearly showing the Rent increase justification and detailing the calculations to which the documentation pertains. Copies of documents should be submitted rather than originals. All documents submitted to the Rent Adjustment Program become permanent additions to the file; and**

f. Proof of service by first-class mail or in person of the owner petition or response and any supporting documents on the tenants of all units affected by the petition. Supporting documents that exceed twenty-five (25) pages are exempt from the service requirement, provided that: (1) the owner petition form must be served by first-class mail or in person; (2) the petition or attachment to the petition must indicate that additional documents are or will be available at the Rent Adjustment Program; and (3) the owner must provide a paper copy of supporting documents to the tenant or the tenant's representative within ten (10) days if a tenant requests a paper copy in the tenant's response.

2. Primary tenant responses to subtenant petitions described by Regulation 8.22.025 are not subject to the Owner response requirements in this section.

D. Time of Hearing and Decision

1. The time frames for hearings and decisions set out below are repeated from OMC 8.22.110 D.

2. The Hearing Officer shall have the goal of hearing the matter within sixty (60) days of the original petition's filing date.

3. The Hearing Officer shall have a goal of rendering a decision within sixty (60) days after the conclusion of the hearing or the close of the record, whichever is later.

E. Designation of Representative

Parties have the right to be represented by the person of their choice. A Representative does not have to be a licensed attorney. Representatives must be designated in writing by the party. Notices and correspondence from the Rent Adjustment Program will be sent to representatives as well as parties so long as a written Designation of Representative has been received by the

Rent Adjustment Program at least ten (10) days prior to the mailing of the notice or correspondence. Parties are encouraged to designate their representatives at the time of filing their petition or response whenever possible.

8.22.100 MEDIATION OF RENT DISPUTES.

A. Availability of Mediation

Voluntary mediation of Rent disputes will be available to all parties participating in Rent adjustment proceedings after the filing of a petition and response. Mediation will only be conducted in those cases in which all parties agree in advance to an effort to mediate the dispute.

B. Procedures

1. Parties who desire mediation shall have the choice between the use of Rent Adjustment Program Staff Hearing Officers acting as mediators or the selection of an outside mediator. Staff Hearing Officers shall be made available to conduct mediations free of charge. The Rent Adjustment Program will develop a list of available outside mediators for those who do not wish to have Staff Hearing Officers mediate rent disputes. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

2. The following rules apply to mediations conducted by Staff Hearing Officers and notices regarding the scheduling of a mediation session shall explain the following:

a. Participation in a mediation session is voluntary;

b. A request by any party for a hearing on the petition instead of the mediation session received prior to or during the scheduled mediation will be granted. Such a request will be immediately referred to the Rent Adjustment Program and a hearing on the petition will be scheduled;

c. Written notice of the mediation session shall be served on the parties by the Rent Adjustment Program in accordance with OMC 8.22.110.

d. It is the goal to have the mediation scheduled within the first 30 days after the response to the petition is filed.

e. Absence Of Parties. If either party fails to appear for a properly noticed mediation, the Hearing Officer will refer the matter to the Rent Adjustment Program for administrative review or hearing on the petition, whichever is appropriate.

~~i. If a petitioner fails to appear at a properly noticed mediation, the Hearing Officer may, in the Hearing Officer's discretion, dismiss the case.~~

~~ii. If a respondent fails to appear, the Hearing Officer will refer the matter to the Rent Adjustment Program for administrative review or hearing on the petition, whichever is appropriate.~~

3. The following rules apply to mediations conducted by outside mediators and notices regarding the scheduling of a mediation session shall explain the following:

a. Participation in a mediation session is voluntary;

b. The Rent Adjustment Program will not schedule the mediation; the parties will be responsible for scheduling the mediation between themselves and the mediator and for notifying the Rent Adjustment Program of the time and date for the mediation;

c. A request by any party for a hearing on the petition instead of the mediation session received prior to or during the scheduled mediation will be granted. Such a request will be immediately referred to the Rent Adjustment Program and an administrative hearing will be scheduled.

d. In the event that ~~the responding~~either party fails to appear for the mediation session, the case will be referred back to the Rent Adjustment Program for administrative review and or hearing on the petition, whichever is appropriate.

~~d. In the event that the petitioning party fails to appear for the mediation session, the case will be referred back to the Rent Adjustment Program for administrative dismissal of the petition.~~

4. The Regulations regarding representation by an agent and translation apply to mediations.

5. If the parties fail to settle the rent dispute through the mediation process after a good faith effort, a hearing on the petition will be scheduled on a priority basis with a Staff Hearing Officer. If the mediation was conducted by a Staff Hearing Officer, the hearing on the petition will be conducted by a different Hearing Officer.

6. If the parties reach an agreement during the mediation, a written mediation agreement will be prepared immediately by the mediator and signed by the parties at the conclusion of the mediation. To the extent possible, mediation agreements shall be self-enforcing. The Hearing Officer will issue an order corresponding to the mediated agreement and signed by the parties that either dismisses the petition or grants the petition according to terms set out in the mediation agreement.

7. A settlement agreement reached by the parties will become a part of the record of the proceedings on the petition unless the parties otherwise agree.

8. The parties cannot agree to grant an Owner a permanent exemption of for dwelling unit. Permanent exemption claims must be decided by a Hearing Officer after a hearing on the evidence.

C. Postponements of Mediations Before Hearing Officers

1. A Hearing Officer or designated Staff member may grant a postponement of the mediation only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. "Good cause" includes but is not limited to:

a. Verified illness of a party an attorney or other authorized representative of a party or

material witness of the party;

b. Verified travel plans scheduled before the receipt of notice of hearing;

c. Any other reason that makes it impractical to appear at the scheduled mediation date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

3. A request for a postponement of a mediation must be made in writing at the earliest date possible after receipt of the notice of mediation with supporting documentation attached.

4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Adjustment Program office must be notified in writing at the earliest date possible prior to the date set for the mediation.

8.22.110 HEARING PROCEDURE.

A. Postponements

1. A Hearing Officer or designated Staff member may grant a postponement of the hearing only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.
2. "Good cause" includes but is not limited to: a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party; b. Verified travel plans scheduled before the receipt of notice of hearing; c. Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".
3. A request for a postponement of a hearing must be made in writing at the earliest date possible after receipt of the notice of hearing with supporting documentation attached.
4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Adjustment Program office must be notified in writing at the earliest date possible prior to the date set for the hearing.

B. Absence Of Parties

1. If a petitioner fails to appear at a properly noticed hearing, the Hearing Officer may, in the Hearing Officer's discretion, dismiss the case, subject to the petitioner showing good cause for the failure to appear.
 - a. Any excuse for failing to appear, along with supporting documentation, must be submitted to the Hearing Officer within ten (10) days of service of the hearing decision.
 - b. The Hearing Officer will determine if the excuse represents constitutes a prima facie case of good cause based on the standards for failing to appear at a hearing and any Board decisions interpreting good cause for failure to appear.
 - c. If the Hearing Officer determines that the application represents petitioner's excuse establishes a prima facie case of good cause, the Hearing Officer may schedule a new hearing on good cause and on the petition.
 - d. If the petitioner submits a timely application under subsection (a), the time to appeal the Hearing Decision is extended until fifteen (15) days after service of the Hearing Officer's decision denying good cause for failure to appear.

2. If a respondent fails to appear, the Hearing Officer may rule against the respondent, or proceed to a hearing on the evidence.

C. Record Of Proceedings

1. All proceedings before a Hearing Officer or the Rent Board, except mediation sessions, shall

be recorded by tape or other mechanical means. A party may order a duplicate or transcript of the tape recording of any hearing provided that the party ordering the duplicate or transcript pays for the expense of duplicating or transcribing the tape.

2. Any party desiring to employ a court reporter to create a record of a proceeding, except a mediation session, is free to do so at their own expense, provided that the opportunity to obtain copies of any transcript are offered to the Rent Adjustment Program and to the opposing party.

D. Translation

Translation services for documents, procedures, hearings and mediations in languages other than English pursuant to the Equal Access to Services ordinance (O.M.C. Chapter 2.3) shall be made available to persons requesting such services subject to the City's ability to provide such services. In the event that the City is unable to provide such services, petitioners and respondents who do not speak or are not comfortable with English must provide their own translators. The translators will be required to take an oath that they are fluent in both English and the relevant foreign language and that they will fully and to the best of their ability translate the proceedings.

E. Conduct Of Hearings Before Hearing Officers

1. Each party, attorney, other representative of a party or witness appearing at the hearing shall complete a written Notice of Appearance and oath, as appropriate, that will be submitted to the Hearing Officer at the commencement of the hearing. All Notices of Appearance shall become part of the record.

2. All oral testimony must be given under oath or affirmation to be admissible.

3. Each party shall have these rights:

a. To call and examine witnesses;

b. To introduce exhibits, provided that the party provides the exhibits to the Rent Adjustment Program and serves copies to the other party not less than seven (7) days before the hearing unless the party has good cause for late filing;

c. To cross-examine opposing witnesses on any matter relevant to the issues even if that issue was not raised on direct examination;

d. To impeach any witness regardless of which party called first called him or her to testify;

e. To rebut the evidence against him or her;

f. To cross-examine an opposing party or their agent even if that party did not testify on his or her own behalf or on behalf of their principal

g. A party who fails to file a timely response to a petition is prohibited from calling or examining witnesses or introducing oral or written evidence and is limited to cross-examination.

unless the party has good cause for failing to file a response.

4. Unless otherwise specified in these Regulations or OMC Chapter 8.22, the rules of evidence applicable to administrative hearings contained in the California Administrative Procedures Act (California Government Code Section 11513) shall apply.

F. Decisions Of The Hearing Officer

1. The Hearing Officer shall make written findings of fact and issue a written decision on petitions filed.

2. If an increase in Rent is granted, the Hearing Officer shall state the amount of increase that is justified, ~~and the effective date of the increase.~~

3. If a decrease in Rent is granted, the Hearing Officer shall state when the decrease commenced, the nature of the service decrease, the value of the decrease in services, and the amount to which the rent may be increased when the service is restored. When the service is restored, any Rent increase based on the restoration of service may only be taken following a valid change of terms of tenancy notice pursuant to California Civil Code Section 827. A Rent increase for restoration of decreased Housing Services is not considered a Rent increase for purposes of the limitation on one Rent increase in twelve (12) months pursuant to OMC 8.22.070 A. (One Rent Increase Each Twelve Months).

4. The Hearing Officer may order Rent adjustment for overpayments or underpayments over a period of months, however, such adjustments shall not span more than a twelve (12) month period, unless longer period is warranted for extraordinary circumstances. The following is a schedule of adjustments for underpayment and overpayments that Hearing Officers must follow unless the parties otherwise agree or good cause is shown:

a. If the underpayment or overpayment is 25% of the Rent or less, the Rent will be adjusted over 3 months;

b. If the underpayment or overpayment is 50% of the Rent or less, the Rent will be adjusted over 6 months;

c. If the underpayment or overpayment is 75% of the Rent or less, the Rent will be adjusted over 9 months;

d. If the underpayment or overpayment is 100% of the Rent or more, the Rent will be adjusted over 12 months.

5. For Rent overpayments based on an Owner's failure to reduce Rent after the expiration of the amortization period for a Capital Improvement, the decision shall also include a calculation of any interest that may be due pursuant to Reg. 8.22.070.C.1.a(5) 10-2.5 (see Appendix A).

6. If the Landlord has petitioned for multiple capital improvements covering the same unit or building, the Hearing Officer may consolidate the capital improvements into a single amortization period and, in the Hearing Officer's discretion, determine the length for that

amortization period in the Decision.

G. Administrative Decisions

For rent increase petitions based on one or more additional occupants, if there is no genuine dispute regarding any material fact, the petition may be decided as a matter of law, and the tenant waives their right to a hearing in writing on a form provided by the Rent Adjustment Program, the Hearing Officer shall issue a decision without a hearing.

8.22.120 APPEALS.

A. Statement of Grounds for Appeal and Supporting Documentation

1. A party who appeals a decision of a Hearing Officer or administrative decision must clearly state the grounds for the appeal on the appeal form or an attachment. The grounds for appeal must be stated sufficiently clearly for the responding party, and the Board to reasonably determine the basis for the appeal so that the responding party can adequately respond and the Board can adequately adjudicate the appeal.
2. A party who files an appeal must file any supporting argument and documentation and serve it on the opposing party within fifteen (15) days of filing the appeal along with a proof of service on the opposition party.
3. A party responding to an appeal must file any response to the appeal and any supporting documentation and serve it on the opposing party within ~~thirty (30)~~fifteen (15) days of the service of the ~~supporting documentation~~appeal along with a proof of service on the opposing party.
4. Any argument and supporting documentation may not be any more than twenty-five (25) pages. Arguments must be legible and double-spaced if typed. Any submissions not conforming to these requirements may be rejected by Staff. Staff may limit the pages for argument and supporting documentation submitted in consolidated cases.
5. Staff, in its discretion, may modify or waive the above requirements for good cause. The good cause must be provided in writing by the party seeking a waiver or modification.

B. Grounds for Appeal

The grounds on which a party may appeal a decision of a Hearing Officer include, but are not limited to, the following:

1. The decision is inconsistent with OMC Chapter 8.22, the Regulations, or prior decisions of the Board;
2. The decision is inconsistent with decisions issued by other Hearing Officers;
3. The decision raises a new policy issue that has not previously been decided by the Board;
4. The decision violates federal, state, or local law;
5. The decision is not supported by substantial evidence. Where a party claims the decision is not supported by substantial evidence, the party making this claim has the burden to ensure that sufficient record is before the Board to enable the Board to evaluate the party's claim;
6. The Hearing Officer made a procedural error that denied the party sufficient opportunity to adequately present his or her claim or to respond to the opposing party; or
7. The decision denies the Owner a fair return.

a. This appeal ground may only be used by an Owner when his or her underlying petition for approval of a rent increase was based on a fair return claim.

b. Where an Owner claims the decision denies a fair return, the Owner must specifically state on the appeal form the basis for the claim, including any calculations, and the legal basis for the claim.

C. Postponements

1. The Board or Staff may grant a postponement of the appeal hearing only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. "Good cause" shall include but is not limited to:

a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party;

b. Verified travel plans scheduled before the receipt of notice of hearing;

c. Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

3. A request for a postponement of an appeal hearing must be made in writing at the earliest date possible after receipt of the notice of appeal hearing with supporting documentation attached.

~~4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Adjustment Program office must be notified in writing at the earliest date possible prior to the date for the appeal hearing.~~

D. Procedures at Appeal Hearings

1. It is the Board's or Appeal Panel's goal to hear three (3) appeals per meeting.

2. Unless the Board or Appeal Panel votes otherwise, or the Appeal Body Chair establishes an alternate time limit prior to the first appeal being heard by the Appeal Body, each party will have ~~fifteen (15)~~ six (6) minutes to present argument on or in opposition to the appeal. This time includes opening argument and any response.

3. Whenever the Board or Appeal Panel considers an appeal at more than one meeting, any Board member not present at a prior hearing must listen to a tape of the prior hearing in order to participate at a subsequent hearing.

4. Only those grounds presented in the written appeal may be argued before the Board or the Appeal Panel.

E. Record Of Proceedings

1. All proceedings before the Rent Board shall be recorded by tape or other mechanical means. A party may order a duplicate or transcript of the tape recording of any appeal hearing provided that the party ordering the duplicate or transcript pays for the expense of duplicating or transcribing the tape.
2. Any party desiring to employ a court reporter to create a record of a proceeding, except a mediation session, is free to do so at their own expense, provided that the opportunity to obtain copies of any transcript are offered to the Rent Adjustment Program and to the opposing party.

F. Evidentiary Hearings

1. As a general rule, the Board and Appeal Panels should not conduct evidentiary hearings. When the Board or Appeal Panel determines that additional evidence or reconsideration of evidence is necessary, the Board or Appeal Panel should remand the matter back to a Hearing Officer for consideration of evidence.
2. The Board or Appeal Panel should only consider evidence when the evidence is limited in scope and resolution of the matter is more efficient than having it remanded to a Hearing Officer for consideration of the evidence.
3. In order for new evidence to be considered, the party offering the new evidence must show that the new evidence could not have been available at the Hearing Officer proceedings.
4. If the Board or Appeal Panel deems an evidentiary hearing necessary, the appeal will be continued and the Board will issue a written order setting forth the issues on which the parties may present evidence.
5. The parties must file any new documentary evidence with the Board or Appeal Panel and also serve it the opposing party not more than ten (10) days after notice is given that a date has been set for the evidentiary appeal hearing.
 - a. Parties must also file with the Rent Program proofs of service of the evidence on the opposing party.
 - b. Failure to file the evidence and the proofs of service may result in the evidence not being considered by the Board or Appeal Panel.
6. When the Board or Appeal Panel conducts an evidentiary hearing, the same rules will apply as to hearings before Hearing Officers.

G. Appeal Decisions

1. **Vote Required.** Provided a quorum of the Board is present, or all three Appeal Panel members if a matter is being heard by an Appeal Panel, a majority vote of the Board members present is required to overturn or modify a Hearing Officer's decision. A tie vote upholds the Hearing Officer's decision. If no Board member makes a motion to uphold, reverse, or modify the Hearing Officer's decision on appeal or no motion receives a second, the appeal is deemed denied without comment.

2. Vote at Close of Appeal Hearing. Unless the Board or Appeal Panel votes otherwise, it shall vote on each appeal at the close of the appeal. The motion should include the reasons for the decisions so that the reasons can be set forth in a written decision.

a. Form of Decision. An appeal decision must be in writing and include findings and conclusions.

b. Time for Written Decision. The Board has the goal of issuing a written decision within thirty (30) days of the close of the appeal hearing.

c. Final decision.

i. Written appeal decisions are drafted by Staff, reviewed by the City Attorney, signed by staff as the Board's designee, and served on the parties.

ii. In any individual matter, however, the Board or Appeal Panel may vote to require that a decision first come to the full Board or full Appeal Panel or to the Board or Appeal Panel Chair for final approval and signature of that Chair. A decision is not final until signed by Staff or the Board or Appeal Panel Chair and served on the parties.

d. In its decision, the Board is authorized to designate a schedule for refunds or repayments consistent with Reg. 8.22.110 F.4 in cases where its decision results in under- or over-payments by a party; alternatively, the Board may remand to the Hearing Officer for purposes of devising a refund or repayment plan.

e. Staff shall serve decisions on the parties.

H. Dismissal of Appeal

1. Untimely appeal filing.

a. Staff may dismiss an appeal that is not timely filed.

b. Within ten (10) days following Staff's notice of the dismissal, the party filing the late appeal may submit a written statement explaining any good cause for the late filing.

c. If the good cause appears within the guidelines for acceptable good cause set out in Rent Board decisions, Staff may reinstate the appeal or set a hearing before the Board on whether there is good cause for the late appeal.

d. If the good cause does not appear within the acceptable good cause parameters, Staff may reject the good cause and affirm the appeal dismissal.

2. Failing to adequately state grounds for appeal.

a. If Staff determines that an appeal fails to adequately state the grounds for appeal, Staff will send a deficiency notice to the appellant notifying the appellant of the deficiency and giving the appellant ten (10) days to correct the deficiency.

b. If the appellant fails to respond to the deficiency notice or fails to correct the deficiency in the response, Staff may dismiss the appeal, or ask the Rent Board to determine the adequacy of the appeal.

I. Failure to Appear

1. Appellant. If an appellant fails to appear at an appeal hearing, the Board or Appeal Panel may will decide the appeal on the record as submitted~~consider the appeal dropped and will issue a decision dismissing the appeal, subject to the appellant showing good cause for the failure to appear.~~

a. ~~Any excuse for failing to appear, along with supporting documentation, must be submitted to Staff with ten (10) days of the date of the service of the appeal decision.~~

b. ~~Staff will, in the first instance determine if the excuse represents a prima facie case of good cause based on the standards for failing to appear at a hearing and any Board decisions interpreting good cause for failure to appear.~~

e. ~~If a prima facie case of good cause is shown, Staff will schedule an appeal hearing on whether the Board or Appeal Panel accepts the good cause.~~

2. Responding party. If an appellant appears and the responding party fails to appear, the Board or Appeal Panel must still hear and decide the appeal.

Appendix A

Deleted [Contents moved to Section 8.22.070.]

FURTHER RESOLVED: That the Rent Board authorizes the Chair or the Chair's designee to speak in support of the resolution on behalf of the Board at City Council or Committee meetings.

APPROVED BY THE FOLLOWING VOTE

AYES: BRODFUEHRER, ESCOBAR, NICKENS, OSHINUGA, TAYLOR, WILLIAMS AND
CHAIRPERSON INGRAM

NOES:

ABSENT:

ABSTENTION:

Date:

ATTEST _____
BRIANA LAWRENCE-MCGOWAN
Rent Adjustment Program, Housing
& Community Development
Department

3253243v7

CHRONOLOGICAL CASE REPORT

Case No.: T23-0019

Case Name: Barragan et al v. Mead Holding LLC

Property Address: 2031 69th Avenue, Oakland, CA 94621

Parties: Ahmed Said, Mead Holding LLC (Owner)
Reyes Ornelas (Tenant)
Maria Barragan (Tenant)
Gregory Ching (Tenant Representative)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	January 23, 2023
Property Owner Response filed	February 1, 2023
Tenant Evidence Submission	February 28, 2023
Notice of Incomplete Owner Response mailed	February 28, 2023
Administrative Decision mailed	April 6, 2023
Property Owner Appeal filed	April 18, 2023
Tenant Brief in Support of Petition submitted	May 2, 2023

000051

Owner Appeal Supporting Document submitted May 25, 2023

Order Re Postponement of Appeal Hearing emailed June 22, 2023

Property Owner Information

Property Owner

Ahmed

Said

First Name

Last Name

Company/LLC/LP (if applicable): Mead Holding LLC

Mailing Address: 2400 Market Suite B Oakland ,ca 94607

Phone Number: (510)-812-3277

Email: Ahmedmead@gmail.com

Property Manager (if applicable)

First Name

Last Name

Name of Management Company

Mailing Address:

Phone Number:

Email:

GROUNDS FOR PETITION

Select the grounds for this petition from the list below. Check all that apply. You must check at least one box. To contest a rent increase, select item(s) from Category A. If you have experienced a decrease in housing services and/or have issues with the condition of your unit, or are being charged for utilities in violation of the law, select item(s) from Category B. For more information on each of the grounds, see Oakland Municipal Code (O.M.C.) Sections 8.22.070 and 8.22.090 (Rent Adjustment Ordinance) and the corresponding Regulations. A copy of the Ordinance and Regulations are available here: www.oaklandca.gov/resources/read-the-oakland-rent-adjustment-program-ordinance.

A.	Unlawful Rent Increase(s) <i>(Complete section A on page 3)</i>	<input checked="" type="checkbox"/> (A1) I received a rent increase above the allowable amount.
		<input checked="" type="checkbox"/> (A2) I received a rent increase that I believe is unlawful because I was not given proper notice, was not properly served, and/or was not provided with the required RAP Notice ("Notice to Tenants of the Residential Rent Adjustment Program").
		<input type="checkbox"/> (A3) I received a rent increase and do not believe I should be required to pay it because a government agency has cited my unit for serious health, safety, fire, or building code violations. (You must attach a copy of the citation to your petition.)
B.	Decreased Housing Services <i>(Complete section B on page 3)</i>	<input type="checkbox"/> (B1) The property owner is providing me with fewer housing services than I previously received and/or I am being charged for services originally paid for by the owner. (Check this box for petitions based on bad conditions/failure to repair.)
		<input type="checkbox"/> (B2) I am being unlawfully charged for utilities.
C.	Other	<input type="checkbox"/> (C1) My rent was not reduced after a prior rent increase period for capital improvements or after an additional tenant for whom the owner was allowed an increase, vacated from the premises.
		<input type="checkbox"/> (C2) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake.
		<input type="checkbox"/> (C3) The initial rent amount when I first moved in was unlawful because the property owner was not permitted to set the initial rent without limitation. O.M.C. § 8.22.080 (C).

A. Unlawful Rent Increase(s)
 (Complete this section if any of the grounds for petition fall under category A, above)

List all rent increases you wish to contest. Begin with the most recent increase and work backwards. If you never received the RAP Notice, you can contest all past increases. See the "Important Information" page at the end of this petition packet for more information on time limits for contesting rent increases. If you need additional space, attach a separate sheet or an additional copy of this form.

- For petitions contesting a rent increase on the grounds that the unit has been cited by a government agency for serious health, safety, fire, or building code violations, **you must attach a copy of the citation** to your petition. Failure to attach a copy of the citation may result in your petition being dismissed.

Date received rent increase notice: (Month/Day/Year)	Date rent increase went into effect: (Month/Day/Year)	Amount of increase:		Received RAP Notice with notice of rent increase?	
		FROM	TO	YES	NO
09/2019	12/2019	\$ 1,000	\$ 1,300	<input type="checkbox"/>	<input type="checkbox"/>
09/2022	12/2022	\$ 1,300	\$ 1,500	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>

B. Decreased Housing Services
 (Complete this section if any of the grounds for petition fall under category B, above)

List all the conditions that you believe entitle you to a rent decrease. If your petition is based on problems related to your unit, or because the owner has taken away service(s) or is charging for services originally provided by the owner, you must complete this section. If you need more space, attach a separate sheet or an additional copy of this form.

- You are strongly encouraged to submit documentary evidence** (photographs, inspection reports, correspondence with your landlord, etc.) together with your petition. Evidence may be submitted up to seven calendar days prior to your hearing.
- You may wish to have a City inspector come inspect your unit** for possible code violations in advance of your hearing. Copies of any inspection report(s) may be submitted in support of your petition. To schedule an inspection, contact the City of Oakland Code Enforcement Unit at (510) 238-3381, or file a complaint online at <https://www.oaklandca.gov/services/file-a-complaint-with-code-enforcement>. *Note: if additional items are cited in an inspection report that were not included in your original petition (below), you must file an additional petition listing those items in order for RAP staff to consider them as a part of your claim.*

	Description of problem or decreased housing service (list separately):	Date problem or decreased service started: (Month/Day/Year)	Date first notified owner or manager of problem: (Month/Day/Year)	Date problem or service was fixed, if ever: (Month/Day/Year)	What is the dollar value of your claimed loss?
1.					\$
2.					\$
3.					\$
4.					\$

TENANT VERIFICATION

(Required)

I/We declare under penalty of perjury pursuant to the laws of the State of California that everything I/we said in this Tenant Petition is true and that all of the documents attached to the Petition are true copies of the originals.

MARIA BARRAGAN

Tenant 1 Signature

01/20/23

Date

REYES ORZAS

Tenant 2 Signature

01/20/23

Date

CONSENT TO ELECTRONIC SERVICE

(Highly Recommended)

Check the box below if you agree to have RAP staff and the OTHER PARTY/PARTIES send you documents related to your case electronically. If you agree to electronic service, the RAP may send certain documents only electronically and not by first class mail.

I/We consent to receiving notices and documents in this matter from the RAP and from the OTHER PARTY/IES electronically at the email address(es) provided in this response.

MEDIATION PROGRAM

Mediation is an optional process offered by RAP to assist parties in settling the issues related to their Rent Adjustment case as an alternative to the formal hearing process. A trained third party will work with the parties prior to the hearing to see if a mutual agreement can be reached. If a settlement is reached, the parties will sign a binding agreement and there will not be a formal hearing. If no settlement is reached, the case will go to a formal hearing with a Rent Adjustment Hearing Officer, who will then issue a hearing decision.

Mediation will only be scheduled if both parties agree to mediate. Sign below if you agree to mediation in your case.

I agree to have the case mediated by a Rent Adjustment Program staff mediator.

Tenant Signature

Date

INTERPRETATION SERVICES

If English is not your primary language, you have the right to an interpreter in your primary language/dialect at the Rent Adjustment hearing and mediation session. You can request an interpreter by completing this section.

I request an interpreter fluent in the following language at my Rent Adjustment proceeding:

- Spanish (Español)
- Cantonese (廣東話)
- Mandarin (普通话)
- Other: _____

-END OF PETITION-

PERSON(S) SERVED:

Name	Ahmed Said
Address	2400 Market Suite B
City, State, Zip	Oakland, CA 94607

Name	
Address	
City, State, Zip	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Israel Lepiz

PRINTED NAME

Israel Lepiz

SIGNATURE

01/20/23

DATE SIGNED



CITY OF OAKLAND

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA
94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

NOTICE TO PROPERTY OWNER OF TENANT PETITION

ATTENTION: IMMEDIATE ACTION REQUIRED

If you are receiving this NOTICE together with a completed TENANT PETITION form, it means that a tenant has filed a case against you with the Oakland Rent Adjustment Program ("RAP") (commonly referred to as the "Rent Board").

- **YOU MUST FILE A RESPONSE WITHIN 35 CALENDAR DAYS AFTER THE PETITION WAS MAILED TO YOU (30 DAYS IF DELIVERED IN-PERSON).**

- TO RESPOND:

- 1) Complete a **PROPERTY OWNER RESPONSE** form found on the RAP website. (<https://www.oaklandca.gov/services/respond-to-a-tenant-petition-for-the-rent-adjustment-program>)
- 2) Serve a copy of your **PROPERTY OWNER RESPONSE** form on the tenant (or the tenant's representative listed on the petition) by mail or personal delivery.
- 3) Complete a **PROOF OF SERVICE** form (which is attached to the Response form and also available on the website) and provide a copy to the tenant (or tenant's representative) together with your **PROPERTY OWNER RESPONSE** form.
- 4) Submit your **PROPERTY OWNER RESPONSE** form and completed **PROOF OF SERVICE*** form to RAP through RAP's online portal, via email, or by mail.

**Note: The Response will not be considered complete until a PROOF OF SERVICE is filed indicating that the tenant has been served with a copy.*

DOCUMENT REVIEW: The tenant is required to serve on you all documents the tenant filed in this case in addition to the petition. Additionally, all documents are available for review at RAP.

FOR ASSISTANCE: Contact a RAP Housing Counselor at (510) 238-3721 or by email at RAP@oaklandca.gov. Additional information is also available on the RAP website and on the **PROPERTY OWNER RESPONSE** form.

IMPORTANT INFORMATION REGARDING FILING YOUR PETITION

TIME TO FILE YOUR PETITION

Your Tenant Petition form must be received by the Rent Adjustment Program within the required time limit for filing. RAP staff cannot grant an extension of time to file your Petition.

- For Petitions contesting a rent increase, you have 90 days from the date of notice of increase or from the first date you received the RAP Notice (whichever is later) to file a Petition. If you did not receive a RAP Notice with the rent increase you are contesting but have received one in the past, you have 120 days to file a Petition. If you have never received a RAP Notice, you may contest all rent increases.
- For Petitions claiming decreased housing services, you have 90 days from either the date you first became aware of the decreased service or the date you first received the RAP Notice (whichever is later) to file a Petition. If the decreased housing service is ongoing, you may file a Petition at any time. See O.M.C. §§ 8.22.090 (A)(2)-(3) for more information.

CONTACT A HOUSING COUNSELOR TO REVIEW YOUR PETITION BEFORE SUBMITTING

To make an appointment, email RAP@oaklandca.gov or call (510) 238-3721. Although the Housing Resource Center is temporarily closed for drop-in services, assistance is available by email or telephone.

DOCUMENTS SUBMITTED IN SUPPORT OF PETITION

All attachments submitted together with your Petition must be numbered sequentially. You may submit additional evidence in support of your Petition up to seven days before your hearing¹. You must serve a copy of any documents filed with RAP on the other party and submit a PROOF OF SERVICE form.

REMINDER: Once a petition and its attachments are submitted to the RAP they become public records. Please redact any private information (such as social security numbers, bank account numbers, credit card numbers and similar financial data) from the documents you submit as part of this petition. If you have any questions, you may contact RAP staff at (510) 238-3721 or by email at RAP@oaklandca.gov.

Additionally, all documents submitted to the RAP, including but not limited to emails, petitions, attachments, potential evidence, text messages, screenshots, etc., are a part of the file in your case and all parties to a case are entitled to have access to this information.

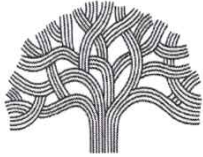
SERVICE ON PROPERTY OWNER

You are required to serve ALL the following documents on the property owner and/or the property owner's representative:

1. Copy of RAP form entitled "NOTICE TO PROPERTY OWNER OF TENANT PETITION" (*included in petition packet and available on RAP website*).
2. Copy of completed Petition form and attachments.
3. Completed PROOF OF SERVICE form (*included in petition packet and available on RAP website*).

You may serve the property owner and/or the owner's representative by mail or personal delivery. A copy of the completed PROOF OF SERVICE form must be submitted to RAP together with your Petition. Your Petition will not be considered complete until a PROOF OF SERVICE form is filed indicating that the owner has been served. Note that you cannot serve a Petition by email, even if you have an agreement to electronic service between the parties, because the Ordinance requires service by mail or in person.

¹ Note that certain documents are required to be submitted with the Petition. See petition for details.



CITY OF OAKLAND

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

RECEIVED

FEB -1 2023

RENT ADJUSTMENT PROGRAM
OAKLAND

CASE NUMBER T - 23-0019

EL/BL

PROPERTY OWNER RESPONSE TO TENANT PETITION

Please fill out this form as completely as you can. Use this form to respond to the Tenant Petition you received. By completing this response form and submitting it in the required time for filing, you will be able to participate in the hearing. Failure to provide the required information may result in your response being rejected or delayed. See "Important Information Regarding Filing Your Response" on the last page of this packet for more information, including filing instructions and how to contact the Rent Adjustment Program ("RAP") with questions. Additional information is also available on the RAP website. **CONTACT A HOUSING COUNSELOR TO REVIEW YOUR RESPONSE BEFORE SUBMITTING.** To make an appointment email RAP@oaklandca.gov.

Rental Unit Information

2031 69th Avenue C Oakland, CA 94621
Street Number Street Name Unit Number Zip Code

Is there more than one street address on the parcel? Yes If yes, list all addresses: _____
 No

Type of unit(s) (check one): Single family home Number of units on property: 6
 Condominium Date acquired property: 11/22/2000
 Apartment, room, or live-work

Case number(s) of any relevant prior Rent Adjustment case(s): _____

Tenant Information

Name of Tenant Petitioner(s): Maria Barragan & Reyes Ornelas

Date tenant(s) moved into rental unit: Jan, 2013 Initial rent amount: \$ 1,000 Is/are tenant(s) current on rent? Yes No

Property Owner Information

Ahmed Said
First Name Last Name

Company/LLC/LP (if applicable): Mead Holding LLC
2400 Market St, Suite B
Mailing address: Oakland Ca, 94607

Primary Telephone: (510) 812-3277 Other Telephone: (510) 326-6215 Email: ahmedmead@gmail.com

Property Owner Representative (Check one): No Representative Attorney Non-attorney

First Name Last Name Firm/Organization (if any)
Mailing Address: _____
Phone Number: _____ Email: _____

GENERAL FILING REQUIREMENTS

To file a Response to a Tenant Petition, the property owner must be current on the following requirements and submit supporting documentation of compliance. Property Owner Responses that are submitted without proof of compliance with the below requirements will be considered incomplete and may limit your participation in the hearing.

Requirement	Documentation
<input type="checkbox"/> Current Oakland business license	Attach proof of payment of your most recent Oakland business license.
<input type="checkbox"/> Payment of Rent Adjustment Program service fee ("RAP Fee")	Attach proof of payment of the current year's RAP Fee for the subject property.
<input type="checkbox"/> Service of the required City form entitled "NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM" ("RAP Notice") on all tenants	Attach a signed and dated copy of the <u>first</u> RAP Notice provided to the petitioning tenant(s) or check the appropriate box below. <input type="checkbox"/> I first provided tenant(s) with the RAP Notice on (date): _____ <input checked="" type="checkbox"/> I have never provided a RAP Notice. <input type="checkbox"/> I do not know if a RAP Notice was ever provided.

PROPERTY OWNER CLAIM OF EXEMPTION

If you believe that the subject property is exempt from the Rent Adjustment Ordinance (pursuant to O.M.C. § 8.22.030), check each box below that is the claimed basis of exemption. Attach supporting documentation together with your response form. If you do not claim any exemption, proceed to the "Response to Tenant Petition" section on the following page.

- The unit is a single-family residence or condominium exempted by the Costa Hawkins Rental Housing Act (Civil Code 1954.50, et seq.). **If claiming this exemption, you must answer the following questions. Attach a separate sheet if necessary.**
1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
 2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?
 3. Was the prior tenant evicted for cause?
 4. At the time the prior tenant vacated were there any outstanding violations of building housing, fire or safety codes in the unit or building?
 5. Is the unit separately alienable, meaning it can be sold separately from any other unit on the parcel?
 6. Did the petitioning tenant have roommates when he/she moved in?
 7. If the unit is a condominium, did you purchase it? If so: 1) From whom? 2) Did you purchase the entire building?
- The rent for the unit is controlled, regulated, or subsidized by a governmental unit, agency, or authority other than the City of Oakland Rent Adjustment Ordinance. (Attach documentation.)
- The unit was newly constructed and issued a Certificate of Occupancy on or after January 1, 1983. (Attach copy of Certificate of Occupancy.)
- The unit is located in a motel, hotel, or rooming/boarding house, which the tenant petitioner has occupied for less than 30 days.
- The unit is in a building that was previously issued a certificate of exemption from RAP based on substantial rehabilitation. (Attach copy of Certificate of Exemption.)
- The unit is an accommodation in a hospital, convent, monastery, extended care facility, convalescent home, non-profit home for the aged, or dormitory owned and operated by an educational institution. (Attach documentation.)

RESPONSE TO TENANT PETITION

Use the chart(s) below to respond to the grounds stated in the Tenant Petition. Enter your position on each claim in the appropriate section(s) below. You may attach any documents, photographs, or other tangible evidence that support your position together with your response form. If you need more space, attach additional copies of this page or state your response in a separate sheet attached to this form.

A. Unlawful Rent Increase(s)

Complete this section if any of the grounds for the Tenant Petition fall under Category A on the Tenant Petition.

List all rent increases given within the past five years, starting with the most recent increase.

Date tenant given notice of rent increase: (mm/dd/yy)	Date rent increase went into effect: (mm/dd/yy)	Amount of increase:		Did you provide a RAP Notice with the notice of rent increase?		Reason for increase (CPI, banking, or other):
		FROM	TO	YES	NO	
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>	
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>	
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>	
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>	
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>	

If the Tenant Petition is based on either of the following grounds, state your response in the space below or in a separate sheet attached to this form.

Tenant Petition Grounds		Owner Response
(A2)	Tenant did not receive proper notice, was not properly served, and/or was not provided with the required RAP form with rent increase(s).	
(A3)	A government agency has cited the unit for serious health, safety, fire, or building code violations.	

B. Decreased Housing Services

Complete this section if any of the grounds for the Tenant Petition fall under Category B on the Tenant Petition.

Tenant Petition Grounds		Owner Response
(B1)	The owner is providing tenant(s) with fewer housing services and/or charging for services originally paid for by the owner.	
(B2)	Tenant(s) is/are being unlawfully charged for utilities.	

C. Other

Complete this section if any of the grounds for the Tenant Petition fall under Category C on the Tenant Petition.

Tenant Petition Grounds		Owner Response
(C1)	Rent was not reduced after a prior rent increase period for capital improvements.	
(C2)	Owner exemption based on fraud or mistake.	
(C3)	Tenant's initial rent amount was unlawful because owner was not permitted to set initial rent without limitation (O.M.C. § 8.22.080 (C)).	

OWNER VERIFICATION

(Required)

I/We declare under penalty of perjury pursuant to the laws of the State of California that everything I/we said in this response is true and that all of the documents attached to the response are true copies of the originals.



Property Owner 1 Signature

1/31/23

Date

Property Owner 2 Signature

Date

CONSENT TO ELECTRONIC SERVICE

(Highly Recommended)

Check the box below if you agree to have RAP staff and the OTHER PARTY/IES send you documents related to your case electronically. If you agree to electronic service, the RAP may send certain documents only electronically and not by first class mail.

- I/We consent to receiving notices and documents in this matter from the RAP and from the OTHER PARTY/IES electronically at the email address(es) provided in this response.

MEDIATION PROGRAM

Mediation is an optional process offered by RAP to assist parties in settling the issues related to their Rent Adjustment case as an alternative to the formal hearing process. A trained third party will work with the parties prior to the hearing to see if a mutual agreement can be reached. If a settlement is reached, the parties will sign a binding agreement and there will not be a formal hearing. If no settlement is reached, the case will go to a formal hearing with a Rent Adjustment Hearing Officer, who will then issue a hearing decision.

Mediation will only be scheduled if both parties agree to mediate. Sign below if you agree to mediation in your case.

I agree to have the case mediated by a Rent Adjustment Program staff mediator.

Property Owner Signature

Date

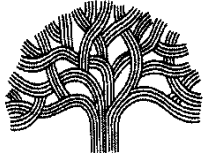
INTERPRETATION SERVICES

If English is not your primary language, you have the right to an interpreter in your primary language/dialect at the Rent Adjustment hearing and mediation session. You can request an interpreter by completing this section.

- I request an interpreter fluent in the following language at my Rent Adjustment proceeding:

- Spanish (Español)
 Cantonese (廣東話)
 Mandarin (普通话)
 Other: _____

-END OF RESPONSE-



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR RESPONSE (PLUS ANY ATTACHMENTS) ON THE TENANT(S) PRIOR TO FILING YOUR RESPONSE WITH RAP.

- 1) Use this PROOF OF SERVICE form to indicate the date and manner of service and the person(s) served.
- 2) Note: Email is not a form of allowable service on a party of a petition or response pursuant to the Ordinance.
- 3) Provide a completed copy of this PROOF OF SERVICE form to the person(s) being served together with the documents being served.
- 4) File a completed copy of this PROOF OF SERVICE form with RAP together with your Response. Your Response will not be considered complete until this form has been filed indicating that service has occurred.

On the following date: 1 / 31 / 2023 I served a copy of (check all that apply):

- PROPERTY OWNER RESPONSE TO TENANT PETITION** plus _____ attached pages
(number of pages attached to Response not counting the Response form or PROOF OF SERVICE)
- Other: _____

by the following means (check one):

- United States Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- Personal Service.** I personally delivered the document(s) to the person(s) at the address(es) listed below or I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

Name	Maria Barragan
Address	2031 69th ave #C
City, State, Zip	Oakland, Ca, 94621

Name	
Address	
City, State, Zip	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Ahmed Said

PRINTED NAME



SIGNATURE

1/31/23

DATE SIGNED

IMPORTANT INFORMATION REGARDING FILING YOUR RESPONSE

TIME TO FILE YOUR RESPONSE

Your Property Owner Response form must be received by the Rent Adjustment Program within 35 days after the Tenant Petition was mailed to you (30 days if the Petition was delivered in-person). RAP staff cannot grant an extension of time to file.

CONTACT A HOUSING COUNSELOR TO REVIEW YOUR RESPONSE BEFORE SUBMITTING

To make an appointment, email RAP@oaklandca.gov or call (510) 238-3721. Although the Housing Resource Center is temporarily closed for drop-in services, assistance is available by email or telephone.

DOCUMENTS SUBMITTED IN SUPPORT OF RESPONSE

All attachments submitted together with your Response must be numbered sequentially. You may submit additional evidence in support of your Response up to seven days before your hearing.¹ You must serve a copy of any documents filed with RAP on the other party and submit a PROOF OF SERVICE form.

REMINDER: Once a petition and its attachments are submitted to the RAP they become public records. Please redact any private information (such as social security numbers, bank account numbers, credit card numbers and similar financial data) from the documents you submit as part of this petition. If you have any questions, you may contact RAP staff by phone at (510) 238-3721 or by email at RAP@oaklandca.gov.

Additionally, all documents submitted to the RAP, including but not limited to emails, petitions, attachments, potential evidence, text messages, screenshots, etc., are a part of the file in your case and all parties to a case are entitled to have access to this information.

SERVICE ON TENANT(S)

You are required to serve a copy of your Property Owner Response form (plus any attachments) on the tenant or the tenant's representative and submit a PROOF OF SERVICE form together with your Response.

- (1) Serve a copy of your Response on the tenant(s) by mail or personal delivery.
- (2) Complete a PROOF OF SERVICE form (*included in this Response packet and available on RAP website*) indicating the date and manner of service and the person(s) served.
- (3) Provide the tenant with a completed copy of the PROOF OF SERVICE form together with the document(s) being served.
- (4) File a completed copy of the PROOF OF SERVICE form together with your Response when submitting to RAP.

You may serve the tenant(s) and/or the tenant's representative by mail or personal delivery. A copy of the completed PROOF OF SERVICE form must be submitted to RAP together with your Response. Your Response will not be considered complete until a PROOF OF SERVICE form is filed indicating that the tenant has been served. Note that you cannot serve a Response by email, even if you have an agreement to electronic service between the parties, because the Ordinance requires service by mail or in person.

FILING YOUR RESPONSE

Although RAP normally does not accept filings by email or fax, RAP is temporarily accepting Responses via email during the COVID-19 local state of emergency. You may also fill out and submit your Response online through the RAP website or deliver the Response to the RAP office by mail. If the RAP office is closed on the last day to file, the time to file is extended to the next day the office is open. If you send your

¹ Note that certain documents are required to be submitted with the Response. See Response form for details.

Response by mail, a postmark date does not count as the date it was received. Remember to file a PROOF OF SERVICE form together with your Response.

Via email: hearingsunit@oaklandca.gov

Mail to: City of Oakland
Rent Adjustment Program
250 Frank H. Ogawa Plaza, Ste. 5313
Oakland, CA 94612-0243

File online: <https://www.oaklandca.gov/services/respond-to-a-tenant-petition-for-the-rent-adjustment-program>

In person: TEMPORARILY CLOSED
City of Oakland
Dalziel Building, 250 Frank H. Ogawa Plaza Suite
5313 Reception area
Use Rent Adjustment date-stamp to stamp your documents to verify timely delivery and place them in RAP self-service drop box.

AGREEMENT TO ELECTRONIC SERVICE

If you have agreed to electronic service from the RAP by signing the Consent to Electronic Service on page 4 of the response, you have agreed to receive electronic service from the Rent Adjustment Program only, and not from the other parties to the case.

AFTER RESPONSE IS FILED

In most cases, RAP will schedule a hearing to determine whether the Tenant Petition should be granted or denied. You will be mailed a Notice of Hearing indicating the hearing date. If you are unable to attend the hearing, contact RAP as soon as possible. The hearing will only be postponed for good cause.

FILE/DOCUMENT REVIEW

Either party may contact RAP to review the case file and/or to request copies of any documents pertaining to the case at any time prior to the scheduled hearing.

FOR MORE INFORMATION

Additional information on the petition and hearing process is located on the RAP website and in the Residential Rent Adjustment Program Ordinance and Regulations (see Oakland Municipal Code 8.22.010 *et seq.*). For more information on rent increases, including the list of the annual allowable CPI rates and calculators for certain justifications, see: <https://www.oaklandca.gov/resources/learn-more-about-allowable-rent-increases>, or you can refer to the Guide on Oakland Rental Housing Law at <https://cao-94612.s3.amazonaws.com/documents/Guide-to-Oakland-Rental-Housing-Law-1.pdf>. You may also contact a RAP Housing Counselor with questions at any time by emailing RAP@oaklandca.gov or calling (510) 238-3721.

**CITY OF OAKLAND
BUSINESS TAX CERTIFICATE**

**ACCOUNT
NUMBER**
00038967

The issuing of a Business Tax Certificate is for revenue purposes only. It does not relieve the taxpayer from the responsibility of complying with the requirements of any other agency of the City of Oakland and/or any other ordinance, law or regulation of the State of California, or any other governmental agency. The Business Tax Certificate expires on December 31st of each year. Per Section 5.04.190(A), of the O.M.C. you are allowed a renewal grace period until March 1st the following year.

DBA

SAID AHMED M

BUSINESS LOCATION

2031 69TH AVE
OAKLAND, CA 94621-3404

BUSINESS TYPE

M Rental - Apartment

EXPIRATION DATE

12/31/2022

Starting January 1, 2021, Assembly Bill 1607 requires the prevention of gender-based discrimination of business establishments. A full notice is available in English or other languages by going to:
<https://www.dca.ca.gov/publications>



AHMED SAID
PO BOX 23562
OAKLAND, CA 94623-0544

A BUSINESS TAX CERTIFICATE IS REQUIRED FOR EACH BUSINESS LOCATION AND IS NOT VALID FOR ANY OTHER ADDRESS.

ALL OAKLAND BUSINESSES MUST OBTAIN A VALID ZONING CLEARANCE TO OPERATE YOUR BUSINESS LEGALLY. RENTAL OF REAL PROPERTY IS EXCLUDED FROM ZONING.

PUBLIC INFORMATION ABOVE THIS LINE TO BE CONSPICUOUSLY POSTED!

Tenant Evidence Submission

<u>Exhibit</u>	<u>Document Description</u>	<u>Page Numbers</u>
T1	Rent Increase Notice (9/24/2022)	2-3
T2	Rent Increase Notice (12/1/2019)	4-10
T3	Rent Payment Receipts	11-19
T4	Property Owner-Tenant Communications	20-22

Tenant Evidence Submission

Exhibit T1

Mead Holding llc

Notice of Rent Increase

Ahmed Said

2400 Market Suite B

Oakland Ca, 94607

Address: 2031 69th ave, Apt C Oakland Ca, 94621

Dear tenant,

On this 24th day of September 2022, the Landlord known as Ahmed Said is increasing your rent to \$1,500. (One-Thousand Five-Hundred Dollars and No Cents) from its current rate of \$1,300. This rental increase will be effective December 1st, 2022.

The increase in rent will be applied due to high inflation rates that include increasing property and city tax, water, PG&E, as well as maintenance in addition to other factors. Please take into consideration that rent has remained \$1,300 without any increases for years. If you have any questions, comments, or concerns, please feel free to call, text, or email me.

Best Regards,

Ahmed Said

Ahmedmead@gmail.com

(510) 812-3277

Tenant Evidence Submission

Exhibit T2

60-DAY NOTICE TO CHANGE THE TERMS OF YOUR RENTAL AGREEMENT

To: All occupants, Resident(s) and all others in possession of Apt. No. C, located at (Street Address) 2031 Geath Ave in the city of Oakland, California

PLEASE TAKE NOTICE that in accordance with the governing State and local laws and ordinances, that sixty (60) days after service upon you of this notice or beginning _____, 20____, whichever is later, the terms of your rental agreement for the above described property are hereby changed as follows:

YOUR MONTHLY RENT shall be increased from \$ 1000.⁰⁰ per month to \$ 1300.⁰⁰ per month, an increase of \$ _____ per month.

YOUR SECURITY DEPOSIT shall be increased from \$ _____ to \$ _____, an increase of \$ _____.

TOTAL AMOUNT DUE and payable by the above stated time period:

New Monthly Rent:

\$ _____

Security Deposit Increase:

\$ _____

Other:

\$ _____

Total Due:

\$ 1300.⁰⁰

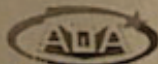
OTHER CHANGES:

Except for the above changes, all other terms of your Rental Agreement shall remain in full force and effect.

Dated: (Month/Day) December 1, 2012

[Signature], OWNER(S)

By: _____, AGENT



A Meads Properties

Notice Of Rent Increase

Ahmed Said
PO Box 23562
Oakland CA 94623

Address: 2031 69th Ave Apt C Oakland, CA 94621

To All Occupants,

On this 12th day of September, 2019 the Landlord known as Ahmed Said is increasing your rent to \$1,300.00. (One-Thousand Three-Hundred Dollars and No Cents) from its current rate of \$1,000.00. This rental increase will be effective December 1, 2019.

The rental increases will be applied due to high inflation rates that include the increase of property and city tax, water, garbage, and other maintenance in addition to many other factors. Please take into consideration that rent has been \$1,000.00 for the past 10+ years with no increases. The California State Law allows property owners to defer applying annual rent increases for up to 10 years. If you have any questions, comments, or concerns, please feel free to call, text, or email me.

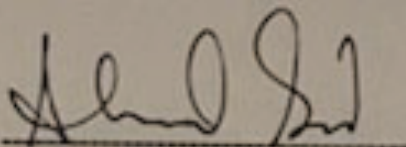
Best Regards,

Ahmed Said

ahmedmead@gmail.com

(510)812-3277

Signature: _____



Date: _____

9/12/19

Learn More About CPI & Allowable Rent Increases

Mayor Libby Schaaf

Select Language ▼

311

NEWS

SERVICES

DEPARTMENTS

MEETINGS

CITY

COUNCIL

based on the regional Consumer Price Index (CPI). These annual rent increases are known as CPI increases or annual general rent increases.

The annual CPI rate for rent increases effective July 1, 2019 through June 30, 2020, is 3.5%. The rate is not applied to rent increases that take effect earlier than July 1, 2019.

July 1, 2019: 3.5%

July 1, 2018: 3.4%

July 1, 2017: 2.3%

July 1, 2016: 2.0%

July 1, 2015: 1.7%

July 1, 2014: 1.9%

July 1, 2013: 2.1%

July 1, 2012: 3.0%

July 1, 2011: 2.0%
July 1, 2010: 2.7%
July 1, 2009: 0.7%
July 1, 2008: 3.2%
July 1, 2007: 3.3%
May 1, 2006: 3.3%
May 1, 2005: 1.9%
May 1, 2004: 0.7%
May 1, 2003: 3.6%
July 1, 2002: 0.6%
March 1, 1995 - June 30, 2002: 3% per year

The "CPI rate" takes effect on each July 1 and remains in effect through June 30 of the following year. A property owner can raise rent above the CPI rate, based on certain justifications.

- Banking
- Increased housing service costs
- Capital improvements
- Uninsured repair costs
- Fair return

Banking

Banking refers to deferred allowed annual rent increases. Annual rent increases that were not applied either fully or completely, can be applied in future years. Property owners may defer applying annual rent increases up to 10 years. Rent increases that were not imposed within 10 years expire. If challenged, evidence of the rental history of the subject unit is required.

Banking Rent Increase Calculator Instructions

Banking Rent Increase Calculator

Increased housing service costs

Housing service costs are expenses for services provided by the property owner. The costs are related to the use of a rental unit. These costs are also known as "operating expenses".

If a tenant challenges a rent increase, the landlord must present evidence to prove all claimed expenses. Staff will compare the most recent two years of operating expenses to determine if a rent increase is justified. The calculation in both years must provide a reasonable comparison of all expenses. You may not isolate any single expense.

Expenses considered include:

- Property taxes
- Business license/taxes, and insurance,
- Utilities (electricity, gas, water, garbage)
- Maintenance and repairs
- Managerial costs
- Other legitimate annually recurring expenses to operate the rental property, except debt service

Increased Housing Costs Rent Increase Calculator

Capital improvements

Capital improvements include improvements to the property. A landlord may apply a rent increase to reimburse themselves for property improvements that benefit the tenants. Reimbursement is limited to 70% of the cost of the improvement amortized over its useful life. Property owners must also show that these costs were paid. Examples include: copies of receipts, invoices, bid contracts or other documentation.

Capital Improvements Rent Increase Calculator Instructions

Capital Improvements Rent Increase Calculator

Uninsured repair costs

Uninsured repair costs are losses that are not reimbursed to the property owner. These losses are related to damage from fire, earthquake, or other disasters. These costs must be associated with repairs to meet state or local laws. An increase for uninsured repairs is calculated the same way as an increase for capital improvements.

Fair return

A property owner may submit evidence to show that without the requested rent increase he or she is being denied a fair return on the investment. A property owner must show that the return on the investment is less than the return for an investment of similar risk.

The property owner is required to provide three things.

Proof of the amount of investment

Evidence of the return from other investments of similar risk

An analysis of the rate of return from the rental property, including any appreciation in the value of the property.

Rent increases that exceed the CPI increase may be justified for one or more of the reasons listed. Owners may use more than one justification to increase the rent at the same time.

CPI, banking, and capital improvements can be passed through as a rent increase in a single petition.

Tenant Evidence Submission

Exhibit T3

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (510) 612-3277

RECEIPT DATE 08/03/21 No. 276753
RECEIVED FROM Maria Barran \$ 1,300.00
One thousand three hundred $\frac{00}{100}$ DOLLARS
 FOR RENT
 FOR 2031 69th ave Apt C Oakland CA, 94621
ACCOUNT: _____
PAYMENT: _____
BAL DUE: _____
 CASH
 CHECK
 MONEY ORDER
 CREDIT CARD
FROM _____ TO _____
BY Ahmed Said

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (510) 612-3277

RECEIPT DATE 09/03/21 No. 276754
RECEIVED FROM Maria Barran \$ 1,300.00
One thousand three hundred $\frac{00}{100}$ DOLLARS
 FOR RENT
 FOR 2031 69th Ave Apt C Oakland CA 94621
ACCOUNT: _____
PAYMENT: _____
BAL DUE: _____
 CASH
 CHECK
 MONEY ORDER
 CREDIT CARD
FROM _____ TO _____
BY Ahmed Said

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (510) 612-3277

RECEIPT DATE 10/03/21 No. 276755
RECEIVED FROM Maria Barran \$ 1,300.00
One thousand three hundred $\frac{00}{100}$ DOLLARS
 FOR RENT
 FOR 2031 69th ave Apt C Oakland CA, 94621
ACCOUNT: _____
PAYMENT: _____
BAL DUE: _____
 CASH
 CHECK
 MONEY ORDER
 CREDIT CARD
FROM _____ TO _____
BY Ahmed Said

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (510) 612-3277

RECEIPT DATE 11/03/21 No. 276756
RECEIVED FROM Maria Barran \$ 1,300.00
One thousand three hundred $\frac{00}{100}$ DOLLARS
 FOR RENT
 FOR 2031 69th ave Apt C Oakland CA, 94621
ACCOUNT: _____
PAYMENT: _____
BAL DUE: _____
 CASH
 CHECK
 MONEY ORDER
 CREDIT CARD
FROM _____ TO _____
BY Ahmed Said

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (913) 812-3277

RECEIPT DATE 12/03/21 No. 276757

RECEIVED FROM Maria Barragan \$1,300.00

One thousand three hundred 00 DOLLARS

FOR RENT
FOR 2021 69th Ave Apt C Oakland CA, 94621

ACCOUNT	
PAYMENT	
BAL DUE	

- CASH
- CHECK
- MONEY ORDER
- CREDIT CARD

FROM _____ TO _____
BY Ahmed Said

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (913) 812-3277

RECEIPT DATE 01/03/22 No. 276758

RECEIVED FROM Maria Barragan \$1,300.00

One thousand three hundred 00/100 DOLLARS

FOR RENT
FOR 2021 69th Ave Apt C Oakland CA, 94621

ACCOUNT	
PAYMENT	
BAL DUE	

- CASH
- CHECK
- MONEY ORDER
- CREDIT CARD

FROM _____ TO _____
BY Ahmed Said

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (913) 812-3277

RECEIPT DATE 02/03/22 No. 276759

RECEIVED FROM Maria Barragan \$1,300.00

One thousand three hundred 00/100 DOLLARS

FOR RENT
FOR 2021 69th Ave Apt C Oakland CA, 94621

ACCOUNT	
PAYMENT	
BAL DUE	

- CASH
- CHECK
- MONEY ORDER
- CREDIT CARD

FROM _____ TO _____
BY Ahmed Said

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (913) 812-3277

RECEIPT DATE 03/03/22 No. 276760

RECEIVED FROM Maria Barragan \$1,300.00

One thousand three hundred 00/100 DOLLARS

FOR RENT
FOR 2021 69th Ave Apt C Oakland CA, 94621

ACCOUNT	
PAYMENT	
BAL DUE	

- CASH
- CHECK
- MONEY ORDER
- CREDIT CARD

FROM _____ TO _____
BY Ahmed Said

RECEIPT

DATE 04/03/22No. **276718**RECEIVED FROM Maria Barragn\$1,300.⁰⁰/₁₀₀One thousand three hundred ⁰⁰/₁₀₀ DOLLARS FOR RENT FOR 2031 69th ave Apt C Oakland CA, 94621

ACCOUNT	
PAYMENT	
BAL. DUE	

 CASH CHECK MONEY ORDER CREDIT CARD

FROM _____ TO _____

BY Ahmed El

3-11

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (510) 812-3277

RECEIPT

DATE 05/03/22No. **276719**RECEIVED FROM Maria Barragn\$1,300.⁰⁰/₁₀₀One thousand three hundred ⁰⁰/₁₀₀ DOLLARS FOR RENT FOR 2031 69th ave Apt C Oakland CA, 94621

ACCOUNT	
PAYMENT	
BAL. DUE	

 CASH CHECK MONEY ORDER CREDIT CARD

FROM _____ TO _____

BY Ahmed El

3-11

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (510) 812-3277

RECEIPT

DATE 06/03/22No. **276720**RECEIVED FROM Maria Barragn\$1,300.⁰⁰/₁₀₀One thousand three hundred ⁰⁰/₁₀₀ DOLLARS FOR RENT FOR 2031 69th ave Apt C Oakland CA, 94621

ACCOUNT	
PAYMENT	
BAL. DUE	

 CASH CHECK MONEY ORDER CREDIT CARD

FROM _____ TO _____

BY Ahmed El

3-11

A & S PROPERTIES
Ahmed Said
MANAGER
TEL: (510) 812-3277

RECEIPT DATE <u>07/03/22</u>		No. 276716
RECEIVED FROM <u>Maria Barragn</u>		\$ <u>1,300.⁰⁰</u>
<u>One thousand three hundred ⁰⁰/₁₀₀</u> DOLLARS		
<input type="radio"/> FOR RENT		
<input type="radio"/> FOR <u>2031 69th ave Apt C Oakland CA, 94621</u>		
ACCOUNT	<input type="radio"/> CASH	FROM _____ TO _____
PAYMENT	<input type="radio"/> CHECK	
BAL. DUE	<input type="radio"/> MONEY ORDER	
	<input type="radio"/> CREDIT CARD	BY <u>Ahmed Said</u>



Review

Cancel



Ahmed Said (APARTMENTS)

Registered as AHMED

🇵🇸 (510) 812-3277

Amount

\$1,300.00

Sending as CARMEN LIZBETH ORNELAS BARRAGAN

Pay from TOTAL CHECKING (...3515)

Send on Nov 1, 2022

Memo 2031 69th Ave #C Oakland Ca

Only send money to people and businesses you trust. Zelle® doesn't offer protection for payments you authorize, so you might not be able to get your money back once you send it.

Send it now



Review

Cancel



Ahmed Said (APARTMENTS)

Registered as AHMED

₪ (510) 812-3277

Amount

\$1,500.00

Sending as CARMEN LIZBETH ORNELAS BARRAGAN

Pay from TOTAL CHECKING (...3515)

Send on Dec 02, 2022

Memo 2031 69th ave #C Oakland Ca 94621

Only send money to people and businesses you trust. Zelle® doesn't offer protection for payments you authorize, so you might not be able to get your money back once you send it.

Send it now



Review

Cancel



Ahmed Said (APARTMENTS)

Registered as AHMED

🇵🇷 (510) 812-3277

Amount

\$1,500.00

Sending as CARMEN LIZBETH ORNELAS BARRAGAN

Pay from TOTAL CHECKING (...3515)

Send on Jan 02, 2023

Only send money to people and businesses you trust. Zelle® doesn't offer protection for payments you authorize, so you might not be able to get your money back once you send it.

Send it now



Review

Cancel



Ahmed Said (APARTMENTS)

Registered as WEST OAKLAND

INVESTMENTS LLC, OAKLAND, CA

(510) 812-3277

Amount

\$1,500.00

Sending as CARMEN LIZBETH ORNELAS BARRAGAN

Pay from TOTAL CHECKING (...3515)

Send on Feb 03, 2023

Memo 2031 69th ave apt C Oakland Ca 94621

Only send money to people and businesses you trust. Zelle® doesn't offer protection for payments you authorize, so you might not be able to get your money back once you send it.

Send it now

Tenant Evidence Submission

Exhibit T4

Mead Holding llc

Rent Payment Method

Ahmed Said

2400 Market st Suite B,

Oakland Ca, 94607

To all tenants,

Starting November 1st, 2022, we will no longer be accepting monthly rental payments by cash.

You have the following methods of payment to choose from:

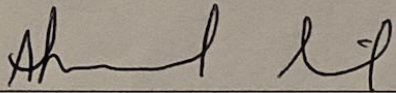
1. Online payment via Zelle
2. CashApp

For any comments or concerns, please feel free to contact me via phone, or email.

Ahmed Said

(510) 812-3277

ahmedmead@gmail.com

x 

Date 10/1/22

To Whom It May Concern,

Maria Barragn has been residing at 2031 69th ave, Oakland Ca, 94621 for 10 years. She is a wonderful tenant, and pays on time every month. She also cleans up around the building and makes the property a better place.

X _____

(Tenant)

Handwritten notes:
The amount of
800
The amount

Handwritten signature:
Alma S. S.

Handwritten date:
7/5/22

X _____

(Landlord)



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.

I served a copy of: Tenant Evidence Submission (Case No. T23-0019)
(insert name of document served)
 And Additional Documents

and (write number of attached pages) 22 attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

Name	Ahmed Said
Address	2400 Market St., Suite B
City, State, Zip	Oakland, CA 94607

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 2/28/2023 (insert date served).

Gregory Ching

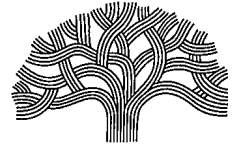
PRINT YOUR NAME



SIGNATURE

February 28, 2023

DATE



Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

NOTICE OF INCOMPLETE OWNER RESPONSE

CASE NUMBER: T23-0019
CASE NAME: Barragen et al v. Mead Holding LLC
PROPERTY ADDRESS: 2031 69th Avenue, Unit C Oakland, CA 94621

The Rent Adjustment Program (hereinafter “RAP”) received a *Property Owner Response* from you on February 1, 2023

To be complete and considered filed, a response by a property owner must include:¹

- a. Proof of payment of the City of Oakland Business License Tax;
- b. proof of payment of the Rent Program Service Fee;²
- c. Evidence that the Owner has provided the RAP Notice to all Tenants affected by the petition or response.³
- d. A substantially completed petition on the form prescribed by the RAP signed under oath;
- e. For a rent increase, organized documentation clearly showing the rent increase justification and detailing the calculations to which the documentation pertains. For an exemption, organized documentation showing your right to the exemption.
- f. For all owner responses, the Owner must provide proof of service by first class mail or in person of the response and any supporting documents on the tenants of all units affected by the petition. (Note that if the supporting documents exceed 25 pages, the Owner is not required to serve the supporting documents on the affected tenants provided that the owner petition was served as required and the petition or attachment indicates

¹ See O.M.C. § 8.22.090 (B).

² See O.M.C. § 8.22.500.

³ This can be done initially by affirming that all notices have been sent but may require additional evidence if the statement is contested.

that the additional documents are or will be available at the RAP and that the Owner will provide copies of the supporting documents to the tenant upon written request within 10 days.)

The response that you attempted to file was incomplete. The chart below indicates what is missing from your filing:

Name of Document	Needed
Proof of service of the response (and attachments where required) by first class mail or in person on all tenants in units affected by the response	X
Proof of payment of Business License Tax.	X
Proof of payment of the RAP Fee.	X

You have 30 days from the date of the mailing of this letter to provide a completed response. If you do not do so, your response will be dismissed. Since your response is incomplete, the RAP cannot accept the response, and any scheduled hearing will be postponed, if scheduled to occur in less than 30 days.

If you have any questions or concerns, consult RAP by email or phone. The email address is blothlen@oakalndca.gov, and the telephone number is 510-238-3721.

Dated: February 28, 2023

Brittani Lothlen

City of Oakland
Rent Adjustment Program

PROOF OF SERVICE

Case Number: T23-0019

Case Name: Barragen et al v. Mead Holding LLC

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Oakland, California, addressed to:

Documents Included

Notice of Incomplete Owner Response

Owner

Ahmed Said
Mead Holding LLC
2400 Market Street, Suite B
Oakland, CA 94607

Tenant

Reyes Ornelas
2031 69th Avenue, Unit C
Oakland, CA 94621

Tenant

Maria Barragan
2031 69th Avenue, Unit C
Oakland, CA 94621

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

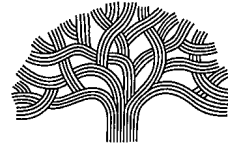
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **February 28, 2023** in Oakland, California.

Brittini Lothlen

Brittini Lothlen

Oakland Rent Adjustment Program

000097

**ADMINISTRATIVE DECISION**

CASE NUMBER T23-0019

CASE NAME: Barragan et al v. Mead Holding LLC

PROPERTY ADDRESS: 2031 69th Avenue, Unit C
Oakland, CA

PARTIES: Maria Barragan, Tenant

SUMMARY OF DECISION

The Tenant's Petition is granted.

INTRODUCTION

Reason for Administrative decision: An Administrative Decision is issued without a hearing. The purpose of a hearing is to allow the parties to present testimony and other evidence to allow the resolution of disputes of material fact. However, in this case, sufficient uncontested facts have been presented to issue a decision without a hearing, and no material facts are disputed. Therefore, an administrative decision, without a hearing, is being issued.

BACKGROUND

On January 23, 2023, the Tenant filed the petition herein. The petition contests rent increases alleged from \$1,000.00 to \$1,300.00, effective December 1, 2019, and from \$1,300.00 to \$1,500.00, effective December 2022, on the grounds that the rent increase exceeds the legally allowable amount.

The petition, completed under penalty of perjury, indicates that that Tenant was never given a RAP Notice,¹ including with the Notices of Rent Increase challenged.

The Owner filed an Owner Response on February 1, 2023. A Notice of Incomplete Owner Response was sent to the Respondent on February 28, 2023.² The Respondent was given 35 days to file the necessary documents and a proof of service of their petition. To date, no new documents were filed, no proof of service was filed, and the response was not completed. Therefore, the response cannot be considered filed and complete. Accordingly, any documentation submitted with the response is inadmissible.³

RATIONALE FOR ADMINISTRATIVE DECISION

2019 Rent Increase

The Rent Adjustment Ordinance (Ordinance) requires an owner to serve a RAP Notice at the start of a tenancy⁴ and with any notice of rent increase or change in any term of the tenancy.⁵ An owner may cure the failure to give notice at the start of the tenancy. However, a notice of rent increase is not valid if the effective date of increase is less than six months after the Tenant first receives the required RAP notice.⁶

It is undisputed that the Tenant moved into the subject unit in 2013. The petition was filed under penalty of perjury and states that the Tenant was not given a RAP Notice including with the Notices of Rent Increase challenged. Accordingly, there is no evidence that the Tenant received the RAP Notice at the inception of the tenancy or with the rent increases challenged. Therefore, it is found that the Tenant has not been provided with a RAP Notice. Accordingly, the Notice of Rent Increase from \$1,000.00 to \$1,300.00, is invalid. Accordingly, the legal rent for the subject unit remained at \$1,000.00.

2022 Rent Increase

Oakland City Council Ordinance 13589 CMS, adopted on March 27, 2020, states as follows at Section 4: .

¹ Notice to Tenants of the Residential Rent Adjustment Program.

² O.M.C. Section 8.22.090(B)

³ O.M.C. Section 8.22.070(C). Santiago v. Vega, Case

⁴ O.M.C. Section 8.22.060.

⁵ O.M.C. Section 8.22.070.

⁶ O.M.C. Section 8.22.060(C)

Rent Increase Moratorium.

For rental units regulated by Oakland Municipal Code 8.22.010 et seq, any notice of rent increase in excess of the CPI Rent Adjustment, as defined in Oakland Municipal Code Section 8.22.020, shall be void and unenforceable if the notice is served or has an effective date during the Local Emergency, unless required to provide a fair return. Any notice of rent increase served during the Local Emergency shall include the following statement in bold underlined 12-point font: **“During the Local Emergency declared by the City of Oakland in response to the COVID-19 pandemic, your rent may not be increased in excess of the CPI Rent Adjustment (3-5% until June 30, 2020), unless required for the landlord to obtain a fair return. You may contact the Rent Adjustment Program at (510.) 238—37.21 for additional information and referrals.”**

When the Rent Increase Moratorium was enacted, the CPI Rent Adjustment was 3-5%. The Moratorium clearly states that this CPI is in effect “until June 30, 2020.” As of July 1, 2022, the CPI Rent Adjustment is 3%. The Local Emergency remains in the City of Oakland. Therefore, increasing the Tenant’s base rent above 3%, or \$30.00, violates the Moratorium. Therefore, the Owner’s Notice of Rent Increase of \$200.00 is invalid. Additionally, the Notice of Rent Increase did not include the required statement in bold, underlined 12-point font, and is likewise on this basis invalid as well.

Notwithstanding, whether the Tenant was served the RAP Notice with the 2022 Rent Increase, the increase would still be invalid since the amount of the increase violated the Moratorium. Accordingly, the legal rent for the subject unit remained at \$1,000.00.

ORDER

1. Petition T23-0019 is granted.
2. The legal rent for the subject unit remains \$1,000.00.

3. The 2019 and 2022 rent increases are not valid. The legal rent for the subject unit remains at \$1,000.00. If the Tenant paid an amount over the legal rent for the subject unit, the parties are instructed to calculate the total rent overpayment and deduct the credit amount in thirty or fewer monthly installments from the Tenant's monthly rent after this decision becomes final. The decision becomes final if no party files an appeal within 20 days after the decision is mailed to the parties.

4. The Remote Settlement Conference and Hearing, scheduled for April 12, 2023, is canceled.

Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within seventeen (17) calendar days of electronic service or twenty (20) days if served by first-class mail. If the last day to file is a weekend or holiday, the appeal may be filed on the next business day. The date and service method are shown on the attached Proof of Service.



Dated: April 5, 2023

Élan Consuella Lambert
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number: T23-0019

Case Name: Barragen et al v. Mead Holding LLC

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Oakland, California, addressed to:

Documents Included

Administrative Decision

Owner

Ahmed Said
Mead Holding LLC
2400 Market Street, Suite B
Oakland, CA 94607

Tenant

Reyes Ornelas
2031 69th Avenue, Unit C
Oakland, CA 94621

Tenant

Maria Barragan
2031 69th Avenue, Unit C
Oakland, CA 94621

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **April 6, 2023** in Oakland, California.

Brittni Lothlen

Brittni Lothlen

Oakland Rent Adjustment Program

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612-0243 (510) 238-3721 CA Relay Service 711 www.oaklandca.gov/RAP	For Rent Adjustment Program date stamp.

APPEAL

Appellant's Name Ahmed Said		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 2031 69th Avenue, Unit C, Oakland, Ca 94621			
Appellant's Mailing Address (For receipt of notices) 2400 Market St Suite B, Oakland, Ca 94607		Case Number T23-0019	
		Date of Decision appealed April 18th, 2023	
Name of Representative (if any)		Representative's Mailing Address (For notices)	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

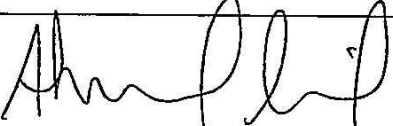
- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
 - a) **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations, or prior decisions of the Board.** *(In your explanation, you must identify the Ordinance section, Regulation or prior Board decision(s) and describe how the description is inconsistent.)*
 - b) **The decision is inconsistent with decisions issued by other Hearing Officers.** *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
 - c) **The decision raises a new policy issue that has not been decided by the Board.** *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
 - d) **The decision violates federal, state, or local law.** *(In your explanation, you must provide a detailed statement as to what law is violated.)*
 - e) **The decision is not supported by substantial evidence.** *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g) The decision denies the Owner a fair return on the Owner's investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h) Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Supporting documents (in addition to this form) must *not* exceed 25 pages, and must be received by the Rent Adjustment Program, along with a proof of service on the opposing party, within 15 days of the filing of this document. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(4). Please number attached pages consecutively. Number of pages attached: 25.

- You must serve a copy of your appeal on the opposing parties, or your appeal may be dismissed. • I declare under penalty of perjury under the laws of the State of California that on April 18th, 2023, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first-class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Maria Barragan
Address	2031 69th Avenue, Unit C
City, State Zip	Oakland, Ca 94621
Name	Reyes Ornelas
Address	2031 69th Avenue, Unit C
City, State Zip	Oakland, Ca 94621

	4/18/23
---	---------

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE



**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.

I served a copy of: Appeal to Tenants' Submission (Case No. T23-0019)
(insert name of document served)
 And Additional Documents

and (write number of attached pages) 25 attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

Name	Maria Barragan
Address	2031 69th Avenue, Unit C
City, State, Zip	Oakland, Ca, 94621

Name	Reyes Ornelas
Address	2031 69th Avenue, Unit C
City, State, Zip	Oakland, Ca, 94621

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on ___/___/___ (insert date served).

Ahmed Said

PRINT YOUR NAME



SIGNATURE

04/18/23

DATE

Appeal to Tenant Submission

Pages 1-6	Response to appeal decision
Page 7	Email/photo of letter to tenant
Pages: 8-9	Copies of Roofing Work Order & Invoice
Pages 10-13	Picture of roof/work completed
Page 14	Extension cord
Page 15	New Balcony Door
Pages 16-20	Texts & photos of tenants not meeting their end of agreement
Pages 21-22	Unpermitted structure built without consent
Pages 23-25	Article for allowable increases per city website

Response to Appeal Decision

Case Number: T23-0019

Case Name: Barragen et al v. Mead Holding LLC

F) I was denied a sufficient opportunity to present my claim because a decision was made without giving me an opportunity to be heard.

BACKGROUND

Where does it show that Reyes and Maria were paying \$1,000 for monthly rent when they moved in? The reason we are appealing this is because the tenants and I had an agreement when they first moved in that the monthly rent would be \$1,300, but if they were to pull out the garbage bins every Monday for all 6 units, and keep the front and backyard clean, then they would pay \$1,000, **only if** they were able to hold up their end of the agreement.

Also, we provided the tenants (Maria and Reyes Ornelas) a storage room for free, and they grew frustrated when we **requested** that extra storage space to expand the laundry room for the building. We then notified them through text that we were going to need that area to expand the laundry room for all tenants, which we did.

1. When the service was no longer being provided as agreed upon, we wrote to all tenants informing them to pull out their own garbage bins, and that we'd clean around the property.
2. The tenants had an extra refrigerator attached to our house meter using an extension cord without our consent. The extension cord poses a high risk as it could have led to a fire endangering the lives of those around them, and an increase in our monthly electricity bill.
3. The tenants also had 7 people living in the unit which cost us more water, but we never complained.
4. Since 2031 69th avenue is a commercial property, the fire department conducts an annual inspection in search of any violations that put individuals at risk. The tenants built a structure on the balcony without consent, and that structure was cited as a violation by the fire department.
5. Each unit has ONE parking spot allocated to them for their use, allowing them to park up to one vehicle in the parking lot. The Barragen family have violated this several times as they park their vehicles in prohibited areas, given that there is a parking spot already provided to them. All tenants with more than 1 vehicle must use street parking.
6. Capital improvements to a building shall be passed on to the tenant as a prorated charge. A landlord is able to increase the rent due to capital improvements made

to the building. In November 2022, we changed the roof, windows, balcony door, and made repairs for a total of \$40,000. In the article titled "Learn More About Allowable Rent Increases", uninsured repair costs are losses that are not reimbursed to the property owner related to disasters. We made several upgrades to the property in preparation for the record breaking rainstorms to ensure our tenants' living space(s) were tolerable.

Rent Increase Moratorium

1. At the inception of their tenancy, we provided the tenants with an RAP notice. The tenants claiming that they were not able to retain the notice that was provided to them may be due to the fact that they moved in 10 years ago. A final decision was made that "the rent increase" in 2019 is invalid. This decision was unfair because the rent was not increased, it was set back at its original amount.
2. **In response to page 5 of 22:**
 - As stated before, the rent was not increased. The monthly rent was set back to its original amount that we agreed to when they moved in, at \$1,300.00 well before the rent increase moratorium was in effect. In 2019, we provided the tenants with a 60 day notice that the rent would return to its original amount of \$1,300 because they were no longer providing their services. We presented the tenants with an official 60 day notice because we are aware that notifying tenants for any purpose must be done in writing.

H) Other

- I have been denied a fair investigation because the tenants and I had an initial agreement when they first moved in that the rent due each month would be \$1,300. We had a verbal agreement that their rent payable for each month would be \$1,000 **IF** they provided those services. Once the services weren't provided any longer, we provided the tenants with a notice over 60 days prior to the amount going into effect. We **DID NOT** increase the rent to \$1,300, rather the rent was set back to its original amount that we agreed to when they first moved in.
- According to page 3 of the Proof of Service from the tenant, it is stated that the notice of rent increase is not in bold, or 12 point font, which is false. We specifically bolded the notice of rent increase statement, and used 12 point font on both letters. We issued the tenants two letters: one in English, and another in Spanish because Spanish is their primary language. Providing a letter in both languages was to ensure effective communication. Nothing was withheld from them because we did nothing wrong.

Increased housing service costs

- Attached below is a breakdown of operating expenses due to keep the building running, and to allow all utilities to function and meet the needs of our tenants. Please refer to the **Increased housing service costs** attached on pages 23-25.

2022 Expenses

1. PG&E Monthly Bill: \$400.00
PG&E bill Annually: \$3,600
2. EBMUD Monthly Bill: \$450.00
EBMUD Bill Annually: \$5,400.00
3. Waste Management Monthly Bill: \$376.23
Waste Management Annually: \$4,514.76
4. Property Tax Monthly: \$1,298.64
Property Tax Annually: \$15,583.78
5. City Tax Monthly: \$159.30
City Tax Annually: \$1,911.64
6. Rent Adjustment Program: \$101 per unit
(6 units) : \$606.00
7. Property Insurance Monthly: \$208.33
Property Insurance Annually: \$2,500
8. Mortgage Expense Monthly: \$2,800
Mortgage Expenses Annually: \$33,600
9. Pest Control Per Month: \$100
Pest Control Per Year: \$1,200
10. Landscaping Per Month: \$100
Landscaping Per Year: \$1,200
11. MGMT fees Per month: \$400
MGMT fees per year: \$4,800

12. Software Subscription month: \$50.00
Software Subscription Per Year: \$600

Monthly Expenses Total: \$6,393.00

Annual Expenses Total: \$75,516.18

-How can the rent be set at \$1,000 after 10 years without any increases? During the pandemic, city officials allowed tenants to withhold rent for months, or even years at a time, but landlords were still expected to pay City tax, RAP fee, and other taxes. It's unfortunate that city officials sitting behind a desk are able to make final decisions for a landlord, or any business owner without taking the full story into account.

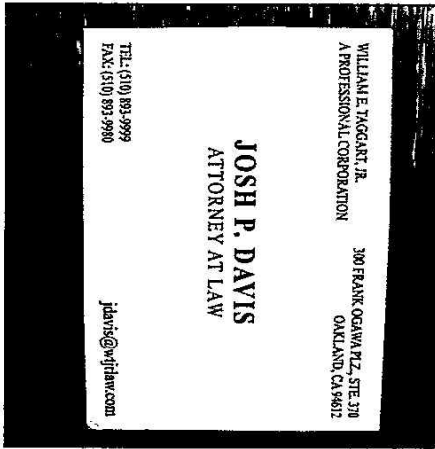
-On September 24, 2022, we notified the tenants through letters in both Spanish and English that the rent would be increased from \$1,300 to \$1,500 due to increased operating expenses, giving them over 60 days. According to the City of Oakland article titled "Learn More About Allowable Rent Increases", rent increases that exceed the CPI increase may be justified for:

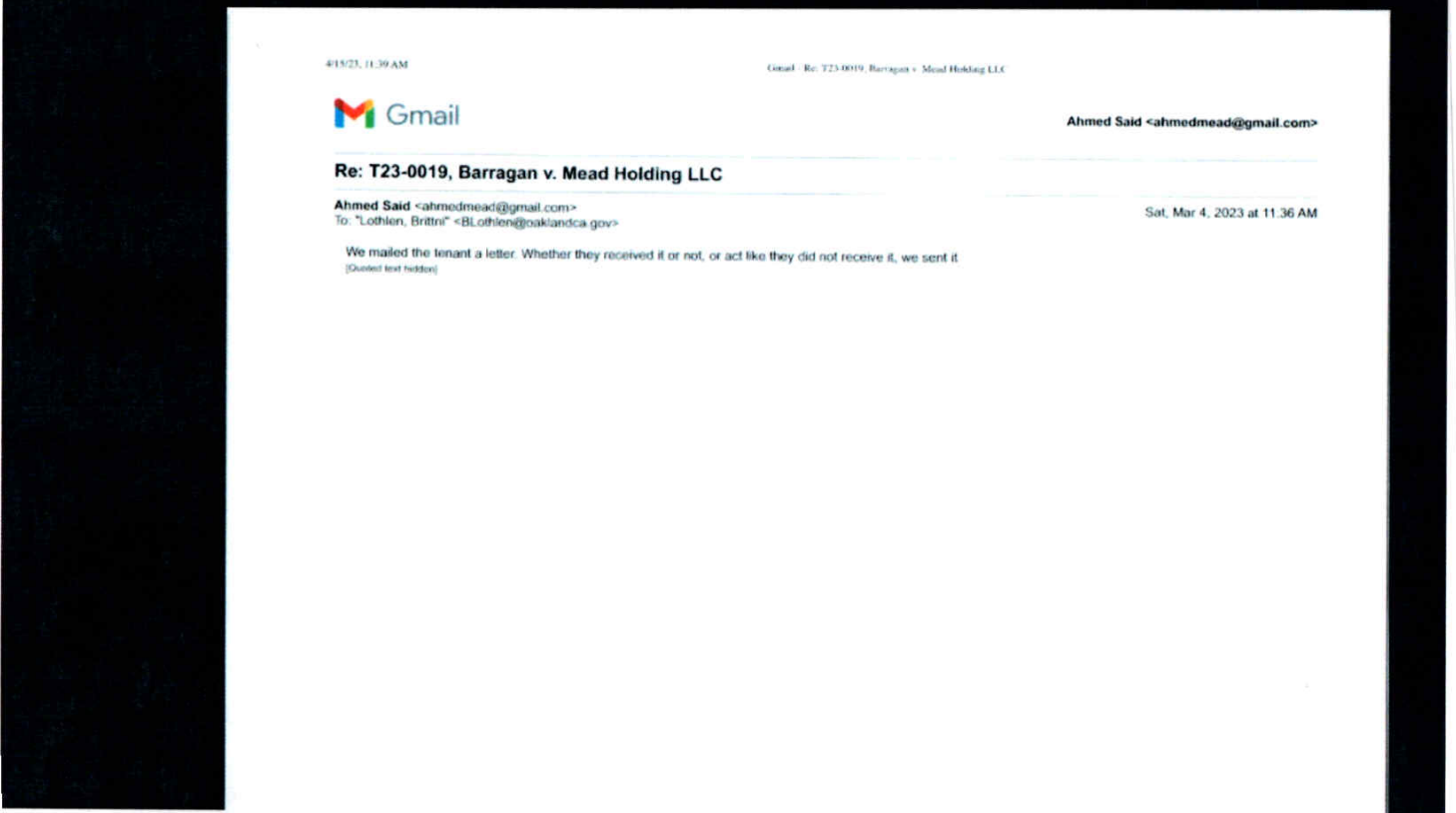
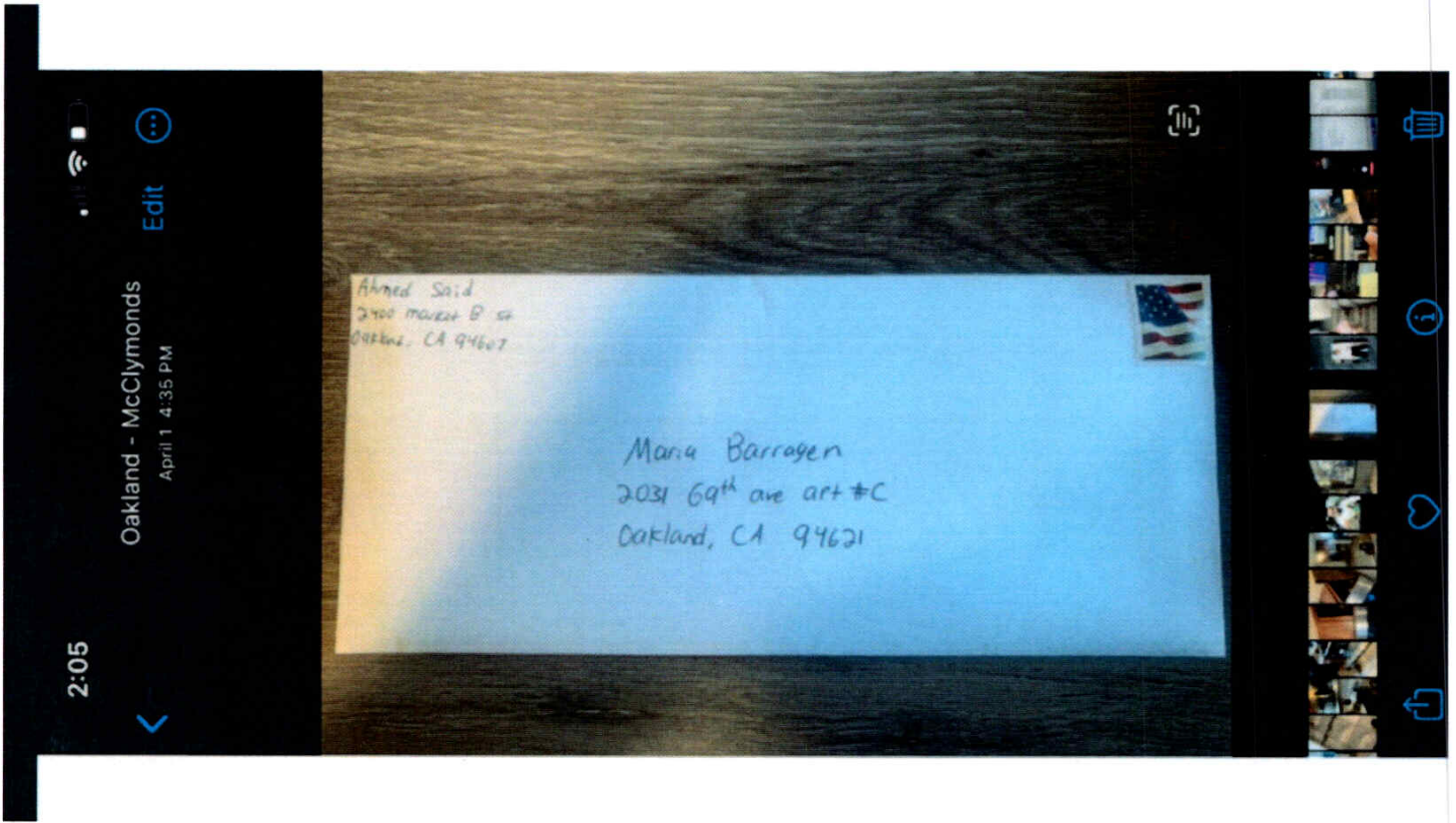
1. CPI, banking, and capital improvements can be passed through as a rent increase in a single petition.
2. Landlords cannot apply a rent increase based on a CPI increase with an increase based on increased housing service costs or fair return. Increased housing service costs or fair housing justifications replace the CPI increase. Refer to the attachment on pages 23-25.

In response to page 22 of 22: In July 2022, Maria Barragan requested a letter from me claiming that she needed a letter of proof from her landlord for immigration purposes. I was only doing Ms. Barragan a favor so that she wouldn't encounter any issues regarding her immigration status. She fraudulently used immigration as an excuse to receive a recommendation letter from me, that is now being used against me.

Closing Statement: We ask that you please do not make a decision without speaking to us. We are appealing because we did everything within the law, and our zoom meeting scheduled for Wednesday, April 12th regarding the landlord/tenant hearing was canceled without proper notice. We were on zoom for 30 minutes for the scheduled hearing, but heard nothing back from the hearing officer. A final decision was sent through the mail without speaking to the landlord, so we ask that if our appeal is not granted, you may discuss further with my attorney.

- Name: Josh P. Davis
- Phone: (510) 207-2472





Mead Property Mgmt
2400 Market St suite B
Oakland, CA 94607
Phone - (510) 812-3277

To:
Migael

Phone - (510) 200-1509

Work Order #	7-1
Status	Assigned
Created On	11/14/2022
Estimate Requested On	11/15/2022
Estimate Amount	\$26,600.00
Estimated On	11/16/2022
Scheduled On	11/18/2022
Completed On	11/23/2022
Job Site	2031 69th ave 2031 69th ave Oakland, CA 94621
Pet(s)	--

Tenant(s)

No Current Tenant

Tenant Availability

Date	Time
--	--

Description

Need to replace the roof for the property because the raining season is approaching. Migael will be available to start the work around November 18th.

Vendor Instructions

Company Name: MEX SOLUTIONS
Phone Number: (510) 200-1509

Created By: Bessery Said
 Authorized By: [Signature]
 Signed By: [Signature]
 Dated By: 11/25/22
 Invoice #: _____

Technician's Notes:

MEX SOLUTIONS

ROOFING INVOICE

LIC # 944015
2685 D ST
HAYWARD CA 94541
(650) 520-4816

DATE 11/25/22		PROPOSAL NO	
OWNER/BUYER NAME Ahmed Said		OWNER S	
OWNER S CITY STATE & POSTAL CODE 2031 69th AVE		OWNER S HOME PHONE (510) 812-3277	OWNER S WORK PHONE
PROJECT NAME		PROJECT ADDRESS	
PROJECT CITY STATE & POSTAL CODE Oakland, Ca 94621		PROJECT PHONE	PROJECT PHONE 2
CONSTRUCTION TO BEGIN	CONTRACT COMPLETION DATE	DATE OF PLANS	ARCHITECT ENGINEER

We hereby propose to furnish the following work:

We did an inspection on the roof, and determined that it needed to be changed. We replaced the entire roof. It has a 25 year warranty.

PROPOSED PAYMENT: Owner agrees to pay Contractor a PROPOSED total cash price of \$ **26,600.00** Dollars. OWNER represents that this agreement is a cash transaction wherein no financing is contemplated and contractor acts in reliance on said representation.

THE PAYMENT SCHEDULE WILL BE AS FOLLOWS:

- 1. Down payment of \$ **\$7,000.00**
- 2. Payment schedule as follows:
\$7,000.00 on 11/20, and the remaining \$12,600 due when the work is complete

THIS IS A BID PROPOSAL WITH A GENERAL DESCRIPTION OF THE PROJECT AND COST. IF THE BID PROPOSAL IS ACCEPTED, A MORE FORMALIZED CONTRACT WILL BE PREPARED PROVIDING DETAILED TERMS AND CONDITIONS INCLUDING ALL YOUR RIGHTS AND YOUR RIGHT TO CANCEL.

ACCEPTANCE OF PROPOSAL

You are hereby authorized to return a formal contract between us to accomplish the work described in the above proposal, for which the undersigned agrees to pay the amount stated in said proposal and according to the terms thereof.

<u>Gerardo Godinez</u>	<u>11/25/22</u>		
Contractor/Seller Signature	Date	Owner/Buyer Authorized Signature	Date
Contractor/Seller Signature	Date	Owner/Buyer Authorized Signature	Date



Oakland - Hegenberger
November 21, 2022 at 11:29:38 AM · 28,975 of 31,102



Edit



11/23/22, 2:58 PM
28,998 of 31,102

Save Shared Photo



Edit

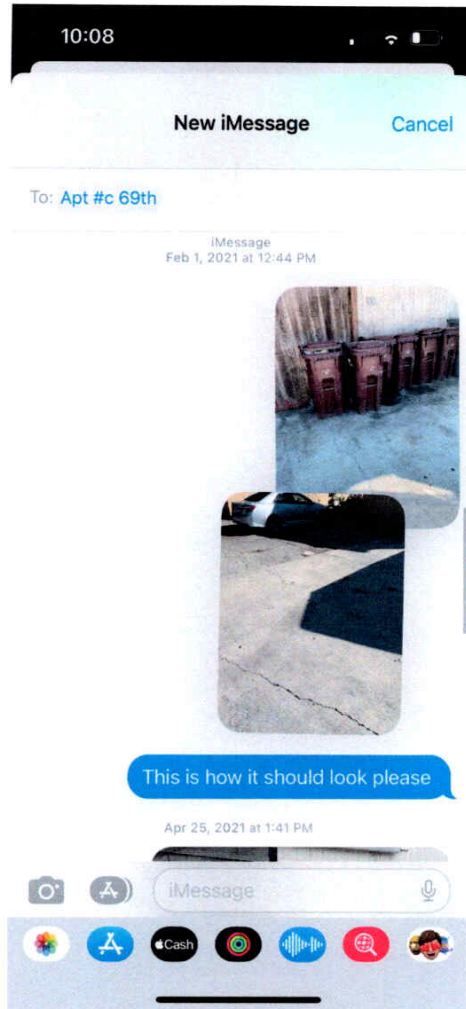




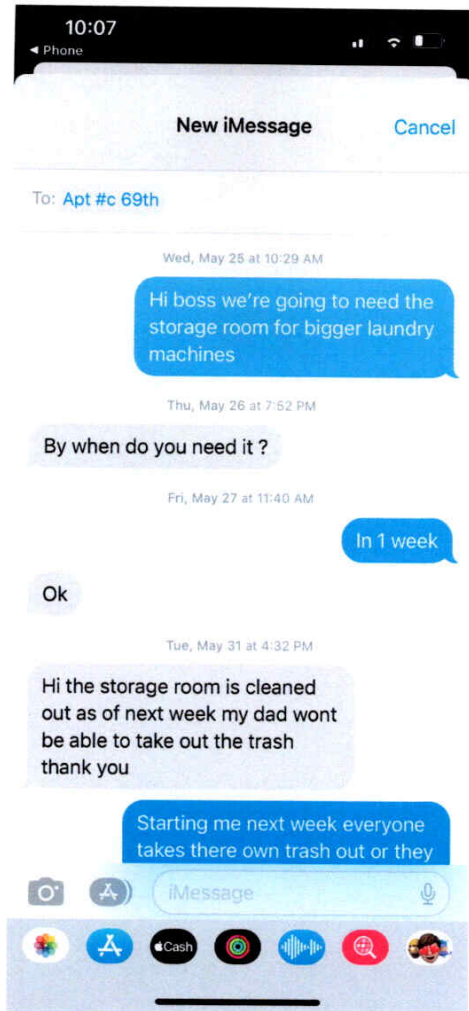
Oakland - Hegenberger
December 6, 2022 at 2:27:39 PM · 29,122 of 31,102







Page 16 of 25



12:21
Oakland - Hegenberger
April 25, 2021 1:11 PM



Share Like Info Delete

10:22



page 19 of 25

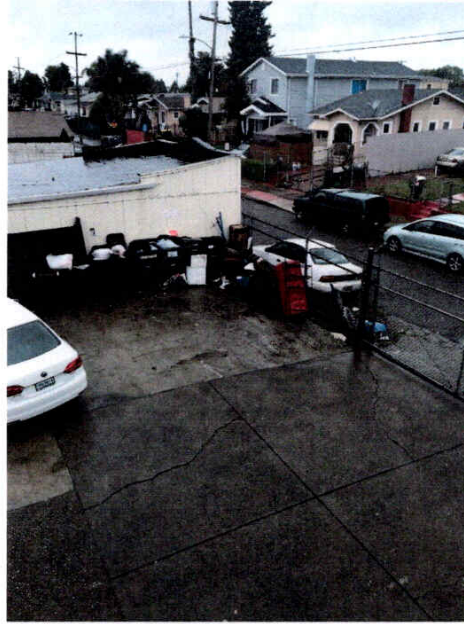


April 9, 2016
10:41 AM

Edit



LIVE



12:51



Page 20 of 25

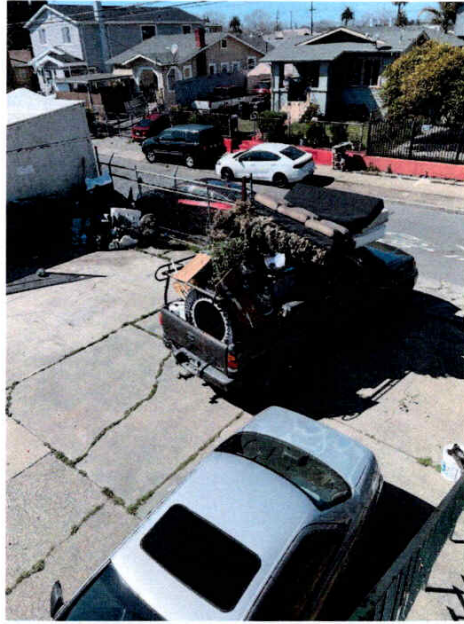


Oakland - Hegenberger
March 6, 2022 1:10 PM

Edit



📷 LIVE ▾





2031 69th Ave
Oakland, California
Google Street View
Nov 2017
See latest date

Global Search...

Home Building Planning Enforcement Fire

File a Complaint/Register a Property Search Complaint Records

Record 1704847:
Housing Habitability Complaint
Record Status: Violation Verified

Record Info Custom Component

2031 69TH AVE *
94621



Case Description:

Apartment building. Possibly structural support and bracing was done without permits.

More Details

The “CPI rate” takes effect on each July 1 and remains in effect through June 30 of the following year. A property owner can raise rent above the CPI rate, based on certain justifications.

- Banking
- Increased housing service costs
- Capital improvements
- Uninsured repair costs
- Fair return

Banking

Banking refers to deferred allowed annual rent increases. Annual rent increases that were not applied either fully or completely, can be applied in future years. Property owners may defer applying annual rent increases up to 10 years. Rent increases that were not imposed within 10 years expire. If challenged, evidence of the rental history of the subject unit is required.

- [Banking Rent Increase Calculator Instructions](#)
- [Banking Rent Increase Calculator](#)

Increased housing service costs

Housing service costs are expenses for services provided by the property owner. The costs are related to the use of a rental unit. These costs are also known as “operating expenses”.

If a tenant challenges a rent increase, the landlord must present evidence to prove all claimed expenses. Staff will compare the most recent two years of operating expenses to determine if a rent increase is justified. The calculation in both years must provide a reasonable comparison of all expenses. You may not isolate any

single expense.

Expenses considered include:

1. Business license and insurance,
2. Utilities (electricity, gas, water, garbage)
3. Maintenance and repairs
4. Managerial costs
5. Other legitimate annually recurring expenses to operate the rental property, except debt service

- [Increased Housing Costs Rent Increase Calculator](#)

Capital improvements

Capital improvements include improvements to the property. A landlord may apply a rent increase to reimburse themselves for property improvements that benefit the tenants. Reimbursement is limited to 70% of the cost of the improvement amortized over its useful life. Property owners must also show that these costs were paid. Examples include: copies of receipts, invoices, bid contracts or other documentation.

- [Capital Improvements Rent Increase Calculator Instructions](#)
- [Capital Improvements Rent Increase Calculator](#)

Uninsured repair costs

Uninsured repair costs are losses that are not reimbursed to the property owner. These losses are related to damage from fire, earthquake, or other disasters. These costs must be associated with repairs to meet state or local laws. An increase for uninsured repairs is calculated the same way as an increase for capital improvements.

Fair return

A property owner may submit evidence to show that without the requested rent increase he or she is being denied a fair return on the investment. A property owner must show that the return on the investment is less than the return for an investment of similar risk.

The property owner is required to provide three things.

1. Proof of the amount of investment
2. Evidence of the return from other investments of similar risk
3. An analysis of the rate of return from the rental property, including any appreciation in the value of the property.

Rent increases that exceed the CPI increase may be justified for one or more of the reasons listed. Owners may use more than one justification to increase the rent at the same time.

- CPI, banking, and capital improvements can be passed through as a rent increase in a single petition.
- Landlords cannot apply a rent increase based on a CPI increase with an increase based on increased housing service costs or fair return. Increased housing service costs or fair housing justifications replace the CPI increase.

Rent increases that exceed the CPI increase may be valid for one or more of the reasons. Owners may combine more than one justification to increase the rent at the same time.

- Owners can combine CPI, banking, and capital improvements for a rent increase in one petition.
- Landlords cannot combine CPI with increased housing service costs or fair return.
- Increased housing service costs or fair housing justifications replace the CPI increase.

1 Gregory T. Ching (SBN 330719)
gching@centrolegal.org
2 **CENTRO LEGAL DE LA RAZA**
3400 E. 12th Street
Oakland, CA 94601
3 Telephone: (510) 437-1554
4 Facsimile: (510) 255-6069

5 *Attorney for Tenant-Respondent Maria Barragan*

6 **OAKLAND RENT ADJUSTMENT PROGRAM**

7
8 BARRAGAN, ET AL.,

9 Tenant-Respondent,

10 vs.

11 MEAD HOLDING LLC,

12 Property Owner-Appellant.

Case No.: T23-0019

**TENANT-RESPONDENT MARIA
BARRAGAN'S REPLY BRIEF IN
SUPPORT OF TENANT PETITION**

13
14 Tenant-Respondent Maria Barragan hereby submits this brief in response to Appellant
15 Mead Holding LLC's appeal brief.

16 **I. FACTS AND PROCEDURAL HISTORY**

17 In notices dated September 12, 2019, and December 1, 2019, Tenant-Respondent Maria
18 Barragan ("Tenant") received a rent increase from Appellant Ahmed Said (doing business as
19 Mead Holding LLC) ("Owner"), which imposed an increase from \$1,000.00 per month to
20 \$1,300.00 per month (the "2019 Rent Increase"). On September 24, 2022, Tenant received
21 another rent increase notice from Owner, raising Tenant's rent from \$1,300 per month to
22 \$1,500 per month (the "2022 Rent Increase"). Tenant has paid the corresponding demanded
23 amounts for both the 2019 and 2022 Rent Increases, as demonstrated in the Tenant Evidence
24 Submission in this action. Neither the 2019 Rent Increase nor the 2022 Rent Increase included
25 proper notice, and both were in excess of the allowable CPI Rent Adjustment.
26
27
28

1 Furthermore, the Rent Adjustment Program generally falls within those requirements of
2 California civil law. There are a variety of well-established legal principles that allow a judge
3 or fact finder to reach a decision without a hearing, and some even without evidence. Examples
4 include decisions on motions for judgment on the pleadings, motions for summary judgment,
5 and motions for summary adjudication. *See, e.g.*, Cal. Code Civ. P. §§ 438, 437c. Merely filing
6 a Response, especially one that fails to raise any genuine dispute over any material fact, does
7 not guarantee either a tenant or a property owner a hearing. The Hearing Officer’s
8 Administrative Decision does not constitute a denial of Owner’s opportunity to be heard.

9 **B. The 2022 Rent Increase**

10 The 2022 Rent Increase was plainly and facially unlawful, and properly invalidated by
11 the Hearing Officer. The 2022 Rent Increase, which required an increase in Tenant’s rental
12 payments from \$1,300 per month to \$1,500 per month, did not meet multiple requirements
13 under the Oakland Municipal Code.

14 First, the 2022 Rent Increase Notice did not include a RAP Notice, which is required
15 under Oakland law. Oakland Mun. Code § 8.22.070(H). Tenant provided sufficient evidence to
16 the Hearing Officer to demonstrate this deficiency. *See* Tenant Evidence Submission, Exh. T1.
17 Owner does not dispute this fact, and has not disputed this deficiency in either the first Owner
18 Response; the second, delinquent, Owner Response, or in Owner’s Appeal. As such, the 2022
19 Rent Increase Notice is invalid.

20 Second, the 2022 Rent Increase Notice did not include the rent increase moratorium
21 statement in bold, underlined, 12-point font as required by the Oakland Moratorium. *See id.*
22 Owner contends that “According to page 3 of the Proof of Service from the tenant [sic], it is
23 stated that the notice of rent increase is not in bold, or 12 point font, which is false. We
24 specifically bolded the notice of rent increase statement, and used 12 point font on both letters.”
25 *See* Owner Appeal, p. 3. Owner misunderstands the Administrative Decision and the Oakland
26 Moratorium. Under the Oakland Moratorium, Owner is required to provide the following
27 statement in bold, underlined, 12-point font:

1 **“During the Local Emergency declared by the City of Oakland in response**
2 **to the COVID-19 pandemic, your rent may not be increased in excess of the**
3 **CPI Rent Adjustment (3-5% until June 30, 2020), unless required for the**
4 **landlord to obtain a fair return. You may contact the Rent Adjustment**
5 **Program at (510) 238-3721 [sic] for additional information and referrals.”**

6 Oakland Moratorium, § 4. Owner did not include this statement in the 2022 Rent Increase.

7 Instead, the only text that were provided in bolded font were “Notice of Rent Increase,”
8 “Address,” and “Mead Holding LLC” letterhead. *See* Tenant Evidence Submission, Exh. T1.

9 Third, the 2022 Rent Increase Notice provided for a \$200 increase, which equates to an
10 increase of over 15%. Tenant Evidence Submission, Exh. T1. This is well above the 3% CPI
11 Rent Adjustment allowed by the City of Oakland for the relevant time period.

12 Fourth, the 2022 Rent Increase Notice stated that the increase was justified “due to high
13 inflation rates that include increasing property and city tax, water, PG&E, as well as
14 maintenance in addition to other factors.” *See* Tenant Evidence Submission, Exh. T1. Owner
15 confirms such rationale in the Owner Appeal, stating that Tenant’s rent “would be increased
16 from \$1,300 to \$1,500 due to increased operating expenses.” *See* Owner Appeal, p. 5. Owner
17 argues that such an increase is justifiable, as the Oakland Municipal Code allows rent increases
18 to exceed the CPI Rent Adjustment. *Id.* The Oakland Moratorium, however, prohibits rent
19 increases in excess of the CPI Rent Adjustment on the basis of increased operating expenses
20 during the Local Emergency. Oakland Moratorium, § 4. Further analysis of Owner’s
21 misinterpretation of rent increases in excess of the CPI Rent Adjustment is discussed in Section
22 D, *infra*.

23 For the foregoing reasons, the 2022 Rent Increase was properly found invalid.

24 **C. The 2019 Rent Increase**

25 The 2019 Rent Increase was plainly and facially unlawful, and was properly held by the
26 Hearing Officer to be invalid. The 2019 Rent Increase required an increase in Tenant’s rental
27 payments from \$1,000 per month to \$1,300 per month, in excess of the allowable CPI Rent
28 Adjustment; the rent increase did not meet requirements under the Oakland Municipal Code;
and the rent increase was not a rent set back.

1 **1. The 2019 Rent Increase Did Not Include the RAP Notice**

2 It is undisputed that the 2019 Rent Increase did not include the legally required RAP
3 Notice. *See* Tenant Evidence Submission, Exh. T2. Owner provided only the rent increase
4 notice, itself, along with a printout from the Rent Adjustment Program website. Tenant has
5 provided sufficient evidence to demonstrate this deficiency. Owner does not dispute the fact
6 that no RAP notice was included with the 2019 Rent Increase, and has not disputed this fact in
7 either the Owner Response; the second, delinquent, Owner Response; or in the Owner Appeal.

8 In his Appeal filing, Owner states, “At the inception of their tenancy, we provided the
9 tenants with a RAP notice. The tenants claiming that they were not able to retain the notice that
10 was provided to them may be due to the fact that they moved in 10 years ago.” This statement
11 is problematic for several reasons.

12 First, the allegation that Owner provided Tenant with a RAP Notice at the inception of
13 their tenancy is false. Tenant has stated in her Petition, under penalty of perjury, that she was
14 never provided with a RAP Notice. *See* Tenant Petition, T23-0019. Tenant has not wavered
15 from this assertion. Owner, on the other hand, has repeatedly changed his story, and has
16 provided no evidence to support his false statement at any stage of this case. In the Owner
17 Response dated January 31, 2023, Owner, under penalty of perjury, affirmatively checked the
18 box stating: “I have never provided a RAP Notice.” *See* Owner Response (Jan. 31, 2023). In the
19 second Owner Response, Owner, under penalty of perjury, affirmatively checked the box
20 stating: “I do not know if a RAP Notice was ever provided.” *See* Owner Response (Mar. 31,
21 2023). Owner now claims to have provided a RAP Notice at the inception of Tenant’s tenancy,
22 contradicting Owner’s prior assertions and without providing any evidence to support his
23 claim. Owner Appeal, p. 3. Owner has contradicted himself, under oath, and has not provided
24 any evidence to support this claim. Accordingly, the Hearing Officer correctly found that
25 Tenant was not given a RAP Notice at the beginning of her tenancy.

26 Second, Owner misunderstands the notice requirement. While a RAP Notice is required
27 to be provided at the inception of a tenancy, a RAP Notice is also required to be provided with
28

1 each rent increase notice. Oakland Mun. Code § 8.22.070(H). Even if Owner had provided
2 Tenant with a RAP Notice at the inception of her tenancy, Owner would still be required to
3 provide additional RAP Notices concurrently with rent increase notices. Owner did not provide
4 the required RAP Notice with the 2019 Rent Increase and has not disputed this fact. Tenant
5 Evidence Submission, Exh. T2. Tenant has provided sufficient evidence for the Hearing Officer
6 to find that Owner failed in his duty to provide the required notice.

7 **2. The Increase Amount Exceeded That Allowed by Law**

8 The 2019 Rent Increase imposed an increase from \$1,000 per month to \$1,300 per
9 month, which equates to an increase of 30%. This rent increase is illegal on its face. The 2019
10 CPI Rent Adjustment was 3.5%. Moreover, the Oakland Municipal Code restricts rent
11 increases based on CPI Rent Adjustments to no more than 10% in any 12-month period, and no
12 more than 30% over any period of five years. § 8.22.070(A)(2)-(3). A rent increase of 30% is
13 clearly improper, and the 2019 Rent Increase was correctly held to be invalid.

14 **3. The 2019 Rent Increase was an Increase and Not a Set Back**

15 Owner's contention that the 2019 Rent Increase should be considered a rent "set back"
16 is without merit. Tenant denies Owner's account of an agreement of services in exchange for a
17 rent reduction. Owner did not raise this issue in either of his two Owner Responses, and has
18 provided no evidence to support such an allegation. In fact, Owner, himself, contradicts this
19 characterization of the rent increase in the actual 2019 Rent Increase Notice.

20 In his Appeal, Owner provides that "the tenants and I had an agreement when they first
21 moved in that the monthly rent would be \$1,300, but if they were to pull out the garbage bins
22 every Monday for all 6 units, and keep the front and backyard clean, then they would pay
23 \$1,000." Owner Appeal, p. 2. Owner states that such agreement was "verbal." *Id.* at p. 3.

24 Tenant denies the existence of such an agreement. Tenant's rental rate when she moved
25 into the property in 2013 was \$1,000 per month. Tenant has never agreed to a reduced rental
26 rate from \$1,300 to \$1,000 per month in exchange for services to Owner or at the subject
27 property. Tenant has never agreed to a reduced rental rate in exchange for services to Owner or

1 at the subject property, either verbally or in writing. Owner has provided no evidence to
2 support his claim that such an agreement existed, and Owner did not raise this argument at the
3 proper time: in his Owner Response to the Tenant Petition.

4 Owner also states that: “In 2019, we provided the tenants with a 60 day notice that the
5 rent would return to its original amount of \$1,300 because they were no longer providing their
6 services.” *See* Owner Appeal, p. 3, ¶ 2. The 2019 Rent Increase Notice, however, includes no
7 such language about the alleged services. Instead, the 2019 Rent Increase Notice states: “The
8 rental increases will be applied *due to high inflation rates that include the increase of property*
9 *and city tax, water, garbage, and other maintenance in addition to many other factors.*” Tenant
10 Evidence Submission, Exh. T2 (emphasis added). The 2019 Rent Increase Notice does not
11 include any mention of services, of an agreement, or of a set back. Moreover, the 2019 Rent
12 Increase Notice uses almost the exact same language that Owner used in the 2022 Rent
13 Increase. *See id.* at Exh. T1 (“The increase in rent will be applied due to high inflation rates that
14 include increasing property and city tax, water, PG&E, as well as maintenance in addition to
15 other factors”). Owner is attempting to characterize the 2019 Rent Increase as a rent set back,
16 however all evidence demonstrates that the 2019 Rent Increase was merely an unlawful rent
17 increase.

18 Owner further contradicts his set back argument, stating in the 2019 Rent Increase
19 Notice, “Please take into consideration that rent has been \$1,000 for the past 10+ years with no
20 increases. The California State Law allows property owners to defer applying *annual rent*
21 *increases* for up to 10 years.” *Id.* at Exh. T2 (emphasis added). Owner was clearly attempting to
22 bank multiple years’ worth of rent increases into a single, illegal rent increase. The fact that
23 Owner could have increased rent lawfully during that time period does not allow Owner to do
24 so illegally by increasing Tenant’s rent by an unlawful amount and without proper notice.
25 Owner is either being misleading, or mischaracterizing the 2019 Rent Increase by asserting that
26 it was based on a set back rather than what it actually was: an illegal rent increase.

1 In the present case, Owner did not file a petition with the Oakland Rent Adjustment
2 Program before either the 2019 or 2022 Rent Increases. Owner did not receive approval from
3 the Rent Adjustment Program to impose a rent increase in excess of the CPI Rent Adjustment
4 before either the 2019 or 2022 Rent Increases. Owner instead took it upon himself to increase
5 Tenant’s rent by an unconscionable amount on two separate occasions without following
6 established and legally required procedures.

7 **E. Owner’s Appeal Includes Allegations and Arguments That Lie Beyond the**
8 **Scope of the Underlying Petition and this Appeal**

9 Matters on appeal are limited in their scope. The Rent Adjustment Program Regulations
10 contain an enumerated list of grounds for appeal. *See, e.g.*, Oakland Rent Adjustment Program
11 Regulations; Oakland Municipal Code § 8.22.120. As a general rule, Appeals should not
12 conduct evidentiary hearings or consider the introduction of new evidence. *See* Oakland Rent
13 Adjustment Program Regulations.

14 Here, Owner attempts to include a number of arguments and accompanying evidence
15 that lie well beyond the scope of the underlying Petition, and bear no relevance to this case.
16 Specifically, the following allegations are irrelevant with regard to whether or not the 2019 and
17 2022 Rent Increases were proper and legal: whether or not Owner requested that tenants at the
18 property pull out their own garbage bins, whether or not Owner decided to begin cleaning
19 around the property, whether or not Tenant had an extra refrigerator, the number of persons
20 living within the subject property, whether or not a fire department violation occurred, and
21 whether or not Tenant’s family used multiple parking spaces. Owner Appeal, p. 2, ¶¶ 1-5.
22 Tenant reserves the right to challenge or dispute Owner’s allegations.

23 Additionally, Owner’s table of Increased Housing Service Costs is similarly irrelevant
24 for the purposes of this appeal. The issue of whether or not Owner incurred increased costs falls
25 outside of the scope of the Tenant Petition and of this Appeal. Furthermore, Owner has
26 provided no evidence to support his claim that he incurred increased housing costs aside from
27

1 the table, itself. Owner Appeal, p. 4. Tenant reserves the right to challenge or dispute Owner’s
2 contention regarding increased housing costs.

3 Owner did not raise these allegations or arguments in either of his two Owner
4 Responses, and they should not be considered in, and are not relevant to, this Appeal.

5 **F. Owner’s Allegation of Fraud Is False and Improper**

6 Tenant included in her Tenant Evidence Submission a letter, dated July 5, 2022 and
7 signed by Owner. *See* Tenant Evidence Submission, Exh. T4. The purpose of including the
8 letter in the Tenant Evidence Submission was to provide further evidence that Tenant was
9 current on her rental payments.

10 In his Owner Appeal, Owner alleges that Tenant “fraudulently used immigration as an
11 excuse to receive a recommendation letter from me, that is now being used against me.” Owner
12 Appeal, p. 5.

13 Tenant denies defrauding Owner. Tenant did not request the letter for any purposes
14 other than those that Tenant made Owner aware of at the time of her request. Tenant was
15 truthful in her request, and has been honest and consistent throughout the entirety of this action.
16 Unless Owner is admitting to having committed fraud by lying in his letter, no fraud occurred.
17 Tenant reserves the right to pursue Owner on any and all claims related to Owner’s baseless
18 allegation of fraud.

19 **G. The April 12, 2023 Hearing Was Not Canceled Without Proper Notice**

20 Owner contends that the Hearing for the underlying Petition was “canceled without
21 proper notice.” Owner Appeal, p. 5. As discussed in Section A, *supra*, the Hearing Officer did
22 not act improperly in issuing a ruling by Administrative Decision. The cancelation of the
23 Hearing was properly noticed in the Hearing Officer’s decision, served on the Parties on April
24 6, 2023, by Analyst Brittini Lothlen. *See* T23-0019 Administrative Decision, p. 4, ¶ 4.

25 **III. CONCLUSION**

26 For the reasons set forth herein, the Appeals Board should find affirm the Hearing
27 Officer’s decision to grant the Tenant Petition.

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Dated: May 2, 2023

CENTRO LEGAL DE LA RAZA

By: *Gregory Ching*
Gregory T. Ching
Attorney for Tenant-Respondent Maria Barragan



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.

I served a copy of:

TENANT-RESPONDENT MARIA BARRAGAN'S REPLY BRIEF IN SUPPORT
OF TENANT PETITION IN
PETITION CASE NO.: T23-0019 (12 pages)
(insert name of document served)
 And Additional Documents

and (write number of attached pages) 0 attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

Name	Ahmed Said
Address	2400 Market St. Suite B
City, State, Zip	Oakland, CA 94607

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
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City, State, Zip	

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Name	
Address	
City, State, Zip	

To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 05/02/2023 (insert date served).

Israel Lepiz

PRINT YOUR NAME

Israel Lepiz

SIGNATURE

05/02/23

DATE

05/24/2023 Barragan et al v. Mead Holding LLC

Att: Hearing of Appeal

Case Number: T23-0019

Notice of Appeal

I, the appealing party, would like to present to you why the appeal should be granted.

We are challenging the decision made by the rent board because at the inception of their tenancy [2012], we agreed that the rent would be \$1,300. However, we verbally agreed that if they were to pull out all 6 garbage bins for weekly garbage pick up, keep the front and backyards clean, and have the storage room, then they would pay \$1,000 **ONLY** if they were able to hold up their end of the agreement.

1. Tenants built an extra structure without landlord approval, and the fire department sent the landlord a notice of violation because the structure was unpermitted. We were fined, and I, as the landlord, had to pay, and remove the structure.
2. We provided them with a free storage room, but they **DID NOT** notify us that they would plug in refrigerators, and other equipment to the house meter using extension cords [big fire hazard].
Also, the tenants exceeded the agreed occupancy of 5 people for a 2 bedroom unit, as they had up to 7 people living in the unit. We never complained when PG&E and EBMUD rates increased.
3. Each unit has ONE parking spot allocated to them for their use, but have continued to park their vehicles in prohibited areas around the building.
4. We have made capital improvements to the building, and specifically their unit such as: New roof, New windows, New balcony door, and other improvements to ensure that our tenants have the best living space possible. These improvements cost us over \$40,000.

000148

According to the article titled “Learn More About Allowable Rent Increases” on the City of Oakland Website, last updated May 19th, 2023, it states that Rent Increases that exceed the CPI Increase may be valid for one or more of the reasons. Owners may combine more than one justification to increase rent at the same time.

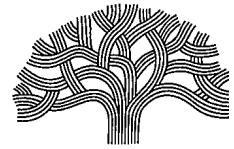
- A. Owners can combine CPI, banking, and capital improvements for a rent increase in one petition.
 - B. Increased housing service costs [Property taxes, Utility bills, Mortgage, and many other expenses]
5. All in all, the rent was not increased for 7 years [2012 - 2018]. In 2019, the rent was not increased, rather it was set back to its original amount because their services were no longer provided. We gave the tenants a 60 day written notice notifying them that their rent payable would be set back the amount that was agreed upon initially, \$1,300.

According to the article titled “Learn More About Allowable Rent Increases” on the City of Oakland Website, last updated May 19th, 2023, it states that Rent Increases that exceed the CPI Increase may be valid for one or more of the reasons. Owners may combine more than one justification to increase rent at the same time.

- A. Owners can combine CPI, banking, and capital improvements for a rent increase in one petition.
- B. Increased housing service costs [Property taxes, Utility bills, Mortgage, and many other expenses]

Closing Statement: San Francisco, and Oakland always favor the tenants. We’re asking since you are the judge and mediator of this hearing to PLEASE BE FAIR. When we increased the rent, we increased fairly, not by thousands of dollars, or an unreasonable amount. We ask that you please take our argument into consideration and reason with us because living costs continue to increase, and the pandemic was an uphill battle as mortgages and taxes were still due on a month to month basis, but tenants were given the opportunity to withhold rent. Ultimately, we are very fair landlords

to our tenants as they have been renting from us for over 10 years now, otherwise they would not be paying \$1,500 per month for a 2 bedroom with parking, and free water (EBMUD).



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

ORDER RE POSTPONEMENT OF APPEAL HEARING

Case No./Name: T23-0019, Barragan et al v. Mead Holding LLC

Property Address: 2031 69th Avenue, Unit C, Oakland, CA 94621

Background: This case is currently scheduled for an Appeal Hearing on June 22, 2023, at 5:30 p.m.

On June 21, 2023, the Rent Adjustment Program received a request for a postponement of the appeal hearing from tenant representative Gregory Ching due to the representative's illness and inability to attend the hearing on June 22, 2023.

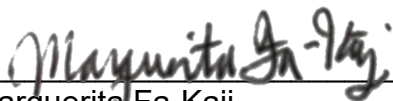
The "Request to Change Date of Proceeding" form submitted by the tenant representative stated that the opposing party had been contacted but that the parties were unable to agree on a date for the re-scheduled hearing.

Rent Ordinance Regulation 8.22.120.C sets forth the "good cause" requirement for postponement of an appeal hearing. Illness of one of the party's representatives constitutes good cause.

GOOD CAUSE APPEARING, the Appeal Hearing scheduled for this case on June 22, 2023, at 5:30 p.m. is hereby cancelled and shall be rescheduled.

A new Notice of Appeal Hearing will be sent to the parties under separate cover.

DATED: June 22, 2023



Marguerita Fa-Kaji
Senior Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE BY ELECTRONIC MAIL

Case Number T23-0019

I, the undersigned, state that I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612. My electronic service address is: BMcGowan@oaklandca.gov

Today, I electronically served the attached documents:

Documents Included

Order Re Postponement of Appeal Hearing

I electronically served the document(s) listed above to:

Ahmed Said: ahmedmead@gmail.com

Gregory Ching: gching@centrolegal.org

Maria Barragan: carmenornelas01@gmail.com

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **June 22, 2023**.



Briana Lawrence-McGowan

Oakland Rent Adjustment Program

CHRONOLOGICAL CASE REPORT

Case No.: T19-0384

Case Name: Salvador v. Fong

Property Address: 1354 81st Avenue, Oakland, CA 94621

Parties: May Fong & Michael Lee (Owners)
Ana Salvador (Tenant)
Gregory Ching (Tenant Representative)

OWNER APPEAL:

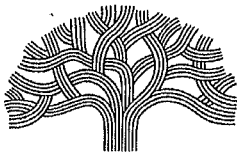
<u>Activity</u>	<u>Date</u>
Tenant Petition filed	August 9, 2019
Notice of Settlement Conference and Hearing mailed	October 8, 2019
Certificate of Exemption submitted	November 3, 2019
Renewed Request for Expedited Hearing	December 9, 2019
Letter Re: Request for Expedited Hearings mailed	January 7, 2020
Motion to Dismiss Petition Cases submitted	January 13, 2020
Order Denying Owner's Motion mailed	January 16, 2020
Property Owner Response filed	January 28, 2020

Tenant Evidence submitted	February 13, 2020
Statement of Appearance	February 19, 2020
Notice of Hearing mailed	February 20, 2020
CC&Rs submitted	March 24, 2021
Hearing Continued for Briefing	March 31, 2021
Tenant Evidence submitted	April 9, 2021
Landlord Brief	April 30, 2021
Tenant Brief	April 30, 2021
Administrative Decision mailed	August 31, 2021
Tenant Appeal with Brief filed	September 20, 2021
Owner Response to Tenant Appeal filed	September 30, 2021
Appeal Hearing date	December 9, 2021
Appeal Decision mailed	April 1, 2022
Tenant Remand Brief in Support of Petition	July 29, 2022
Tenant Request for Judicial Notice	November 8, 2022
Hearing dates	January 24 2023 & March 8, 2023

Tenant Supplemental Submission	April 7, 2023
Hearing Decision mailed	May 16, 2023
Owner Appeal filed	June 4, 2023
Tenant Reply Brief in Support of Tenant Petition	July 31, 2023

T19-0384 ^{AS} MS / MASK

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
For date stamp.
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 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	TENANT PETITION
--	--	------------------------

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

Please print legibly

Your Name Ana Jeronimo Salvador	Rental Address (with zip code) 1354 81st Avenue #A Oakland, CA 94621	Telephone: 510-688-1892
		E-mail:
Your Representative's Name	Mailing Address (with zip code)	Telephone:
		Email:
Property Owner(s) name(s) May Lee Fong	Mailing Address (with zip code) 358 Cerro Court, Daly City, CA 94015	Telephone:
		Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone:
		Email:

Number of units on the property: 6

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

I. GROUNDS FOR PETITION: Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input checked="" type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Commission for an increase and the rent increase exceeds the CPI Adjustment and the available banked

For more information phone (510) 238-3721.

Petition prepared by Centro Legal de la Raza

	rent increase.
X	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
X	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
X	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
X	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
X	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

II. RENTAL HISTORY: (You must complete this section)

Date you moved into the Unit: 8/3/2012 Initial Rent: \$ 1150 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: 7/5/2018. If never provided, enter "Never."

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
6/11/2019	9/1/2019	\$ 1375	\$ 2000	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Additional rent increases I want to challenge are listed on my prior petition T18-0392				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

T18-0392

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

Are you being charged for services originally paid by the owner?

Yes No

Have you lost services originally provided by the owner or have the conditions changed?

Yes No

Are you claiming any serious problem(s) with the condition of your rental unit?

Yes No

If you answered "Yes" to any of the above, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

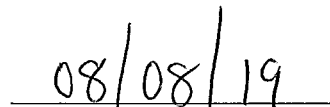
You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

IV. VERIFICATION: The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.



Tenant's Signature



Date

V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a different Rent Adjustment Program Hearing Officer.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

If you want to schedule your case for mediation, sign below.

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

Time to File This form must be **received** at the offices of the City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612 within the time limit for filing a petition set out in the Rent Adjustment Ordinance, Oakland Municipal Code, Chapter 8.22. Board Staff cannot grant an extension of time to file your petition by phone. For more information, please call: (510) 238-3721.

File Review

Your property owner(s) will be required to file a response to this petition within 35 days of notification by the Rent Adjustment Program. You will be sent a copy of the Property Owner's Response. The petition and attachments to the petition can be found by logging into the RAP Online Petitioning System and accessing your case once this system is available. If you would like to review the attachments in person, please call the Rent Adjustment Program office at (510) 238-3721 to make an appointment.

VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?

- _____ Printed form provided by the owner
- _____ Pamphlet distributed by the Rent Adjustment Program
- _____ Legal services or community organization
- _____ Sign on bus or bus shelter
- _____ Rent Adjustment Program web site
- _____ Other (describe): _____

Tenant Petitioner
Ana Salvador
1354 81st Avenue #A
Oakland CA 94621

Addendum A- Exemption Sought or Obtained through Fraud or a Mistake

Specifically, the condominium conversion project for 1354 and 1356 81st Avenue did not receive a final approval from the Planning and Building Department because the Landlord did not meet all requirements of the condominium conversion ordinance and fraudulently asserted that the building contained four units, rather than six. The Tenant discovered these facts very recently, after reviewing the file associated with the property's condominium conversion and engaging in discussion with the Planning and Building Department.

Tenant Petitioner
Ana Salvador
1354 81st Avenue #A
Oakland CA 94621

Addendum B- Decreases In Service and Bad Conditions

The decreases in service and bad conditions I continue to experience are listed in my previous petition T18-0392.



Centro Legal de la Raza

Working for Justice
Strengthening Community
Since 1969

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2019 AUG -9 AM 11:28

August 9, 2019

Analyst Margaret Sullivan
City of Oakland
Rent Adjustment Program
Department of Housing and Community Development
250 Frank H. Ogawa Plaza
Oakland, CA 94612

Via Hand Delivery

RE: Petition submission and request for consolidation

Dear Analyst Sullivan:

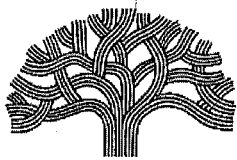
Please find attached a tenant petition.

The tenant petitioner requests that this petition be consolidated with Cases: T19-0159, T19-0160, T18-0382, T18-0383, and T18-0392.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns at (510) 947-9898.

Sincerely,

Noel Munger
Housing Advocate
Tenants' Rights Program



CITY OF OAKLAND

Housing and Community Development Department
Rent Adjustment Program
250 Frank Ogawa Plaza, Suite 5313
Oakland, CA 94612

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

NOTICE OF SETTLEMENT CONFERENCE AND HEARING

File Name: Salvador v. Fong
Property Address: 1354 81st Avenue Oakland, CA 94621
Case Number: T19-0384

The Hearing Officer will conduct a Settlement Conference to attempt to resolve this matter. The Settlement Conference in your case will begin on:

Date: February 19, 2020
Time: 10:00 PM
Place: 250 Frank H. Ogawa Plaza, Ste. #5313 , Oakland, CA 94612

If the Settlement Conference is not successful, the Hearing will begin immediately after the Settlement Conference.

Order to Produce Evidence

All proposed tangible evidence, including but not limited to documents and pictures, must be submitted to the Rent Adjustment Program not less than seven (7) days prior to the Hearing. Black out all sensitive information on the documents you submit, like bank or credit card account numbers and Social Security numbers. Proposed evidence presented later may be excluded from consideration. The Hearing Officer can also use the official records of the City of Oakland and Alameda County Tax Assessor as evidence if provided by the parties for consideration.

Request to Change Date

A request for a change in the date or time of Settlement Conference and Hearing ("continuance") must be made on a form provided by the Rent Adjustment Program. The party requesting the continuance must try to get an agreement for alternate dates with the opposing parties. If an agreement cannot be reached, check the appropriate box on the form. A continuance will be granted only for good cause.

Hearing Record

The Rent Adjustment Program makes an audio recording of the Hearing. Either party may bring a court reporter to record the hearing at their own expense. The Settlement Conference is not recorded. If the settlement is reached, the Hearing Officer will draft a Settlement Agreement to be signed by the parties.

Inspections

During the Hearing, the Hearing Officer may decide to conduct an inspection of the subject unit(s). The inspection may be conducted on the same day as the Hearing or scheduled for a later date selected by the Hearing Officer or mutually agreed upon by the parties present at the Hearing. No testimony will be taken at the inspection.

000163

Representatives

Any party to a Hearing may designate a representative in writing prior to the Settlement Conference or on the record at the Hearing.

Interpreter

The Hearing must be conducted in English. The Rent Adjustment Program will provide interpreters on request providing the request is made at least 7 days in advance of the scheduled Hearing. Any party may also bring a person to the Hearing to interpret for them. The interpreter will be required to take an oath that they are fluent in both English and the relevant foreign language and they will fully and to the best of their ability interpret the proceedings.

Failure to Appear for Hearing

If the petitioner fails to appear at the Hearing as scheduled, the Hearing Officer may either conduct the Hearing and render a decision without the petitioner's participation, or dismiss the petition. If the respondent fails to appear at the Hearing as scheduled, the Hearing Officer may either issue an administrative decision without a Hearing, or conduct the Hearing and render a decision without the respondent's participation.

Accessibility

This meeting location is wheelchair accessible. To request disability-related accommodations or to request an ASL, please email sshannon@oaklandnet.com or call (510) 238-3715 or California relay service at 711 at least five working days before the meeting. Please refrain from wearing scented products to this meeting as a courtesy to attendees with chemical sensitivities.

Service Animals/Emotional Support Animals

The City of Oakland Rent Adjustment Program is committed to providing full access to qualified persons with disabilities who use service animals or emotional support animals.

If your service animal lacks visual evidence that it is a service animal (presence of an apparel item, apparatus, etc.), then please be prepared to reasonably establish that the animal does, in fact, perform a function or task that you cannot otherwise perform.

If you will be accompanied by an emotional support animal, then you must provide documentation on letterhead from a licensed mental health professional, not more than one year old, stating that you have a mental health-related disability, that having the animal accompany you is necessary to your mental health or treatment, and that you are under his or her professional care.

Service animals and emotional support animals must be trained to behave properly in public. An animal that behaves in an unreasonably disruptive or aggressive manner (barks, growls, bites, jumps, urinates or defecates, etc.) will be removed.

PROOF OF SERVICE
Case Number T19-0384

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Documents Included

Notice of Settlement Conference and Hearing

Owner

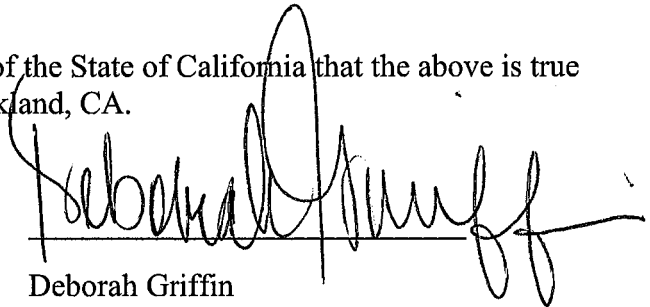
May Lee Fong
358 Cerro Court
Daly City, CA 94015

Tenant

Ana Jeronimo Salvador
1354 81st Avenue Unit A
Oakland, CA 94621

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **October 08, 2019** in Oakland, CA.



Deborah Griffin

Oakland Rent Adjustment Program

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721

FAX (510) 238-6181

RECEIVED

Via email

NOV 03 2019

RENT ADJUSTMENT PROGRAM
OAKLAND

CERTIFICATE OF EXEMPTION
O.M.C. § 8.22.030(B)

Pursuant to the Court's Decision in Fong vs. City of Oakland, Housing, Residential Rent & Relocation Board, Case Number, RG18930130, the residential rental units described below are permanently exempt from application of the City of Oakland Rent Adjustment Ordinance, Oakland Municipal Code, Chapter 8.22, Article 1.

Situs Address: 1354 A 81st Avenue
Oakland, CA

The units are subject to payment of the Rent Adjustment Program fee.

Alameda County Assessor Parcel No. 42-4247-81

Date: _____

9/20/19

Chanee Franklin Minor
Program Manager
Rent Adjustment Program

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)
County of ALAMEDA)

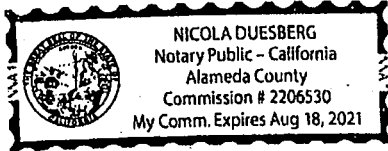
On 9-20-19 before me, NICOLA DUESBERG, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared CHANEY FRANKLIN MINOR
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: CERTIFICATE OF EXEMPTION NOTICE OF CONSTRAINTS Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: _____

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

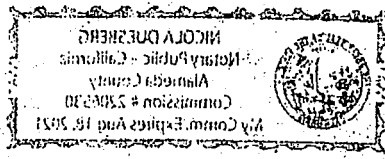
Signer Is Representing: _____

NOTARIAL PUBLIC - CALIFORNIA
ALAMEDA COUNTY
COMMISSION # 2306230
MY COMM. EXPIRES 12/31/2021

NOTARIAL PUBLIC - CALIFORNIA
ALAMEDA COUNTY
COMMISSION # 2306230
MY COMM. EXPIRES 12/31/2021

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MY COMM. EXPIRES 12/31/2021



NOTARIAL PUBLIC - CALIFORNIA
ALAMEDA COUNTY
COMMISSION # 2306230
MY COMM. EXPIRES 12/31/2021

<p>RECORDING REQUESTED BY:</p> <p>WHEN RECORDED MAIL TO:</p>	
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THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION (GOVT. CODE 27361.6) (additional recording fee applies)

TITLE OF DOCUMENT

CERTIFICATE OF EXEMPTION FROM APPLICATION OF
O.M.C. Chapter 8.22, Article 1

Silveira, Ava

From: Silveira, Ava
Sent: Wednesday, January 22, 2020 12:40 PM
To: Sullivan, Margaret; Cohen, Barbara
Cc: Kong-Brown, Barbara; Cooper, Cometria
Subject: RE: T19-0382, T19-0383 & T19-0384

I emailed Ms. Fong confirming receipt of the owner responses on November 3, 2019 via email. I also advised her that she cannot file responses by email and that she needs to submit the original response forms either in person or by mail.

Thank you,

Ava Silveira, MPA
Administrative Analyst I | Rent Adjustment Program
City of Oakland | Housing and Community Development
250 Frank H. Ogawa Plaza, Suite 6301, Oakland, CA 94612
(510) 238-7093

From: Sullivan, Margaret <MSullivan@oaklandca.gov>
Sent: Wednesday, January 22, 2020 12:02 PM
To: Cohen, Barbara <BCohen@oaklandca.gov>
Cc: Kong-Brown, Barbara <BKong-Brown@oaklandca.gov>; Cooper, Cometria <CCooper@oaklandca.gov>; Silveira, Ava <ASilveira@oaklandca.gov>
Subject: RE: T19-0382, T19-0383 & T19-0384

Barbara C.,

Thanks for your input and suggestion below for responding to May Fong.

I did locate the three landlord responses Ms. Fong claims to have submitted. They were among the attachments to her chain of email correspondence with you arguing that she had grounds to have the cases dismissed. She refers to them incidentally at the end of her 11/3/19 email: *"I attached the response to these cases just in case but these should not be able to be relitigating when I have an exemption and they keep filing the same thing."* They did not get printed out, date-stamped and logged.

These cases now have been assigned to Ava, because the hearing is Feb. 19, 2020, the first day of our dividing the cases. The three case files are now in her possession.

Thank you.
Peggy

From: Cohen, Barbara
Sent: Wednesday, January 22, 2020 11:46 AM
To: Sullivan, Margaret <MSullivan@oaklandca.gov>
Cc: Kong-Brown, Barbara <BKong-Brown@oaklandca.gov>; Cooper, Cometria <CCooper@oaklandca.gov>; Silveira, Ava <ASilveira@oaklandca.gov>
Subject: RE: T19-0382, T19-0383 & T19-0384

Peggy; I really think this is a BKB issue. We do not accept filings by email. You should talk to her about how to proceed but I think she needs an emailed response saying we do not accept filings by email (as I have told her in the past.) That she should file her responses by mailing (the legal way). Then, at the Hearing, SK can rule on whether there was "good cause" for her late filing because she believed she could file this way.

You should confirm these ideas with BKB because this is a Hearings Unit procedural issue.

Barbara

From: Sullivan, Margaret <MSullivan@oaklandca.gov>

Sent: Wednesday, January 22, 2020 10:54 AM

To: Cohen, Barbara <BCohen@oaklandca.gov>

Cc: Kong-Brown, Barbara <BKong-Brown@oaklandca.gov>; Cooper, Comertia <CCooper@oaklandca.gov>; Costa, Robert <RCosta@oaklandca.gov>; Mason, Keith <KMason@oaklandca.gov>; Silveira, Ava <ASilveira@oaklandca.gov>

Subject: FW: T19-0382, T19-0383 & T19-0384

Barbara Cohen,

Please advise ALL OF US the status of the issue raised by May Fong in this latest email.

I currently am not able to get into the case database.

Ava currently has the case files.

Thanks.

Margaret

From: May Fong [<mailto:mayfong@pacbell.net>]

Sent: Tuesday, January 21, 2020 8:17 PM

To: Costa, Robert <RCosta@oaklandca.gov>; Sullivan, Margaret <MSullivan@oaklandca.gov>; Mason, Keith <KMason@oaklandca.gov>

Subject: Fw: T19-0382, T19-0383 & T19-0384

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Roberto, Margaret and Keith,

I emailed my responses November 3, 2019 but they were not stamped or filed into my cases. This is of utmost important. Will you be able to back date these for me as I tried to file this online and the website did not work. Then I emailed it to Margaret and Keith but it was not stamped and filed. I need this included in my file as well as an addendum I sent in December.

Please advise.

May

----- Forwarded Message -----

From: May Fong <mayfong@pacbell.net>

To: Barbara Kong-Brown <bkong-brown@oaklandca.gov>; Barbara Cohen <bcohen@oaklandca.gov>; Margaret Sullivan <msullivan@oaklandca.gov>; Keith Mason <kmason@oaklandca.gov>

Cc: Michael Lee <mblee28@yahoo.com>

Sent: Sunday, November 3, 2019, 01:21:47 PM PST
Subject: Re: T19-0382, T19-0383 & T19-0384

Hi Margaret, Barbara and Barbara!

I once again received another petition and appeal in regards to the same cases already ruled on and have all been dismissed. I AM REQUESTING TO DISMISS THESE CASES.

Please let me know these cases cannot be relitigated as per Superior Court. We have the exemption for these units and have filed it with county recorders office.

There was no "fraud or mistake" in issuing the certificates. There already were consolidated cases that squarely put the issue of whether your condos are exempt before the Rent Board. That prompted the tenants at that time to put forth whatever evidence they had to disprove your exemption claim. Despite that chance, the tenants didn't make the argument they are making now - that you somehow didn't carry your evidentiary burden to prove your condos are in fact condos.

Tenants get only "one bite at the apple." They can't raise new issues now about your condos. Otherwise, parties could extend rent disputes over dozens of cases with no end in sight. Ultimately, what the tenants are claiming now isn't any "mistake" made by the hearing officer. There is no rule stating you had to put forth certain evidence to prove the units are condos. Nor was there "fraud" by you. To the extent tenants raise relevant issues about your condos, they have waived those issues by not raising them in the original cases.

I attached the response to these cases just in case but these should not be able to be relitigating when I have an exemption and they keep filing the same thing.

May

On Tuesday, October 1, 2019, 10:14:57 AM PDT, May Fong <mayfong@pacbell.net> wrote:

Hi!

I finally received my certificate of exemption and they vacated my other rent board cases. However I need this case to be vacated as well because I am going to court and I want be sure that this will not be an issue.

This case should never have went through since the unit was under appeal for the certificate of exemption.

Please advise.

May
Sent from my iPhone

On Sep 28, 2017, at 2:47 PM, May Fong <mayfong@pacbell.net> wrote:

Yes I did. I sent the original the date indicated on the appeal.

If it's reviewed can it be combined with the other appeal?

May

**CENTRO
LEGAL DE LA
RAZA**

CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2019 DEC -9 PM 4:27

Chanée Franklin Minor, Rent Adjustment Program Manager
Barbara Cohen, Assistant Program Manager
Oakland Rent Adjustment Program
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612

December 9, 2019

Re: Renewed Request for Expedited Hearing, Case Nos. T19-0382, T19-0383, and T19-0384

Dear Program Manager Franklin Minor and Assistant Program Manager Cohen:

I write to renew the tenants' request for an expedited hearing in the above cases. The tenants in Case Nos. T19-0382, T19-0383, and T19-0384 filed petitions on August 9, 2019 challenging the Certificate of Exemption for their units. In response, their landlord filed unlawful detainer lawsuits against two of the tenants on September 17, 2019, which would likely dispose of their cases prior to their Rent Program hearing scheduled for February 19, 2020.

The tenants in the above cases previously filed a request for expedited hearing on October 1, 2019. Last week, the tenants received a response from Hearing Officer Kasdin denying the request, stating that it is not the usual policy of the Rent Adjustment Program to grant expedited hearings. Due to the extant unlawful detainers, which threaten to displace the tenants before their cases can be heard and because of the importance of an exemption, which permanently removes the tenants' units from rent control, the tenants seek reconsideration of their request for an expedited hearing.

I. Facts and Procedural History

The tenants in all three cases, Ana Salvador, Rosa Gaona, and Maria Pelayo (the "Tenants"), have lived in their homes for seven, twelve, and twelve years, respectively. The Tenants' landlord, May Fong, ("Landlord") filed an exemption petition for the Tenants' Units, L16-0083, on October 31, 2016, seeking an exemption under the Costa Hawkins Rental Housing Act (hereinafter "Costa Hawkins"), California Civil Code Section 1954.52(a)(3). The Tenants filed responses to the Landlord's petition and Tenant Gaona also filed a tenant petition, T17-0015, contesting rent large increases above the CPI amount. The initial hearing decision in favor of the Tenants was appealed first to the Oakland Housing, Residential Rent and Relocation Board, which affirmed, and then by petition for writ of administrative mandate in Superior Court. During that time, the Tenants filed additional petitions contesting rent increases above the CPI amount. On August 9, 2019, the writ was granted in Superior Court, overturning the hearing officer's finding that the Tenants' units "[had] not been sold separately by the subdivider to a bona fide purchaser for value." The Certificate of Exemption was issued on September 23, 2019.

3022 International Boulevard, Suite 410 Oakland, CA 94601

T 510-437-1554 F 510-437-9164

000173

On August 9, 2019, the Tenants filed petitions alleging that their landlord sought or received a Certificate of Exemption by fraud or mistake. The petitions are set for a hearing on February 19, 2020.

On September 17, 2019, the Landlord filed unlawful detainer lawsuits against two of the Tenants, Ms. Pelayo and Ms. Gaona. The suits are based on nonpayment of rent notices premised on the idea that the rent increases at issue in several of the Tenants' cases, which are more than one-hundred percent increases, are lawful. These suits are currently set for trial in Superior Court on January 13, 2019.¹

II. Due Process Requires an Expedited Hearing

The Oakland Residential Rent Adjustment Ordinance aims to have all petitions heard by the Rent Board within sixty days of their original filing date,² although many cases currently take at least six months from their filing date to go to a hearing, and longer before a decision is issued. In contrast, unlawful detainer cases receive scheduling priority in Superior Court; when a landlord requests a trial date, the Court is required to set one within twenty days.³ The Rent Adjustment Ordinance contains no explicit provision for scheduling expedited hearings, but neither does it forbid them.

Per their petitions filed on August 9, 2019, the Tenants seek to present evidence and legal argument demonstrating that the certificate of exemption was issued based on fraud or mistake. The tenants will demonstrate that the units were not lawfully converted to separately alienable units per the requirements of California Civil Code Section 1954.52(a)(3)(A).

In making her claim to an exemption under Costa Hawkins, the Landlord failed to submit evidence that the condominium conversions on which she based the exemption complied with either the applicable provisions of the Oakland Municipal Code or relevant state law. Notably, she stated during the exemption hearing that there are five units at the property and submitted documentation that identifies five parcel numbers at the property. However, the Landlord failed to include a Notice of Subdivision Public Report from the California Department of Real Estate, which is required to sell any unit in a subdivision of five parcels or more under California Business and Professions Code Section 11018.2. The California Court of Appeal has held that noncompliance with this provision renders a unit ineligible for an exemption from rental control under Costa Hawkins.⁴ The Landlord also neglected to demonstrate compliance with other provisions of the Oakland Municipal Code that govern the sale of condominiums. Moreover, documents she submitted in the original exemption case bolster the Tenants' position that the units are not legally alienable. These grounds for overturning the Certificate of Exemption based on fraud and mistake are separate from the finding by the Superior Court overturning the original decision in Case No. L16-0083.

The Rent Board is the proper venue for the presentation of the Tenants' evidence regarding fraud and mistake in the Certificate of Exemption, rather than the expedited process of an unlawful detainer case, in which the Court is likely to defer to an existing finding by the Rent Board. The Landlord's cases

¹ See Notices of Hearing, attached hereto as Exhibit A.

² Oakland Mun. Code § 8.22.100(D)(1).

³ Code Civ. Proc. § 1170.5.

⁴ See *City of W. Hollywood v. 1112 Inv. Co.*, 105 Cal. App. 4th 1134 (2003).

against the Tenants are premised on rent increases above the CPI amount, which are not lawful if the Certificate of Exemption was issued based on fraud or mistake.

The Tenants seek an expedited hearing so that the Rent Board may hear their claims before their unlawful cases go to trial. Otherwise, they risk displacement before they have the opportunity to present evidence to the Rent Board demonstrating that the exemption is improper and their units are still rent-controlled. Should no process exist for an expedited hearing, no tenant unable to pay an exorbitant increase could ever challenge the validity of a certificate of exemption before their landlord evicted them. Rather, the proscription of expedited hearings emboldens landlords to file unlawful detainer cases against tenants who file petitions in order to exert pressure and prevent their hearings from ever taking place.

CONCLUSION

Because of the extant unlawful detainer cases, should the Tenants not receive an expedited hearing, they will be at risk of eviction without having their petitions filed nearly four months ago heard on the merits. In light of the above, the Tenants respectfully request that their petitions be set for hearing within thirty days of today's date, or the earliest possible hearing date thereafter.

Date: December 9, 2019

Respectfully submitted,



Jackie Zanetti
Attorney for Tenants

Cc: May Lee Fong

EXHIBIT A

May Fong
358 Cerro Court
Daly City, CA 94015

Centro Legal de la Raza
Attn: Zaneri, Jackie
3022 International Blvd
Suite 410
Oakland, CA 94601

**Superior Court of California, County of Alameda
Hayward Hall of Justice**

Fong
Plaintiff/Petitioner(s)
VS.
Gaona
Defendant/Respondent(s)
(Abbreviated Title)

No. [REDACTED]

NOTICE OF HEARING

To each party or to the attorney(s) of record for each party herein:
Notice is hereby given that the above entitled action has been set for:
Master Jury Trial

You are hereby notified to appear at the following Court location on the date and time noted below:

Master Jury Trial:
DATE: 01/13/2020 TIME: 09:30 AM DEPARTMENT: 511
LOCATION: Hayward Hall of Justice, 2nd Floor
24405 Amador Street, Hayward

Jury fees of (\$150.00) per each party demanding a jury must be deposited at the Clerk's Office no later than 25 calendar days before the date initially set for trial, except in unlawful detainer cases where fees must be deposited at least five days prior to the trial date. (CCP 631(b)).

Jury fees deposited shall not be refunded if the court finds there has been insufficient time to notify the jurors that the trial would not proceed at the time set. (CCP 631.3.)

Except as otherwise required by law, in general civil and probate departments, the services of an official court reporter are not normally available. For civil trials, each party must serve and file a statement before the trial date indicating whether the party requests the presence of an official court reporter. (Local Rule 3.95). In limited jurisdiction cases, parties may request electronic recording.

Dated: 12/04/2019 Chad Finke Executive Officer / Clerk of the Superior Court

By Jeffrey S. [Signature]
Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 12/04/2019.

By Jeffrey S. [Signature]
Deputy Clerk

May Fong
358 Cerro Court
Daly City, CA 94015

Centro Legal de la Raza
Attn: Zaneri, Jackie
3022 International Blvd
Suite 410
Oakland, CA 94601

**Superior Court of California, County of Alameda
Hayward Hall of Justice**

Fong	Plaintiff/Petitioner(s)
VS.	
Arechiga	Defendant/Respondent(s) (Abbreviated Title)

No. [REDACTED]

NOTICE OF HEARING

To each party or to the attorney(s) of record for each party herein:
Notice is hereby given that the above entitled action has been set for:
Master Jury Trial

You are hereby notified to appear at the following Court location on the date and time noted below:

Master Jury Trial:
DATE: 01/13/2020 TIME: 09:30 AM DEPARTMENT: 511
LOCATION: Hayward Hall of Justice, 2nd Floor
24405 Amador Street, Hayward

Jury fees of (\$150.00) per each party demanding a jury must be deposited at the Clerk's Office no later than 25 calendar days before the date initially set for trial, except in unlawful detainer cases where fees must be deposited at least five days prior to the trial date. (CCP 631(b)).

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Except as otherwise required by law, in general civil and probate departments, the services of an official court reporter are not normally available. For civil trials, each party must serve and file a statement before the trial date indicating whether the party requests the presence of an official court reporter. (Local Rule 3.95). In limited jurisdiction cases, parties may request electronic recording.

Dated: 12/04/2019

Chad Finke Executive Officer / Clerk of the Superior Court

By Jeffrey S. [Signature]

Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

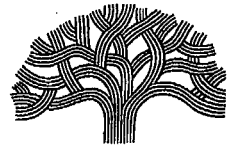
I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 12/04/2019.

By Jeffrey S. [Signature]

Deputy Clerk

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

January 2, 2020

Jackie Zaneri
Centro Legal de La Raza
3022 International Blvd, Suite 410
Oakland, CA 94601

Re: Request for Expedited Hearings in T19-0382, T19-0383 and T19-0384

I am writing on behalf of Chanee Franklin-Minor and myself in response to your request for expedited Hearings in cases T19-0382, T19-0383 and T19-0384. As you know, the RAP program does not currently have a system for expedited Hearings and no exception can be made in these cases.

We are looking at taking a deep dive into our policies and procedures in the coming year, and will consider stakeholder's suggestions in that analysis. Centro Legal will be invited to offer suggestions when the time comes along with representatives from other tenants' rights groups and those who represent the residential property owner community.

In the meantime, the cases are scheduled as before.

Sincerely;

Barbara M. Cohen
Assistant Program Manager
City of Oakland
Rent Adjustment Program

000179

PROOF OF SERVICE

Case Number T19-0382; T19-0383; T19-0384

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Documents Included

Re: Request for Expedited Hearings

Owner

May Lee Fong
358 Cerro Court
Daly City, CA 94015

Tenant(s)

Maria Pelayo
1354 81st Avenue Unit E
Oakland, CA 94621

Rosa Gaona
1354 81st Avenue Unit D
Oakland, CA 94621

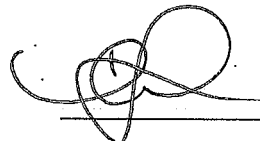
Ana Jeronimo Salvador
1354 81st Avenue Unit A
Oakland, CA 94621

Tenant Representative

Jackie Zaneri, Centro Legal de la Raza
3022 International Blvd., Ste: 410
Oakland, CA 94601

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **January 07, 2020** in Oakland, CA.



Raven Smith

Oakland Rent Adjustment Program

000180

RECEIVED

JAN 13 2020

MOTION TO DISMISS PETITION CASES NUMBER T19-0382, T19-0383
AND T19-0384 BASED ON NO MISTAKE OR FRAUD OF ADJUSTMENT PROGRAM
PROPERTY EXEMPTION AND OF ISSUE AND CLAIM PRECLUSION AKA
RES JUDICATA AND COLLATERAL ESTOPPEL

I. INTRODUCTION

Landlords May Fong and Michael Lee (the "Landlords") are exempt from the Rental Ordinance from City of Oakland, Housing, Residential Rent and Relocation Board ("OHRRRB"). Tenants Ricardo Dominguez and Ana Jeronimo Salvador, Rosa Gaona and Ignacio Gaona, and Maria Arechiga aka Maria Pelayo (the "Tenants") filed a petition on August 9, 2019 challenging the Certificates of Exemptions for their units. However, we are requesting the above petition to be dismissed based on no mistake or fraud on the exemption issued and of Issue and Claim Preclusion also known as Res Judicata and Collateral Estoppel.

II. BACKGROUND

Landlords May Fong and Michael Lee (the "Landlords") filed a Petition of Exemption Case L16-0083 for the four condominium units 1354A-81st Ave, 1354B-81st Ave, 1356A-81st Ave, and 1356B-81st Ave (the "Condominiums") on October 31, 2016.1 Tenants Ricardo Dominguez and Ana Jeronimo, Rosa Gaona and Ignacio Gaona, and Maria Arechiga aka Maria Pelayo (the "Tenants") responded to claim December 28, 2016, January 10, 2017 and January 6, 2017 respectively.2 Notice of hearing from Oakland Rent Board was sent to all parties November 2, 2016 where it states "All proposed tangible evidence, including but not limited to documents and pictures, must be submitted to the Rent Adjustment Program not less than seven (7) days prior to the Hearing. Black out all sensitive information on the documents you submit, like bank or credit card account numbers and Social Security numbers. Propose evidence presented later may be excluded from consideration."3 The hearing was held on February 23, 2017 where the Landlords as Plaintiffs Pro Per and the Tenants with their pro bono attorneys from La Raza de Central were all present to provide or dispute any and all evidence in the case of the four condominium units for the City of Oakland Rent Board to grant Certificate of Exemption to be permanently exempt from the Rent Adjustment Ordinance. The Landlords submitted documentation from Old Republic Public Title Report to evidence the four referenced parcels are in fact Condominiums and are exempt from the Rental Adjustment ordinance based on the Costa-Hawkins Rental Housing Act (Civ. C. §1954.50, et seq.). Again, all parties had their chance at the hearing to present any and all evidence supporting or denying the condominium units to be exempt.

On April 14, 2017, the hearing officer ordered the "subject units were not exempt from the Rent ordinance." The Rent Board ruled that the sold-separately exception to Costa-Hawkins applies to petitioners' condominiums because petitioners bought those condominiums within a single building. Yet that statutory exception does not apply to bona fide purchasers—regardless if a purchaser buys one, multiple, or all the condominiums in a building. This point was argued by the Landlords' appellate attorney and issued more supporting evidence by including the Grant deed with the purchase of the individual parcels and referencing to the *Golden State Venture vs City of Oakland* case Superior Court of California, County of Alameda, No. RG16834166,4 reversed the Rent Board's decision due t

III. LEGAL DISCUSSION

A. *The Fong v City of Oakland Rent Board and Tenants precludes Tenants arguing that Costa Hawkins or Property Exemption does not apply here.*

“‘Res judicata’ [claim preclusion] describes the preclusive effect of a final judgment on the merits. Res judicata prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. Under the doctrine of res judicata, if a plaintiff prevails in an action, the cause is merged into the judgment and may not be asserted in a subsequent lawsuit; a judgment for the defendant serves as a bar to further litigation of the same cause of action. [¶] A clear and predictable res judicata doctrine promotes judicial economy. Under this doctrine, all claims based on the same cause of action must be decided in a single suit; if not brought initially, they may not be raised at a later date. ‘‘Res judicata precludes piecemeal litigation by splitting a single cause of action or relitigation of the same cause of action on a different legal theory or for different relief.’’ [Citation.]” (Mycogen Corp. v. Monsanto Co. (2002) 28 Cal.4th 888, 896-897, 123 Cal.Rptr.2d 432, 51 P.3d 297, italics omitted.)”

Tenants Ricardo Dominguez and Ana Jeronimo Salvador, Rosa Gaona and Ignacio Gaona, and Maria Arechiga aka Maria Pelayo are the same parties of the same cause of action in the second suit - for the four property units to be exempt from Rent Control as the condominiums are covered by the Costa-Hawkins Act and not subject to Oakland’s rent ordinance. There was a final judgment on the merits and it was so ordered this case cannot be relitigated by Superior Court of California Ruling.⁸

Furthermore, Res judicata will bar a lawsuit if the claim could have been raised in the prior proceeding. (People v. Damon (1996) 51 Cal.App.4th 958, 974-975, 59 Cal.Rptr.2d 504.)

The Tenants had more than two opportune hearings to present their claims and was not brought up initially, they may not be raised at a later date as precluded by Res judicata.


B. *By Superior Court order Fong v City of Oakland,⁸ The OHRRRB is also prohibited from relitigating this issue by the doctrine of collateral estoppel. The doctrine of collateral estoppel forbids a party from re-litigating a specific factual or legal issue that has already been actually decided by another court when the identical issue was actually litigated in a prior suit and was finally adjudicated against a party to the first suit or a person in privity. (Key v. Tyler (2019) 34 Cal.App.5th 505, -.)*

The tenants attempt argue that this case does not present the identical issue as was litigated in Case No. L16-0083 and decided by Superior Court. Whereas the Landlords were seeking for the Certificate of Exemption based on the property units were Condominiums and Costa Hawkins applies here. The tenants contend the units are not legally alienable. As stated in Superior Court ruling,⁸ the parties agree that the units in question are condominium units and that Fong and Lee were bona fide purchasers. This issue had already been litigated in the rent board hearings and Superior Court and judgment had been made on these merits of the case. As argued by Landlord’s appellate attorney, so long as the condominiums retain separate title through the sales process, the Costa-Hawkins condominium exemption from rent control applies. (AR 207-

Dated: January 4, 2020

Respectfully submitted,

MAY LEE FONG AND MICHAEL B. LEE


By, ~~MAY LEE FONG~~, Landord

Cc: Jackie Zaneri

HL 0083 RM/BKB

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	RECEIVED For date stamp. CITY OF OAKLAND RENT ARBITRATION PROGRAM 2016 OCT 31 AM 9:47 LANDLORD PETITION FOR CERTIFICATE OF EXEMPTION (OMC §8.22.030.B)
---	---

Please Fill Out This Form Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed. Attach to this petition copies of the documents that prove your claim. Before completing this petition, please read the Rent Adjustment Ordinance, section 8.22.030. A hearing is required in all cases even if uncontested or irrefutable.

Section 1. Basic Information

Your Name May Lee Fong Michael B Lee	Complete Address (with zip code) 358 Cerro Court Daly City, Ca 94015	Telephone Day: 415-812-9908	
Your Representative's Name	Complete Address (with zip code)	Telephone Day:	
Property Address 1354-81st Ave, #A, B, Oakland, Ca 94621 1356-81st Ave, #A, B, Oakland, Ca 94621		Total number of units in bldg or parcel. 6	
Type of units (circle one)	Single Family Residence (SFR)	<input checked="" type="checkbox"/> Condominium	<input type="checkbox"/> Apartment or Room
If an SFR or condominium, can the unit be sold and deeded separately from all other units on the property?		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Section 2. Tenants. You must attach a list of the names and addresses, with unit numbers, of all tenants residing in the unit/building you are claiming is exempt.

Section 3. Claim(s) of Exemption: A Certificate of Exemption may be granted only for dwelling units that are permanently exempt from the Rent Adjustment Ordinance.

New Construction: This may apply to individual units. The unit was newly constructed and a certification of occupancy was issued for it on or after January 1, 1983.

Substantial Rehabilitation: This applies only to entire buildings. An owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project. The average basic cost for new construction is determined using tables issued by the Chief Building Inspector applicable for the time period when the Substantial Rehabilitation was completed.

**LANDLORD PETITION
FOR CERTIFICATE OF EXEMPTION ADDENDUM**

Section 2.

1354 - 81st Avenue #A, Oakland, Ca 94621

Tenants: Ricardo Dominguez, Ana Jeronimo, et al

1354 - 81st Avenue #B, Oakland, Ca 94621 (AKA 1354-81st Avenue #D)

Tenants: Rosa Gaona, Ana Rosas, Ignacio Gaona

1356 - 81st Avenue #A, Oakland, Ca 94621

Tenants: Yuliana Apodara, Salazar Apodaca, et al

1356 - 81st Avenue #B, Oakland, Ca 94621 (AKA 1354-81st Avenue #E)

Tenants: Lorena Arechiga, Maria Arechiga, Rafael Arechiga, Alejandro Arechiga, Leo Pena

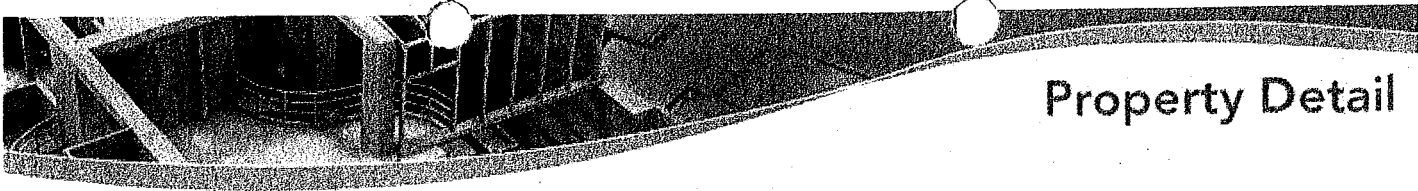
Single-Family or Condominium (Costa-Hawkins):

1. No
2. No
3. No
4. No
5. Yes
6. 1354 - 81st Avenue #A, Oakland, Ca 94621 - 8/3/12

1354 - 81st Avenue #B, Oakland, Ca 94621
AKA 1354 - 81st Ave # D - 9/1/10

1356 - 81st Avenue #A, Oakland, Ca 94621 - 11/1/07

1356 - 81st Avenue #B, Oakland, Ca 94621
AKA 1354 - 81st Ave # E - 11/1/07

A black and white photograph of a modern building's interior, showing a curved architectural element and a staircase.

Property Detail

Subject Property : **1354 81st Ave # B Oakland CA 94621**

Owner Information

Owner Name : **Fong Grant W / Fong May L**
Mailing Address : **358 Cerro Ct, Daly City CA 94015-4087**
Vesting Codes : **Husband/wife / Ea / Tenants In Common**

Location Information

County : **Alameda, Ca** APN : **042-4247-082**
Census Tract / Block : **4089.00 / 1** Subdivision : **Buenaventura Map 02**
Legal Lot : **10** School District : **Oakland**
Legal Block : **E** Munic/Township : **Oakland Incorp**

Last Market Sale Information

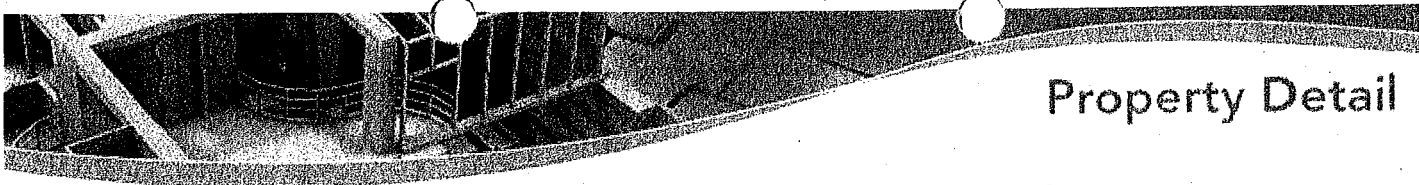
Recording/Sale Date : **03/29/2012 / 03/07/2012** Document # : **107555**
Sale Price : **\$199,500** Deed Type : **Grant Deed**
Sale Type : **Full**
Seller Name : **Deutsche Bk Series 2003-2**

Property Characteristics

Gross Area : **1,315** Bath(F/H) : **2** Construction : **Wood**
Living Area : **1,315** Year Built / Eff : **1976 / 1976** Style : **Unknown**
Total Rooms : **6** # of Stories : **1** Quality : **Average**
Bedrooms : **4**

Property Information

Land Use : **Condominium** Res/Comm Units : **6** State Use : **(D60z)**
County Use : **Condominiums - Single Resident**



Property Detail

Subject Property : **1356 81st Ave # B Oakland CA 94621**

Owner Information

Owner Name : **Fong Grant W / Fong May L**
Mailing Address : **358 Cerro Ct, Daly City CA 94015-4087**
Vesting Codes : **Husband/wife / Ea / Tenants In Common**

Location Information

County : **Alameda, Ca** APN : **042-4247-084**
Census Tract / Block : **4089.00 / 1** Subdivision : **Buenaventura Map 02**
Legal Lot : **10** School District : **Oakland**
Legal Block : **E** Munic/Township : **Oakland Incorp**

Last Market Sale Information

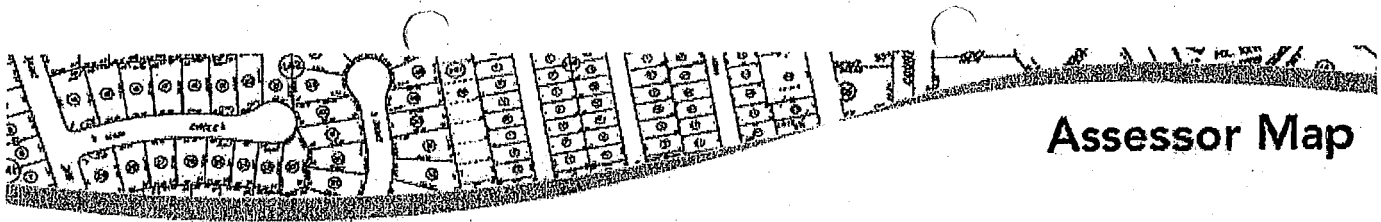
Recording/Sale Date : **03/29/2012 / 03/07/2012** Document # : **107555**
Sale Price : **\$199,500** Deed Type : **Grant Deed**
Sale Type : **Full**
Seller Name : **Deutsche Bk Series 2003-2**

Property Characteristics

Gross Area : **655** Bath(F/H) : **1** Construction : **Wood**
Living Area : **655** Year Built / Eff : **1976 / 1976** Style : **Unknown**
Total Rooms : **4** # of Stories : **1** Quality : **Average**
Bedrooms : **2**

Property Information

Land Use : **Condominium** County Use : **Condominiums - Single Resident** State Use : **(D60z)**



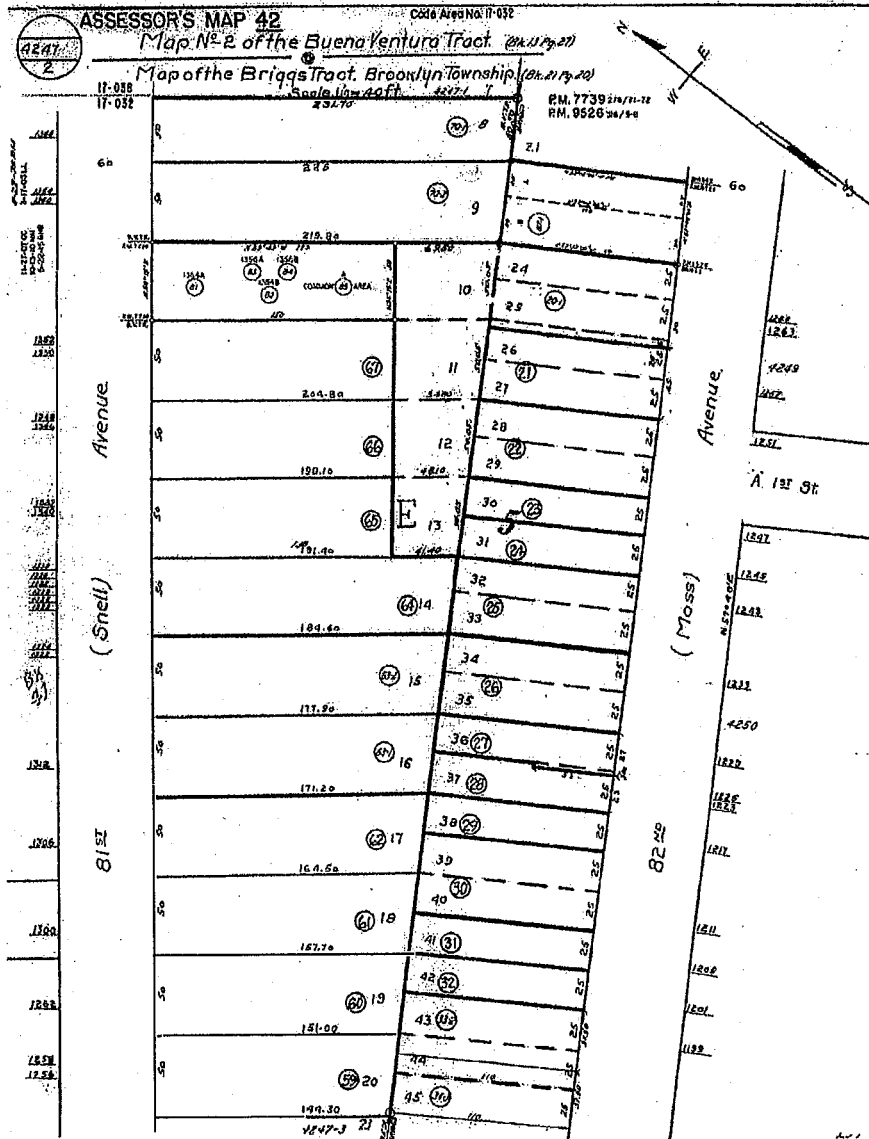
Assessor Map

CASE # L16-0083

RECEIVED

DEC 14 2016

RENT ADJUSTMENT PROGRAM
OAKLAND



Old Republic Title

Prepared On : 05/03/2016



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000188



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

for Date Stamp Only
RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2016 DEC 28 PM 2:23

CASE NUMBER L16-0083

**TENANT RESPONSE TO
CLAIM OF PERMANENT EXEMPTION**

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name RICARDO DEMINGUEZ O	Complete Address (with Zip Code) 1354 81ST UNIT A OAKLAND CA 94621	Telephone (510) 827-6372
Your Representative's Name	Complete Address (with Zip Code)	Telephone (510) 827-6372

Number of Units on the parcel: The unit I rent is: a house an apartment a condo

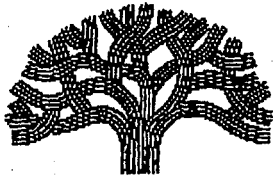
Rental History:
Date you entered into the Rental Agreement for this unit: Date you moved into this unit:

Are you current on your rent? Yes No Lawfully Withholding Rent
If you are lawfully withholding rent, attach a written explanation of the circumstances.

Exemption Contested
For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>
¹ <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

RECEIVED
for Date Stamp Only
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2017 JAN 10 PM 2:33

CASE NUMBER L16-0083

TENANT RESPONSE TO
CLAIM OF PERMANENT EXEMPTION

Please Fill Out This Form Completely. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <i>Rosa Gaona</i>	Complete Address (with Zip Code) <i>1354 81st Ave. #D Oakland CA 94621</i>	Telephone <i>(510) 830-9804</i>
Your Representative's Name <i>Maria Zarate</i>	Complete Address (with Zip Code) <i>627 Dowling Blvd apt. 1 San Leandro CA 94577</i>	Telephone <i>(510) 760-2574</i>

Number of Units on the parcel:

The unit I rent is:

a house an apartment a condo

Rental History:

Date you entered into the Rental Agreement for this unit:

Date you moved into this unit:

Are you current on your rent? Yes No Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

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For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

- <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>
- <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

When May Fong purchased the property she raised my rent and has continued to raise it every year. we were fine with first increase but then it doubled the second time and now this last increase was more than double and almost positive that its not legal!

PROOF OF SERVICE

Case Number L16-0083

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

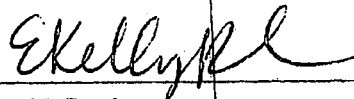
Today, I served the attached Copy of Tenant Response for Exemption Petition by placing a true copy of it in a sealed envelope in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Owner

May Lee Fong & Michael B. Lee
358 Cerro Ct
Daly City, CA 94015

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 13, 2017 in Oakland, CA.



Esther K. Rush

Oakland Rent Adjustment Program

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment Program (RAP Notice):

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
11/30/2016	01/01/2017	\$ 965	\$ 1,150	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
11/30/2015	01/01/2016	\$ 950	\$ 965	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
11/30/2014	01/01/2015	\$ 935	\$ 950	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
11/30/2013	01/01/2014	\$ 920	\$ 935	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
11/30/2012	01/01/2013	\$ 850	\$ 920	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

Verification

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.

Maria Delgado
 Tenant's Signature

12-12-2016
 Date

 Tenant's Signature

 Date

Important Information

This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-

You cannot get an extension of time to file your Response by telephone.

File Review

You should have received with this letter a copy of the landlord petition.

For an appointment to review a file call (510) 238-3721.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

FOR COURT USE ONLY

TORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Roxanne Hoegger Alejandre SBN 222160
Bay Area Legal Aid
405 14th Street, 11th Floor
Oakland, Ca 94612

TELEPHONE NO.: (510) 663-4744 FAX NO. (Optional): (510) 663-4740

E-MAIL ADDRESS (Optional):

ATTORNEY FOR (Name): Maria Arechiga

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda

STREET ADDRESS: 1225 Fallon Street

MAILING ADDRESS: same as above

CITY AND ZIP CODE: Oakland, CA 94612

BRANCH NAME: Rene C. Davidson Courthouse

ENDORSED
FILED
ALAMEDA COUNTY

OCT 13 2005

CLERK OF THE SUPERIOR COURT
By Leo F. Tungohan, Deputy

MARRIAGE OF

PETITIONER: Maria Arechiga

RESPONDENT: Cristobal Arechiga

JUDGMENT

DISSOLUTION LEGAL SEPARATION NULLITY

Status only

Reserving jurisdiction over termination of marital or domestic partnership status

Judgment on reserved issues

Date marital or domestic partnership status ends:

10/12/05
FORTHWITH

CASE NUMBER:

847222-3

1. This judgment contains personal conduct restraining orders modifies existing restraining orders.
The restraining orders are contained on page(s) of the attachment. They expire on (date):

2. This proceeding was heard as follows: Default or uncontested By declaration under Family Code section 2336
 Contested

a. Date:

Dept.:

Room:

b. Judicial officer (name):

Temporary judge

c. Petitioner present in court

Attorney present in court (name):

d. Respondent present in court

Attorney present in court (name):

e. Claimant present in court (name):

Attorney present in court (name):

f. Other (specify name):

3. The court acquired jurisdiction of the respondent on (date): 3/19/2002

a. The respondent was served with process.

b. The respondent appeared.

THE COURT ORDERS, GOOD CAUSE APPEARING

4. a. Judgment of dissolution is entered. Marital or domestic partnership status is terminated and the parties are restored to the status of single persons

(1) on (specify date):

FORTHWITH 10/12/05

(2) on a date to be determined on noticed motion of either party or on stipulation.

b. Judgment of legal separation is entered.

c. Judgment of nullity is entered. The parties are declared to be single persons on the ground of (specify):

d. This judgment will be entered nunc pro tunc as of (date):

e. Judgment on reserved issues.

f. The petitioner's respondent's former name is restored to (specify): Maria del Rosario

g. Jurisdiction is reserved over all other issues, and all present orders remain in effect except as provided below.

h. This judgment contains provisions for child support or family support. Each party must complete and file with the court a Child Support Case Registry Form (form FL-191) within 10 days of the date of this judgment. The parents must notify the court of any change in the information submitted within 10 days of the change, by filing an updated form. The Notice of Rights and Responsibilities—Health Care Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order (form FL-192) is attached.

CITY of OAKLAND

250 Frank H. Ogawa Plaza, Suite 5313, Oakland, CA 94612-2034
Department of Housing and Community Development
Rent Adjustment Program



TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

NOTICE OF HEARING

File Name: Fong et al v. Tenants
Property Address: 1354-1356 81st Avenue Oakland, CA 94621
Case Number: L16-0083

The Hearing in your case will begin:

Date: Thursday, February 23, 2017
Time: 10:00 a.m.
Place: 250 Frank H. Ogawa Plaza , Ste. #5313 , Oakland, CA 94612

The Hearing is public and will continue from day to day until completed.

Order to Produce Evidence

All proposed tangible evidence, including but not limited to documents and pictures, must be submitted to the Rent Adjustment Program not less than seven (7) days prior to the Hearing. Black out all sensitive information on the documents you submit, like bank or credit card account numbers and Social Security numbers. Proposed evidence presented later may be excluded from consideration. The Hearing Officer can also use the official records of the City of Oakland and Alameda County Tax Assessor as evidence if provided by the parties for consideration.

Request to Change Date

A request for a change in the date or time of Hearing ("continuance") must be made on a form provided by the Rent Adjustment Program. The party requesting the continuance must try to get an agreement for alternate dates with the opposing parties. If an agreement cannot be reached, check the appropriate box on the Request. A change will be granted only for good cause. A second request for a change of date will be granted only for exceptional circumstances.

Hearing Record

The Rent Adjustment Program makes an audio recording of the Hearing. Either party may bring a court reporter to record the proceedings at their own expense.

Inspections

During the Hearing, the Hearing Officer may decide to conduct an inspection of the subject unit(s). The inspection may be conducted on the same day as the Hearing or scheduled for a later date selected by the Hearing Officer and mutually agreed upon by the parties present at the Hearing. The inspection will be recorded but no testimony will be taken.

PROOF OF SERVICE

Case Number L16-0083

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

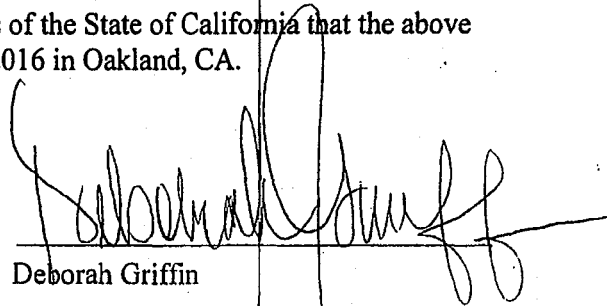
Today, I served the attached Notice of Hearing by placing a true copy of it in a sealed envelope in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Owner

May Lee Fong & Michael B. Lee
358 Cerro Ct
Daly City, CA 94015

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 02, 2016 in Oakland, CA.



Deborah Griffin

Oakland Rent Adjustment Program

1 PAUL J. KATZ (CA Bar No. 243932)
2 **KATZ APPELLATE LAW**
3 484 Lake Park Ave. #603
4 Oakland, CA 94610
5 Tel: (510) 920-0543
6 Email: paul@katzappellatelaw.com

7 Attorney for Petitioners May Lee Fong and Michael B. Lee

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED JURISDICTION

11 MAY LEE FONG and MICHAEL B. LEE,

12 Petitioners,

13 v.

14 CITY OF OAKLAND, HOUSING,
15 RESIDENTIAL RENT AND RELOCATION
16 BOARD,

17 Respondent,

18 RICHARD DOMINGUEZ, ANA JERONIMO
19 SALVADOR, CARLA FLURRY, ANA
20 ROSAS, ROSA GAONA, IGNACIO GAONA,
21 LEO PENA, LORENA ARECHIGA, MARIA
22 ARECHIGA, and RAFAEL ARECHIGA,

23 Real Parties in Interest.

CASE NO. RG18930130

ASSIGNED FOR ALL PURPOSES TO:
JUDGE FRANK ROESCH
DEPARTMENT 17

**NOTICE OF MOTION AND MOTION
FOR JUDGMENT ON THE WRIT OF
ADMINISTRATIVE MANDAMUS;
MEMORANDUM OF POINTS AND
AUTHORIES IN SUPPORT;
[MOTION FOR JUDICIAL NOTICE IN
SUPPORT FILED CONCURRENTLY]**

Hearing date/time: June 7, 2019; 9:00 a.m.
Date Action Filed: November 28, 2018

24 TO EACH PARTY AND TO THE COUNSEL OF RECORD FOR EACH PARTY:

25 YOU ARE HEREBY NOTIFIED THAT on June 7, 2019, 9:00 a.m., in Department 17 of this
26 court located at 1221 Oak Street, Oakland, California, petitioners May Lee Fong and Michael B. Lee
27 will move the court for a peremptory writ of administrative mandamus setting aside respondent City of
28 Oakland, Housing, Residential Rent and Relocation Board's October 2, 2018 appeal decision. This
motion is made on the ground that respondent erred in ruling that petitioners' four condominiums were
subject to Oakland's rent ordinance. This motion will be based on this notice, the attached memorandum

EXHIBIT 5

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I. BACKGROUND

3 When petitioners bought six units in Oakland in 2012, a prior owner had already subdivided four
4 of those units into condominiums. (1 AR 113–133.) So, in 2016, petitioners filed a Landlord Petition for
5 Certificate of Exemption claiming that their four condominiums were exempt from Oakland’s rent-
6 control scheme pursuant to the Costa-Hawkins Act’s condominium exemption. (1 AR 6–12.) The next
7 year, a tenant in one of those condominiums filed a Tenant Petition claiming that petitioners had
8 increased her rent above that allowed by the rent ordinance. (1 AR 49–51.) Respondent City of Oakland,
9 Housing, Residential Rent and Relocation Board (“Rent Board”) then consolidated the two petitions.
10 (1 AR 76.)

11 The Rent Board’s hearing officer ruled that the four condominiums did not qualify under the
12 condominium exemption. (1 AR 152.) Since petitioners had bought an entire building, which included
13 the four condominiums, the officer reasoned that the condominiums fit into an exception of that
14 exemption for condominiums that have not been sold separately by the subdivider to a bona fide
15 purchaser for value. (1 AR 152.) Pending appeal of that hearing officer decision, a Court of Appeal in
16 another case (*Golden State Ventures v. City of Oakland Rent Board*) issued an unpublished decision
17 against the Rent Board on the same issue as presented in this case. (2 AR 198–215.) The Court of
18 Appeal ruled that the exception to the condominium exemption covers only original subdividers, not
19 subsequent purchasers. (2 AR 206–211.) Despite the *Golden State Ventures* decision, the Rent Board in
20 this case affirmed the officer’s decision that the exception applied to petitioners. (2 AR 235, 239–241.)

21 Petitioners now ask that this court to order a peremptory writ directing the Rent Board to set
22 aside its appeal decision and to enter a new decision declaring that petitioners’ four condominiums are
23 exempt from rent control.

24 II. LEGAL DISCUSSION

25 A. *This court reviews de novo the Costa–Hawkins Act, using the ordinary statutory-*
26 *construction rules.*

27 Petitioners argue that the Rent Board misapplied an exception to the Costa–Hawkins Act to four
28 of petitioners’ condominiums. Although a court ordinarily reviews a petition for writ of administrative

1 Cal.App.4th at p. 1045.) The relevant Costa-Hawkins exemption covers units that are “alienable separate
2 from the title to any other dwelling unit,” which includes condominiums because (unlike apartments)
3 they can be sold individually without affecting other units’ titles. (§ 1943.52, subd. (a)(3)(A); see also
4 *Burien, supra*, 230 Cal.App.4th at p. 1045; § 4105 [defining a “[c]ommunity apartment project”];
5 § 4125, subd. (b) [defining a “condominium”].) This “ ‘exemption’ ” from local rent control “ ‘was
6 originally created to spur construction of condominiums, seen as an affordable housing alternative, and
7 in recognition that condominiums were built with the same purpose as apartment units.’ ” (*City of West
8 Hollywood v. 1112 Investment Co.* (2003) 105 Cal.App.4th 1134, 1143 (*City of West Hollywood*),
9 quoting Sen. Comm. on the Judiciary, Analysis of S.B. 985 (2001–2002 Reg. Sess), at p. 2; see also
10 Mot. for Judicial Notice, Decl. of Paul J. Katz, Ex. A (MJN, Ex. A).)

11 But in 2001, the Legislature limited this exemption to condominiums that have “ ‘been sold
12 separately *by the subdivider* to a bona fide purchaser for value.’ ” (*City of West Hollywood, supra*, 105
13 Cal.App.4th at p. 1142, quoting § 1954.52, subd. (a)(3)(B)(ii), italics added.) This sold-separately
14 exception prevents an apartment-building owner from subdividing the property, maintaining ownership
15 of the resulting condominiums, and charging market-rate rent for those units. (*Id.* at p. 1148.)

16 But once a subdivider *has* sold a condominium to a bona fide purchaser, the sold-separately
17 exception no longer applies by its own terms. Thus, that sold condominium fits within Costa-Hawkins’
18 general condominium exemption from rent control.

19 To avoid this bright-line distinction between subdividers and subsequent purchasers, the Rent
20 Board grasps onto the phrase “sold separately” within the exception. Although the Rent Board’s
21 definition of “sold separately” is not clear, their position is that the phrase at the very least does not
22 cover multiple condominiums in a building that are sold to a single buyer. Yet the sold-separately
23 exception requires only that the purchaser be “bona fide” and pay “value” for the condominium.¹ Had
24 the Legislature intended to impose an *additional* qualification that the purchaser not buy *other*
25 condominiums in the same building, the Legislature would have done so expressly. This court should
26 not insert words that the Legislature omitted. (*DiCampli-Mintz v. County of Santa Clara* (2012) 55

27
28 ¹ These limitations prevent a subdivider from circumventing the exception by “selling” the
condominium in a sham transaction to a related entity and then charging market-rate rent.

1 And in any event, the word “separately” is not superfluous under the exception’s proper
2 construction. Unlike what happened here, a subdivider can sell multiple condominiums in a single
3 transaction and *merge* those units into one, larger unit. (See § 1093; *Van't Rood v. County of Santa*
4 *Clara* (2003) 113 Cal.App.4th 549, 569.) The word “separately” in the exception would prevent the
5 merged unit from being exempt from rent control.

6 Another reason to avoid the Rent Board’s construction is that it would lead to absurd results.
7 (*John v. Superior Court* (2016) 63 Cal.4th 91, 96.) In this case, petitioners happened to acquire the four
8 condominiums contemporaneously.² But what would happen under the Rent Board’s construction if
9 petitioners had purchased one of the condominiums each year for four consecutive years? In the initial
10 year, petitioners could charge market-rate rent since they would own only one unit in the building. But it
11 is unclear what would happen when petitioners later acquire the other condominiums. On one hand, it
12 would make no sense to *re-apply* rent control to the first condominium. (After all, it had been “sold
13 separately” even under the Rent Board’s construction.) But on the other hand, in year four petitioners
14 own all the condominiums in the entire building. So under the Rent Board’s construction of *Costa-*
15 *Hawkins*, petitioners would have evaded rent control simply by staggering its real-estate purchases. Or
16 even more simply, petitioners could have created entities and had each one buy a separate condominium
17 at the same time. The Legislature would not have created such a flimsy limitation. (See *United Farm*
18 *Workers of America, AFL-CIO v. Dutra Farms* (2000) 83 Cal.App.4th 1146, 1156.)

19 The plain meaning of *Costa-Hawkins* shows that, because petitioners are bona fide purchasers
20 for value, they are allowed to charge market-rate rent.

21 C. *The Costa-Hawkins exception’s legislative history confirms that a single purchaser of*
22 *multiple condominiums in a building is entitled to charge market-rate rent for those units.*

23 Above, petitioners contend that the meaning of “sold separately” is clear. But if it were not clear,
24 the provision’s legislative history would confirm that petitioners’ construction is correct.

25 The Legislature enacted the sold-separately exception to prevent subdividers—not subsequent

26 _____
27 ² The fact that the four condominiums were conveyed in a single deed is immaterial since they
28 retained separate title throughout the transaction. (See § 1093 [providing that conveying multiple parcels
in a single deed, absent contrary written statement, “does not operate in any manner to alter or affect the
separate and distinct nature of the real property so described”].)

1 unit's title must be separate from that of other dwelling units. If the
2 Legislature had intended that in order to qualify for the exemption each
3 condominium in a building must also be sold separately to individual
4 purchasers, it could have plainly stated that requirement. In our view, the
5 interpretation that the Rent Board advocates does not flow naturally from
6 the statutory language, instead adding a requirement that the Legislature,
7 for whatever reason, did not see fit to include.

8 (AR 206.)

9 That *Golden State Ventures* appeal decision precludes the Rent Board from contending that
10 Costa-Hawkins does not apply here. Once a party has “had a full and fair to litigate [an] issue in [a] first
11 case but lost, ... the party should not be allowed to relitigate the same issue in a new lawsuit.” (*DKN*
12 *Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 826–827.) So issue preclusion (formerly known as
13 collateral estoppel) “applies: (1) after final adjudication (2) of an identical issue (3) actually litigated and
14 necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in
15 privity with that party.” (*Id.* at p. 825.) Issue preclusion applies here because the Court of Appeal’s final
16 *Golden State Ventures* decision, in ruling against the Rent Board, held that the sold-separately exception
17 applies only to original subdividers and not to subsequent purchasers. (AR 206–211.) Thus, the Rent
18 Board cannot try to relitigate that legal issue in this case. (See *County of Los Angeles v. County of Los*
19 *Angeles Assessment Appeals Bd.* (1993) 13 Cal.App.4th 102, 109, fn. 4 [collateral estoppel applies to
20 legal issues].)

21 Indeed, the Rent Board’s non-voting attorney stated at the Rent Board appeal hearing in this case
22 that “[t]he reasoning [of *Golden State Ventures*] would apply to this case” (2 AR 235.) But that
23 attorney reasoned that *Golden State Ventures* did not bind the Rent Board here because that Court of
24 Appeal decision was unpublished. (2 AR 235.) While it is true that *Golden State Ventures* is not binding
25 on other litigants, it is binding on the Rent Board—the litigant in that case who lost the same issue as
26 presented here.

27 The Rent Board might try to argue that this case does not present the identical issue as was
28 litigated in *Golden State Ventures*. Whereas the purchaser in that case acquired the condominiums

EXHIBIT 6

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I. INTRODUCTION

Petitioners May Lee Fong and Michael B. Lee purchased a six-unit apartment building in 2012. The building consisted of four condominium units and two apartment units. There were tenants in each of the units. Years later they noticed rent increases for the condominium tenants arguing that these units were exempt under state law from the City of Oakland Rent Ordinance. While it may be true that a dwelling that is “alienable separate from the title to any other dwelling unit” and “sold separately” to a “bona fide purchaser for value” is exempt under state law, Petitioners’ transaction falls squarely *outside* of the exemption.

The units in the apartment building were not sold *separately* because Petitioners purchased *the entire apartment building*. The units are not exempt from the Rent Ordinance controlling residential rents. Although Petitioners identify a previous trial court order and an unpublished Court of Appeal decision on this issue, neither is controlling. Further, the cases are factually distinguishable from those in the prior court orders. Issue preclusion is not applicable. The petition must be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioners purchased an apartment building containing six units in 2012. (Tab 36 Administrative Record (“AR”) 130-133.) The units are physically located on one “parcel,” but have separate APN numbers. (Tab 39.) Petitioners filed a Landlord Petition for Certificate of Exemption in 2016, alleging that four units in the apartment building were condominiums and exempt from the City’s Rent Ordinance under a state law Costa-Hawkins exemption. (Tab 5 AR 006-012.) In 2017, prior to the hearing on the Petition for Certificate for Exemption, a tenant in one of the condominium units filed a Tenant Petition challenging the rent increase from Petitioners on her unit. (Tab 19 AR 049-051.) The City’s Rent Program consolidated the Landlord Petition and Tenant Petition. (Tabs 29 and 30 AR 076-084.)

On February 23, 2017, a hearing officer heard the case from both Petitioners and the tenant challenging the rent increase. (Tab 32.) The hearing officer issued a decision finding that “Costa-Hawkins does not exempt dwelling units that have not been sold separately.” (Tab 41 AR 152.) The hearing officer found that the units in this case “were not sold separately” because the

1 In order to construe this Costa-Hawkins exemption to effectuate the legislative purpose,
2 the Court must, first, consider the plain or ordinary meaning of the provision when read in light of
3 the statutory scheme. *Mosser Cos. v. San Francisco Rent Stabilization and Arbitration Bd.*, 233
4 Cal. App. 4th 505, 512 (2015). The pertinent Costa-Hawkins provision states in part:

5
6 (a) Notwithstanding any other provision of law, an owner of residential real
7 property may establish the initial and all subsequent rental rates for a dwelling or
8 a unit about which any of the following is true:

9 (3)(A) It is **alienable separate from the title to any other dwelling unit** or is a
10 subdivided interest in a subdivision . . .

11 (B) This paragraph **does not apply to either of the following:**

12 (ii) A condominium dwelling or unit that **has not been sold separately by the**
13 **subdivider to a bona fide purchaser for value.**

14 Cal. Civ. Code § 1954.52(a)(3)(A) and (B) (emphasis added). The Rent Board concedes that the
15 condominium conversion in this case is complete. The parties also agree that the condominium
16 titles for the units at issue are “alienable separate from the title to any other dwelling unit.” Cal.
17 Civ. Code § 1954.52(a)(3)(A). The City disagrees, however, that the plain meaning of the phrase
18 “sold separately” includes the transaction between Petitioners and the prior owner.

19 The phrase “sold separately” does not encompass condominium units that were sold
20 together – where one owner continues to own the entire building, with tenants who continue to
21 reside in their units as they did prior to the conversion, and no units have been sold to individual
22 owners. In Petitioners’ transaction, they essentially “stepped into the shoes” of the prior owner
23 and continued to operate the building as an apartment building – though the units were legally
24 titled as condominiums. (Tab 103 AR 0373:12-17.) Indeed, the tenants did not know that a
25 conversion or any other noticeable change had occurred. (Tab 32 AR 89:21-28; 100:11-14;
26 105:22-23; 109:25-110:7.)

27 The City acknowledges that the Costa-Hawkins exemption does not explicitly state that
28 “sold separately” means sold to individual purchasers – but it also does not explicitly define “sold
separately.” When read in the context of other subsections of section 1954.52(a), it is
unmistakable that “sold separately” does not mean selling the entire building to one owner who,

1 To the extent the Court disagrees that the plain meaning of “sold separately” is only
2 subject to one interpretation, the legislative history and public policy behind the exemption
3 support only one outcome – the units in this case are not covered by Costa-Hawkins. *Mosser*, 233
4 Cal. App. 4th at 512.

5 **C. The legislative purpose of the Costa-Hawkins condominium exemption.**

6 Neither the plain language of “sold separately,” nor the legislative intent behind the
7 provision, encompasses a single buyer purchasing *all* the units in a building. The over-arching
8 purpose of Costa-Hawkins is to prevent rent control laws from regulating rental rates even after
9 units are vacant. *Mosser*, 233 Cal. App. 4th at 514. The parties agree that the initial purpose of
10 the Costa-Hawkins subsection containing the exemption at issue was to spur condominium
11 construction which was seen as an affordable housing alternative. *City of West Hollywood v.*
12 *1112 Inv. Co.*, 105 Cal. App. 4th 1134, 1143 (2003).

13 In keeping with this purpose, relevant provisions of Costa-Hawkins were drafted to
14 prevent local rent control from impacting condominiums. *Id.* Legislators proposed the
15 exemption in section 1954.52(a)(3)(B)(ii) to combat those owners who found a loophole in the
16 subsection – the provisions applied even if they did not fully complete the condominium
17 conversion. (Petitioners’ Request for Judicial Notice (“RJN”), Ex. A.) Although not specifically
18 at issue in this case because the Rent Board does not dispute that the condominium conversion
19 was completed, the reasoning behind closing the loophole applies equally and forcefully in this
20 case.

21 Although both exhibits in Petitioners’ RJN support the City’s position, Exhibit A, “Senate
22 Judiciary Committee Analysis of Senate Bill 985, as amended on April 2, 2001,” notes a key
23 concern for amending 1954.52(a)(3)(B)(ii): preventing owners from strategically *avoiding local*
24 *rent control laws*. (Petitioners’ RJN, Ex. A at 4.) The analysis states in part:

25
26 According to the sponsor, this amendment is **necessary to close a loophole** in law
27 that **allows landlords to avoid local rent control laws**. . . However, the language
28 was broadly written and, as a consequence, **some apartment property owners**
have taken advantage of the law by obtaining a permit to convert to
condominiums . . . and **contin[ing] to rent the apartment units, free from**
local rent controls because of the Costa-Hawkins exemption. . . . Thus,

1 (2002)). Issue preclusion applies: (1) after final adjudication; (2) of an identical issue; (3)
2 actually litigated and necessarily decided in the first suit; and (4) asserted against one who was a
3 party in the first suit or one in privity with that party. *Id.* at 825 (citing *Lucido v. Superior Court*,
4 51 Cal. 3d 335, 341 (1990)).

5 The issue in the underlying case is not identical the one in *Golden State Ventures*. In that
6 case, the petitioner purchased an entire building in *one* transaction – here, Petitioners purchased
7 the units in separate transactions. (Tabs 35-37.) The buyer in *Golden State Ventures* purchased
8 directly from the subdivider and there was, at least, a question regarding the condominium
9 conversion completion and whether the buyer was a bona fide purchaser – here, Petitioners
10 purchased from the bank after foreclosure and there was no dispute concerning the conversion
11 process. The building that the buyer in *Golden State Ventures* purchased was entirely converted
12 to condominiums – here, there are two units that remain “apartments.” The court in *Golden State*
13 *Ventures* had varying facts which lead to a different analysis than that in the instant case. For
14 these reasons, issue preclusion does not apply.

15 **IV. CONCLUSION**

16 The Costa-Hawkins state law exemption applies to condominium units that have been “sold
17 separately.” The plain meaning of the exemption, as well as the legislative history and public policy,
18 supports one conclusion. Petitioners’ purchase is not exempt from Costa-Hawkins and the City’s
19 Rent Ordinance applies.

20
21 Dated: May 23, 2019

BARBARA J PARKER, City Attorney

22 By: 

JAMILAH A. JEFFERSON, Superv. Deputy City Attorney
23 Attorneys for Defendant
24
25
26
27
28

Katz Appellate Law
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484 Lake Park Ave #603
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Oakland, CA 94610

City Attorney's Office
Attn: Jefferson, Jamilah A.
One Frank H. Ogawa Place, 6th Floor
Oakland, CA 94612

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Fong <p style="text-align: center;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> City of Oakland , Housing , Residential Rent & Relo <p style="text-align: center;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG18930130</u> Order Date: 06/07/2019 Time: 02:00 PM Dept: 17 Judge: Frank Roesch
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The Petition for Writ of Mandate was set for hearing on 06/07/2019 at 02:00 PM in Department 17 before the Honorable Frank Roesch. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: Petitioners May Lee Fong and Michael B. Lee petition the Court for a writ of administrative mandate directing Respondent City of Oakland, Housing, Residential Rent and Relocation Board ("OHRRRB") to set aside its decision denying Petitioners' application for certificate of exemption from Oakland's Rent Adjustment Program ("RAP"). (Oakland Mun. Code ch. 8.22.)

Fong and Lee bid for and purchased several condominiums in the same building at a foreclosure sale. The building's prior owner had operated the building as an apartment house, but the units were converted to condominiums before being sold to Fong and Lee. The same tenants remained in the condominium units (formerly apartments) and were unaware that a conversion had even occurred. Fong and Lee applied for exemption from the RAP on the grounds that the units were condominiums exempt from local rent control under the Costa-Hawkins Act (Civ. Code § 1954.50 et seq.). OHRRRB denied the application on the grounds that Fong and Lee had "stepped into the shoes" of the prior landlord.

The sole issue on this petition is a question of law and statutory interpretation of the provision of the Costa-Hawkins Act that exempts condominiums from local rent control ordinances after they are sold to a bona fide purchaser. (Civ. Code § 1954.52(a)(3) [exempting dwelling units "alienable separate from the title to any other dwelling unit" from local rent control].) After the Costa-Hawkins Act was initially passed, the Legislature became concerned that some apartment buildings were being legally converted to condominiums but never sold to new owners; buildings could escape local rent control through a trick of paperwork while maintaining the same ownership, management, and tenants. (See Decl. of P.J. Katz Ex. A (Sen. J. Comm. Analysis) ["[S]ome apartment property owners have taken advantage of the law by obtaining a permit to convert to condominiums, but never completing the process. . . ."]) The legislature amended the exemption to provide that condominiums is not available for "[a] condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value." (Stats 2001, ch. 729 (S.B. 985), § 2, codified as Civ. Code § 1954.52(a)(3)(B)(ii); see also Decl. of P.J. Katz Ex. A ["This bill would close that loophole and provide that the exemption would apply only when the unit is sold separately to a bona fide purchaser for value. Thus, apartment units that have remained

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: RG18930130
Order After Hearing Re: of 06/07/2019

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 06/10/2019.

Chad Finke Executive Officer / Clerk of the Superior Court

By



digital

Deputy Clerk

CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA, SUITE 5313, OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Agency
Rent Adjustment Program

(510) 238-3721
FAX (510) 238-6181
CA RELAY 711

ORDER

**Re: Case Nos. T19-0382 through T19-0384, Pelayo, et al. v. Fong
Addresses: 1354 - 81st Ave., #s A, D, & E, Oakland, CA**

Background: On January 13, 2020, the owner filed a document entitled "Motion to Dismiss Petition" regarding the above-named cases. The tenants' Petitions allege, in part, that the exemption from the Rent Adjustment Ordinance that was previously granted was based on fraud or mistake.

Discussion: A tenant petition alleging that an exemption from the Rent Adjustment Ordinance was granted due to fraud or mistake is authorized under O.M.C. Section 8.22.090(A)(1)(e). Therefore, it is proper to hold a Hearing regarding the tenants' petitions.

It is further noted that on October 8, 2019, the Rent Adjustment Program mailed copies of the tenants' Petitions to the owner, along with blank Response forms and a cover letter which stated, in part: "**YOU MUST FILE A WRITTEN RESPONSE TO THE ATTACHED TENANT PETITION(S) WITHIN THIRTY-FIVE (35) DAYS FROM THE DATE OF MAILING OR THIS NOTICE OR A DECISION MAY BE MADE AGAINST YOU. THE RESPONSE MUST BE FILED ON THE PROPER FORM . . .**" (Bold face type in the original).

The owner has yet to file Responses to any of the tenants' Petitions.

ORDER: The owner's motion is denied. The Hearing will take place on the scheduled date, as follows:

The Hearing in your cases will begin:

Date: February 19, 2020
Time: 10:00 A. M.
**Place: 250 Frank H. Ogawa Plaza, Ste. #5313 (Dalziel Building)
Oakland, CA 94612**

The Hearing is public and will continue from day to day until completed.

000210

Order to Produce Evidence

ALL TANGIBLE EVIDENCE, INCLUDING BUT NOT LIMITED TO DOCUMENTS AND PICTURES, MUST BE SUBMITTED TO THE RENT ADJUSTMENT PROGRAM NOT LESS THAN SEVEN (7) DAYS PRIOR TO THE HEARING. EVIDENCE PRESENTED LATER MAY BE EXCLUDED FROM CONSIDERATION BY THE HEARING OFFICER.

Continuances

A request for a change in the date or time of hearing must be made on a form provided by the Rent Adjustment Program. The party requesting the continuance must try to arrange alternate dates for hearing with the opposing parties. If an agreement cannot be reached, the request shall so state. A continuance will be granted only for good cause. A second request for continuance will only be granted only for **exceptional** circumstances.

Hearing Record

The Rent Adjustment Program makes an audio recording of the hearing. Either party may bring a court reporter to record the proceedings at their own expense.

Representatives

Any party to a hearing may be represented or assisted by anyone designated by the party in writing or on the record at the hearing.

Interpreter

The hearing must be conducted in English. The Rent Adjustment Program is not responsible for providing an interpreter. However, the City may have interpreters available upon request through the Equal Access Program of the City Manager's Office. Any party may bring a person to the hearing to interpret for them. The interpreter will be required to take an oath that they are fluent in both English and the relevant foreign language and they will fully and to the best of their ability translate the proceedings.

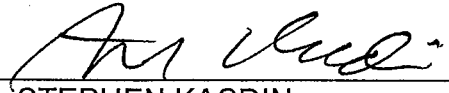
Failure to Appear for Hearing

If the petitioner fails to appear at the hearing, on the date, at the time and at the place stated above, the Hearing Officer may either conduct the hearing and render a decision, or dismiss the petition.

Accommodations

Hearings are held in a wheelchair accessible facility. Contact the Office of the City Clerk, One Frank H. Ogawa Plaza, or call (510) 238-3611 (VOICE) or (510) 839-6451 (TTY) to arrange the following services: 1) Sign interpreters or Phonic Ear Hearing Device for the hearing impaired; 2) large print, Braille, or cassette tape text for the visually impaired. The City of Oakland complies with applicable City, State and Federal disability related laws and regulations protecting the civil rights of persons with environmental illness/multiple chemical sensitivities (EI/MCS). Auxiliary aids and services and alternative formats are available by calling (510) 238-3716 at least 72 hours prior to the hearing. Please refrain from wearing strongly scented products to the hearing.

Dated: January 15, 2020



STEPHEN KASDIN
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T19-0382; T19-0383; T19-0384

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Documents Included

Order

Owner

May Lee Fong
358 Cerro Court
Daly City, CA 94015

Tenant(s)

Maria Pelayo
1354 81st Avenue Unit E
Oakland, CA 94621

Rosa Gaona
1354 81st Avenue Unit D
Oakland, CA 94621

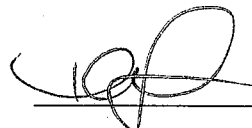
Ana Jeronimo Salvador
1354 81st Avenue Unit A
Oakland, CA 94621

Tenant Representative

Jackie Zaneri, Centro Legal de la Raza
3022 International Blvd., Ste: 410
Oakland, CA 94601

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **January 16, 2020** in Oakland, CA.



Raven Smith

Oakland Rent Adjustment Program

000213

PROOF OF SERVICE
Case Number T19-0384

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached document listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Document Included

Copy of Owner's Motion to Dismiss

Tenant

Ana Jeronimo Salvador
1354 81st Ave., #A
Oakland, CA 94621

Tenant Representative

Jackie Zaneri
Centro Legal de la Raza
3022 International Blvd., Suite 410
Oakland, CA 94601


I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **January 16, 2020** in Oakland, CA.



Ava Silveira
Oakland Rent Adjustment Program

RECEIVED

 CITY OF OAKLAND CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp: JAN 28 2020 RENT ADJUSTMENT PROGRAM OAKLAND PROPERTY OWNER RESPONSE
---	--	---

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

CASE NUMBER T TI 9-0384

Your Name May Lee Fong Michael B Lee	Complete Address (with zip code) 358 Cerro Court Daly City, Ca 94015	Telephone: 415-812-9908 Email: mayfong@pacbell.net
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone: Email:
Tenant(s) Name(s) Ana Jeronimo Salvador	Complete Address (with zip code) 1354 81st Ave Unit A Oakland, Ca 94621	
Property Address (If the property has more than one address, list all addresses) 1354 81st Ave Unit A, Oakland, Ca 94621		Total number of units on property 6

Have you paid for your Oakland Business License? Yes No Lic. Number: 00149707
The property owner must have a current Oakland Business License. If it is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes No APN: 42-4247-85
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Date on which you acquired the building: 03 /29 / 12.

Is there more than one street address on the parcel? Yes No .

Type of unit (Circle One): House / Condominium / Apartment, room, or live-work

I. JUSTIFICATION FOR RENT INCREASE You must check the appropriate justification(s) box for each increase greater than the Annual CPI adjustment contested in the tenant(s) petition. For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent

III. EXEMPTION

If you claim that your property is exempt from Rent Adjustment (Oakland Municipal Code Chapter 8.22), please check one or more of the grounds:

The unit is a single family residence or condominium exempted by the **Costa Hawkins Rental Housing Act** (California Civil Code 1954.50, et seq.). **If claiming exemption under Costa-Hawkins, please answer the following questions on a separate sheet:**

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building?
5. Is the unit a single family dwelling or condominium that can be sold separately?
6. Did the petitioning tenant have roommates when he/she moved in?
7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?

The rent for the unit is **controlled, regulated or subsidized** by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance.

The unit was **newly constructed** and a certificate of occupancy was issued for it on or after January 1, 1983.

On the day the petition was filed, the tenant petitioner was a resident of a **motel, hotel, or boarding house** less than 30 days.

The subject unit is in a building that was **rehabilitated** at a cost of 50% or more of the average basic cost of new construction.

The unit is an accommodation in a **hospital, convent, monastery, extended care facility, convalescent home, non-profit home for aged, or dormitory** owned and operated by an educational institution.

The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

IV. DECREASED HOUSING SERVICES

If the petition filed by your tenant claims **Decreased Housing Services**, state your position regarding the tenant's claim(s) of decreased housing services. If you need more space attach a separate sheet. Submit any documents, photographs or other tangible evidence that supports your position.

V. VERIFICATION

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.



Property Owner's Signature

10/31/19

Date

CASE NUMBER T T19-0384 IV. EXEMPTION

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)? NO
2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)? NO
3. Was the prior tenant evicted for cause? NO
4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building?
NO
5. Is the unit a single family dwelling or condominium that can be sold separately? YES
6. Did the petitioning tenant have roommates when he/she moved in? NO
7. If the unit is a condominium, did you purchase it? If so:
 - 1) from whom? ? YES FROM AMERIQUEST MORTGAGE SECURITIES INC
 - 2) Did you purchase the entire building? YES

CASE NUMBER T19-0382, T19-0383 AND T19-0384
ADDENDUM RESPONSE TO TENANT CLAIM

RECEIVED

JAN 28 2020

RENT ADJUSTMENT PROGRAM
OAKLAND

A) Petition Invalid Unit Exemption is under Claim Preclusion and Issue Preclusion

This issue or claim is preclusion, that the issues raised in this new case were already decided in the prior case or could have been decided in the case. Please see attached Motion to Dismiss this petition is by barred res judicata and collateral estoppel. The hearing officer and RAP should conclude Tenant's fraud or mistake claim is barred by the decision in *The Fong v City of Oakland Rent Board and Tenants*, because opinion was issued final judgment on the merits allowing Fong to invoke the claim preclusion or issue preclusion doctrines.

B) Petition Invalid Filed Past Deadline

TENANT filed petition past the deadline set forth by the Oakland Municipal Code. It states "You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

C) Petition Invalid Filed Past Deadline Procedurally Incorrect

TENANT cannot contest the Property exemption by fraud or mistake since this petition is procedurally filed too early. LANDLORD requests this case be dismissed. Oakland Rent Board ordinance allows a tenant may contest a prior certificate of exemption based on "fraud or mistake regarding the granting of the certificate." (Oakland Mun. Code, §§ 8.22.030.B.1.c) However, there was no fraud or mistake with exemption. LANDLORD purchased the units as "alienable separate from the title to any other dwelling unit," which includes condominiums because (unlike apartments) they can be sold individually without affecting other units' titles. (§ 1943.52, subd. (a)(3)(A); see also *Burien*, supra, 230 Cal.App.4th at p. 1045; § 4105 [defining a "[c]ommunity apartment project"]; § 4125, subd. (b) [defining a "condominium"].) and this was proven and judgment ruled by Superior Court.

TENANT cannot make a claim of fraud or mistake with this petition since the Certificate of Exemption was not issued until after this petition was filed. This was petition was filed August 9, 2019 and the unit was not issued an exemption until September 20, 2019.¹ Therefore, this petition was filed prior to the exemption issued and a hearing cannot be heard unless the petition was made after the exemption was issued. This petition should be dismissed and tenant must refile a new petition after the certificate of exemption was issued by Oakland Rent Board if not ruled under claim and issue preclusion.

000218

Request #19-4131

CLOSED

As of February 11, 2020, 1:49pm

Details

Unless specifically stated otherwise, all of the following requested records correspond to the condominium conversion of 1354-1356 81st Avenue, Oakland CA 94621. The planning number initially assigned to the project was TPM07739.

Please note that the condominium conversion process began in 2001. As such, it may be necessary to check currently unused databases or files in storage in order to produce the requested records. Additionally, some records may have been archived under a different organizational structure of the Community and Economic Development Agency. Many of the records which would normally be processed by the City Engineer may have been received and processed by the at-the-time Director of Building Services, Calvin Wong. As a result, the condominium conversion file may be archived in Building Services records. I estimate that many of the requested records related to the Parcel Map were received in 2002-2003 but for the purpose of this request please do not limit your search to any time window. All documents requested are vital to this record request. I apologize for the burden and appreciate all efforts to locate the requested records.

The requested records are:

1. The entire condominium conversion file corresponding to planning project # TPM07739.
2. The Tentative Parcel Map (TPM07739) and all documents and attachments submitted with it in the application process.
3. The Preliminary Soil Report submitted in support of the condominium conversion, or any records indicating the granting of a waiver.
4. The subdivider's statement certifying that no unit in the conversion will be offered for sale until the unit conforms to the noise insulation standards promulgated in Title 25 of the California Administrative Code, Section 1092, or its successor.
5. The Parcel Map submitted to the City Engineer, Director of Building Services, Calvin Wong, or any employee of the city of Oakland. Any notes or records indicating the date of submission of the Parcel Map.
6. All surveys, field notes, traverse sheets and any other documents or data received or maintained by the City Engineer, Director of Building Services, Calvin Wong, or any employee of the city of Oakland demonstrating the technical correctness of the Parcel Map and the Tentative Parcel Map and demonstrating that the Parcel Map accurately represented the property.
7. The notice of subdivision public report or notice of start of sales program filed with the Parcel Map.
8. Any notice of start of sales program ever filed for 1354-1356 81st avenue.

9. The property report prepared and signed by an appropriately licensed contractor or engineer submitted with the Parcel Map describing the condition and useful life of the roof and foundations, and the mechanical, electrical, plumbing, and structural elements of all existing structures on the property, and estimating future property maintenance costs.
 10. The Structural pest report submitted with the Parcel Map.
 11. The statement, signed by a person experienced in the field of acoustical testing and engineering, certifying that the converted units conform to the noise insulation standards promulgated in Title 25 of the California Administrative Code, Section 1092, or its successor submitted with the Parcel Map.
 12. Any documents including, but not limited to notes, internal memos, letters, and emails, granting extensions of time to the Tentative Parcel Map TPM07739.
 13. Any notes, internal memos, written communications, or other documents created, received, or maintained by any employee of the planning and building department or any agency of the City of Oakland outlining building improvements or alterations necessary to complete the condominium conversion of 1354-1356 81st avenue.
 14. Any records listing variances, exemptions, time extensions, or exceptions granted to the subdivider in the condominium conversion of 1354-1356 81st avenue.
 15. The full plan spec for building record # B0103918. All available records related to building record # B0103918 including but not limited to applications, permits, approvals, letters, notes, memos, drawings, photographs, inspection notes, and finalizing records.
 16. All available records related to design review project # DR01327 including but not limited to applications, permits, approvals, letters, notes, memos, drawings, photographs, inspection notes, and finalizing records.
 17. All available records related to record # RB9801637 including but not limited to all reports, plans, inspection notes, photos, attachments and any other associated documents.
 18. Any records of any proceedings or communications of the Planning Commission that addressed, on any level, the condominium conversion of 1354-1356 81st avenue.
 19. Any written communications including but not limited to letters and emails between
- [Read less](#)

Received

August 16, 2019 via web

Due

August 26, 2019

Departments

Planning & Building

CITY OF OAKLAND
 PLANNING AND BUILDING DEPARTMENT
 2019 FEB 13 PM 4:49

Documents

[Address History.pdf](#)

[B0103918 - comments.pdf](#)

[B0103918 - inspections_Redacted.pdf](#)

[B0103918_Redacted.pdf](#)

[RB9801637 - comments.pdf](#)

[RB9801637 - inspections.pdf](#)

[TPM7737.pdf](#)

Staff

Point of Contact

David Guillory

Timeline

Document(s) Released

Public

[B0103918_Redacted.pdf](#)

November 21, 2019, 4:24pm

Request Closed

Public

We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).

November 19, 2019, 8:08am

Document(s) Released

Public

[Address History.pdf](#)

[B0103918 - comments.pdf](#)

[B0103918 - inspections_Redacted.pdf](#)

[RB9801637 - comments.pdf](#)

[RB9801637 - inspections.pdf](#)

November 15, 2019, 12:47pm

Document(s) Released

Public

[TPM7737.pdf](#)

September 6, 2019, 11:20am

Department Assignment

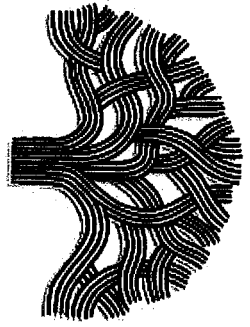
Public
3 of 281
000221

Request Opened

Public

Request received via web

August 16, 2019, 11:39am



CITY OF OAKLAND

Address History (Beginning ≈ 1987)

APN	Unit #	Record ID	Date Opened	Status	Status Date	Description
1354, 81ST, AVE						
042		RI700671	8/8/2017	Completed Cert Received	9/25/2017 12:00:00 AM	Re-Roofing Certification - Obstruction permit required: Reserve curbside parking or obstruct sidewalk/street (scaffolding, canopy, fencing, dumpsters, traffic, etc.)
424708100		ZC151472	6/23/2015	Withdrawn	6/23/2015 12:00:00 AM	Zoning Clearance @ 1354 8th Avenue #B (Home Occupation/Coliseum Flea Market)
042		1501950	6/10/2015	Abated	7/21/2015 12:00:00 AM	Unit B. Fire damage; work being done without permit. Cut wires, trash and debris in basement.
424708200		ZC142100	9/8/2014	Approved	9/8/2014 12:00:00 AM	Zoning clearance for home office for off-site house cleaning; no customers/employees at home, no storage, 1 small vehicle for work
042		RE1201892	7/2/2012	Final	10/9/2012 12:00:00 AM	Replace electric heaters in 4-plex. No gas to building.
424708500	#C	1203109	6/25/2012	Abated	10/9/2012 12:00:00 AM	DOING WORK W/O PERMITS-HOLES IN WALLS/ MATERIAL LEFT IN UNITS
042	C	RE1201007	4/6/2012	Final	5/9/2012 12:00:00 AM	400 AMP SERVICE UPGRADE
424708500		R1100661	12/19/2011	Permit Issued	12/19/2011 12:00:00 AM	RE ROOF
042	7085500	ZC112717	12/19/2011	Approved	12/19/2011 12:00:00 AM	home office for a handyman service note: no sales, services, or storage on site.
424708500		1001586	3/15/2010	Abated	4/30/2010 12:00:00 AM	WATER DAMAGE FROM UPSTAIRS, POSSIBLY CREATING MOLD.
042		0603964	6/1/2006	Abated	7/5/2006 12:00:00 AM	OVERGROWN VEGETATION
424706800		E0104418	12/19/2001	Final	9/3/2002 12:00:00 AM	Electrical for rehab
042		MO102064	12/19/2001	Final	8/28/2002 12:00:00 AM	Mechanical for rehab, replace one FAU, gas test.
424706800						

For real-time, direct access to information via the Internet, 24 hours a day - <https://aca.accela.com/oakland>

1354, 81ST, AVE

APN	Unit #	Record ID	Date Opened	Status	Status Date	Description
042		P0103566	12/19/2001	Expired	7/10/2003 12:00:00 AM	Plumbing for rehab of 4 unit bldg.
424706800		B0103918	8/28/2001	Final	9/19/2002 12:00:00 AM	Refinish and rehab entire 4 unit bldg. Relocate exterior stairs.
042		DR01327	7/17/2001	TBD		Rehab existing fourplex
424706800		0103080	4/19/2001	Abated	10/10/2002 12:00:00 AM	REAR CONCRETE STAIRS DEFECTIVE.WINDOWS AND DOORS BROKEN THROUGH- OUTWALLS,CEILING,FLOORS,FURNACES,PLUMBING FIXTURES,& WIRING DEFECTIVE.
042		TPM07739	3/2/2001	Approved	3/2/2001 12:00:00 AM	Convert 4 exist. vacant res. units to condos.
424706800		0006296	6/22/2000	Abated	7/13/2000 12:00:00 AM	TRASH, DEBRIS AND OVERGROWN WEEDS
042		P9801950	11/2/1998	Expired	11/4/1999 12:00:00 AM	1 toilet

1356, 81ST, AVE

APN	Unit #	Record ID	Date Opened	Status	Status Date	Description
042	B	P1901875	11/1/2019	Permit Issued	11/1/2019 12:00:00 AM	Replace kitchen sink, toilet and vanity in condo unit 1356B.
424708400		M1901652	11/1/2019	Permit Issued	11/1/2019 12:00:00 AM	Replace range vent in condo unit 1356A.
042	A	P1901876	11/1/2019	Permit Issued	11/1/2019 12:00:00 AM	Replace kitchen sink, toilet and vanity in condo unit 1356A.
424708300		M1901651	11/1/2019	Permit Issued	11/1/2019 12:00:00 AM	Replace range vent in condo unit 1356B.
042	B	RB1904714	10/18/2019	Issued	10/18/2019 12:00:00 AM	Remove and replace portions of drywall to rewire condo unit 1356B.
424708400		RB1904715	10/18/2019	Issued	10/18/2019 12:00:00 AM	Remove and replace portions of drywall to rewire condo unit 1356A.
042	A	RE1902914	10/18/2019	Final	11/4/2019 9:03:19 AM	Upgrade to 125amp subpanel, add 3 lights and 4 receptacles, related to removing and replacing portions of drywall to rewire condo unit 1356A.
424708300		RE1902915	10/18/2019	Final	11/4/2019 9:03:37 AM	Upgrade to 125amp subpanel, add 3 lights and 4 receptacles, related to removing and replacing portions of drywall to rewire condo unit 1356B.
042	B	P9801950	11/2/1998	Expired	11/4/1999 12:00:00 AM	1 toilet
424708400		9807678	9/29/1998	Closed	11/17/2000 12:00:00 AM	FRONT DOOR HAS 2 INCH SPACE, KITCHEN & BATH FANS NOT OPERABLE,LIVING ROOM CEILING HAS LEAKAGE, STOVE HAS GAS LEAK, SCREEN MISSING
042	B	RB9801637	5/13/1998	Expired	4/29/1999 12:00:00 AM	Termite repairs, see attached report, items: 1a-f, 3a-b, 4a-d, 9a-b, 10a-c, 10f, 11a-e.

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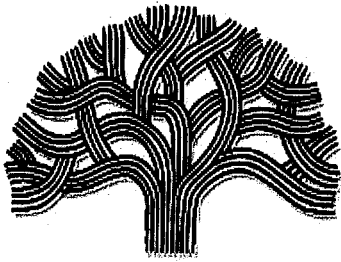
1356, 81ST AVE

APN	Unit #	Record ID	Date Opened	Status	Status Date	Description
B		9604189	7/30/1996	Abated	9/16/1996 12:00:00 < NOT VACANT >	CRACKS IN WALKWAY, DILAPIDATED APARTMENT, ETC

For real-time, direct access to information via the Internet, 24 hours a day - <https://aca.accela.com/oakland>



Update Results



CITY OF OAKLAND

Record Detail with Comments

Record ID: B0103918

Description: Refinish and rehab entire 4 unit bldg. Relocate exterior stairs.

APN: 042 424706800

Address: 1354 81ST AVE

Unit #:

Date Opened: 8/28/2001

Record Status: Final

Record Status Date: 9/19/2002

Job Value: \$70,000.00

Requestor: *LETTER OF AUTH. O.K.*****

:

Business Name:

License #:

Comment Date	Commenter	Comment
--------------	-----------	---------

Requestor: LUIS CAMACHO

:

Business Name:

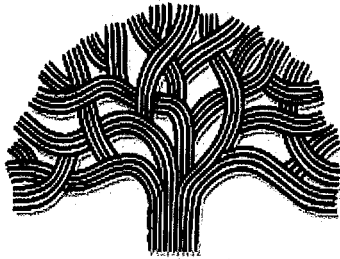
License #:

Comment Date	Commenter	Comment
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For real-time, direct access to information via the Internet, 24 hours a day - <https://aca.accela.com/oakland>



Update Results



CITY OF OAKLAND

Record Detail with Inspection Log

Record ID: **B0103918**

Description: Refinish and rehab entire 4 unit bldg. Relocate exterior stairs.

APN: 042 424706800

Address: 1354 81ST AVE

Unit #:

Date Opened: 8/28/2001

Record Status: Final

Record Status Date: 9/19/2002

Job Value: \$70,000.00

Requestor: ***LETTER OF AUTH. O.K.***

:

Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
10/30/2001		SHEARWALL/ROOF 03N	APPROVED	ROOF FRAMING AND ROOF NAIL
12/20/2001		FTG/SLAB/EMBED 01P	CORRECTION NOTICE	REV. REINSPT REQUIRED FOR INT. FTG AND SLAB
12/27/2001		FTG/SLAB/EMBED 01P	INSP CANCELLED	INSPECTION CANCELLED BY ED/RESCHED/ND
12/28/2001		FTG/SLAB/EMBED 01P	CORRECTION NOTICE	NOT READY
1/3/2002		FTG/SLAB/EMBED 01P	APPROVED	FTG. & SLAB APPRVL.
4/15/2002		SHEARWALL/ROOF 03N	CORRECTION NOTICE	NOTICE REINSPT REQUIRED
4/26/2002		SHEARWALL/ROOF 03N	PARTIAL APPROVAL	EXT. SHEAR & HOLES FOR H.D.'S
5/1/2002		LATH/CEILING 03N	CORRECTION NOTICE	NOTICE REV AND REINSPT REQ'D
5/10/2002		LATH/CEILING 03N	CORRECTION NOTICE	CORRECTION NOT MADE REINSPT REQUIRED
5/15/2002		LATH/CEILING 03N	NO PROGRESS	WORK NOT COMPLETE
5/22/2002		LATH/CEILING 03N	APPROVED	EXT. LATH -H.D.'S VERIFIED
5/28/2002	DAVID C MILES	ROUGH 03P	INSP CANCELLED	CANCELLED BY LUIS
6/18/2002	DAVID C MILES	WALLBRD/SHINGLE 03N	PARTIAL APPROVAL	S/R OK NO RECORD OF ROUGH BLD OK
9/5/2002		FINAL BUILDING 04P	CORRECTION NOTICE	FINAL/LUIS [REDACTED]
9/18/2002		FINAL BUILDING 04P	PARTIAL APPROVAL	
9/19/2002		FINAL BUILDING 04P	APPROVED	

Requestor: LUIS CAMACHO

:

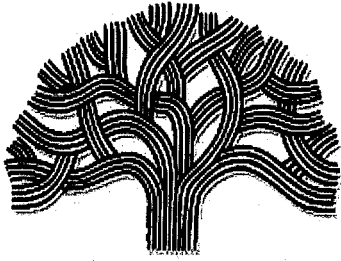
Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
10/30/2001		SHEARWALL/ROOF 03N	APPROVED	ROOF FRAMING AND ROOF NAIL
12/20/2001		FTG/SLAB/EMBED 01P	CORRECTION NOTICE	REV. REINSPT REQUIRED FOR INT. FTG AND SLAB



Update Results



CITY OF OAKLAND

Record Detail with Comments

Record ID: RB9801637

Description: Termite repairs, see attached report, items; 1a-f, 3a-b, 4a-d, 9a-b, 10a-c, 10f, 11a-e.

APN:

Address: 1356 81ST AVE

Unit #:

Date Opened: 5/13/1998

Record Status: Expired

Record Status Date: 4/29/1999

Job Value: \$14,000.00

Requestor: WEBB'S TERMITE & PEST CONTROL

:

Business Name:

License #: PC1091

Comment Date

Commenter

Comment

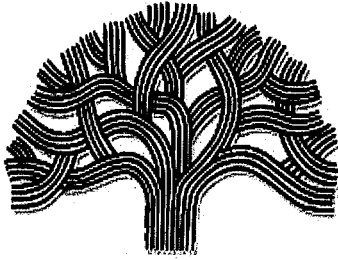
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information via the Internet, 24 hours a
day - <https://aca.accela.com/oakland>

12/27/2001		FTG/SLAB/EMBED 01P	INSP CANCELLED	INSPECTION CANCELLED BY ED/RESCHED/ND
12/28/2001		FTG/SLAB/EMBED 01P	CORRECTION NOTICE	NOT READY
1/3/2002		FTG/SLAB/EMBED 01P	APPROVED	FTG. & SLAB APPRVL.
4/15/2002		SHEARWALL/ROOF 03N	CORRECTION NOTICE	NOTICE REINSPT REQUIRED
4/26/2002		SHEARWALL/ROOF 03N	PARTIAL APPROVAL	EXT. SHEAR & HOLES FOR H.D.'S
5/1/2002		LATH/CEILING 03N	CORRECTION NOTICE	NOTICE REV AND REINSPT REQ'D
5/10/2002		LATH/CEILING 03N	CORRECTION NOTICE	CORRECTION NOT MADE REINSPT REQUIRED
5/15/2002		LATH/CEILING 03N	NO PROGRESS	WORK NOT COMPLETE
5/22/2002		LATH/CEILING 03N	APPROVED	EXT. LATH -H.D.'S VERIFIED
5/28/2002	DAVID C MILES	ROUGH 03P	INSP CANCELLED	CANCELLED BY LUIS
6/18/2002	DAVID C MILES	WALLBRD/SHINGLE 03N	PARTIAL APPROVAL	S/R OK NO RECORD OF ROUGH BLD OK
9/5/2002		FINAL BUILDING 04P	CORRECTION NOTICE	FINAL/LUIS [REDACTED]
9/18/2002		FINAL BUILDING 04P	PARTIAL APPROVAL	
9/19/2002		FINAL BUILDING 04P	APPROVED	

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Update Results



CITY OF OAKLAND

Record Detail with Inspection Log

Record ID: RB9801637

Description: Termite repairs, see attached report, items; 1a-f, 3a-b, 4a-d, 9a-b, 10a-c, 10f, 11a-e.

APN:

Address: 1356 81ST AVE

Unit #:

Date Opened: 5/13/1998

Record Status: Expired

Record Status Date: 4/29/1999

Job Value: \$14,000.00

Requestor: WEBB'S TERMITE & PEST CONTROL

Business Name:

License #: PC1091

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
5/14/1998		ROUGH 03P	PARTIAL APPROVAL	SEE NOTES TERMITE REPORT
5/22/1998		ROUGH 03P	PARTIAL APPROVAL	UNIT A TUB FRAME OK TO COVER
6/2/1998		FTG/SLAB/EMBED 01P	APPROVED	FOOTING FORMS O.K. TO POUR
6/9/1998		LATH/CEILING 03N	APPROVED	EXT. LATH OK
7/27/1998		ROUGH 03P	PARTIAL APPROVAL	UNIT C. BATH O.K. S/T PLUMB. PMT AND APPROVAL
3/26/1999		FINAL BUILDING 04P	INSP CANCELLED	CANCELLED

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CITY OF OAKLAND.



250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2031

Community and Economic Development Agency
Planning & Zoning Services Division

(510) 238-3911
FAX (510) 238-4730
TDD (510) 839-6451

March 23, 2001

Luis Camacho
1127 Livorna Road
Alamo, CA 94507

RE: CASE FILE NO.: TPM 7739, 1354-1356 81st Avenue

Dear Mr. Camacho

Tentative Parcel Map 7739 to create four residential condominium units located at 1354-1356 81st Avenue in the Mixed Housing Type Residential General Plan Land Use Classification and the R-50 Medium Density Residential Zone has been approved. (Environmental Determination: Exempt, Section 15303, State CEQA Guidelines; tentative parcel maps with four or fewer lots) In accordance with provisions of Article 4 (Real Estate Subdivision Regulations) and Article 5 (Parcel Maps), Chapter 7 of the Oakland Municipal Code.

In order for the Tentative Parcel Map to be approved, it must meet the following requirements (citations relate to sections of the Oakland Municipal Code):

- (1) It must conform, as set forth in Section 7-4.011, with the Oakland Comprehensive Plan (General Plan), with any applicable specific plan, and to the Zoning Regulations.
- (2) It must conform with the prescribed street design, lot design and other design standards set forth in Sections 7-4.15 to 7-4.331 and Section 7-5.05, if these standards are applicable to the proposal.

This approval is subject to conditions of approval as stated in the Building Services Division memo dated March 9, 2001 (attached), the Fire Prevention Bureau report dated March 22, 2001 (attached), and following conditions:

1. That the subdivider shall defend, indemnify, and hold harmless the City of Oakland, its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, its agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the City Planning Department, Planning Commission, or City Council. The City shall promptly notify the applicant/subdivider of any claim, action or proceeding and the

City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

2. The subdivider shall provide a "Joint Use and Maintenance Agreement" or a "Covenant, Codes and Restrictions" document for review and approval prior to the approval of any final map for the site. This document shall provide for the easement or other rights of all property owners using the common driveway, and/or landscaping to be maintained in good condition and repair at all times and should provide remedies should this not occur. Upon approval of said document it shall be recorded with the County Recorder with each and every deed applicable to this map.

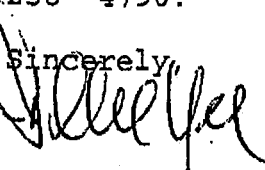
This decision becomes effective ten (10) days from the date of this letter unless appealed to the City Planning Commission. An appeal is made by completing an application and paying the required fee (\$413,00).

A Parcel Map may be certified by the City Engineer at the expiration of the ten (10)-day appeal period from the date of this approval.

A Parcel Map shall be filed with the City Engineer within two (2) years from the date of approval of the Tentative Parcel Map, or within such additional time as may be granted by the Advisory Agency. Failure to file a Parcel Map within these time limits shall nullify the previous approval or conditional approval of the Tentative Parcel Map.

If you have any questions please call case planner Jason Madani at (510) 238-4790.

Sincerely,


WILLIE YEE
Zoning Administrator
Community & Economic Development Agency

CC: Ahmad Moghaddas, 1631 Berkeley Way, Berkeley, CA 94703
Jose Patino, 1127 Livorna Road Alamo, CA 94507
Lourdes Barrozo, Engineering Services
Philip Basada, Fire Prevention Bureau

Job Site 1354 81ST AV Parcel# 042 -4247-068-00 Appl# BO103918
 Descr Refinish and rehab entire 4 unit bldg. Relocate exterior stairs. District: BD-INSP 05
 Permit Issued 09/28/01
 To schedule inspection call (510) 238-3444

Scope: Building: YES Electrical: NO Mechanical: NO Plumbing: NO
 Work Type ALTERATION #Units 4 Plans 2 Energy Calcs
 Bldg Sq Ft #Stories 2 Survey Struct Calcs
 Est Value \$70,000 Const Type 5N Soil Report Occup Codes R-1
 Bldg Use APARTMENTS 3-5 UNITS Sprinkler Zoning
 Applcmt Phone# Lic# License Classes---

Owner PATINO JOSE
 Contractor [Redacted]
 Arch/Engr ***LETTER OF AUTH. O.K.***
 Agent LUIS GAMACHO X [Redacted]
 Applic Addr 1354-1356 81ST AV, OAKLAND CA, 94621

\$1,737.16 TOTAL FEES PAID AT FILING		\$363.00 TOTAL FEES PAID AT ISSUANCE	
\$45.00 Applic	\$197.86 State Regs	\$0.00 Applic	\$0.00 State Regs
\$544.12 Process	\$0.00 School	\$0.00 Process	\$0.00 School
\$0.00 Bedroom	\$0.00 Plot Plan	\$0.00 Bedroom	\$0.00 Plot Plan
\$0.00 Address	\$0.00	\$0.00 Address	\$0.00
\$7.00 SMIP	\$0.00	\$0.00 SMIP	\$0.00
\$0.00 Fire	\$0.00 Zone Conds	\$0.00 Fire	\$0.00 Zoning Cnd
\$706.65 Permit	\$56.53 Recd Mgmt	\$0.00 Permit	\$0.00 Recd Mgmt
\$0.00 Invstg	\$70.00 Gen Plan	\$0.00 Invstg	\$0.00 Gen Plan
\$0.00 Other	\$0.00 Fld Chk	\$363.00 Other	\$0.00 Fld Chk
\$110.00 Zone Insp	\$0.00 Proc Coord	\$0.00 Zone Insp	\$0.00 Proc Coord

Plans Checked By _____ Date _____ Permit Issued By JMP Date 09/28/01
 Special Inspections _____ Finaled By 9-19-02 Date Dm

DIST: ADDRESS: 1354

OWNER/BUILDER APPLICANT

I hereby affirm that I am exempt from the Contractor's License Law for the following reason (Sec. 7031.5. Business and Professions Code. Any city or county which requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for such permit to file a signed statement that he is licensed pursuant to the provisions of the Contractor's License Law Chapter 9 (commencing with Sec. 7000) of Division 3 of the Business and Professions Code, or that he is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than \$500).

I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractor's License Law does not apply to an Owner of property who builds or improves thereon, and who does such work himself or through his own employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of the completion, the owner-builder will have the burden of proving that he did not build or improve for the purpose of sale).

I, as owner of the property, am exempt from the sale requirements of the above due to: 1) I am improving my principal place of residence or appurtenances thereto, 2) the work will be performed prior to sale, 3) I have resided in the residence for the 12 months prior to the completion of the work, and 4) I have not claimed exemption in this subdivision on more than two structures more than once during any three-year period. (Section 7044, Business and Professions Code).

I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractor's License Law does not apply to an owner of property who builds or improves thereon, and who contracts for such projects with a contractor(s) licensed pursuant to the Contractor's License Law).

I, am exempt under Sec. _____ B.&P.C. for this reason _____

Luis Gamacho 9-28-01
 Signature of Owner or Authorized Agent Date

I hereby affirm under penalty of perjury one of the following declarations:

I have and will maintain a certificate of consent to self-insure for worker's compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.

I have and will maintain worker's compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My worker's compensation insurance carrier and policy number are: _____

Carrier _____ Policy Number _____

(This section need not be completed if the permit is for one hundred dollars (\$100-) or less)

I certify that in the performance of the work for which this permit is issued, I shall not employ any person, in any manner, so as to become subject to the worker's compensation laws of California, and agree that if I should become subject to the worker's compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: Failure to secure worker's compensation is unlawful, and shall subject and employer to criminal penalties and civil fines up to one hundred thousand dollars (\$100,000-), in addition to the cost of compensation, damages as provided for in Section 3706 of the Labor Code, interest, and attorney's fees.

Luis Gamacho 9-28-01
 Signature of Owner or Authorized Agent Date

I CERTIFY THAT I HAVE READ THIS APPLICATION AND STATE THAT THE INFORMATION GIVEN IS TRUE AND CORRECT. I AGREE TO COMPLY WITH ALL LOCAL ORDINANCES AND STATE LAWS RELATING TO BUILDING CONSTRUCTION, AND I MAKE THIS STATEMENT UNDER PENALTY OF LAW. I HEREBY AUTHORIZE REPRESENTATIVES OF THIS CITY TO ENTER UPON THE ABOVE MENTIONED PROPERTY FOR INSPECTION PURPOSES. EXCEPT IN THOSE CONSTRUCTION PROJECTS WHERE THE BUILDING OFFICIAL, DUE TO THE NATURE OF THE PROJECT, DEEMS THESE LIMITATIONS TO BE UNREASONABLE, EVERY PERMIT ISSUED BY THE BUILDING OFFICIAL, UNDER THE PROVISIONS OF THIS CODE, SHALL EXPIRE BY LIMITATION AND BECOME NULL AND VOID IF THE BUILDING OR WORK AUTHORIZED BY SUCH PERMIT DOES NOT RECEIVE AN APPROVAL OF A MAJOR INSPECTION, AS FURTHER IDENTIFIED IN SECTION 9-2.16 OF THIS CHAPTER, WITHIN 180 DAYS FOLLOWING THE ISSUANCE DATE OF SUCH PERMIT OR FOLLOWING THE APPROVAL DATE OF A PREVIOUS MAJOR INSPECTION. DO NOT CONCEAL OR COVER ANY CONSTRUCTION UNITS UNTIL THE WORK IS INSPECTED AND THE INSPECTION IS RECORDED ON THE BACK OF THE JOB COPY OF THIS PERMIT. ALL INSPECTION REQUESTS ARE REQUIRED AT LEAST 24 HOURS IN ADVANCE OF THE INSPECTION.

I hereby agree to save, defend, indemnify and keep harmless the City of Oakland and its officers, employees, agents and volunteers from all actions, claims, demands, litigation, or proceedings, including those for Attorney's fees, against the City in consequence of the granting of this permit or from the use or occupancy of any sidewalk, street or sub-sidewalk or otherwise by virtue thereof, and will in all things strictly comply with the conditions upon which this permit is granted.

Contractor Luis Gamacho 9-28-01
 Signature of Contractor or Owner or Agent Date

Owner Luis Gamacho 9-28-01
 Signature of Owner or Owner or Agent Date

Authorized Agent for: Contractor Also PRINT NAME Owner

Address of Agent _____ CITY _____ STATE _____ ZIP _____ TELEPHONE _____

I hereby affirm, under penalty of perjury, that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C).

Lender's Name _____
 Lender's Address _____
 City _____ State _____ Zip _____ Phone () _____

I hereby affirm that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License # _____ City Business Tax # _____
 and Class _____

Contractor's Name _____ Phone _____
 Signature _____ Date 15 of 281
000233

WORKER'S COMPENSATION LENDER CONTRACTOR

1-3-02

FT6 + SCAB REP

426 EXT (copy) Lys
522 EXT. LATH H.W.'S VERIFIED REP
725
337241 - 2463415
421
337241 FOR H.W.'S OK

APPLICATION

Job Site 1354 81ST AV

Parcel# 042 -4247-068-00

App# B0103918

Descr Refinish and rehab entire 4 unit bldg. Relocate exterior stairs.

Filed 08/28/01

Scope Includ Building: YES Electrical: NO Mechanical: NO Plumbing: NO

Work Type ALTERATION #Units 4 Plans 2 Energy Calcs
Bldg Sq Ft #Stories 2 Survey Struct Calcs
Est Value \$70,000 Const Type 5N Soil Report Occup Codes R-1

Owner PATINO JOSE
Contractor
Arch/Engr
Agent LUIS CAMACHO X
Applic Addr 1354-1356 81ST AV, OAKLAND CA, 94621

Table with 4 columns: Fee Category, Amount, Fee Category, Amount. Total fees: \$1,737.16. Includes items like Applic (\$45.00), Process (\$544.12), State Regs (\$197.86), etc.

Applic Processed By CB Date 8-28-01 Applic Received By CB Date 9-13-01

Application Routing:

- 1 FLD-CHK
X1 PWA-ESD form to LUIS 8-28-01 CB
X1 ENG-SVCS
X1 CP-ZONE Hold issuance of permit, pending minor design alterations.
1 PLN-CHK
1 FINL-CHK
2 COUNTER

1354 81st Ave



[Faint handwritten text]



LETTER OF AGENCY FOR PROPERTY OWNERS

OPB Operations Division
1330 Broadway, 2nd Flr
Oakland, CA 94612
Voice (510) 238-3443
FAX (510) 238-2263

NAME OF PROPERTY OWNER:
JOSE PATINO

PROPERTY ADDRESS:
1354-1356 81ST AVE. , OAKLAND, CALIFORNIA 94621

By my signature below I authorize LUIS CAMACHO to act as my agent/representative in obtaining any permits related to the work described below from the Office of Planning and Building for the above listed property address.

BRIEFLY DESCRIBE WORK TO BE PERFORMED:

CHANGE, ADD CONVERT, COMBINE, REPLACE, ETC. ANY OF THE UNITS, CONDO CONVERSION INTO UNITS, REMODEL OR REHAB TO ANY EXTENSION.

As proof of ownership, I have attached either 1) a copy of my property deed, or 2) a current tax bill which identifies me as the owner of said property.

JOSE PATINO 1-17-01
 PROPERTY OWNER'S SIGNATURE (MUST BE SIGNED BEFORE A NOTARY PUBLIC) DATE

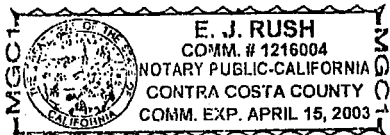
PRINT NAME OF PROPERTY OWNER _____ PROPERTY OWNER'S TELEPHONE NUMBER _____

USE SPACE BELOW FOR SIGNATURE NOTARIZATION _____

State of California

County of Contra Costa

Subscribed and sworn to before me on 1/17/01 DATE



NOTARY SEAL

[Signature]
 SIGNATURE OF NOTARY



OWNER BUILDER VERIFICATION

RE: 1354 81st Ave.
(Address of job)

Attention Property Owner:

Regarding the "owner builder" building permit in your name and bearing your signature or your authorized agent's signature, please complete this information at your earliest opportunity to avoid unnecessary delay in processing and issuing your building permit. No building permit will be issued until this verification is received.

Please complete items 1 - 4 on this form. If item(s) are not applicable, please write "not applicable" where name is requested for specific item(s).

1. I personally plan to provide the major labor and materials for construction of the proposed property improvement (yes or no) yes
2. I or my authorized agent (have/have not) have signed an application for a building permit for the proposed work.
3. I will provide some of the work but I have contracted with the following persons (firms) to provide the work indicated:

Name	Address	Phone	Type of Work	Contractor's License No.

4. I will provide some of the work, but I have hired the following person(s)/firm(s) to provide the work indicated:

Name	Address	Phone	Type of Work	Contractor's License No.

Property Owner Signature Luis Canache

Also, print Name LUIS CANACHE

Date: 5-28-01



~~Handwritten scribbles~~
 PARTIAL ONLY
 OFFICE OF PLANNING AND BUILDING
CORRECTION NOTICE

INSPECTION SERVICES
 250 Frank H. Ogawa Plaza 2nd Fl.
 Oakland, CA 94612
 (510) 238-3587

CITY OF OAKLAND

(MUST BE AVAILABLE DURING EACH INSPECTION)

PERMITTEE _____ JOB LOCATION 1354 81ST AVE

ADDRESS _____ PERMIT NO. B 0103918

CITY/STATE _____ DATE/TIME 9/5/02 1:15

- TO DISCUSS A DEFICIENCY LISTED BELOW, TELEPHONE YOUR INSPECTOR BEFORE 8:30AM, OR BRING YOUR APPROVED PLANS AND THIS CORRECTION NOTICE TO THE INSPECTION COUNTER BEFORE 8:30AM.
- DO NOT CONCEAL ANY WORK UNTIL "OK TO POUR/OK TO COVER" IS SIGNED BY THE CITY ON THE PERMIT INSPECTION CARD.
- TO APPROVE A FIELD REVISION, BRING YOUR APPROVED PLANS, 3 COPIES OF YOUR REVISION, YOUR CORRECTION NOTICE, CALCULATIONS/CERTIFICATIONS/REPORTS/ETC., AND REVIEW FEES TO THE INSPECTION COUNTER BEFORE 8:30AM.
- ALL PERMITS WILL EXPIRE UNLESS MAJOR INSPECTIONS ARE APPROVED BY THE CITY EVERY 6 MONTHS (OR SOONER).
- BLDG, ELECT, PLUMB, & MECH INSPECTIONS MUST BE SCHEDULED SEPARATELY WELL IN ADVANCE (510/238-3444).
- ADDITIONAL FEES WILL BE CHARGED FOR ADDITIONAL JOBSITE VISITS AFTER YOUR "PRE-PAID LIMIT" IS EXCEEDED.

- 1) Provide Access to allow inspection. Have approved plans and revisions available at next inspection.
- 2) → HAND RAILS @ RIGHT SIDE T/C ←
- 3) HAND RAIL @ front porch. SLOPE MUST be rise & run + or - 3/8"
- 4) SIDE PORCH ALSO (HAND RAIL 3458 - 14" x 2" Grippable)
- 5) INSURE DOOR/SCREEN/COVER UNDER LODGE OPENINGS.
- 6) CALL FOR REINSPECTION [REDACTED]
- 7) COMPLETE ELECTRICAL WORK. SUBMIT [REDACTED]
- 8) GET ALL PLUMBING REVISIONS AND ELECTRICAL INSPECTIONS APPROVED BEFORE FINAL SIGNATURES.

INSPECTOR David Miller TITLE _____ DIRECT DIALING _____



CITY OF OAKLAND

OFFICE OF PLANNING AND BUILDING
CORRECTION NOTICE

INSPECTION SERVICES
250 Frank H. Ogawa Plaza 2nd Fl.
Oakland, CA 94612
(510) 238-3587

(MUST BE AVAILABLE DURING EACH INSPECTION)

PERMITTEE _____

JOB LOCATION B351 81st AV

ADDRESS _____

PERMIT NO. B0103718

CITY/STATE _____

DATE/TIME 7/5/08

- TO DISCUSS A DEFICIENCY LISTED BELOW, TELEPHONE YOUR INSPECTOR BEFORE 8:30AM, OR BRING YOUR APPROVED PLANS AND THIS CORRECTION NOTICE TO THE INSPECTION COUNTER BEFORE 8:30AM.
- DO NOT CONCEAL ANY WORK UNTIL "OK TO POUR/OK TO COVER" IS SIGNED BY THE CITY ON THE PERMIT INSPECTION CARD.
- TO APPROVE A FIELD REVISION, BRING YOUR APPROVED PLANS, 3 COPIES OF YOUR REVISION, YOUR CORRECTION NOTICE, CALCULATIONS/CERTIFICATIONS/REPORTS/ETC., AND REVIEW FEES TO THE INSPECTION COUNTER BEFORE 8:30AM.
- ALL PERMITS WILL EXPIRE UNLESS MAJOR INSPECTIONS ARE APPROVED BY THE CITY EVERY 6 MONTHS (OR SOONER).
- BLDG, ELECT, PLUMB, & MECH INSPECTIONS MUST BE SCHEDULED SEPARATELY WELL IN ADVANCE (510/238-3444).
- ADDITIONAL FEES WILL BE CHARGED FOR ADDITIONAL JOBSITE VISITS AFTER YOUR "PRE-PAID LIMIT" IS EXCEEDED.

(8) Finish material on upper porch floor side. ?? complete the WATER PROOF

(9) Attach hand/guardrail on rear stairs.

(10) Begin (a) SIDE STAIRS project into rear 6' x 8' headroom.

(11) Install missing part (a) landing of side stairs.

(12) Weather protection for 6' x 9' beam

(13) Rear STAIRS bottom STAIR NO = Rise on ROW.

(510) 238 -

INSPECTOR

TITLE

DIRECT DIALING

3544-021.01 (11 / 98)

WHITE : PERMIT COLOR : FILE

006243



CITY OF OAKLAND

OFFICE OF PLANNING AND BUILDING
CORRECTION NOTICE

(MUST BE AVAILABLE DURING EACH INSPECTION)

INSPECTION SERVICES
250 Frank H. Ogawa Plaza 2nd Fl.
Oakland, CA 94612
(510) 238-3587

PERMITTEE OWNER - CONTR JOB LOCATION 1354 81 AV
ADDRESS _____ PERMIT NO. B0103918
CITY/STATE _____ DATE/TIME 5-1-02

- TO DISCUSS A DEFICIENCY LISTED BELOW, TELEPHONE YOUR INSPECTOR BEFORE 8:30AM, OR BRING YOUR APPROVED PLANS AND THIS CORRECTION NOTICE TO THE INSPECTION COUNTER BEFORE 8:30AM.
- DO NOT CONCEAL ANY WORK UNTIL "OK TO POUR/OK TO COVER" IS SIGNED BY THE CITY ON THE PERMIT INSPECTION CARD.
- TO APPROVE A FIELD REVISION, BRING YOUR APPROVED PLANS, 3 COPIES OF YOUR REVISION, YOUR CORRECTION NOTICE, CALCULATIONS/CERTIFICATIONS/REPORTS/ETC., AND REVIEW FEES TO THE INSPECTION COUNTER BEFORE 8:30AM.
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- ADDITIONAL FEES WILL BE CHARGED FOR ADDITIONAL JOBSITE VISITS AFTER YOUR "PRE-PAID LIMIT" IS EXCEEDED.

- ① REVISED PLANS MUST BE SUBMITTED FOR NEW MECHANICAL ROOM ADDED TO LEFT SIDE OF BUILDING (WORKING APPROVAL REQ'D) BRING REVISED PLANS ALONG WITH PREVIOUSLY APPROVED PLANS TO OFFICE 8:30 A.M.
- ② EXT. LATH MUST CONSIST OF 2 LAYERS OF GRADE "D" PAPER
- NAILS OR STAPLES 6" APART OVER FRAMING ONLY
- WINDOW FLASHING EXTENDING OVER LATH PAPER AT BOTTOM OF WINDOWS
- ALL WIRE TO OVERLAP WIRE ONE CELL (MIN) MINIMUM

③ REVISIT. REQ'D AFTER REVISION APPROVAL

K. Pacheco BUD HUPPER
INSPECTOR TITLE





OFFICE OF PLANNING AND BUILDING
CORRECTION NOTICE

INSPECTION SERVICES
250 Frank H. Ogawa Plaza 2nd Fl.
Oakland, CA 94612
(510) 238-3587

CITY OF OAKLAND

(MUST BE AVAILABLE DURING EACH INSPECTION)

PERMITTEE OWNER-COMTR JOB LOCATION 1354 81 AD
ADDRESS _____ PERMIT NO. B0103918
CITY/STATE _____ DATE/TIME 4-15-02

- TO DISCUSS A DEFICIENCY LISTED BELOW, TELEPHONE YOUR INSPECTOR BEFORE 8:30AM, OR BRING YOUR APPROVED PLANS AND THIS CORRECTION NOTICE TO THE INSPECTION COUNTER BEFORE 8:30AM.
- DO NOT CONCEAL ANY WORK UNTIL "OK TO POUR/OK TO COVER" IS SIGNED BY THE CITY ON THE PERMIT INSPECTION CARD.
- TO APPROVE A FIELD REVISION, BRING YOUR APPROVED PLANS, 3 COPIES OF YOUR REVISION, YOUR CORRECTION NOTICE, CALCULATIONS/CERTIFICATIONS/REPORTS/ETC., AND REVIEW FEES TO THE INSPECTION COUNTER BEFORE 8:30AM.
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- ADDITIONAL FEES WILL BE CHARGED FOR ADDITIONAL JOBSITE VISITS AFTER YOUR "PRE-PAID LIMIT" IS EXCEEDED.

- ① INSTALL 4"X6" POST AND BEAM CONNECTORS ON ALL LOCATIONS PER PLANS - INSTALL H.O.'S AS NEEDED
- ② INSTALL INT. SHEAR ON ONE SIDE OF ALL REQ'D SHEAR WALLS (A 2ND SIDE/SHEAR PLATES TO BE INSTALLED AFTER FRAME + OTHER TRADE ROUGHS
- ③ 5/8 S. ROCK REQ'D BOTH SIDES OF WALLS SEPARATING UNITS
- ④ ELEC. BOXES IN CEILING RTW. UNITS MUST BE 1 HR. RATED - BOX IN (W) 5/8" S. ROCK
- ⑤ FIRE BLOCK AT ALL LOWERED CEILING
- ⑥ SOUND SEPARATION REQ'D BETWEEN UNITS - INSTALL SOUND CHANNEL AS NEEDED

R. P. Achard
INSPECTOR

BLD INSPTR
TITLE





OFFICE OF PLANNING AND BUILDING
CORRECTION NOTICE

INSPECTION SERVICES
250 Frank H. Ogawa Plaza 2nd Fl.
Oakland, CA 94612
(510) 238-3587

CITY OF OAKLAND

(MUST BE AVAILABLE DURING EACH INSPECTION)

PERMITTEE OWNER - CONTR JOB LOCATION 1354 81ST AV
ADDRESS _____ PERMIT NO. B0103918
CITY/STATE _____ DATE/TIME 12-20-01

- TO DISCUSS A DEFICIENCY LISTED BELOW, TELEPHONE YOUR INSPECTOR BEFORE 8:30AM, OR BRING YOUR APPROVED PLANS AND THIS CORRECTION NOTICE TO THE INSPECTION COUNTER BEFORE 8:30AM.
- DO NOT CONCEAL ANY WORK UNTIL "OK TO POUR/OK TO COVER" IS SIGNED BY THE CITY ON THE PERMIT INSPECTION CARD.
- TO APPROVE A FIELD REVISION, BRING YOUR APPROVED PLANS, 3 COPIES OF YOUR REVISION, YOUR CORRECTION NOTICE, CALCULATIONS/CERTIFICATIONS/REPORTS/ETC., AND REVIEW FEES TO THE INSPECTION COUNTER BEFORE 8:30AM.
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- ADDITIONAL FEES WILL BE CHARGED FOR ADDITIONAL JOBSITE VISITS AFTER YOUR "PRE-PAID LIMIT" IS EXCEEDED.

APPRV. PLANS DO NOT REFLECT SLAB AND
ADOL. FTG. PLEASE SUBMIT

2 COPIES OF REVISION (WITH APPROVED
ORIGINAL PLANS) FOR PLAN CHECK APPROVAL
- ADDRESS ABOVE 8-830 A.M. - SIGN UP
FOR MYSELF & R. PACHECO -

OBTAIN SUBFER, UNDER GRD PLUMB. APPROV.

NOTE: REVISION SHOULD REFLECT ANY
PROPOSED MODIFICATION TO NEW. GLU-LAM

REVISION FOR FTG. TO REFLECT SECTION
INCLUDING WASTE LINE WITHIN FTG

REVISIT REQ. D

R. PACHECO

BLD INSPTR



INSPECTOR

TITLE

DIRECT DIALING

ASSESSOR'S MAP 42

Code Area No. 17-032

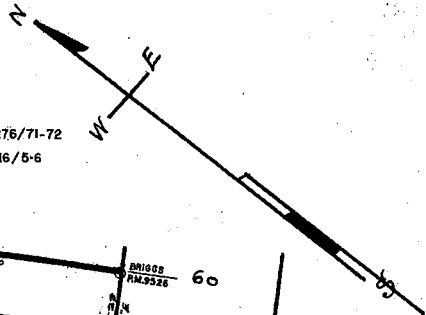
Map No. 2 of the Buena Ventura Tract. (Bk. 13 Pg. 27)

Map of the Briggs Tract, Brooklyn Township. (Bk. 21 Pg. 20)

Scale 1 in = 40 ft

4247-1-7

P.M. 7739 276/71-72
P.M. 9526 316/5-6



4247

2

17-036
17-032

5-22-26 RM
3-17-08 LL

11-27-07 CC
10-15-10 MM
5-22-15 BRB

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Avenue
(Snell)

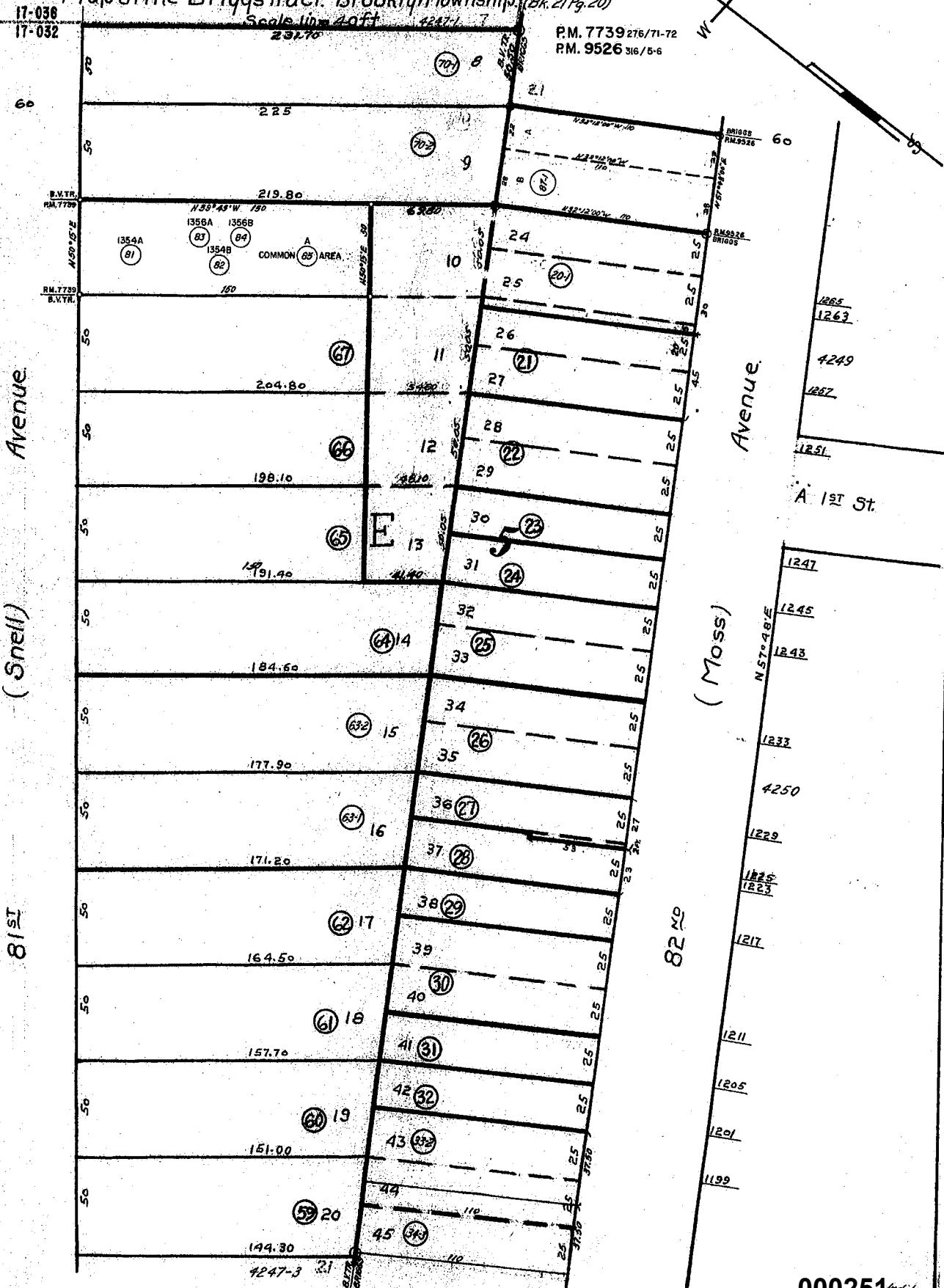
(Snell)

81st

Avenue
(Moss)

(Moss)

82nd



FOR OFFICE USE ONLY

BUILDING & HOUSING DEPARTMENT - CITY OF OAKLAND
WRITE IN INK - FILE ALL COPIES

Inspected

1354-56 31st AVE

HOUSING DIVISION _____
 PERMITS APPROVAL _____
 CITY MANAGER PERMIT NO. _____
 HOUSING PERMIT NUMBER _____
 POINT OF OAKLAND APPROVAL _____
 PUBLISHING PERMIT NO. _____
 HEALTH DEPT. APPROVAL _____
 ZONING OR PLANNING NO. _____
 BOARD OF EXAM. & APPEALS ITEM NO. _____ DATE _____
 HOUSING ADVISORY & APPEALS RES. NO. _____

DATE FILED 4-26-62
 DATE ISSUED MAY -7-1962 PERMIT NO. C 1942
 APPLICATION FOR PERMIT TO:
 ALTER _____ ADD TO _____ NEW CONSTR. _____
 REPAIR _____ WRECK _____ OTHER _____
 JOB LOCATION 1354-56 31st AVE
 OWNER'S NAME PAUL CLARK
 OWNER'S ADDRESS 3220 BOISE ST. BERK.
 OWNER'S PHONE NO. OL 5-3183
 FIELD CHECK BY PETERS DATE _____
 Approved YES _____ NO _____
 REMARKS (conditions noted) _____

PLAN FILED Yes SURVEY FILED Yes
 MAP NO. 666 TRACT/AMEND. HT. 1th. N
 TYPE OF BUILDING I II III IV V HT. 1 2 3 4 5
 OCCUPANCY GROUP A B C D E F G H I J DIV. 1 2 3 4 5
 ZONING DISTRICT AA A B CC C D E F G H I S-1 1 T UR
 FIRE ZONE 1 2 3 4
 PRIOR CERTIFICATE OF OCCUPANCY NO. _____ DATE _____
 ADDITION ALTERATION REPAIR
 VALUE 12,500 FEES 8.00
 General Fee \$ 56.00
 Checking Fee \$ 25.00
 TOTAL FEES \$ 89.00
 ADDITIONAL COST:
 Add'l Fee \$ _____
 Advt. Fee \$ _____
 Checking Fee \$ _____
 TOTAL VALUE _____ TOTAL FEES \$ _____

NEW CONSTRUCTION:
 No. of new building _____ Number of Families _____
 Height to highest point _____ Size of lot _____
 No. of Stories _____ Material of Exterior Walls _____
 Specific type of Occupancy _____
 State how many buildings now on lot _____
 and give use of each _____

Present use of building DWELLING Families 2
 Proposed use of building APT HOUSE Families 4
 Size of existing building 32'-2" x 56'-9" Number of stories high 1 TO 2
 Describe briefly all proposed construction work:
ADD 2 UNITS AT REAR OF EXISTING
DUPEX WITH 6 CARPETS SPICES BELOW.

FOOTING: Width 16" Depth to Ground 14" Width of Wall 8" Material 2" x 8" R.W.
 Studs 2 x 4 @ 16 cts. Floor Joists 2 x 8 @ 16 cts. Ceiling Joists 2 x 6 @ 16 cts.
 Rafters 2 x 8 @ 16 cts. Roof Covering THE 5 GRAVEL
 VALUATION OF PROPOSED WORK: \$12,500.00
 Including self labor and material and all permanent lighting, heating, ventilating, water supply, plumbing, fire sprinkler, electric wiring and elevator equipment therein or thereon.

CONTRACTOR (if any) _____ Certified Architect _____
 Address _____ Licensed Civil Engineer _____
 Phone No. _____ City License No. _____

GENERAL INSTRUCTIONS: If the work herein described is not commenced within one hundred twenty (120) days after the issuing of this permit, or if the work is suspended or abandoned at any time after the work is commenced for a period of one hundred twenty (120) days, this permit shall expire by limitation and become null and void or provide in the Oakland Building Code.
 Permission is hereby granted to do the work described in this application in accordance with the provisions of the Oakland Building Code and related ordinances.
 Approved: LAWRENCE A. LANE
 Building Inspector LANE

Signature of Owner: Paul Clark
 Signature of Applicant: Paul Clark
 DEPARTMENT COPY
 FORM 339-A - 6-60

TO BE SIGNED ONLY WHEN ISSUED TO OWNER.

I hereby certify that I am the applicant for a Building Permit, and that in the performance of the work for which such permit is issued, I will not employ any person or persons in any manner so as to become subject to the provisions of the Labor Code of the State of California relating to workmen compensation insurance.

Signature of Owner: Paul Clark
 DEPARTMENT COPY
 FORM 339-A - 6-60

FOR INSPECTIONS TELEPHONE: TE 2-3-600, LOCAL 807
337 12821

ONLINE SERVICES

Assessor's Office | Treasurer-Tax Collector | New Query

PROPERTY ASSESSMENT INFORMATION

ASSESSOR'S OFFICE

2019 - 2020 Assessment Information

■ Parcel Number:	42-4247-85
■ Assessor's Map: (Map image is not to scale)	Maps... Disclaimer
■ Use Code:	7390
■ Description	Condominium Common Area or use
■ Land	0
■ Improvements	0
■ Fixtures	0
■ Household Personal Property	0
■ Business Personal Property	0
■ Total Taxable Value	0
Exemptions	
■ Homeowner	0
■ Other	0
■ Total Net Taxable Value	0

[Additional Assessment Information](#) | [Property Tax Information](#)

Adobe Acrobat Reader is required to view the maps. Click [here](#) to download.

34 B
0002331

RECORDING REQUESTED BY
AND MAILED TO
ALLIANCE TITLE CO.

WHEN RECORDED RETURN TO:

John K. Sutherland
1990 North California Boulevard
Suite 650
Walnut Creek, California 94596

11572943



2007381848

11/01/2007 08:30 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 138.00



41 PGS

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
1354-1356 81st AVENUE CONDOMINIUMS,
1354 - 1356 81st AVENUE,
OAKLAND, CALIFORNIA

000254

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CONDITIONS AND RESTRICTIONS
OF
1354-1356 81st AVENUE CONDOMINIUMS,
1354 - 1356 81st AVENUE,
OAKLAND, CALIFORNIA

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DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
1354-1356 81st AVENUE CONDOMINIUMS,
1354 - 1356 81st AVENUE,
OAKLAND, CALIFORNIA

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 31ST day of OCTOBER, 2007, by Osvaldina S. Lima.

ARTICLE I

RECITALS:

1.1 FACTS: This Declaration is made with reference to the following facts:

1.1.1 Property Owned by Declarant: Declarant is the owner of the real property located in Oakland, California, described as follows: PARCEL A, PARCEL MAP 7739, RECORDED 7-13-2004, IN MAP BOOK 276, PAGES 73-74

1.1.2 Nature of Project: Declarant intends to develop the Project as a condominium project within the meaning of California Civil Code Section 1351(f) and in conformity with the provisions of the Davis-Stirling Common Interest Development Act. To establish the condominium project, Declarant desires to impose on the Project mutually beneficial restrictions, easements, assessments and liens under a general plan of improvement and development for the benefit of all of the Owners, Units and Common Area within the Project.

1.2 APPLICABILITY OF RESTRICTIONS: Pursuant to California Civil Code Section 1353, Declarant hereby declares that the Project and all improvements thereon are subject to the provisions of this Declaration. The Project shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the mutually beneficial covenants, conditions and restrictions stated in this Declaration. All such covenants, conditions and restrictions are declared to be in furtherance of the plan for the subdivision, improvement and sale of the Project as a condominium project. Pursuant to California Civil Code Section 1354, all of the limitations, easements, uses, obligations, covenants, restrictions and conditions stated in this Declaration shall be enforceable as equitable servitudes, shall run with the Project and shall inure to the benefit of and be binding on all Owners and all

other parties having or acquiring any right, title or interest in any part of the Project.

ARTICLE II

DEFINITIONS

Unless the context clearly indicates a different meaning, the terms used in this Declaration, in the Map, in the Plan, and in any deed to a Condominium in the Project shall have the meanings specified in this Article II.

2.1. ASSOCIATION: The term "Association" shall mean the 1354 - 1356 81st AVENUE, OAKLAND, CALIFORNIA, OWNERS ASSOCIATION, its successors and assigns, an unincorporated membership association composed of all of the Unit Owners.

2.2. COMMON AREA: The term "Common Area" shall mean all of the Project which is not expressly made a part of any Unit.

2.3. CONDOMINIUM: The term "Condominium" shall mean an estate in real property consisting of a Unit together with the undivided interest in the Common Area conveyed in fee to an Owner, and all easements appurtenant thereto.

2.4. DECLARANT: The term "Declarant" shall mean Osvaldina S. Lima.

2.5. DECLARATION: The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions and any amendments hereto.

2.6. ELIGIBLE HOLDER: The term "Eligible Holder" shall mean any Institutional Mortgagee who has delivered a written notice to the Association containing its name, address and the number or address of the Condominium encumbered by the Mortgage held by the Eligible Holder and requesting that the Association deliver written notice to it of any or all of the events specified in Section 8.5, below.

2.7. FIRST MORTGAGE: The term "First Mortgage" shall mean a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Condominium.

2.8. FIRST MORTGAGEE: The term "First Mortgagee" shall mean the Mortgagee of a First Mortgage.

2.9. INSTITUTIONAL MORTGAGEE: The term "Institutional Mortgagee" shall mean a First Mortgagee which is (i) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under or regulated by any federal and/or state law; (ii) an insurer or governmental guarantor of a First Mortgage including, without limitation, the Federal Housing Authority and the Veteran's Administration; or (iii) the State of California.

2.10. MAP: The term "Map" shall mean parcel map 7739 recorded on July 13, 2004, ~~2006~~, in book 276 of maps at page ~~72~~, in the Official Records of Alameda County, California. 71

2.11. MORTGAGE: The term "Mortgage" shall mean any duly recorded mortgage or deed of trust encumbering a Condominium.

2.12. MORTGAGEE: The term "Mortgagee" shall mean a mortgagee under any duly recorded mortgage or a beneficiary under a deed of trust, either of which encumbers a Condominium.

2.13. OWNER: The term "Owner" shall mean the holder of record fee title to a Condominium. If more than one (1) person owns a single Condominium, the term "Owner" shall mean all owners of that Condominium. The term "Owner" shall also mean a contract purchaser (vendee) under an installment land contract but shall exclude any person having an interest in a Condominium merely as security for performance of an obligation. Every Unit Owner shall be a member of the Association.

2.14. PARKING SPACE: The term "Parking Space" shall mean those portions of the Common Area shown on the Plan designated with the letter P. The dimensions of the Parking Spaces are shown on the Plan. Where a Parking Space is enclosed the perimeter boundaries of the Parking Space are the exterior walls of the adjacent Units. Where the Parking Space is not enclosed, the perimeter boundary of the Parking Space is a vertical plane along the dimension lines shown on the Plan. The Parking Spaces are Restricted Common Area.

2.15. PLAN: The term "Plan" shall mean the condominium plan attached as Exhibit "A" to this Declaration.

2.16. PROJECT: The term "Project" shall mean all of the real property as shown on the Map and all improvements thereon.

2.17. RESTRICTED COMMON AREA: The term "Restricted Common Area" shall mean those portions of the Common Area which are shown on the Plan and defined in this Declaration as the Parking Spaces and the Yards. The term "Restricted Common Area" shall also mean

those portions of the Common Area licensed or assigned by the Association to and for the exclusive use of a particular Owner.

2.18. UNIT:

2.18.1. The term "Unit" shall mean the elements of a Condominium which are separate interests within the Project not owned in common with the Owners of other Condominiums in the Project. Each Unit is individually numbered. Each Unit includes the airspace encompassed by its boundaries and all improvements located therein, including walls, fixtures and appliances.

2.18.2. In interpreting deeds and plans, the existing physical boundaries of the Unit or a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in deeds or the Map and regardless of minor variance between boundaries shown on the Map or in a deed and those of a building.

2.19. YARD: The term "Yard" shall mean the areas on the Plan designated with the letter "Y". The dimensions of each Yard are shown on the Plan. The perimeter boundaries of each Yard are the interior unfinished surfaces of the fences and/or railings and the exterior finished surface of any Unit walls enclosing the Yard. Where a Yard is not enclosed, the perimeter boundary of the Yard shall consist of a plane extended vertically along the dimension lines shown on the Plan. The Yards are Restricted Common Area.

ARTICLE III

OWNERSHIP AND EASEMENTS

3.1. NON-SEVERABILITY: The interests in the Common Area cannot be changed after the conveyance of a Condominium. The undivided interests in the Common Area and the fee title to the respective Units conveyed therewith shall not be separated or separately conveyed. Each undivided interest in the Common Area shall be deemed to be conveyed or encumbered with the respective Unit even though the description in the grant deed or other instrument of conveyance or encumbrance may refer only to the Unit.

3.2. OWNERSHIP OF UNITS: Title to each Unit in the Project shall be conveyed in fee to an Owner. If the Association owns a Unit, the Association shall not be considered an Owner for the purposes of this Declaration. If more than one (1) person and/or entity (other than the Association) owns an undivided interest in the same Unit, such persons and/or entities shall constitute one (1) Owner.

3.3. OWNERSHIP OF COMMON AREA: Each Owner of each Unit shall own an undivided fifty percent (50%) tenancy-in-common interest in the Common Area.

3.4. EASEMENTS: The ownership interests in the Common Area and Units described in this Article III are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Units superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Condominiums may, but shall not be required to, set forth the easements specified in this Article III.

3.4.1. Recorded Easements: The Common Area and Units are subject to the easements and rights of way shown on the Map and any other visible and apparent easements and easements recorded in the Official Records of Alameda County, California.

3.4.2. Easements For Common Area: There is reserved and granted to each Unit, as dominant tenement, over and across the Common Area, as servient tenement, a non-exclusive appurtenant easement for ingress, egress, use and enjoyment of the Common Area.

3.4.3. Restricted Common Area: There are reserved and granted to each Unit and each Owner of a Unit exclusive appurtenant easements for the use, possession and enjoyment of the Restricted Common Area designated on the Plan or in the initial individual Condominium grant deed. All easements to Restricted Common Area are subject, however, to the right of the Association to enter in and upon Restricted Common Area for the purpose of maintaining and repairing Restricted Common Area and for enforcing the terms of this Declaration. The grant of any easement for a Yard shall include the area beneath the surface of the earth that is necessary for the cultivation, landscaping and drainage of the Yard.

3.4.4. Utilities: Notwithstanding anything expressly or impliedly to the contrary, this Declaration shall be subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of the Project. There are further reserved and granted for the benefit of each Unit, as dominant tenement, over, under, across and through the Project (including the Common Area and each other Unit, jointly), as the servient tenement, non-exclusive easements for irrigation for each Owner's Yard(s) and for utility services.

3.4.5. Easements for Installation and Maintenance: An easement over and under the Project for the installation, repair and maintenance of electric, telephone, water, gas and sanitary sewer lines and facilities, heating and air-conditioning facilities, cable or master radio or television antenna leads, drainage facilities, walkways and landscaping as shown on the recorded map of the Project, and as may be hereafter required or needed to service the Project, is hereby reserved by and to Declarant and its successors and assigns, including the Association.

3.4.6. Encroachment: There are reserved and granted for the benefit of each Unit, as dominant tenement, over, under and across each other Unit and Common Area, as servient tenements, and for the benefit of the Common Area, as dominant tenement, over, under and across each Unit, as servient tenement, non-exclusive easements for encroachment, support, occupancy and use of such portions of Units and/or Common Area as may be encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof, or any other cause. In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroachment shall exist for as long as the encroachment exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may but need not be cured by repair and restoration of the structure.

3.4.7. Support, Maintenance and Repair: There is hereby reserved and granted non-exclusive easements appurtenant to the Common Area and to all other Units, as dominant tenements, through each Unit and the Common Area, as servient tenements, for the support, maintenance and repair of the Common Area and all Units.

3.4.8. Association's Easements: There are hereby reserved to Declarant, the Association and their duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association set forth in this Declaration, including, without limitation and subject to Section 5.9, below, the right to enter upon Common Area and Units.

3.5. OWNERS' RIGHTS AND DUTIES: The rights and duties of the Owners with respect to sanitary sewer, water, electricity, gas and telephone lines and facilities, and heating and air-conditioning

facilities shall be as follows:

3.5.1. Whenever sanitary sewer, water, electricity, gas, television cable, telephone lines or connections are installed within the Project, which lines or connections, or any portion thereof, lie in or about Units or Yards owned by other than the Owner of a Condominium served by said connections, the Owners of any Condominium served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Units or Yards or to have the utility companies enter upon the Units or Yards in or about which said connections, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when necessary.

3.5.2. Whenever sanitary sewer, water, electricity, gas, television cable, telephone lines or connections are installed within the Project, which connections serve more than one (1) Condominium, the Owner of each Condominium served by said connection shall be entitled to full use and enjoyment of such portions of said connections to so service the Owner's Condominium.

3.6. JUDICIAL PARTITION:

3.6.1. Waiver of Partition: Except as provided in California Civil Code Section 1359 and Section 3.6.2, below, there shall be no judicial partition of the Project or of any part thereof. Each Owner, and each successor of each Owner, specifically waives and abandons all rights, interests and causes of action for judicial partition of the tenancy-in-common ownership of the Common Area. Each Owner agrees that no action for judicial partition of the Project shall be instituted, prosecuted or reduced to judgment, except in compliance with California Civil Code Section 1359.

3.6.2. Single Units: If a Condominium is owned by two (2) or more Owners as tenants-in-common, as joint tenants, or as community property, nothing contained in this Section 3.6 shall be deemed to prevent a judicial partition between the co-Owners of that Condominium.

3.6.3. Power of Attorney: If there is judicial partition of the Project pursuant to California Civil Code Section 1359 or this Declaration, each Owner, for the Owner's successors and assigns, hereby grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of all of the Owners.

ARTICLE IV

USE RESTRICTIONS

4.1. USE OF COMMON AREA GENERALLY: There shall be no use of the Common Area except by Owners and their licensees and invitees. All Owners and their licensees and invitees may enjoy the use of the Common Area as long as they abide by the terms of this Declaration and any rules adopted by the Association. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior consent of the Association. Except as expressly provided herein, no alterations or additions to Common Area shall be permitted without the approval of the Association. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area without the prior consent of the Association. No Owner shall permit anything to be done or kept in the Common Area or any other part of the Project which might result in the cancellation of insurance on any Unit or any part of the Common Area, which would interfere with rights of other Owners, which would be noxious, harmful or unreasonably offensive to other Owners, or which would be in violation of any governmental statute, ordinance, rule or regulation. No waste shall be committed in the Common Area.

4.2. GARBAGE: All garbage, trash and accumulated waste material shall be kept in containers located in or adjacent to each Owner's Unit. Each Owner shall arrange and pay for garbage collection for the Owner's Unit.

4.3. PETS: A reasonable number of pets, as defined in California Civil Code 1360.5, may be kept in the Units. No pet shall be permitted that disturbs the peaceful enjoyment of the Project by the Owners. Permitted animals shall not be kept, bred, or raised for commercial purposes. All pets shall be kept under reasonable control at all times. Owners who keep pets shall promptly clean up after the Owner's pet(s) and shall be liable for any damages to person or property caused by the Owner's pet(s).

4.4. LICENSEES AND INVITEES: Each Owner shall be responsible for compliance with the provisions of this Declaration by the Owner's licensees and invitees, and an Owner shall promptly pay any reimbursement assessment levied and/or any fine or penalty imposed against such Owner for violations committed by the Owner's licensees and invitees.

4.5. USE OF UNITS: Each Unit shall be used solely for residential purposes. No other use is allowed except as specifically permitted by local ordinance. No Owner may permit or

cause anything to be done or kept upon, in or about the Owner's Unit which might obstruct or interfere with the rights of other Owners or which would be noxious, harmful or unreasonably offensive to other Owners. Each Owner shall comply with all federal, state and local laws, ordinances, rules and regulations applicable to the use of the Owner's Condominium.

4.6. RENTAL OR LEASING OF UNITS: An Owner shall be entitled to rent or lease all or part of the Owner's Unit if:

4.6.1. The Owner complies with all applicable laws and ordinances;

4.6.2. There is a written lease or rental agreement which specifies that the tenant or lessee shall be subject to all provisions of this Declaration and that a failure to comply with any provision of this Declaration shall constitute a default under the lease or rental agreement;

4.6.3. The Owner notifies the Association of the name and address of the tenant or lessee and the length of the term of the tenancy; and

4.6.4. The Owner gives the tenant or lessee a copy of this Declaration.

4.7. PARKING: Only vehicles used for personal transportation shall be parked in the Project. Vehicles shall be parked only in the Parking Spaces. No other vehicles, boats, trailers, campers, golf carts, or mobile homes shall be parked or stored in the Project. No part of the Project shall be used for repair, construction or reconstruction of any vehicle, boat or any other item or thing except in an emergency. As long as applicable ordinances and laws are observed, the Association may cause the removal of any vehicle which is in violation of this Declaration.

4.8. INSURANCE: The Association shall at all times maintain and pay for fire and extended peril insurance for the Project, in an amount not less than the full replacement value thereof. Each Unit Owner may, but shall not be required to, obtain insurance for the contents of the Owner's Unit. The Association shall also at all times maintain and pay for comprehensive liability insurance for acts in, on, or about the Project, in an amount determined by the Association. All of the Owners shall be named as insureds or additional insureds on the liability insurance maintained by the Association.

ARTICLE V

IMPROVEMENTS

5.1. MAINTENANCE OF COMMON AREA:

5.1.1. Generally: The Association shall be responsible for maintenance and repair of all Common Area except as expressly provided herein. The Association shall provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of all Common Area except for Yards in good condition and repair.

5.1.2. Notice to Association: The Owners shall give to the Association prompt notice of any damage to or defective condition in any part of the Project's sanitary, electrical, heating or other systems serving, located in, or passing through the Units.

5.1.3. Negligence: The responsibility of an Owner or the Association for maintenance and repairs shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of another Owner or another Owner's tenants, or customers, suppliers, guests and invitees of such Owner or tenant. The repair or replacement of a portion of the Project resulting from such excluded items shall be the responsibility of the Owner to whom the damage is attributable; provided, however, that if an Owner shall fail to make the repairs or replacements which are the responsibility of such Owner, as provided above, then, the Association shall have the right, but not the obligation, to enter the Unit of the Owner, if necessary, and to make such repairs or replacements, and the cost of such repairs or replacements shall become a reimbursement assessment chargeable to such Condominium and shall be payable to the Association by the Owner thereof.

5.1.4. Interruption of Services: The Association shall have the right to interrupt any electrical, mechanical, lighting, utility, power, water, cleaning, plumbing, or other service at such times as may be necessary and for as long as may reasonably be required by reason of accidents, strikes, the making or repairs, alterations or improvements, inability to secure a proper supply of fuel, steam, water, electricity, labor or supplies, or by reason of any other cause beyond the control of the Association; provided, however, that any such stoppage or interruption for the purpose of making any alterations or improvements shall be made at such times and in such manner as shall not unreasonably interfere with each Unit Owner's use of the

Owner's Unit.

5.2. ALTERATIONS TO COMMON AREA:

5.2.1. Approval: Only the Association shall construct, alter, maintain or repair any portion of the Common Area, except for Restricted Common Area or as otherwise expressly provided in this Declaration. In no event shall any construction or other alteration of or to the Common Area change the architectural style of the Project or block any views from the Project.

5.2.2. Funding: Expenditures for alterations, maintenance or repairs to the Common Area for which a reserve has been collected shall be made from the reserve account. The Association may levy a special assessment to fund any construction, alteration, repair or maintenance of Common Area for which no reserve has been collected or if the reserve account contains insufficient funds to cover the cost of the proposed alterations, maintenance or repairs.

5.3. MAINTENANCE OF UNITS: Each Owner shall keep the Owner's Unit, including, without limitation, all finishes, fixtures, appliances and appurtenances, in good condition and repair. Each Owner shall have the sole responsibility and the exclusive right, at the Owner's sole cost and expense, to:

5.3.1. Maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors and the perimeter walls, of the Owner's Unit;

5.3.2. Repair, paint, finish, alter, substitute, add or remove any fixtures and utility connections attached to ceilings, floors or walls including, without limitation, lighting fixtures, telephone facilities, doors and windows within the Unit; and

5.3.3. Maintain, repair, replace and clean interiors and exteriors of any windows, doors and other glass surfaces of the Owner's Unit.

5.4. ASSOCIATION'S RIGHT TO MAINTAIN UNITS: In the event an Owner fails to maintain the Owner's Unit in a manner in which the Association deems necessary to preserve the appearance and value of the Project, the Association may notify the Owner of the work required and request that it be done within sixty (60) days from the giving of such notice. In the event an Owner fails to carry out such maintenance within said period, the Association may, after notice and hearing, cause such work to be done and the cost of such work shall be a reimbursement assessment chargeable to such

Condominium and shall be payable to the Association by the Owner thereof.

5.5. ALTERATIONS TO UNITS: Owners may alter or remodel their Units, if the Owner complies with all laws and ordinances regarding alterations and remodeling, the alterations, the alterations or improvements do not impair the views from the other Unit, and the alterations or improvements do not affect the structural or architectural integrity or unity of the Project.

5.6. MAINTENANCE OF RESTRICTED COMMON AREA: Any fences between Yards shall be maintained by the Owners of the adjacent Yards, the cost of which shall be shared equally. Any fences along the perimeter of the Project separating a Yard from adjacent properties shall be maintained in good condition by the Owner to whom the Yard is assigned, at that Owner's sole expense. Each Owner shall maintain and otherwise care for all plants and planters located within a Yard at the Owner's sole expense. All Yards shall be kept free from debris. Each Owner shall maintain the Owner's own Parking Space in good condition and repair at the Owner's expense.

5.7. ALTERATIONS TO RESTRICTED COMMON AREA: Any proposals for the alteration or addition of Restricted Common Area shall be subject to the Association's prior written consent and approval, which shall not be unreasonably withheld or delayed.

5.8. LANDSCAPING: All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality as originally established as of the date of the recordation of this Declaration. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. No yard debris shall be left in the Project beyond the time reasonably necessary for collection and removal.

5.9. RIGHT OF ENTRY: The Association may enter any Unit and Restricted Common Area whenever entry is necessary in connection with the performance of any maintenance or construction which the Association is authorized to undertake. Entry shall be made with as little inconvenience to an Owner as practicable and only after reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

5.10. CONDEMNATION: If all or any portion of the Project is taken for any public or quasi-public use under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the entire award shall be paid either as apportioned by court judgment, as apportioned among the Owners of the Common Area by agreement between the condemning authority and each of the Owners of the Common Area, or to such Owners proportionately

according to the respective fair market values of their Condominiums at the time of condemnation as determined by an independent appraisal made by a qualified real estate appraiser with a member of the Appraisal Institute certificate or the equivalent, as selected by the Association. The Association shall represent the interests of the affected Owners; however, each Owner shall be entitled to obtain and be represented by legal counsel as the Owner so desires.

5.11. MECHANICS' LIENS:

5.11.1. Labor performed or services or materials furnished for the Common Area, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner.

5.11.2. No labor performed or services or materials furnished with the consent or at the request of an Owner or the Owner's agent or the Owner's contractor or subcontractor shall be the basis for the filing of a mechanic's lien against the Unit of any other Owner, or against any part thereof, or against any other property of another Owner, unless such other Owner has expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such consent shall be deemed to have been given by any Owner in the case of emergency repairs to the Owner's Unit.

5.11.3. In case there shall be filed a notice of mechanic's lien against the Project for, or purporting to be for, labor or materials alleged to have been furnished to delivered at the Project or any Unit at the request of or for the benefit of the Owner, the Owner shall forthwith cause such lien to be discharged by payment, bonding or otherwise. If the Owner shall fail to cause such lien to be discharged by payment, bonding or otherwise, the Association may send written notice to the Owner specifying that unless the Owner discharges the lien within five (5) days from the date of the notice, then the Association may cause the lien to be discharged by payment, bonding or otherwise. Within said five (5) day period, notice and hearing shall be provided to the Owner regarding the validity of such lien or any offsets or defenses thereto.

(a) The Association shall determine whether such lien adversely and improperly affects the ownership interests of the Association and/or other Owners. Should the Association determine that said lien adversely and improperly affects the ownership interests of the Association and/or other Owners and that no adequate protection of said interests has been provided, the Association may cause said lien to be discharged by payment,

bonding or otherwise.

(b) The Association shall have the right to levy a reimbursement assessment against the Owner responsible for said lien in an amount equal to all sums so paid together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

ARTICLE VI

FUNDS AND ASSESSMENTS

6.1. COVENANTS TO PAY: Each Owner covenants and agrees to pay to the Association the assessments and any additional charges levied pursuant to this Article VI.

6.1.1. Liability for Payment: The obligation to pay assessments shall run with the land so that each successive record Owner of a Condominium shall in turn become liable to pay all such assessments. No Owner may waive or otherwise escape personal liability for assessments or release the Condominium owned by the Owner from the liens and charges hereof by non-use of the Common Area, abandonment of the Condominium or any other attempt to renounce rights in the Common Area or the facilities or services within the Project. Each assessment shall constitute a separate assessment and shall also be a separate, distinct and personal obligation of the Owner of the Condominium at the time when the assessment was levied and shall bind the Owner's heirs, devisees, personal representatives and assigns. Any assessment not paid within fifteen (15) days after it becomes due is delinquent. The personal obligation of an Owner for delinquent assessments shall not pass to a successor Owner unless the personal obligation is expressly assumed by the successor Owner. No such assumption of personal liability by a successor Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent assessments. After an Owner transfers fee title of record to the Owner's Condominium, the Owner shall not be liable for any charge thereafter levied against the Condominium.

6.1.2. Funds Held in Trust: The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Project as provided in this Declaration. Upon the sale or transfer of any Condominium, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner.

6.1.3. No Offsets: No offsets against any assessment

shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

6.2. REGULAR ASSESSMENTS:

6.2.1. Commencement of Regular Assessments: Regular assessments for each fiscal year shall be established when the Association approves the budget for that fiscal year. Regular assessments shall be levied on a fiscal year basis. Unless otherwise specified by the Association, regular assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration. Regular assessments shall commence for all Condominiums on the first day of the first month following the month in which the first Condominium of the Project is conveyed to an Owner other than Declarant. If an Owner fails to pay an installment of a regular assessment within thirty (30) days of its due date, the Association may elect to declare the entire amount of the regular assessment for that fiscal year immediately due and payable.

6.2.2. Allocation of Assessments: The Association budget shall be allocated equally between the Units.

6.2.3. Restriction for Tax Exemption: Notwithstanding any other provision in this Declaration, the Association shall prepare its annual budget and otherwise conduct the business of the Association in such a manner that the Association shall qualify and be considered as an organization exempt from federal and state income taxes pursuant to Internal Revenue Code Section 528 and California Revenue and Taxation Code Section 23701t and any amendments thereto. As long as either federal or state regulations may so require for the Association to receive tax exempt status, the following budgeting limitations shall be observed:

(a) On Gross Income: Sixty percent (60%) or more of the gross income of the Association for each taxable year shall consist solely of amounts received as membership dues, fees and assessments from Owners;

(b) On Nature of Expenditures: Ninety percent (90%) or more of the expenditures of the Association for the taxable year shall be expenditures solely for providing management, maintenance and care of the property of the Association or for the general welfare of the Owners;

(c) On Benefit to Individuals: No part of the net earnings of the Association shall inure to the benefit of any Owner or individual (other than those benefits provided by the

Association's management, maintenance and care of property within the Project or by a rebate of excess assessments);

(d) On Expenditures for Utilities: The Association shall not provide or maintain facilities to provide utilities for its Owners (provided, however, that the Association may charge for commonly metered services provided to the Project by utility companies); and

(e) On Funds for Capital Improvements: Amounts received as assessments which are not expended for Association purposes during the taxable year (funds collected for contingencies and deferred maintenance, repair and replacement of capital improvements), not including excess funds in the current operation account, shall be transferred or deposited to and held in a separate trust account(s) to provide for management, maintenance and care of the property within the Project and to promote the general welfare of the Owners.

6.3. SPECIAL ASSESSMENTS: Subject to the limitations in this Declaration, special assessments may be levied in addition to regular assessments for (i) constructing capital improvements, (ii) correcting an inadequacy in the current operation account, (iii) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of improvements for which the Association is responsible, or (vi) paying for such other matters as the Association may deem appropriate. Special assessments shall be levied in the same manner as regular assessments.

6.4. REIMBURSEMENT ASSESSMENTS:

6.4.1. Levy of Reimbursement Assessments: The Association shall levy a reimbursement assessment against any Owner and the Owner's Condominium if a failure to comply with this Declaration has resulted in the imposition of a fine or penalty or has necessitated an expenditure of monies by the Association to bring the Owner or the Owner's Condominium into compliance. A reimbursement assessment shall be due and payable to the Association when levied. A reimbursement assessment shall not be levied by the Association until notice and hearing has been given.

6.4.2. No Lien For Discipline: Notwithstanding any other provision of this Declaration, a monetary penalty imposed by the Association as a disciplinary measure for failure of a Owner to comply with this Declaration or as a means of reimbursing the Association for costs incurred by the Association in the repair of Common Area for which the Owner is responsible or in bringing the Owner and the Owner's Unit into compliance with this Declaration shall not be a lien against the Owner's Condominium enforceable by

a sale of the Condominium in accordance with the provisions of California Civil Code Sections 2924, 2924(b) and 2924(c).

6.4.3. Exception for Late Charges: The provisions of Section 6.4.2, above, do not apply to charges imposed against an Owner consisting of late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

6.5. ENFORCEMENT OF ASSESSMENTS:

6.5.1. Establishment of Lien: There is a present lien against each Condominium to secure payment of all assessments levied against the Condominium pursuant to this Declaration, all additional charges and all sums which become due and payable in accordance with this Declaration after the date of recordation of a notice of assessment due. Except for the transfer of a Condominium pursuant to a foreclosure proceeding, the sale or transfer of a Condominium shall not affect such a lien. The priority of all liens shall be in inverse order so that, upon foreclosure of the lien for a particular assessment, any foreclosure sale will be subject to all liens securing assessments on such Condominium previously levied. Any lien recorded shall be in favor of the Association.

6.5.2. Grant of Power of Sale: Each Owner hereby grants a present lien with power of sale to the Association, appoints the person or entity designated by the Association as "trustee" in the notice, or such substitute trustee as is designated pursuant to California Civil Code Section 2934(a) as trustee, and empowers such trustee, to enforce the lien and to foreclose the lien by the private power of sale. Each Owner further grants to the trustee, the power and authority to sell the Condominium of any defaulting Owner to the highest bidder to satisfy such lien.

6.5.3. Enforcement: In the event that any monthly installment of the annual assessment levied against a Unit is not paid within thirty (30) days after the date that monthly installment becomes due, the Association may declare the entire unpaid balance of such annual installment due and payable in its entirety. In accordance with California Civil Code Section 1367(d), and in addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of the Owners to pay each assessment provided for in this Declaration in any manner provided by law or by either or both of the following procedures:

(a) By Suit: The Association may commence and maintain a suit at law against any Owner personally obligated to pay a delinquent assessment. The suit shall be maintained in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, additional charges and any other amounts as the court may award. A proceeding to recover a judgment for unpaid assessments shall be maintained without the necessity of foreclosing or waiving the lien established herein.

(b) By Lien: The Association may commence and maintain proceedings to foreclose the lien established herein. No action shall be brought to foreclose a lien until a notice authorized by the Association and signed by an authorized agent (or by any Owner if the Association fails or refuses to act) has been recorded in the Official Records of Alameda County, California, and a copy of the recorded notice has been delivered to the Owner(s) named in the notice. The notice shall state the amount of the delinquent assessments, the additional charges incurred to date, a description of the Owner's interest in the Condominium against which the assessment and other sums are levied, the name(s) of the record Owner(s) thereof, and the name and address of the trustee authorized by the Association to enforce the lien. Upon the recordation of the notice, the Association, at its option, may declare the entire unpaid balance of the annual regular assessment and all other sums then due or to become due from the Owner due and payable. This total sum may then be included in any suit, action or proceeding for collection. Once thirty (30) days has elapsed since the recordation of the notice, and ten (10) days has elapsed since the mailing or delivery of a copy of the recorded notice to the Owner, an action in the name of the Association may then be commenced to foreclose the lien for the delinquent assessment. When a notice has been recorded, such assessment shall constitute a lien on each respective Condominium prior and superior to all other liens, except all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and the lien or charge of any first mortgage.

6.5.4. Additional Charges: In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such additional charges, as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent. All additional charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent assessments or may be levied against a Condominium as a reimbursement assessment. Additional charges shall include, but not be limited to, the following:

(a) Attorneys' Fees: Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to

collect any assessment or sum due, whether by suit or otherwise;

(b) Late Charges: A late charge in an amount to be fixed by the Association in accordance with Civil Code Section 1366(c)(2) to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law; provided, however, that such late charge shall not exceed ten percent (10%) of the delinquent assessment or Ten Dollars (\$10.00), whichever is greater, or such greater amount as may, from time to time, be allowed by law;

(c) Costs of Suit: Costs of suit and court costs incurred as are allowed by the court;

(d) Interest: Interest on all sums imposed in accordance with this Article VI, including the delinquent assessment, reasonable costs of collection, reasonable attorneys' fees, and late charges, at an annual percentage rate to be established by the Association but in no event to exceed twelve percent (12%) interest, or such greater amount as may, from time to time, be allowed by law, commencing thirty (30) days after the assessment becomes due; and

(e) Other: Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

6.5.5. Certificate of Satisfaction of Lien: Upon payment of a delinquent assessment or other satisfaction thereof, the Association shall record a certificate stating the satisfaction and release of the assessment lien.

6.6. STATEMENT OF ASSESSMENT LIEN: Upon request, the Association shall furnish to any Owner liable for assessments a written certificate signed by an officer or authorized agent of the Association stating the amount of any assessment secured by the lien upon the Owner's Condominium and stating whether the assessment or any portion has been paid. The certificate shall be conclusive evidence as to the matters stated therein. A reasonable charge may be made for the issuance of such certificate.

6.7. SUBORDINATION OF LIEN: Notwithstanding any provision to the contrary, the liens for assessments created by this Declaration shall be subject and subordinate to and shall not affect the rights of the holder of First Mortgage made in good faith and for value. Upon the foreclosure of any First Mortgage on a Unit, any lien for assessments which became due prior to such foreclosure shall be extinguished; provided, however, that after the foreclosure of any such First Mortgage there shall be a lien on the interest of the

purchaser at the foreclosure sale to secure all assessments, whether regular, special or reimbursement, charged to such Condominium after the date of such foreclosure sale, which lien shall have the same effect and shall be enforced in the same manner as provided herein. For purposes of this Section 6.7, a Mortgage may be given in good faith or for value even though the Mortgagee has constructive or actual knowledge of the assessment lien provisions of this Declaration.

6.8. BOOKS AND RECORDS: The Association shall cause a complete record of all of its acts and corporate affairs to be kept. All books, records and papers of the Association, including minutes of meetings of the Association, the membership register, including mailing addresses and telephone numbers of the Owners, and this Declaration shall be available for inspection and copying by any Owner or the Owner's duly appointed representative during reasonable business hours. Owners shall have such further rights to access to Association records provided by Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the California Corporations Code. Every Owner shall have the absolute right to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association at any reasonable time. An Owner shall be entitled to make extracts and copies of documents. The Association shall establish rules regarding: (i) notice to be given to the custodian of the records by an Owner desiring to make the inspection; (ii) hours and days of the week when an inspection may be made; and (iii) payment for costs of making copies of documents requested by an Owner.

6.9. USE OF RESERVES: The Association shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. The Association may, however, authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses. The transferred funds shall be restored to the reserve fund within three (3) years of the date of the initial transfer, except that the Association may, upon making a finding supported by documentation that a delay would be in the best interests of the Project, delay the restoration until the time which the Association reasonably determines to be necessary. The Association shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this Section 6.9.

ARTICLE VII

THE ASSOCIATION

7.1. THE ORGANIZATION: The Association is an unincorporated membership association composed of all of the Unit Owners. The Association shall be governed by and shall have such powers as are set forth in this Declaration.

7.2. OWNERSHIP: Each Owner, by virtue of being an Owner, shall be a member of the Association. No other person shall be accepted as a member. Association membership is appurtenant to and may not be separated from the ownership of a Condominium. Membership shall terminate upon termination of Condominium ownership. Ownership of a Condominium shall be the sole qualification for Association membership. Membership shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Condominium (and then only to the transferee of title to such Condominium). Any attempt to make a prohibited transfer is void. The rights, duties, privileges and obligations of all Owners shall be provided in this Declaration.

7.3. VOTING: The Owners shall have one (1) vote in the Association for each Unit owned by an Owner. All decisions of the Association shall be made by majority vote of the Owners.

7.4. MEDIATION: Disputes between the Owners and/or deadlocks of the Association shall first be submitted to mediation prior to arbitration or litigation. Unless the Owners otherwise agree, the Owners shall use the mediation services provided by the American Arbitration Association. The cost of initiating mediation shall be paid by the Owners between or among whom the dispute occurs or by the Association if the dispute occurs among all of the Owners or if there is a deadlock of the Association.

7.5. ARBITRATION: Disputes between the Owners which are not resolved by mediation pursuant to Section 7.4, above, shall be submitted to the American Arbitration Association for binding arbitration. The decision of the arbitrator(s) shall be final and binding. The decision of the arbitrator(s) may include, require, or permit the exercise of any of the rights and remedies to or for the Association or an Owner provided or permitted in this Declaration or by applicable law. The costs of arbitration, including attorneys' fees, shall be allocated by the arbitrator(s).

7.6. POWERS OF ASSOCIATION: The Association has the general power to do any and all things that a nonprofit membership association organized under the laws of the State of California may lawfully do for the benefit of its members, specifically including any and all lawful actions which may be authorized, required or

permitted to be done under and by virtue of this Declaration or which may be necessary and proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety or general welfare of the Owners. The Association shall have all of the powers and duties set forth in this Declaration.

7.7. VOTING RIGHTS: The votes for each Unit shall be cast as a majority of co-Owners of the Condominium shall determine. Any votes cast by a single Owner shall be deemed the authorized votes for that Condominium. If the majority of co-Owners present in person or by proxy at a meeting cannot agree as to how to cast the votes for their Condominium, no votes shall be cast for that Condominium. The power to cast a particular Owner's votes may be exercised by the Owner's conservator, the guardian of the Owner's estate, the parent(s) entitled to custody of an Owner if the Owner is a minor, or the executor or administrator of a deceased Owner's estate if the Owner's interest in the Condominium is subject to administration in the Owner's estate.

7.8. PROXIES: Each Owner may vote in person or by proxy. Each proxy shall be in writing, signed and dated by the Owner and filed with the secretary of the Association. Every proxy shall be revocable and shall automatically cease upon actual notice to the Association of the conveyance by the Owner of the Owner's interest in the Owner's Condominium or the death or judicially declared incompetence of the Owner. Votes represented by proxies shall be counted in determining whether a quorum exists at a meeting.

7.9. ELECTION OF OFFICERS: Officers shall be elected by the Association.

7.10. REGULAR MEETINGS: The first regular meeting of the Association shall be held within six (6) months after the recordation of this Declaration. Regular meetings of the Association thereafter shall be held at intervals determined by the Association. Regular meetings shall be held within the Project or at a location as close to the Project as possible.

7.11. SPECIAL MEETINGS: A special meeting of the Owners may be scheduled by any Owner. Written notice of special meetings of the Owners shall be given by the Owner who has called the meeting. Notice of each special meeting shall be given to each Owner and shall be addressed to the Owner at either the most recent address appearing on the books of the Association or the address supplied by the Owner to the Association for the purpose of notice. Notices for special meetings shall be personally delivered or mailed first class with postage prepaid at least ten (10) days before the meeting. Notices of special meetings shall specify the place, day and hour of the meeting. Notices of special meetings

shall also state the purpose of the special meeting.

7.12. NOTICE: Except where this Declaration requires otherwise, written notice of regular and special meetings of the Owners shall be given by or at the direction of the president of the Association or any other person authorized to call the meeting.

Any matter may be presented at the meeting for action. Notice of each meeting shall be given to each Owner entitled to vote at the meeting and shall be addressed to the Owner at either (i) the most recent address appearing on the books of the Association or (ii) the address supplied by the Owner to the Association for the purpose of notice. Notices for meetings shall be personally delivered or mailed first class with postage prepaid at least ten (10) days before the meeting. Notices of meetings shall specify the place, day and hour of the meeting. Notices of special meetings shall also state the purpose of the special meeting.

7.13. CONDUCT OF MEETINGS: Meetings of the Owners shall be conducted in accordance with Roberts Rules of Order or such other parliamentary procedures as the Association may adopt. The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Association shall be available to Owners within thirty (30) days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any Owner upon request and upon reimbursement of the Association's costs in making that distribution.

7.14. HEARINGS:

7.14.1. Procedure: If a Owner appears to be in violation of any provision of this Declaration and this Declaration requires that notice and hearing be provided, the Association shall give written notice to the Owner specifying the nature of the violation and any other appropriate information and stating the time, date and place that the Owner will have an opportunity to be heard by the Association. If an Owner's failure to correct a violation results in the expenditure of funds by the Association to correct the violation, the notice shall also state that the Association may vote to levy a reimbursement assessment if the Association finds that a violation has occurred. Written notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail at the address given by the Owner to the Association for the purpose of service of notice or to the address of the Owner's Condominium if no other address has been provided.

7.14.2. Determination: After the hearing has taken place, the Association shall (i) determine whether a violation has occurred and, if so, may impose a reimbursement assessment which

shall become effective not less than five (5) days after the date of the hearing; or (ii) take such other action as may be appropriate. The determination of the Association shall be final.

Nothing herein shall be construed to prevent the Association from making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing notice and hearing.

7.15. ACTION WITHOUT MEETING: Any action which may be taken by the vote of Owners at a regular or special meeting may be taken without a meeting if all of the Owners so consent in writing.

7.16. TIME AND EFFORTS: The Owners shall use their best efforts to devote and provide approximately equal amounts of time on Association business, including on the cleaning, maintenance and repair of the Project. The Owners shall take turns as officers of the Association.

7.17. RULES: The Association may adopt rules which may concern any subject within the jurisdiction of the Association. To the extent deemed necessary in order to preserve the benefits of the Project, the rules may establish architectural controls and may govern the use of the Common Area by Owners or their invitees. The rules may not discriminate between Owners and tenants of Owners. After adoption, a copy of the rules shall be furnished to each Owner. Owners shall be responsible for distributing the rules to their tenants.

7.18. MANAGER: The Association may appoint or hire any Owner or any other person or entity as manager of the Project. The Association may also hire such other employees (including Owners) as it deems necessary. Except as expressly prohibited, the Association may delegate to the manager any of its duties, powers or functions, including the authority to deposit or withdraw funds from the accounts of the Association. The manager may additionally be authorized to establish a common trustee account for the deposit of assessments collected. If a manager is not designated, the president of the Association shall act as manager.

ARTICLE VIII

RIGHTS OF MORTGAGEES

8.1. CONFLICT: Notwithstanding any contrary provision contained elsewhere in the Declaration, the provisions of this Article VIII shall control with respect to the rights and obligations of Institutional Mortgagees specified herein.

8.2. LIABILITY FOR UNPAID ASSESSMENTS: Any Institutional Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall take the property free of any claims for unpaid assessments or charges against the Condominium which accrue prior to the acquisition of title to the Condominium by the Institutional Mortgagee.

8.3. RESERVE FUND: The Association shall maintain as reserve funds the reserve account pursuant to Section 6.5 hereof, which shall be sufficient to pay for maintenance, repair and periodic replacement of Common Area improvements which the Association is obligated to maintain. This reserve fund shall be funded by regular assessments payable in installments, as specified in Section 6.2 hereof, rather than by special assessments; provided, however, that this provision shall not be deemed to limit the power of the Association to levy any other type of assessment or charge authorized by this Declaration.

8.4. TERMINATION OF AGREEMENTS: Any agreement for professional management of the Project shall be for a term not to exceed one (1) year without the consent of all of the Owners; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days written notice.

8.5. NOTICES TO ELIGIBLE HOLDERS: An Eligible Holder is entitled to timely written notice of:

8.5.1. Any condemnation loss or casualty loss which affects either a material portion of the Project or the Condominium on which the Eligible Holder holds a First Mortgage;

8.5.2. Any delinquency in the payment of assessments or charges owed by the Owner of a Condominium which is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date;

8.5.3. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

8.5.4. Any proposal to take any action specified in this Article VIII or in Section 9.1.2, below; or

8.5.5. Any default by an Owner-mortgagor of a Condominium in the performance of the Owner's obligations under

Rear Structure





rear structure











AP 13









this Declaration which is not cured within sixty (60) days.

8.6. INSPECTION OF BOOKS AND RECORDS: Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records and financial statements of the Associations, the Declaration and any amendments thereto during normal business hours or under other reasonable circumstances.

8.7. FINANCIAL STATEMENTS: If fifty-one percent (51%) of the Institutional Mortgagees desire to have audited financial statements of the Association for the immediately preceding fiscal year, the Institutional Mortgagees, at their expense, may cause an audited financial statement to be prepared, if one is not otherwise available.

8.8. TERMINATION OF PROJECT: Except as provided by statute in the case of condemnation or substantial loss to Units and/or the Common Area, any decision, by act or omission, to abandon or terminate the legal status of the Project as a condominium project shall require:

8.8.1. The approval of sixty-seven percent (67%) of the Institutional Mortgagees, based on one (1) vote for each First Mortgage owned, if the decision to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Project; or

8.8.2. The approval of sixty-seven percent (67%) of the total voting power of the Association and sixty-seven percent (67%) of the Eligible Holders, based on one (1) vote for each First Mortgage owned, if Section 8.8.1, above, is not applicable.

8.9. ACTIONS REQUIRING CONSENT: Except as provided by statute in the case of condemnation or substantial loss to Units and/or Common Area, unless sixty-seven percent (67%) of the Institutional Mortgagees, based on one (1) vote for each First Mortgage owned, or all of the Owners have given their prior written approval, the Association shall not be entitled to:

8.9.1. Use hazard insurance proceeds for losses to any Project property (whether to Units or Common Area) for other than the repair, replacement or reconstruction of the Project property;

8.9.2. Partition or subdivide any Condominium;

8.9.3. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utilities or for the other public purposes consistent with the intended use of the Common Area by the Project shall not be deemed a transfer within

the meaning of this clause; or

8.9.4. Change the pro rata interests or obligations of any individual Condominium for the purpose of levying assessments or charges or allocating distributions or hazard insurance proceeds or condemnation awards.

8.10. PARTIAL CONDEMNATION OR DESTRUCTION:

8.10.1. In the event a portion of the Project is condemned, destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of this Declaration and the original plans and specifications for the Project, unless fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each First Mortgage owned, approve the taking of other action by the Association.

8.10.2. After a partial condemnation or partial destruction of the Project, no reallocation of interest of Owners in the Common Area may be effected without the prior written approval of sixty-seven percent of the Institutional Mortgagees on all remaining condominiums, whether existing in whole or in part, based on one (1) vote for each First Mortgage owned.

8.11. SELF-MANAGEMENT: The vote or written consent of all of the Owners and fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each First Mortgage owned, shall be required to assume self-management of the Project, if professional management of the Project has been required by an Eligible Holder at any time.

8.12. MORTGAGE PROTECTION: No breach of any of the covenants, conditions and restriction nor the enforcement of any lien provisions contained in this Declaration shall render invalid the lien of any First Mortgage made in good faith and for value on any Condominium, but all of the covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

ARTICLE IX

AMENDMENT AND ENFORCEMENT

9.1. AMENDMENTS: Prior to the conveyance of the first Condominium, this Declaration may be amended by Declarant alone. After the conveyance of the first Condominium, this Declaration may be amended in accordance with the following provisions:

9.1.1. With respect to any action to be taken under this Section 9.1 which is also governed by provisions of Article VIII that require a specified vote of Owners and/or Mortgagees, the requirements of Article VIII must be satisfied before action may be taken under this Section 9.1. After the requirements of Article VIII have been satisfied, a vote to amend this Declaration in compliance with this Section 9.1 may then be taken.

9.1.2. The vote or written consent of a majority of the Owners and fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each First Mortgage owned, shall be required to add to, amend or modify, whether by formal amendment or otherwise, any material provision of this Declaration which establishes, provides for, governs or regulates any of the following subjects:

- (a) Voting;
- (b) Assessments, assessment liens or subordination or assessments liens;
- (c) Reserves for maintenance, repair and replacement of Common Area;
- (d) Insurance policies or fidelity bonds;
- (e) Rights to use the Common Area;
- (f) Responsibilities for maintenance and repair of any portion of the Project;
- (g) The boundaries of a Unit;
- (h) The interest of an Owner in Common Area or Restricted Common Area;
- (i) Convertibility of Units into Common Area or of Common Area into Units;
- (j) Leasing of Condominiums;
- (k) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium;
- (l) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (m) Restoration or repair of the Project after

damage or partial condemnation in a manner other than as specified in this Declaration;

(n) The provisions of Section 6.8, Article VIII, and this Section 9.1.2.

9.1.3. Any amendment or addition to this Declaration regarding the matters specified in Section 9.1.2, above, shall not be considered material and need not be approved by Eligible Holders if the amendment or addition is solely for the purposes of correcting technical errors or for clarification. Any Eligible Holder who receives a written request to approve an addition or amendment and who does not deliver or have its response postmarked within thirty (30) days of the date contained within the written request shall be deemed to approve the addition or amendment. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when personally delivered against receipted copy, or mailed by certified or registered mail, postage prepaid, in either case to the parties at their last known address.

9.1.4. Other Provisions of Declaration: Any other provisions of this Declaration may be amended by the vote or written consent of all of the Owners.

9.1.5. Recordation of Amendment: Any amendment shall be effective upon the recordation in the Official Records of Alameda County, California, of an instrument setting forth the terms of the amendment, duly certified and executed by the president and secretary of the Association.

9.2. ENFORCEMENT AND NON-WAIVER:

9.2.1. Right of Enforcement: The Association shall have the power to enforce the provisions of this Declaration in any manner provided by law or in equity and in any manner provided in this Declaration. The Association may institute appropriate legal action, suspend an Owner's voting rights for a period not to exceed thirty (30) days and/or levy a fine against an Owner in an amount not to exceed Five Hundred Dollars (\$500.00) or such other standard maximum amount as may be approved by a majority of the Owners. No determination of whether a violation has occurred shall be made until notice and hearing has been provided to the Owner. In the event legal action is instituted by the Association, any judgment rendered shall include all appropriate additional charges. Notwithstanding anything to the contrary contained in this Declaration, the Association shall not have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's individually owned Unit, including access thereto over and across the Common Area, due to the Owner's failure

to comply with the provisions of this Declaration, unless the loss or forfeiture is the result of the judgment of a court, an arbitration decision or a foreclosure proceeding or a sale conducted pursuant to this Declaration. The provisions of this Declaration shall be equitable servitudes, enforceable by any Owner and/or the Association against the Association and/or any other Owner, tenant or occupant of the Project. Except as otherwise provided, Declarant, the Association or any Owner(s) shall have the right to enforce, in any manner permitted by law or in equity, any and all of the provisions of this Declaration, including any decision made by the Association, upon the Owners, the Association or upon any property in the Project.

9.2.2. Violation of Law: Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures herein set forth.

9.2.3. Remedies Cumulative: The remedies provided by this Declaration are cumulative and not exclusive.

9.2.4. Nonwaiver: The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1. TERM OF DECLARATION: This Declaration shall continue for a term of fifty (50) years from its date of recordation. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years until a vote of all of the Owners determines that this Declaration shall terminate.

10.2. CONSTRUCTION OF PROVISIONS: The provisions of this Declaration shall be liberally construed to effect its purpose of creating a uniform plan for the development and operation of a condominium project.

10.3. BINDING: This Declaration shall be for the benefit of and be binding upon all Owners, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, tenants, encumbrancers, donees, grantees, mortgagees, lienors and assigns.

10.4. SEVERABILITY OF PROVISIONS: The provisions hereof shall be deemed independent and severable, and the invalidity or

unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

10.5. GENDER, NUMBER AND CAPTIONS: As used herein, the singular shall include the plural and masculine, feminine, and neuter pronouns shall each include the other(s) where appropriate. The title and captions of each paragraph hereof are not a part thereof and shall not affect the construction or interpretation of any part hereof.

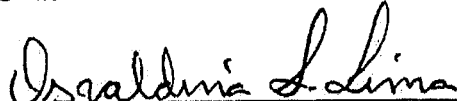
10.6. REDISTRIBUTION OF DECLARATION: Upon the resale or other conveyance of any Condominium by any Owner, the Owner shall supply to the buyer or other transferee of the Condominium a copy of this Declaration.

10.7. EXHIBITS: All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.

10.8. CONFLICT: In the event of a conflict between this Declaration and any rules adopted by the Association, the provisions of this Declaration shall prevail.

IN WITNESS WHEREOF, the undersigned have executed this Declaration on the date first above written.

DECLARANT:



Osvaldina S. Lima

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)

COUNTY OF Contra Costa)

On Oct. 31, 2007 before me, Mykel Lynn Judkins - Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, Osvaldina S. Lima

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

WITNESS my hand and official seal.

Mykel Lynn Judkins (SEAL)
NOTARY PUBLIC SIGNATURE



OPTIONAL INFORMATION

THIS OPTIONAL INFORMATION SECTION IS NOT REQUIRED BY LAW BUT MAY BE BENEFICIAL TO PERSONS RELYING ON THIS NOTARIZED DOCUMENT.

TITLE OR TYPE OF DOCUMENT _____

DATE OF DOCUMENT _____ NUMBER OF PAGES _____

SIGNER(S) OTHER THAN NAMED ABOVE _____

SIGNER'S NAME _____ SIGNER'S NAME _____

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RIGHT THUMBPRINT
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EXHIBIT "A"

NOTES AND DEFINITIONS

1. THIS PROJECT IS LOCATED IN PARCEL "A" OF PARCEL MAP 7739, IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK _____ PAGES _____ OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER. THIS PROJECT IS COMPOSED OF A COMMON AREA AND 4 UNITS.
2. THE CONDOMINIUM DELINEATED HEREIN IS SUBJECT TO THE PROVISIONS OF THE DAVIS-STIRLING COMMON INTEREST DEVELOPMENT ACT, TITLE 6 PART 4, DIVISION SECOND OF THE CIVIL CODE.
3. THE BOUNDARIES OF THE CONDOMINIUM UNITS ARE DEFINED HORIZONTALLY TO THE INTERIOR FINISHED SURFACES AND DOORS OF THE PERIMETER WALLS, AND DEFINED VERTICALLY TO THE BASE ELEVATION AND THE UPPER ELEVATION AS SHOWN HEREON.
4. THIS PLAN AND THE DIMENSIONS SHOWN HEREIN ARE INTENDED TO CONFORM TO CIVIL CODE 1351(e), WHICH REQUIRES A THREE DIMENSIONAL DESCRIPTION OF THE PROJECT IN SUFFICIENT DETAIL TO IDENTIFY THE COMMON AREAS AND EACH SEPARATE INTEREST. THE DIMENSIONS SHOWN HEREIN ARE NOT INTENDED TO BE SUFFICIENTLY ACCURATE TO USE FOR THE COMPUTATION OF THE FLOOR AREA OR AIR SPACE VOLUME IN ANY OR ALL OF THE UNITS.
5. THE DIAGRAMMATIC PLANS INTENTIONALLY OMIT DETAILED INFORMATION OF INTERNAL PARTITIONING WITHIN INDIVIDUAL UNITS. LIKEWISE, SUCH DETAILS AS PROTRUSIONS OF VENTS, BEAMS, COLUMNS, WINDOW CASINGS, AND OTHER SUCH FEATURES ARE NOT INTENDED TO BE REFLECTED ON THIS PLAN.
6. THE COMMON AREA IS ALL OF THE LAND AND REAL PROPERTY INCLUDED WITHIN THE BOUNDARY LINES OF SAID PARCEL "A", EXCEPT THOSE PORTIONS SHOWN AND DEFINED HEREIN AS CONDOMINIUM UNITS.
7. FOR ALL OTHER DEFINITIONS REFER TO THE "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF "1354-1356 81ST AVENUE CONDOMINIUMS", 1354 81ST AVENUE, OAKLAND, CALIFORNIA.
8. IF THERE ARE ANY MATTERS OF CONFLICT OR INCONSISTENCIES BETWEEN THIS CONDOMINIUM PLAN AND THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, THEN THE PROVISIONS OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS SHALL PREVAIL.

CONDOMINIUM PLAN FOR 1354-1356 81ST AVENUE CONDOMINIUMS

PORTION OF LOT 10, BLOCK E, MAP NO. 2 OF THE
BUENA VENTURA TRACT, MAP BOOK 13, PAGE 27,
ALAMEDA COUNTY RECORDS, CALIFORNIA

OWNER: OSVALDINA LIMA
1127 LIVORNA ROAD
ALAMO, CA 94507
TEL: 510-853-4462

SURVEYOR: AHMAD MOGHADDAS
1631 BERKELEY WAY
BERKELEY, CA 94703
TEL: 510-843-6580

LEGEND

--- EXTERIOR BOUNDARY LINE
 --- OLD LOT LINE
 --- MONUMENT LINE
 ○ PERIOD CITY MONUMENT
 ○ SET BACK COMP REC 9/27/05



PARCEL MAP 7739

A ONE LOT SUBDIVISION

FOR CONDOMINIUM PURPOSES
 PORTION OF LOT 10, BLOCK E, MAP NO. 2 OF THE
 BUENA VENTURA TRACT, BOOK 13, PAGE 27,
 ALAMEDA COUNTY RECORDS.

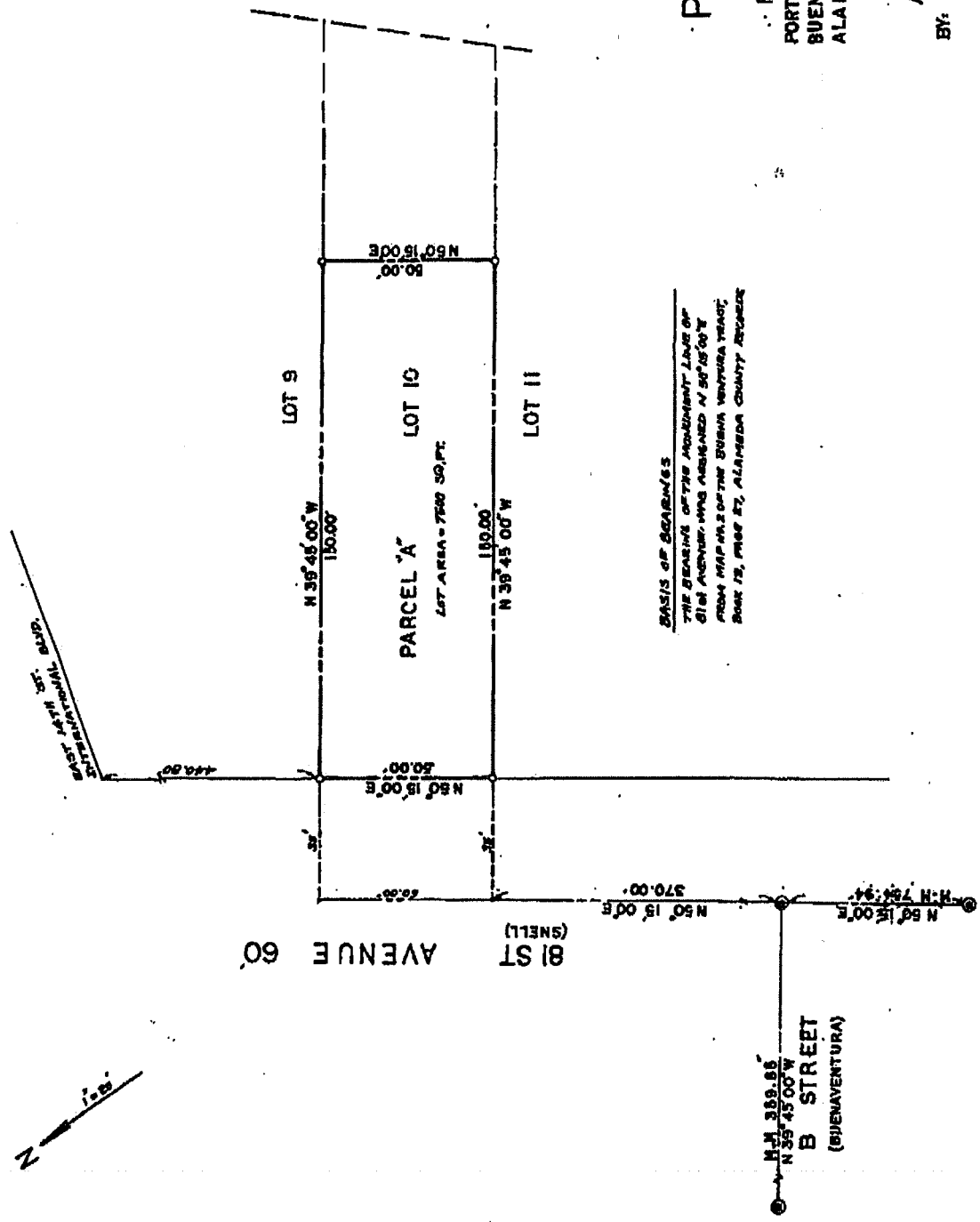
CITY OF OAKLAND
 ALAMEDA COUNTY, CALIFORNIA

BY: AHMAD MOGHADDAS
 1031 BERKELEY WAY,
 BERKELEY, CA. 94709

NOVEMBER 2001

SCALE: 1"=20'

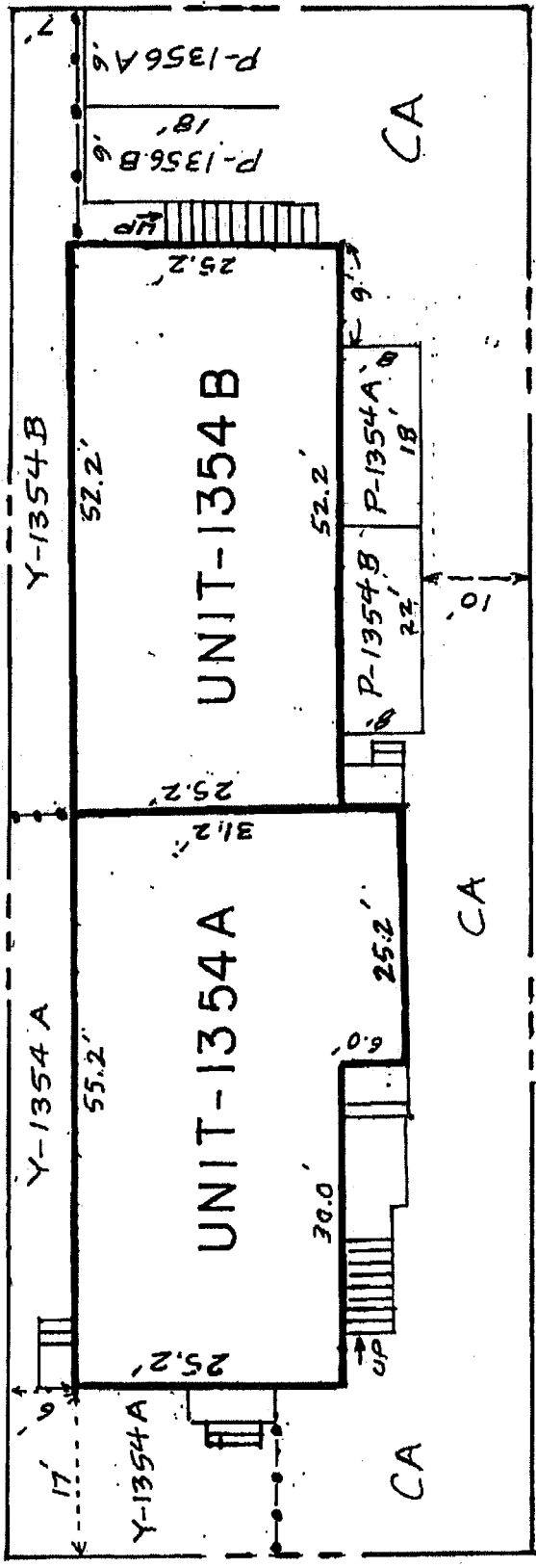
SHEET 2 OF 5



BASIS OF BEARINGS
 THE BEARINGS OF THE MONUMENT LINE OF
 81ST AVENUE WAS ASSIGNED N 50° 15' 00" W
 FROM MAP NO. 2 OF THE BUENA VENTURA TRACT,
 BOOK 13, PAGE 27, ALAMEDA COUNTY RECORDS



81st AVENUE

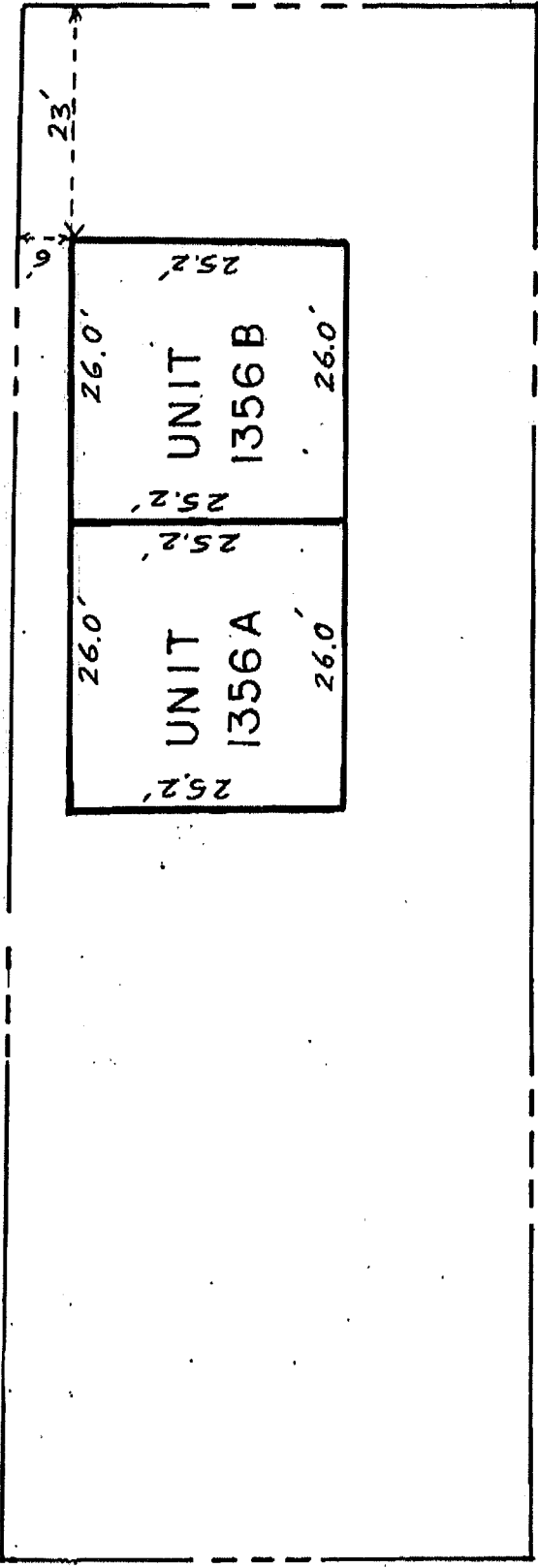


LOWER FLOOR AND SITE PLAN

NOT TO SCALE

LEGEND

- PROPERTY LINE
- - - P-1354 A PARKING OF UNIT 1354 A
- - - P-1354 B " " " 1354 B
- - - P-1356 A " " " 1356 A
- - - P-1356 B " " " 1356 B
- - - Y-1354 A YARD OF UNIT 1354 A
- - - Y-1354 B " " " 1354 B
- YARD LIMIT
- CA COMMON AREA



UPPER FLOOR PLAN

NOT TO SCALE

AREAS AND ELEVATIONS				
UNIT NO.	AREA SQ. FT.	FLOOR ELEVATION FEET	CEILING ELEVATION FEET	
UNIT 1354 A	1542	21.84'	30.84'	
UNIT 1354 B	1315	21.84'	30.84'	
UNIT 1356 A	655	31.84	39.84'	
UNIT 1356 B	655	31.84	39.84'	
LOT	7500			
COMMON	4510			

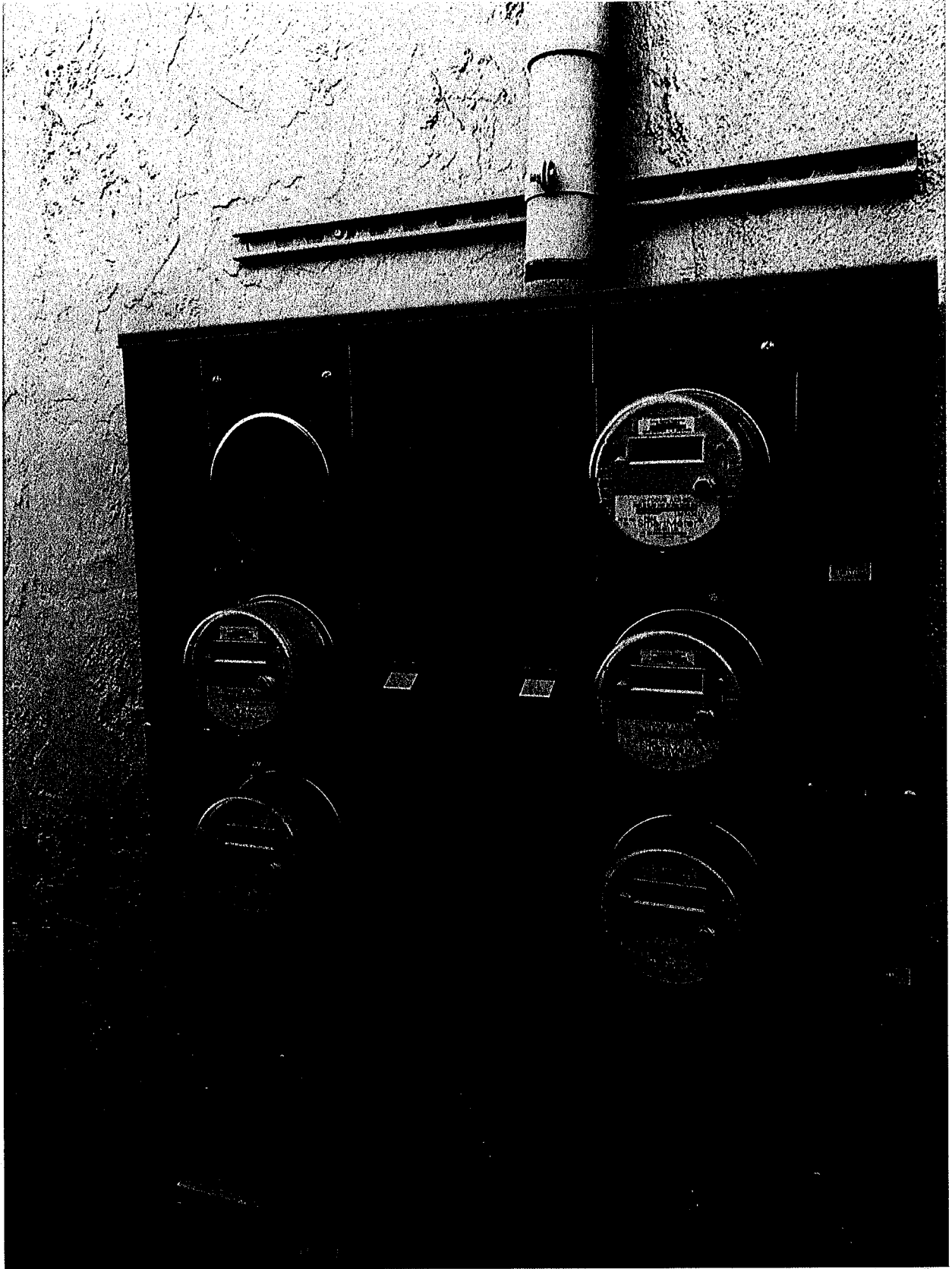
Google Maps 1354 81st Ave

Rear Structure

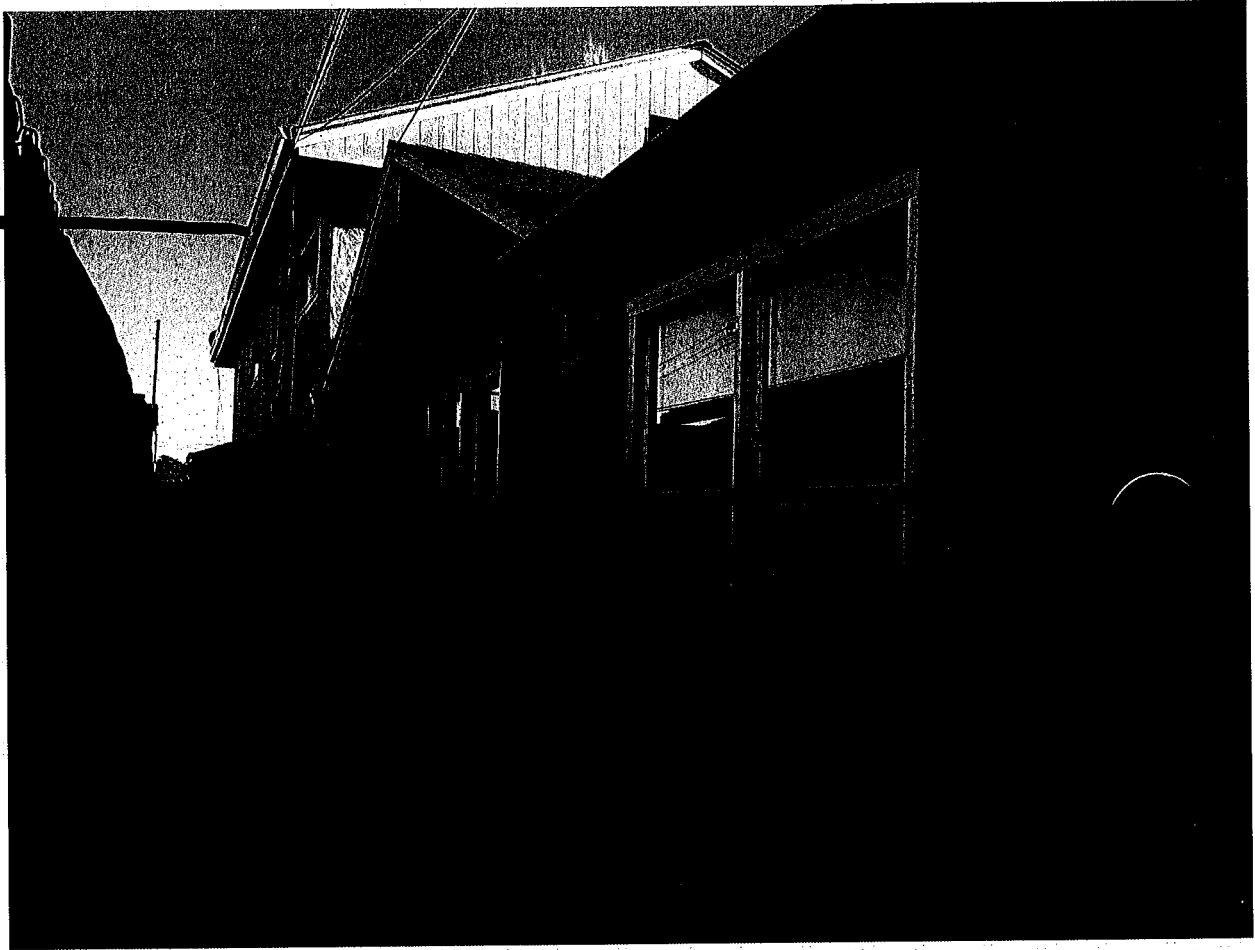


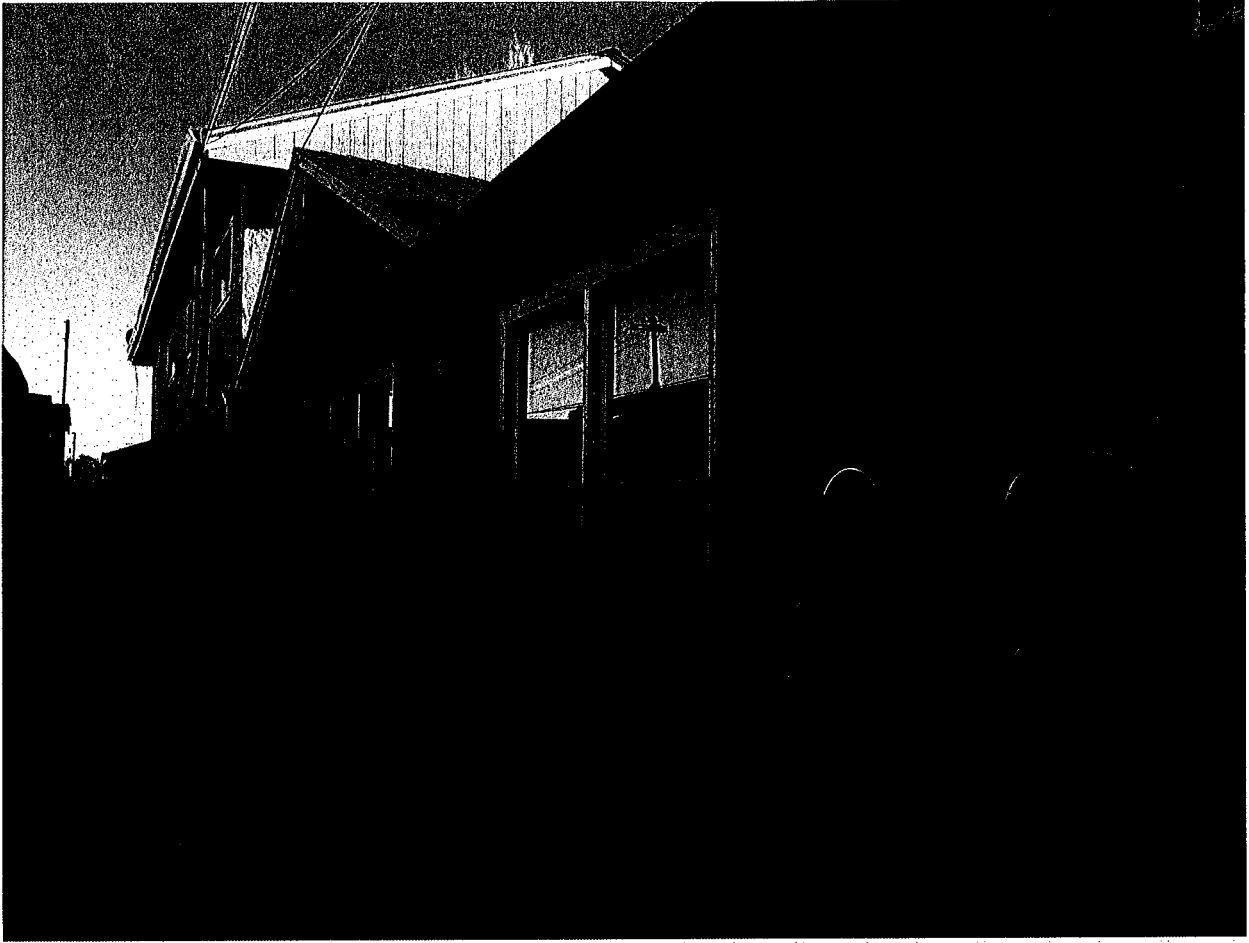
Imagery ©2020 Google, Map data ©2020, Map data ©2020 10 ft

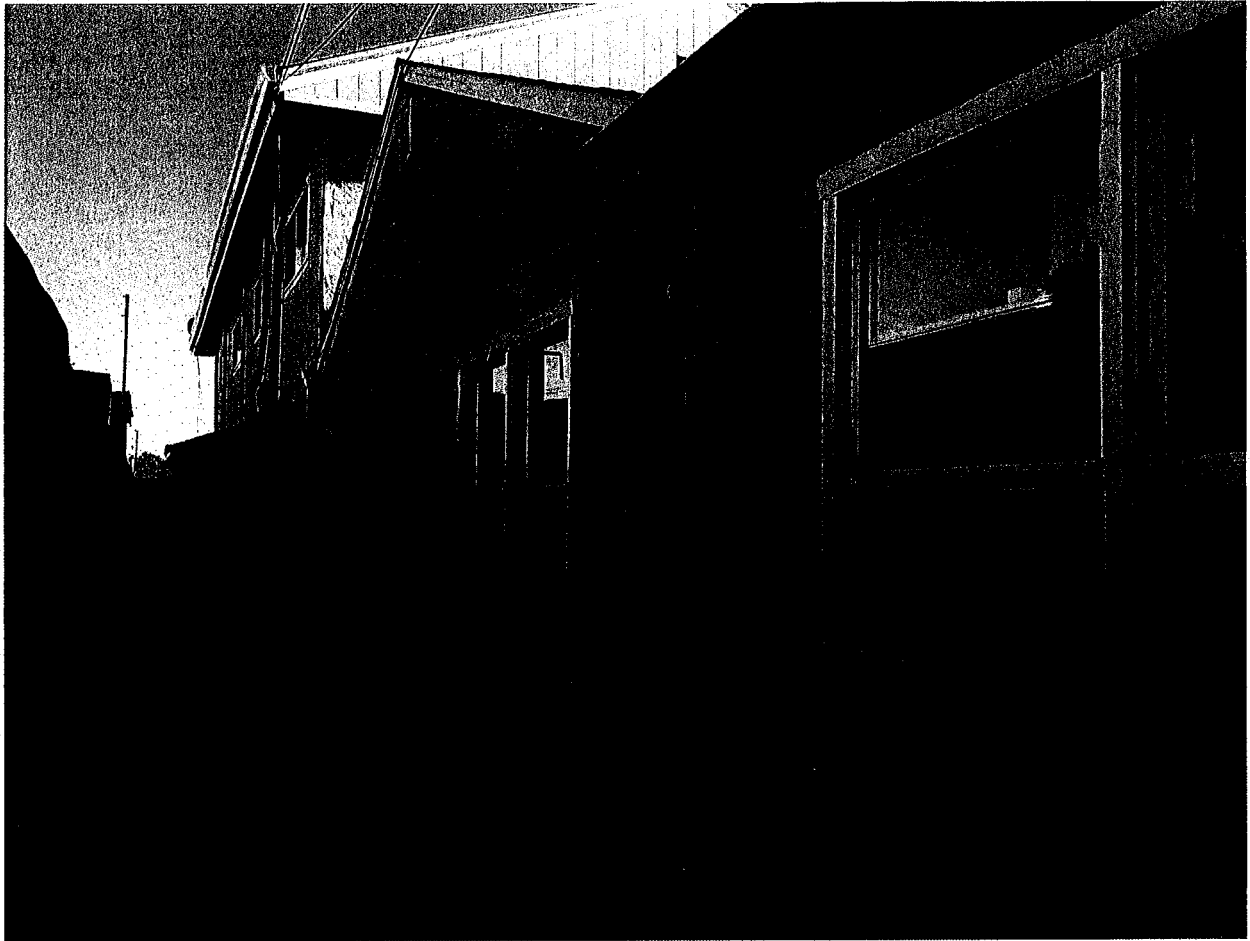
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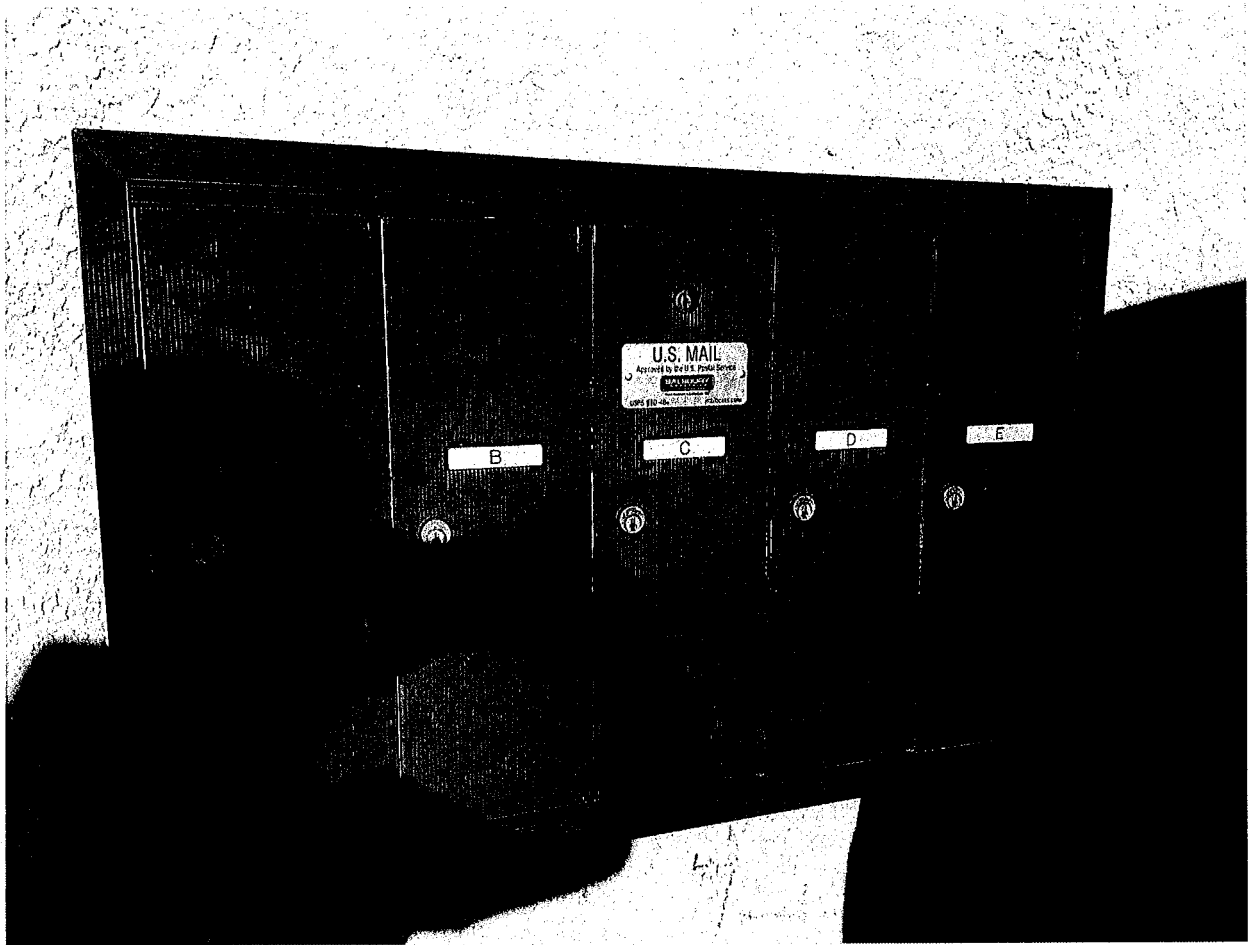


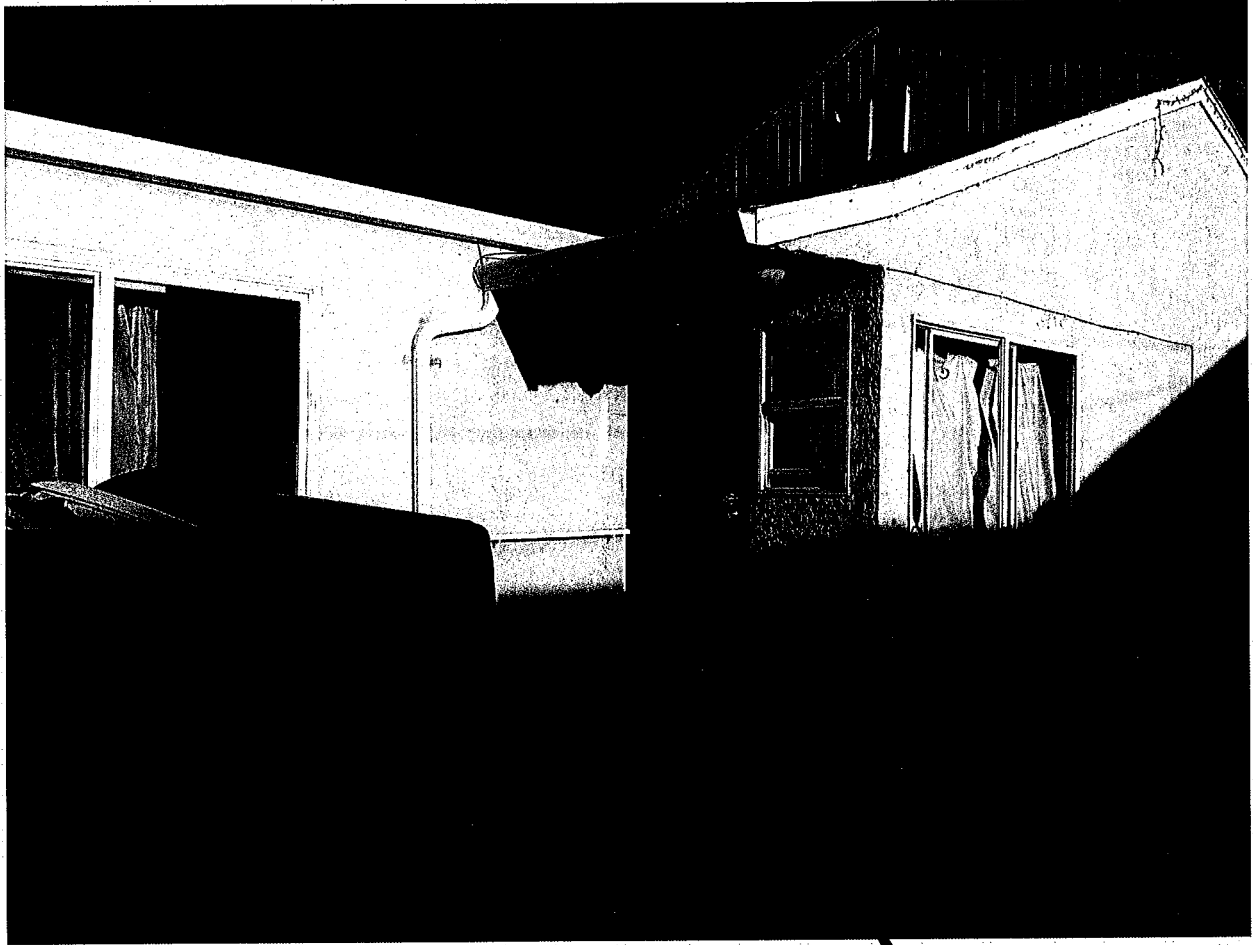
rear structure



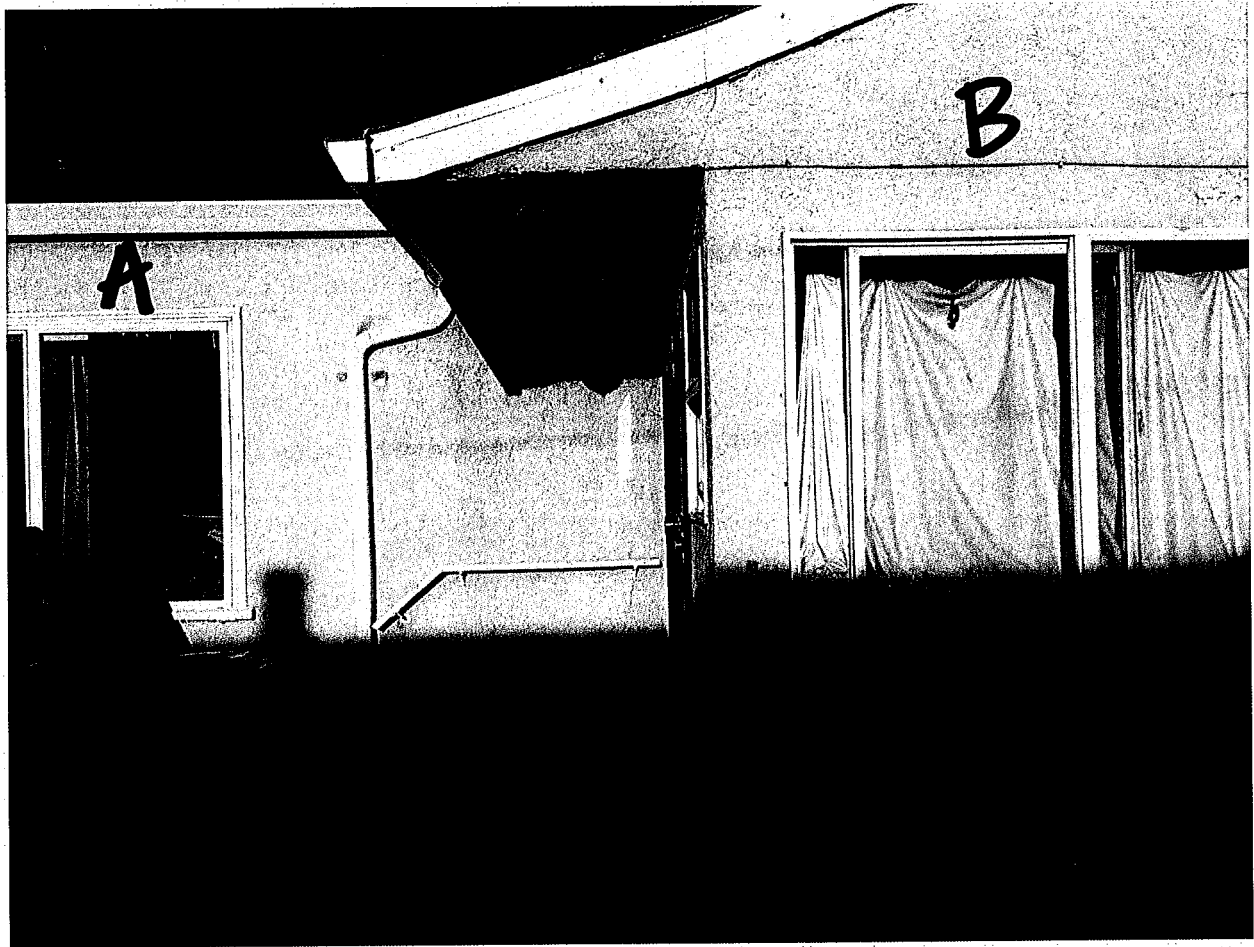


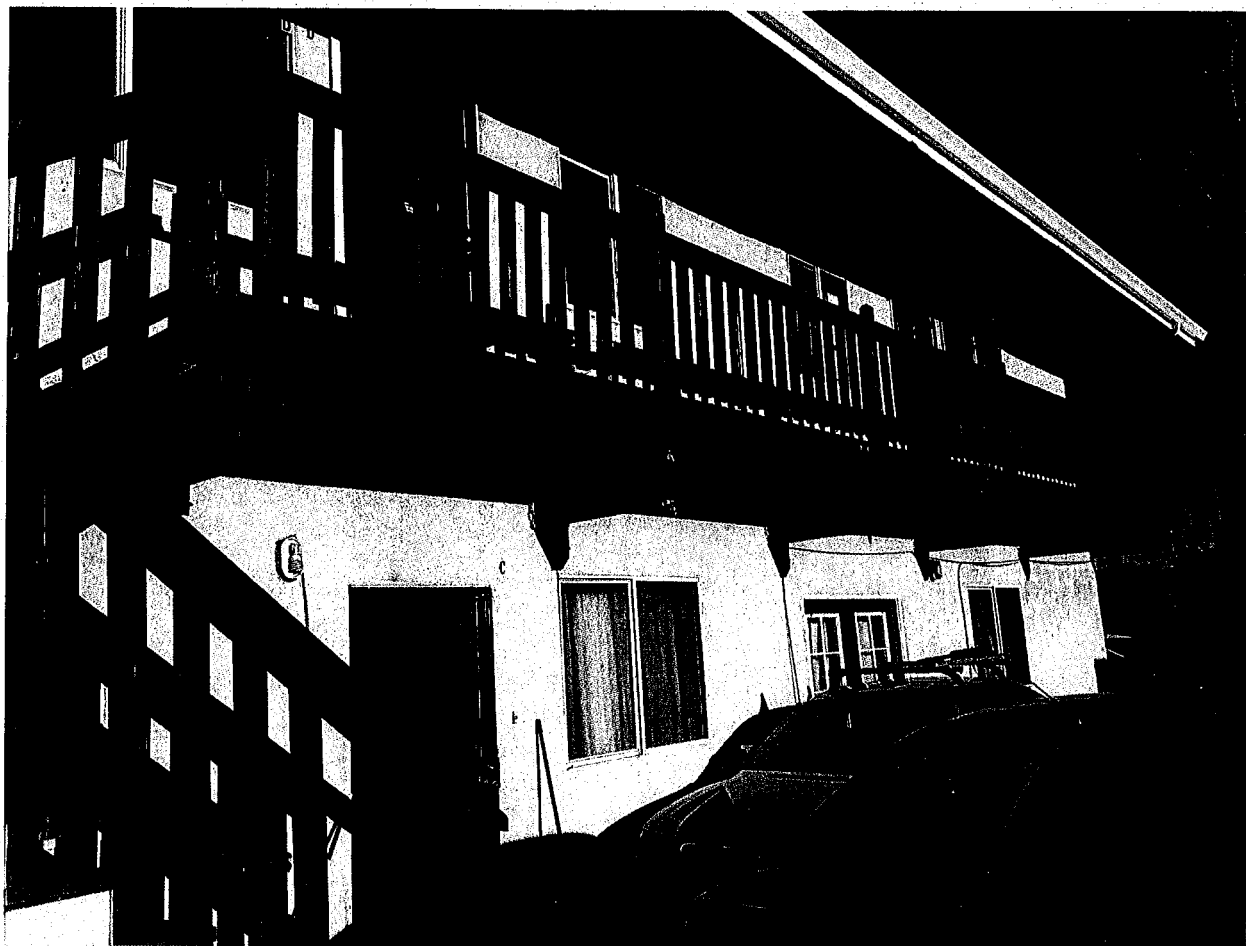


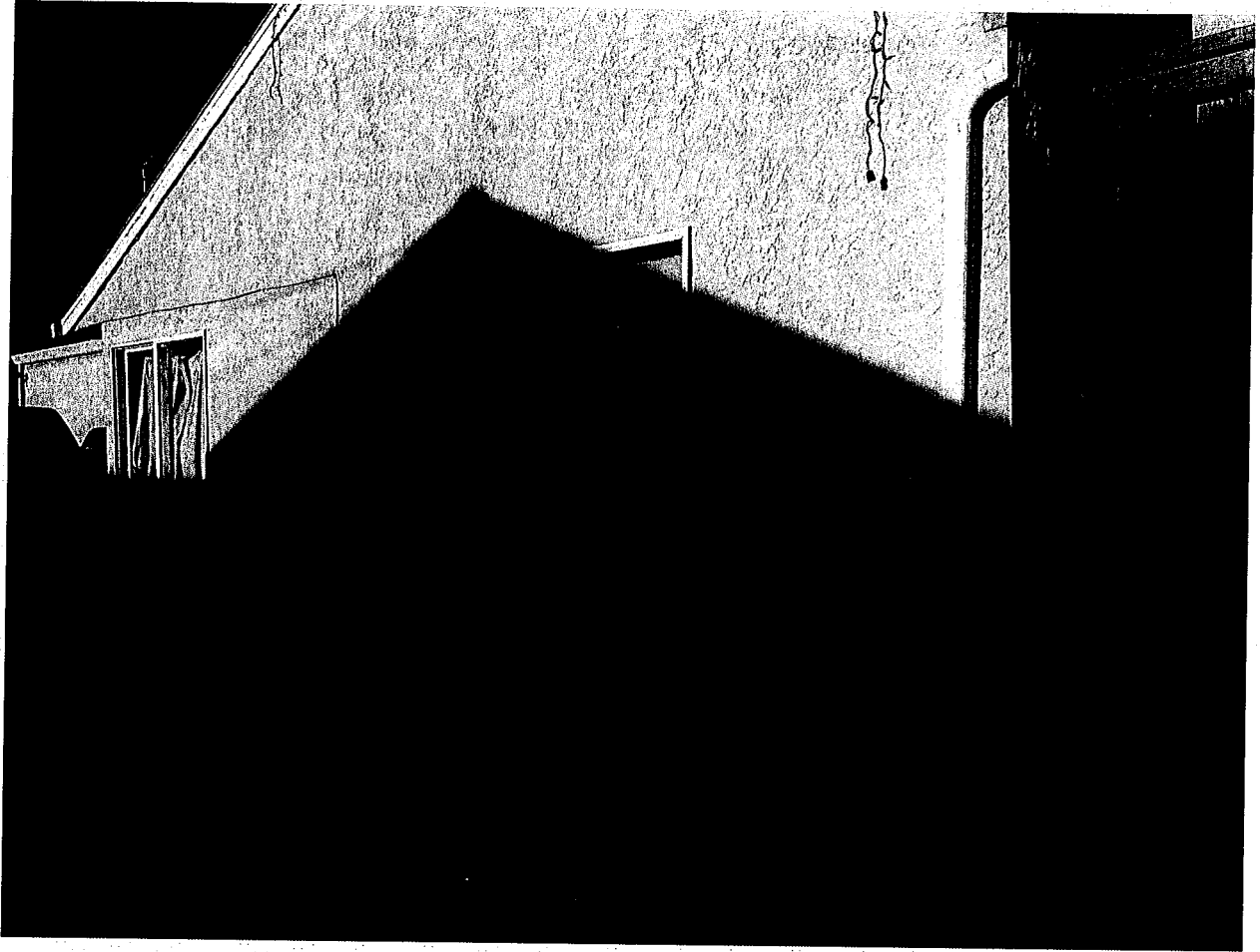




↓
APT B







1270062815



Unit #:

Description: Electrical for rehab

Date Opened: 12/19/2001

Record Status: Final

Record Status Date: 9/3/2002

Job Value: \$0.00

Requestor: LUIS CAMACHO

Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
12/20/2001		ROUGH 03P	CORRECTION NOTICE	C/N
12/27/2001		ROUGH 03P	PARTIAL APPROVAL	R OK UPSTAIRS UNTIS EX SUBPANEL
4/15/2002		ROUGH 03P	CORRECTION NOTICE	C/N UNIT B OK
4/26/2002		ROUGH 03P	PARTIAL APPROVAL	BOTTOM UNIT OK TO COVER
4/30/2002		ROUGH 03P	APPROVED	UNIT "D" OK TO COVER UTILITY RELEASE UNIT A&B
8/22/2002		FINAL ELECTRICAL 04P	INSP CANCELLED	CANCEL
8/30/2002		Frame	No Status	FINAL/LUIS, [REDACTED]
9/3/2002		FINAL ELECTRICAL 04P	APPROVED	FINAL OK

Record ID: **M0102064**

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: Mechanical for rehab, replace one FAU, gas test.

Date Opened: 12/19/2001

Record Status: Final

Record Status Date: 8/28/2002

Job Value: \$0.00

Requestor: LUIS CAMACHO

Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
5/28/2002		ROUGH 03P	NO PROGRESS	INFORMATION; NEEDS PLAN CHECK
8/1/2002		ROUGH 03P	CORRECTION NOTICE	MANY CORRECTIONS SEE NOTICE
8/7/2002		GAS PIPING 03N	APPROVED	GAS PIPING OK
8/7/2002		ROUGH 03P	CORRECTION NOTICE	CORRECTION NOTICE
8/13/2002		ROUGH 03P	PARTIAL APPROVAL	MECH ROUGH OK LESS FLUES
8/28/2002		ROUGH 03P	APPROVED	ROUGH COMPLETED
8/28/2002		FINAL MECHANICAL 04P	APPROVED	FINAL

Record ID: **P0103566**

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: Plumbing for rehab of 4 unit bldg.

Date Opened: 12/19/2001

Record Status: Expired

Record Status Date: 7/10/2003

Job Value: \$0.00

Requestor: LUIS CAMACHO

Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
12/20/2001		ROUGH 03P	CORRECTION NOTICE	CORRECTIONS AND INFO
12/27/2001		UNDERGROUND 01P	APPROVED	UNDERGROUND WASTE A,B ONLY
12/27/2001		ROUGH 03P	PARTIAL APPROVAL	UPSTAIRS A UNIT IN WALLS OK'D
1/3/2002		ROUGH 03P	PARTIAL APPROVAL	UPSTAIRS B UNIT IN WALLS OK

4/15/2002
4/29/2002
5/23/2002
8/21/2002
8/26/2002
8/26/2002
8/28/2002

ROUGH 03P
ROUGH 03P
ROUGH 03P
FINAL PLUMBING 04P
FINAL PLUMBING 04P
GAS TEST 04N
UTILITY RELEASE 04N

CORRECTION NOTICE
CORRECTION NOTICE
PARTIAL APPROVAL
CORRECTION NOTICE
CORRECTION NOTICE
APPROVED
APPROVED

CORRECTIONS ADN INFO
CORRECTIONS AND INFO
ROUGH OK LESS W.HTR. RMS.
CORRECTIVE WORK NOT DONE
C/N
GAS OK A,B,C,D,E
GAST A,B,C,D,E RELEASE)

Record ID: P9801950

Address: 1354 81ST AVE
APN: 042 424706800
Unit #:
Description: 1 toilet
Date Opened: 11/2/1998
Record Status: Expired
Record Status Date: 11/4/1999
Job Value: \$0.00
Requestor: THERESA SHAVERS

Business Name:
License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
-----------------	----------------	-----------------	-----------------	-----------------

Record ID: R1100661

Address: 1354 81ST AVE
APN: 042 424708500
Unit #:
Description: RE ROOF
Date Opened: 12/19/2011
Record Status: Permit Issued
Record Status Date: 12/19/2011
Job Value: \$0.00
Requestor: MLS ROOFING INC

Business Name:
License #: 879508

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
-----------------	----------------	-----------------	-----------------	-----------------

Record ID: R1700671

Address: 1354 81ST AVE
APN: 042 424708100
Unit #:
Description: Re-Roofing Certification -- Obstruction permit required: Reserve curbside parking or obstruct sidewalk/street (scaffolding, canopy, fencing, dumpsters, traffic, etc.)
Date Opened: 8/8/2017
Record Status: Completed Cert Received
Record Status Date: 9/25/2017
Job Value: \$0.00
Requestor: BRIAN SAUER

Business Name:
License #: 764387

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
-----------------	----------------	-----------------	-----------------	-----------------

Record ID: RE1201007

Address: 1354 81ST AVE
APN: 042 424708100
Unit #:
Description: 400 AMP SERVICE UPGRADE
Date Opened: 4/6/2012
Record Status: Final
Record Status Date: 5/9/2012
Job Value: \$0.00

CITY OF OAKLAND
BUILDING AND HOUSING DEPARTMENT
JACK E. TAYLOR, ADMINISTRATOR

BUILDING DIVISION
LAWRENCE A. LANE
BUILDING INSPECTOR

CITY HALL
OAKLAND 12, CALIFORNIA
979,9901

HOUSING DIVISION
ENRICO LA BARBERA
URBAN RENEWAL

September 19, 1963 Code No. 66-12

Address 1354-56 & 1354 A&B 81st Ave
Occ. H F. Zone 4 Stories 2
Type V Z. Zone B Survey C

Paul and Tealer Clark
% Ester A. Harris
1051 - 48th Street, Apt. A
Emeryville, California

Dear Owners:

Your property at 1354-56 & 1354 A&B 81st Avenue, Oakland, California, was surveyed on September 10, 63, by personnel of this Department. Similar surveys are being conducted throughout the City for the purpose of bringing about a healthier, safer and more pleasing urban environment, by the elimination of undesirable and/or illegal housing and building conditions.

The survey revealed the existence of certain code violations. These violations are listed on the attached page(s) and are numbered 1 through 9.

The attached list of violations includes suggested methods of corrections. Other legal and appropriate means of correcting or abating the cited violations may be used. These matters and any other problems connected with the survey should be discussed with your Urban Renewal Representative, Mr. Claude Heavin who may be reached at 273 - 3381 between 8:30 and 9:30 a.m., Monday through Friday. Our office is on the 6th floor of the City Hall, Room 615, Oakland.

Your attention is called to Section 211 of the Oakland Housing Code which provides for your right to appeal to the Housing Advisory and Appeals Board. It is recommended that this matter be fully discussed with your Urban Renewal Representative who will be most happy to fully advise you on the standard operational procedure of application to this Board.

The possession of a valid permit is essential to the satisfactory correction of most building, plumbing, heating and electrical violations.

A progress check of your property will be made on October 21, 1963 or soon afterwards. At this time you will be required to present a reasonable timetable for the elimination of any violations that have not as yet been corrected.

Please do not hesitate to call upon us for further information or assistance.

cc: Bldg. Div. ✓
cc: RSB
cc: CH
cc: Date File

Sincerely,

ENRICO LA BARBERA
Housing Division Official

ELB:RSB:jd

ROBERT S. BALIAN
Supervising Urban Renewal
Representative

H-7

25000819

Page two
Paul & Tealar Clark
September 19, 1963

Re: 1354-56 & 1354 A & B-81st Avenue

A survey was completed of a two-story, type V, frame stucco building, located on the left front portion of the lot. The structure apparently was originally constructed as a single story duplex and subsequently a two unit, two story building, with garages below was added. At the time of the survey the structure was being occupied as four units. Despite repeated attempts entry to 1356 was refused, each time by a different male and therefore no findings as to that unit are made.

The following deficiencies must be corrected:

1. The exterior wooden surfaces lack weather protection. The exterior left side (wire and paper) lacks weather protection. Section 401.19-a, 1402 and 1001.1 OHC and 17900 CAC. Provide weather protection.
2. The roof is in a condition of poor repair. Sections 1001.2 and 1402 OHC and 17900 CAC. Repair or replace.
3. The handrails serving the front and rear stairways of 1356 A and B are unapproved in their present form. Section 401.14-c OHC. Provide acceptable handrails.
4. The roof drain downspouts are in a deteriorated condition throughout. Sections 319 OPC and 1102 OHC. Repair or replace.
5. The underfloor area on the left side front is open. Section 1405 OHC, and 16741 CAC. Enclose the underfloor area and provide approved ventilation.
6. Windows are broken in 1354, 1356, and 1354 B. Section 1001.1 OHC. Replace.
7. The traps serving the bathroom lavatory and kitchen sink in 1354 are defective. Sections 1102 OHC and 319 OPC. Repair or replace.
8. An accumulation of rubbish and debris is being maintained in the yard areas. Section 1002.4 OHC. Remove and maintain in a sanitary manner.
9. An accumulation of lumber is being maintained in the garages. Section 1002.4 OHC. Remove and maintain in a sanitary manner.

You are again reminded that the Urban Renewal Representative must be advised of your intentions to correct all violations with proper permits if they have not already been corrected prior to the re-survey date of October 21, 1963.

The unit known as 1356-81st Avenue was not open for inspection when this survey was made. Should any violations or deficiencies exist in this unit, they shall become a component part of this report and shall be corrected in an approved manner.

PROOF OF SERVICE
Case Number T19-0384

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached document listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Document Included

Copy of Property Owner Response

Tenant

Ana Jeronimo Salvador
1354 81st Ave., Apt. A
Oakland, CA 94621

Tenant Representative

Jackie Zaneri
Centro Legal de la Raza
3022 International Blvd., Suite 410
Oakland, CA 94601

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **January 28, 2020** in Oakland, CA.



Ava Silveira
Oakland Rent Adjustment Program

CASE NUMBER T19-0382, T19-0383 AND T19-0384
ADDENDUM RESPONSE TO TENANT CLAIM

RECEIVED

JAN 28 2020

RENT ADJUSTMENT PROGRAM
OAKLAND

A) Petition Invalid Unit Exemption is under Claim Preclusion and Issue Preclusion

This issue or claim is preclusion, that the issues raised in this new case were already decided in the prior case or could have been decided in the case. Please see attached Motion to Dismiss this petition is by barred res judicata and collateral estoppel. The hearing officer and RAP should conclude Tenant's fraud or mistake claim is barred by the decision in *The Fong v City of Oakland Rent Board and Tenants*, because opinion was issued final judgment on the merits allowing Fong to invoke the claim preclusion or issue preclusion doctrines.

B) Petition Invalid Filed Past Deadline

TENANT filed petition past the deadline set forth by the Oakland Municipal Code. It states "You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

C) Petition Invalid Filed Past Deadline Procedurally Incorrect

TENANT cannot contest the Property exemption by fraud or mistake since this petition is procedurally filed too early. LANDLORD requests this case be dismissed. Oakland Rent Board ordinance allows a tenant may contest a prior certificate of exemption based on "fraud or mistake regarding the granting of the certificate." (Oakland Mun. Code, §§ 8.22.030.B.1.c) However, there was no fraud or mistake with exemption. LANDLORD purchased the units as "alienable separate from the title to any other dwelling unit," which includes condominiums because (unlike apartments) they can be sold individually without affecting other units' titles. (§ 1943.52, subd. (a)(3)(A); see also *Burien*, supra, 230 Cal.App.4th at p. 1045; § 4105 [defining a "[c]ommunity apartment project"]; § 4125, subd. (b) [defining a "condominium"].) and this was proven and judgment ruled by Superior Court.

TENANT cannot make a claim of fraud or mistake with this petition since the Certificate of Exemption was not issued until after this petition was filed. This was petition was filed August 9, 2019 and the unit was not issued an exemption until September 20, 2019.¹ Therefore, this petition was filed prior to the exemption issued and a hearing cannot be heard unless the petition was made after the exemption was issued. This petition should be dismissed and tenant must refile a new petition after the certificate of exemption was issued by Oakland Rent Board if not ruled under claim and issue preclusion.

000322

Other submission

2020 FEB 13 PM 4:48

February 13, 2020

Analyst Ana Silveira
City of Oakland
Rent Adjustment Program
Department of Housing and Community Development
250 Frank H. Ogawa Plaza
Oakland, CA 94612

Via Hand Delivery

RE: Tenant Evidence Submission for Case No. T19-0384

Dear Analyst Ana Silveira:

Please find attached the evidence submission in support of Case No. T19-0384. Given the complexity of the issues raised in this case and the volume of evidence we are submitting, we prepared a hearing brief outlining our position, which is also attached.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns at (510) 806-8609.

Tenant Requests a Spanish Interpreter

Sincerely,



Micaela Alvarez
Tenants' Rights Program
Supervising Attorney

HEARING BRIEF IN SUPPORT OF TENANT PETITION T19-0384

To: Rent Adjustment Program
Fr: Micaela Alvarez, Attorney for Ana Jeronimo Salvador

Case No: T19-0384
Case Title: Salvador v. Fong
Property Address: 1354 81st Avenue Unit A, Oakland, CA 94602

FACTS AND PROCEDURAL HISTORY

Tenant Ana Jeronimo Salvador filed the Oakland Rent Adjustment Program (hereinafter “RAP”) petition at issue in this action, T19-0384, against her landlord, May Fong (hereinafter “Landlord”), on October 9, 2019. Tenant Salvador’s petition contests the exemption that was previously awarded to the Landlord in case number L16-0083, arguing that the exemption was issued on the basis of fraud or mistake, and alleging unlawful rent increases as well as decreased housing services.

The Landlord filed the first petition involving the parties, L16-0083, on October 31, 2016, asserting that Tenant Salvador’s unit as well as three other units at the property are condominiums, and seeking an exemption from RAP under the Costa Hawkins Rental Housing Act (hereinafter “Costa Hawkins”), California Civil Code Section 1954.52(a)(3). Costa Hawkins stipulates that any dwelling or unit that is separately alienable from any other dwelling or unit is exempt from rent control, except under certain circumstances.

At the hearing on case number L16-0083, the Landlord testified that the property had been subdivided into five parcels—four condominium parcels and one parcel containing two “unconverted” apartments.¹ When asked to produce the CC&Rs for the condominium

¹ Hearing Recording for L16-0083, 0:14:05-0:14:15, 0:19:50-0:20:05

Court found that the units at the property had been sold separately and granted the Landlord's petition for an Administrative Mandate in June 2019.⁸

In response to the Court's order, the hearing officer for petition L16-0083 issued a Certificate of Exemption. The hearing officer stated that "on June 13, 2019, the Superior Court of Alameda County ruled in case RG18930130 that the subject units are exempt from rent control under the Costa Hawkins Rental Housing Act."⁹ A careful review of the writ shows that the Court made no such determination. Instead, the Court simply ruled that the units at the subject property were indeed sold separately, and therefore did not fall into the narrow exception to Costa Hawkins outlined in California Civil Code Section 1954.52(3)(B)(ii).

Though the Court determined that the units were sold separately, and that the Landlord was therefore a bona fide purchaser for value, the Court made no finding with regard to whether the property meet other requirements for an exemption from RAP under Costa Hawkins. The Court's interpretation of "sold separately" applies only to California Civil Code § 1954.52(a)(3)(B)(ii). However, in order to qualify for a Costa Hawkins exemption from rent control, the Landlord must also show that the units are "alienable separate from the title to any other dwelling unit" pursuant to California Civil Code § 1954.52(a)(3)(A).

Tenant Salvador brings this petition, T19-0384, because the Landlord not only failed to meet their burden of showing separate alienability, but the evidence and testimony submitted in support of L16-0083 make clear that the units at the subject property are in fact *not* separately alienable. Moreover, the Tenant recently uncovered evidence that demonstrates that the Landlord made several critical misrepresentations in the hearing about the nature of the property and the

⁸ *Id.*

⁹ Certificate of Exemption, L16-0083.

2019 FEB 13 PM 4:48
CITY OF ALAMEDA
OFFICE OF THE CLERK
COUNTY OF ALAMEDA

000325

that the units are separately alienable. Moreover, the little evidence she did submit establishes that the units at the subject property are in fact *not* separately alienable. In support of her exemption petition, the Landlord submitted preliminary title reports and records from the Alameda County Assessor. She also testified that the property had been subdivided into five parcels—four condominium parcels and one parcel containing two apartments.¹²

California law requires that an owner must first obtain a Notice of Subdivision Public Report from the California Department of Real Estate in order to legally sell individual units in a subdivision of five or more parcels.¹³ In applying this law, the California Court of Appeal has held that without a Notice of Subdivision Public Report, subdivided units cannot be considered separately alienable.¹⁴ In *City of West Hollywood v. 1112 Inv. Co.*, the City brought an action against a property owner for violation of the local rent control ordinance, arguing that the units at issue were no longer capable of being sold as condominiums—and therefore no longer entitled to an exemption under Costa Hawkins—because the property owner had allowed to lapse the property’s Notice of Subdivision Public Report. The Court sided with the City of West Hollywood, highlighting the breadth of the state statutory scheme and the policy goals it embodies, and ultimately holding that the units “are not alienable within the meaning of the rent control exemption in Civil Code Section 1954.52.”¹⁵

Here, the Landlord did not submit this required report with her exemption petition, and public records requests submitted by the Tenants confirm that no such report exists for the subject property.¹⁶ Thus, in accordance with prior findings by the California Court of Appeal, the

¹² Hearing Recording 0:14:05-0:14:15, 0:19:50-0:20:05.

¹³ CA Business and Profession Code § 11018.2.

¹⁴ *City of W. Hollywood v. 1112 Inv. Co.*, 105 Cal. App. 4th 1134 (2003).

¹⁵ *Id.* at 1152.

¹⁶ See Exhibit A, Public Records Request No. 19-4131.

sold separately to another party, the four condominium units at the subject property would lose their interest in the common area and a number of easements and characteristics necessary to be viable dwelling units.²⁰ Additionally, the units would lose the utility easements necessary to furnish utilities, rendering the units untenable.²¹ Because the dwelling units exist in the common area, and because the title to the common area cannot be legally separated from the condominiums, the condominium titles are not separately alienable from other dwelling units, or each other. Unfortunately, because the hearing officer for L16-0083 decided the case on other narrower grounds, findings by RAP related to the Landlord's misstatements or the legal implications of the Assessor's map do not appear in the original hearing decision for L16-0083.

c. The Landlord failed to submit the CC&Rs for the condominium subdivision; the CC&Rs provide further evidence that Tenant Salvador's unit is not separately alienable.

At the hearing, when asked why she did not submit the CC&Rs for the condominium subdivision, the Landlord first responded that she did not have them and later indicated that the CC&Rs were verbal.²² Tenant Salvador recently discovered that this is in fact not true. A search at the County Recorder's office revealed that CC&Rs for the property were recorded on November 8, 2007.²³ Importantly, the CC&Rs provide evidence to support a finding that Tenant Salvador's unit is not separately alienable.

Tenant Salvador's unit is addressed as 1354 81st Avenue, Apt A. According to the CC&Rs and County Assessor's map associated with the property, her unit is located within the subdivided airspace corresponding to APN 42-4247-81. However, the parcel drawn on the map

²⁰ See OMC § 16.32.000, OMC § 15.12.010, CA Fire Code Chapter 10, OMC § 17.17.050.

²¹ CA Civ Code § 1941.

²² Hearing Recording for L16-0083, 0:24:35-0:25:31; 0:26:52-0:27:20.

²³ Exhibit C, CC&Rs.

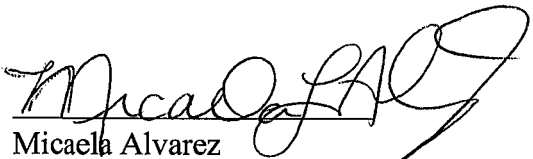
in the CC&Rs is much larger than Ms. Salvador's unit. This is because the parcel where she lives contains another dwelling unit. This unit, which has been referred to as 1354 81st Avenue Apt B, and 1356 81st Avenue Apt. A, in prior hearings was formerly occupied by Tenant Alondra Apodaca, who attended the initial hearing between the parties for case number L16-0083. This subdivision places two dwelling units within the airspace corresponding to one parcel, APN 42-4247-81. Because these two units are not separately alienable from one another, they cannot be granted an exemption from rent control pursuant to Costa Hawkins.

CONCLUSION

In light of the aforementioned, Tenant Salvador respectfully requests that the hearing officer reverse the prior grant of an exemption to the subject property and find that the exemption was awarded on the basis of fraud or mistake.

Date: February 13, 2020

Respectfully submitted,



Micaela Alvarez

Attorney for Tenant Ana Salvador

2020 FEB 13 PM 4:48

FILED IN
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

2020 FEB 13 PM 4:48

<u>Exhibit</u>	<u>Document Description</u>	<u>Page Numbers</u>
A	Public Records Request 19-4131	1-32
B	Alameda County Assessor's Map and property info	33-34
C	Declarations of Covenants, Conditions and Restrictions of 1354-1356 81 st Avenue	35-116
D	Google Maps Aerial photo of property	117
E	Photos of exterior of property taken 2/10/2020	118-127
F	Emails between Jason Madani and Noel Munger	128-129
G	Public Records Request 19-1088	130-231
H	Public Records Request 19-3278	232-266
I	Rent Increase Notice	267
J	Rent Payments	268-276
K	Waste Management Bills	277-280
L	Notice of Utilities charge from landlord	281

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2020 FEB 13 PM 4:48

Exhibit A

Exhibit B

Exhibit C



2007389921

11/08/2007 08:30 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 136.00



41 PGS

RECORDING REQUESTED BY
Alliance Title Company
AND WHEN RECORDED MAIL TO

Name John K. Sutherland
Street 1990 North California Blvd
Address Suite 650
City, State Walnut Creek, Ca. 94596
Zip
Order No. 11572943

11/23
41
M

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Declaration of Covenants, Conditions and Restrictions

This document is being recorded to correct and properly disclose the "Ownership of Common Area" percentages as reflected in Section 3.3 of that certain Declaration recorded November 1, 2007, As Instrument No. 2007-381847, Official Records

WHEN RECORDED RETURN TO:

John K. Sutherland
1990 North California Boulevard
Suite 650
Walnut Creek, California 94596

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
1354-1356 81st AVENUE CONDOMINIUMS,
1354 - 1356 81st AVENUE,
OAKLAND, CALIFORNIA

TABLE OF CONTENTS
 OF
 DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICTIONS
 OF
 1354-1356 81st AVENUE CONDOMINIUMS,
 1354 - 1356 81st AVENUE,
 OAKLAND, CALIFORNIA

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	2.2 Common Area	6
	2.3 Condominium	6
	2.4 Declarant	6
	2.5 Declaration	6
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DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
1354-1356 81st AVENUE CONDOMINIUMS,
1354 - 1356 81st AVENUE,
OAKLAND, CALIFORNIA

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 6th day of NOVEMBER, 2008, by Osvaldina S. Lima.

ARTICLE I

RECITALS:

1.1 FACTS: This Declaration is made with reference to the following facts:

1.1.1 Property Owned by Declarant: Declarant is the owner of the real property located in Oakland, California, described as follows: PARCEL A, PARCEL MAP 7739, RECORDED, JULY 13, 2004 AS MAP BOOK 276, PAGES 73-74

1.1.2 Nature of Project: Declarant intends to develop the Project as a condominium project within the meaning of California Civil Code Section 1351(f) and in conformity with the provisions of the Davis-Stirling Common Interest Development Act. To establish the condominium project, Declarant desires to impose on the Project mutually beneficial restrictions, easements, assessments and liens under a general plan of improvement and development for the benefit of all of the Owners, Units and Common Area within the Project.

1.2 APPLICABILITY OF RESTRICTIONS: Pursuant to California Civil Code Section 1353, Declarant hereby declares that the Project and all improvements thereon are subject to the provisions of this Declaration. The Project shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the mutually beneficial covenants, conditions and restrictions stated in this Declaration. All such covenants, conditions and restrictions are declared to be in furtherance of the plan for the subdivision, improvement and sale of the Project as a condominium project. Pursuant to California Civil Code Section 1354, all of the limitations, easements, uses, obligations, covenants, restrictions and conditions stated in this Declaration shall be enforceable as equitable servitudes, shall run with the Project and shall inure to the benefit of and be binding on all Owners and all other parties having or acquiring any right, title or interest in any part of the Project.

ARTICLE II

DEFINITIONS

Unless the context clearly indicates a different meaning, the terms used in this Declaration, in the Map, in the Plan, and in any deed to a Condominium in the Project shall have the meanings specified in this Article II.

2.1. ASSOCIATION: The term "Association" shall mean the 1354 - 1356 81st AVENUE, OAKLAND, CALIFORNIA, OWNERS ASSOCIATION, its successors and assigns, an unincorporated membership association composed of all of the Unit Owners.

2.2. COMMON AREA: The term "Common Area" shall mean all of the Project which is not expressly made a part of any Unit.

2.3. CONDOMINIUM: The term "Condominium" shall mean an estate in real property consisting of a Unit together with the undivided interest in the Common Area conveyed in fee to an Owner, and all easements appurtenant thereto.

2.4. DECLARANT: The term "Declarant" shall mean Osvaldina S. Lima.

2.5. DECLARATION: The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions and any amendments hereto.

2.6. ELIGIBLE HOLDER: The term "Eligible Holder" shall mean any Institutional Mortgagee who has delivered a written notice to the Association containing its name, address and the number or address of the Condominium encumbered by the Mortgage held by the Eligible Holder and requesting that the Association deliver written notice to it of any or all of the events specified in Section 8.5, below.

2.7. FIRST MORTGAGE: The term "First Mortgage" shall mean a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Condominium.

2.8. FIRST MORTGAGEE: The term "First Mortgagee" shall mean the Mortgagee of a First Mortgage.

2.9. INSTITUTIONAL MORTGAGEE: The term "Institutional Mortgagee" shall mean a First Mortgagee which is (i) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under or regulated by any federal and/or state law; (ii) an insurer or governmental guarantor

of a First Mortgage including, without limitation, the Federal Housing Authority and the Veteran's Administration; or (iii) the State of California.

2.10. MAP: The term "Map" shall mean parcel map 7739 recorded on July 13, 2004, ~~2006~~, in book 276 of maps at page ~~72~~, in the Official Records of Alameda County, California. 71

2.11. MORTGAGE: The term "Mortgage" shall mean any duly recorded mortgage or deed of trust encumbering a Condominium.

2.12. MORTGAGEE: The term "Mortgagee" shall mean a mortgagee under any duly recorded mortgage or a beneficiary under a deed of trust, either of which encumbers a Condominium.

2.13. OWNER: The term "Owner" shall mean the holder of record fee title to a Condominium. If more than one (1) person owns a single Condominium, the term "Owner" shall mean all owners of that Condominium. The term "Owner" shall also mean a contract purchaser (vendee) under an installment land contract but shall exclude any person having an interest in a Condominium merely as security for performance of an obligation. Every Unit Owner shall be a member of the Association.

2.14. PARKING SPACE: The term "Parking Space" shall mean those portions of the Common Area shown on the Plan designated with the letter P. The dimensions of the Parking Spaces are shown on the Plan. Where a Parking Space is enclosed the perimeter boundaries of the Parking Space are the exterior walls of the adjacent Units. Where the Parking Space is not enclosed, the perimeter boundary of the Parking Space is a vertical plane along the dimension lines shown on the Plan. The Parking Spaces are Restricted Common Area.

2.15. PLAN: The term "Plan" shall mean the condominium plan attached as Exhibit "A" to this Declaration.

2.16. PROJECT: The term "Project" shall mean all of the real property as shown on the Map and all improvements thereon.

2.17. RESTRICTED COMMON AREA: The term "Restricted Common Area" shall mean those portions of the Common Area which are shown on the Plan and defined in this Declaration as the Parking Spaces and the Yards. The term "Restricted Common Area" shall also mean those portions of the Common Area licensed or assigned by the Association to and for the exclusive use of a particular Owner.

2.18. UNIT:

2.18.1. The term "Unit" shall mean the elements of a Condominium which are separate interests within the Project not

owned in common with the Owners of other Condominiums in the Project. Each Unit is individually numbered. Each Unit includes the airspace encompassed by its boundaries and all improvements located therein, including walls, fixtures and appliances.

2.18.2. In interpreting deeds and plans, the existing physical boundaries of the Unit or a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in deeds or the Map and regardless of minor variance between boundaries shown on the Map or in a deed and those of a building.

2.19. YARD: The term "Yard" shall mean the areas on the Plan designated with the letter "Y". The dimensions of each Yard are shown on the Plan. The perimeter boundaries of each Yard are the interior unfinished surfaces of the fences and/or railings and the exterior finished surface of any Unit walls enclosing the Yard. Where a Yard is not enclosed, the perimeter boundary of the Yard shall consist of a plane extended vertically along the dimension lines shown on the Plan. The Yards are Restricted Common Area.

ARTICLE III

OWNERSHIP AND EASEMENTS

3.1. NON-SEVERABILITY: The interests in the Common Area cannot be changed after the conveyance of a Condominium. The undivided interests in the Common Area and the fee title to the respective Units conveyed therewith shall not be separated or separately conveyed. Each undivided interest in the Common Area shall be deemed to be conveyed or encumbered with the respective Unit even though the description in the grant deed or other instrument of conveyance or encumbrance may refer only to the Unit.

3.2. OWNERSHIP OF UNITS: Title to each Unit in the Project shall be conveyed in fee to an Owner. If the Association owns a Unit, the Association shall not be considered an Owner for the purposes of this Declaration. If more than one (1) person and/or entity (other than the Association) owns an undivided interest in the same Unit, such persons and/or entities shall constitute one (1) Owner.

3.3. OWNERSHIP OF COMMON AREA: Each Owner of each Unit shall own an undivided twenty-five percent (25%) tenancy-in-common interest in the Common Area.

3.4. EASEMENTS: The ownership interests in the Common Area and Units described in this Article III are subject to the easements granted and reserved in this Declaration. Each of the

easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Units superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Condominiums may, but shall not be required to, set forth the easements specified in this Article III.

3.4.1. Recorded Easements: The Common Area and Units are subject to the easements and rights of way shown on the Map and any other visible and apparent easements and easements recorded in the Official Records of Alameda County, California.

3.4.2. Easements For Common Area: There is reserved and granted to each Unit, as dominant tenement, over and across the Common Area, as servient tenement, a non-exclusive appurtenant easement for ingress, egress, use and enjoyment of the Common Area.

3.4.3. Restricted Common Area: There are reserved and granted to each Unit and each Owner of a Unit exclusive appurtenant easements for the use, possession and enjoyment of the Restricted Common Area designated on the Plan or in the initial individual Condominium grant deed. All easements to Restricted Common Area are subject, however, to the right of the Association to enter in and upon Restricted Common Area for the purpose of maintaining and repairing Restricted Common Area and for enforcing the terms of this Declaration. The grant of any easement for a Yard shall include the area beneath the surface of the earth that is necessary for the cultivation, landscaping and drainage of the Yard.

3.4.4. Utilities: Notwithstanding anything expressly or impliedly to the contrary, this Declaration shall be subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of the Project. There are further reserved and granted for the benefit of each Unit, as dominant tenement, over, under, across and through the Project (including the Common Area and each other Unit, jointly), as the servient tenement, non-exclusive easements for irrigation for each Owner's Yard(s) and for utility services.

3.4.5. Easements for Installation and Maintenance: An easement over and under the Project for the installation, repair and maintenance of electric, telephone, water, gas and sanitary sewer lines and facilities, heating and air-conditioning facilities, cable or master radio or television antenna leads, drainage facilities, walkways and landscaping as shown on the recorded map of the Project, and as may be hereafter required or needed to service the Project, is hereby reserved by and to Declarant and its successors and assigns, including the

Association.

3.4.6. Encroachment: There are reserved and granted for the benefit of each Unit, as dominant tenement, over, under and across each other Unit and Common Area, as servient tenements, and for the benefit of the Common Area, as dominant tenement, over, under and across each Unit, as servient tenement, non-exclusive easements for encroachment, support, occupancy and use of such portions of Units and/or Common Area as may be encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof, or any other cause. In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroachment shall exist for as long as the encroachment exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may but need not be cured by repair and restoration of the structure.

3.4.7. Support, Maintenance and Repair: There is hereby reserved and granted non-exclusive easements appurtenant to the Common Area and to all other Units, as dominant tenements, through each Unit and the Common Area, as servient tenements, for the support, maintenance and repair of the Common Area and all Units.

3.4.8. Association's Easements: There are hereby reserved to Declarant, the Association and their duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association set forth in this Declaration, including, without limitation and subject to Section 5.9, below, the right to enter upon Common Area and Units.

3.5. OWNERS' RIGHTS AND DUTIES: The rights and duties of the Owners with respect to sanitary sewer, water, electricity, gas and telephone lines and facilities, and heating and air-conditioning facilities shall be as follows:

3.5.1. Whenever sanitary sewer, water, electricity, gas, television cable, telephone lines or connections are installed within the Project, which lines or connections, or any portion thereof, lie in or about Units or Yards owned by other than the Owner of a Condominium served by said connections, the Owners of any Condominium served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Units or Yards or to have the utility companies enter upon the Units or Yards in or about which said connections, or any portion thereof, lie, to repair, replace and

generally maintain said connections as and when necessary.

3.5.2. Whenever sanitary sewer, water, electricity, gas, television cable, telephone lines or connections are installed within the Project, which connections serve more than one (1) Condominium, the Owner of each Condominium served by said connection shall be entitled to full use and enjoyment of such portions of said connections to so service the Owner's Condominium.

3.6. JUDICIAL PARTITION:

3.6.1. Waiver of Partition: Except as provided in California Civil Code Section 1359 and Section 3.6.2, below, there shall be no judicial partition of the Project or of any part thereof. Each Owner, and each successor of each Owner, specifically waives and abandons all rights, interests and causes of action for judicial partition of the tenancy-in-common ownership of the Common Area. Each Owner agrees that no action for judicial partition of the Project shall be instituted, prosecuted or reduced to judgment, except in compliance with California Civil Code Section 1359.

3.6.2. Single Units: If a Condominium is owned by two (2) or more Owners as tenants-in-common, as joint tenants, or as community property, nothing contained in this Section 3.6 shall be deemed to prevent a judicial partition between the co-Owners of that Condominium.

3.6.3. Power of Attorney: If there is judicial partition of the Project pursuant to California Civil Code Section 1359 or this Declaration, each Owner, for the Owner's successors and assigns, hereby grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of all of the Owners.

ARTICLE IV

USE RESTRICTIONS

4.1. USE OF COMMON AREA GENERALLY: There shall be no use of the Common Area except by Owners and their licensees and invitees. All Owners and their licensees and invitees may enjoy the use of the Common Area as long as they abide by the terms of this Declaration and any rules adopted by the Association. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior consent of the Association. Except as expressly provided herein, no alterations or additions to Common Area shall be permitted without the approval of the Association. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area

without the prior consent of the Association. No Owner shall permit anything to be done or kept in the Common Area or any other part of the Project which might result in the cancellation of insurance on any Unit or any part of the Common Area, which would interfere with rights of other Owners, which would be noxious, harmful or unreasonably offensive to other Owners, or which would be in violation of any governmental statute, ordinance, rule or regulation. No waste shall be committed in the Common Area.

4.2. GARBAGE: All garbage, trash and accumulated waste material shall be kept in containers located in or adjacent to each Owner's Unit. Each Owner shall arrange and pay for garbage collection for the Owner's Unit.

4.3. PETS: A reasonable number of pets, as defined in California Civil Code 1360.5, may be kept in the Units. No pet shall be permitted that disturbs the peaceful enjoyment of the Project by the Owners. Permitted animals shall not be kept, bred, or raised for commercial purposes. All pets shall be kept under reasonable control at all times. Owners who keep pets shall promptly clean up after the Owner's pet(s) and shall be liable for any damages to person or property caused by the Owner's pet(s).

4.4. LICENSEES AND INVITEES: Each Owner shall be responsible for compliance with the provisions of this Declaration by the Owner's licensees and invitees, and an Owner shall promptly pay any reimbursement assessment levied and/or any fine or penalty imposed against such Owner for violations committed by the Owner's licensees and invitees.

4.5. USE OF UNITS: Each Unit shall be used solely for residential purposes. No other use is allowed except as specifically permitted by local ordinance. No Owner may permit or cause anything to be done or kept upon, in or about the Owner's Unit which might obstruct or interfere with the rights of other Owners or which would be noxious, harmful or unreasonably offensive to other Owners. Each Owner shall comply with all federal, state and local laws, ordinances, rules and regulations applicable to the use of the Owner's Condominium.

4.6. RENTAL OR LEASING OF UNITS: An Owner shall be entitled to rent or lease all or part of the Owner's Unit if:

4.6.1. The Owner complies with all applicable laws and ordinances;

4.6.2. There is a written lease or rental agreement which specifies that the tenant or lessee shall be subject to all provisions of this Declaration and that a failure to comply with any provision of this Declaration shall constitute a default under the lease or rental agreement;

4.6.3. The Owner notifies the Association of the name and address of the tenant or lessee and the length of the term of the tenancy; and

4.6.4. The Owner gives the tenant or lessee a copy of this Declaration.

4.7. PARKING: Only vehicles used for personal transportation shall be parked in the Project. Vehicles shall be parked only in the Parking Spaces. No other vehicles, boats, trailers, campers, golf carts, or mobile homes shall be parked or stored in the Project. No part of the Project shall be used for repair, construction or reconstruction of any vehicle, boat or any other item or thing except in an emergency. As long as applicable ordinances and laws are observed, the Association may cause the removal of any vehicle which is in violation of this Declaration.

4.8. INSURANCE: The Association shall at all times maintain and pay for fire and extended peril insurance for the Project, in an amount not less than the full replacement value thereof. Each Unit Owner may, but shall not be required to, obtain insurance for the contents of the Owner's Unit. The Association shall also at all times maintain and pay for comprehensive liability insurance for acts in, on, or about the Project, in an amount determined by the Association. All of the Owners shall be named as insureds or additional insureds on the liability insurance maintained by the Association.

ARTICLE V

IMPROVEMENTS

5.1. MAINTENANCE OF COMMON AREA:

5.1.1. Generally: The Association shall be responsible for maintenance and repair of all Common Area except as expressly provided herein. The Association shall provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of all Common Area except for Yards in good condition and repair.

5.1.2. Notice to Association: The Owners shall give to the Association prompt notice of any damage to or defective condition in any part of the Project's sanitary, electrical, heating or other systems serving, located in, or passing through the Units.

5.1.3. Negligence: The responsibility of an Owner or the Association for maintenance and repairs shall not extend to

repairs or replacements arising out of or caused by the willful or negligent act or neglect of another Owner or another Owner's tenants, or customers, suppliers, guests and invitees of such Owner or tenant. The repair or replacement of a portion of the Project resulting from such excluded items shall be the responsibility of the Owner to whom the damage is attributable; provided, however, that if an Owner shall fail to make the repairs or replacements which are the responsibility of such Owner, as provided above, then, the Association shall have the right, but not the obligation, to enter the Unit of the Owner, if necessary, and to make such repairs or replacements, and the cost of such repairs or replacements shall become a reimbursement assessment chargeable to such Condominium and shall be payable to the Association by the Owner thereof.

5.1.4. Interruption of Services: The Association shall have the right to interrupt any electrical, mechanical, lighting, utility, power, water, cleaning, plumbing, or other service at such times as may be necessary and for as long as may reasonably be required by reason of accidents, strikes, the making or repairs, alterations or improvements, inability to secure a proper supply of fuel, steam, water, electricity, labor or supplies, or by reason of any other cause beyond the control of the Association; provided, however, that any such stoppage or interruption for the purpose of making any alterations or improvements shall be made at such times and in such manner as shall not unreasonably interfere with each Unit Owner's use of the Owner's Unit.

5.2. ALTERATIONS TO COMMON AREA:

5.2.1. Approval: Only the Association shall construct, alter, maintain or repair any portion of the Common Area, except for Restricted Common Area or as otherwise expressly provided in this Declaration. In no event shall any construction or other alteration of or to the Common Area change the architectural style of the Project or block any views from the Project.

5.2.2. Funding: Expenditures for alterations, maintenance or repairs to the Common Area for which a reserve has been collected shall be made from the reserve account. The Association may levy a special assessment to fund any construction, alteration, repair or maintenance of Common Area for which no reserve has been collected or if the reserve account contains insufficient funds to cover the cost of the proposed alterations, maintenance or repairs.

5.3. MAINTENANCE OF UNITS: Each Owner shall keep the Owner's Unit, including, without limitation, all finishes, fixtures, appliances and appurtenances, in good condition and repair. Each

Owner shall have the sole responsibility and the exclusive right, at the Owner's sole cost and expense, to:

5.3.1. Maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors and the perimeter walls, of the Owner's Unit;

5.3.2. Repair, paint, finish, alter, substitute, add or remove any fixtures and utility connections attached to ceilings, floors or walls including, without limitation, lighting fixtures, telephone facilities, doors and windows within the Unit; and

5.3.3. Maintain, repair, replace and clean interiors and exteriors of any windows, doors and other glass surfaces of the Owner's Unit.

5.4. ASSOCIATION'S RIGHT TO MAINTAIN UNITS: In the event an Owner fails to maintain the Owner's Unit in a manner in which the Association deems necessary to preserve the appearance and value of the Project, the Association may notify the Owner of the work required and request that it be done within sixty (60) days from the giving of such notice. In the event an Owner fails to carry out such maintenance within said period, the Association may, after notice and hearing, cause such work to be done and the cost of such work shall be a reimbursement assessment chargeable to such Condominium and shall be payable to the Association by the Owner thereof.

5.5. ALTERATIONS TO UNITS: Owners may alter or remodel their Units, if the Owner complies with all laws and ordinances regarding alterations and remodeling, the alterations, the alterations or improvements do not impair the views from the other Unit, and the alterations or improvements do not affect the structural or architectural integrity or unity of the Project.

5.6. MAINTENANCE OF RESTRICTED COMMON AREA: Any fences between Yards shall be maintained by the Owners of the adjacent Yards, the cost of which shall be shared equally. Any fences along the perimeter of the Project separating a Yard from adjacent properties shall be maintained in good condition by the Owner to whom the Yard is assigned, at that Owner's sole expense. Each Owner shall maintain and otherwise care for all plants and planters located within a Yard at the Owner's sole expense. All Yards shall be kept free from debris. Each Owner shall maintain the Owner's own Parking Space in good condition and repair at the Owner's expense.

5.7. ALTERATIONS TO RESTRICTED COMMON AREA: Any proposals for the alteration or addition of Restricted Common Area shall be subject to the Association's prior written consent and approval, which shall not be unreasonably withheld or delayed.

5.8. LANDSCAPING: All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality as originally established as of the date of the recordation of this Declaration. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. No yard debris shall be left in the Project beyond the time reasonably necessary for collection and removal.

5.9. RIGHT OF ENTRY: The Association may enter any Unit and Restricted Common Area whenever entry is necessary in connection with the performance of any maintenance or construction which the Association is authorized to undertake. Entry shall be made with as little inconvenience to an Owner as practicable and only after reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

5.10. CONDEMNATION: If all or any portion of the Project is taken for any public or quasi-public use under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the entire award shall be paid either as apportioned by court judgment, as apportioned among the Owners of the Common Area by agreement between the condemning authority and each of the Owners of the Common Area, or to such Owners proportionately according to the respective fair market values of their Condominiums at the time of condemnation as determined by an independent appraisal made by a qualified real estate appraiser with a member of the Appraisal Institute certificate or the equivalent, as selected by the Association. The Association shall represent the interests of the affected Owners; however, each Owner shall be entitled to obtain and be represented by legal counsel as the Owner so desires.

5.11. MECHANICS' LIENS:

5.11.1. Labor performed or services or materials furnished for the Common Area, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner.

5.11.2. No labor performed or services or materials furnished with the consent or at the request of an Owner or the Owner's agent or the Owner's contractor or subcontractor shall be the basis for the filing of a mechanic's lien against the Unit of any other Owner, or against any part thereof, or against any other property of another Owner, unless such other Owner has expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such consent shall be deemed to have been given by any Owner in the case of emergency repairs to the Owner's Unit.

5.11.3. In case there shall be filed a notice of mechanic's lien against the Project for, or purporting to be for, labor or materials alleged to have been furnished to delivered at the Project or any Unit at the request of or for the benefit of the Owner, the Owner shall forthwith cause such lien to be discharged by payment, bonding or otherwise. If the Owner shall fail to cause such lien to be discharged by payment, bonding or otherwise, the Association may send written notice to the Owner specifying that unless the Owner discharges the lien within five (5) days from the date of the notice, then the Association may cause the lien to be discharged by payment, bonding or otherwise. Within said five (5) day period, notice and hearing shall be provided to the Owner regarding the validity of such lien or any offsets or defenses thereto.

(a) The Association shall determine whether such lien adversely and improperly affects the ownership interests of the Association and/or other Owners. Should the Association determine that said lien adversely and improperly affects the ownership interests of the Association and/or other Owners and that no adequate protection of said interests has been provided, the Association may cause said lien to be discharged by payment, bonding or otherwise.

(b) The Association shall have the right to levy a reimbursement assessment against the Owner responsible for said lien in an amount equal to all sums so paid together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

ARTICLE VI

FUNDS AND ASSESSMENTS

6.1. COVENANTS TO PAY: Each Owner covenants and agrees to pay to the Association the assessments and any additional charges levied pursuant to this Article VI.

6.1.1. Liability for Payment: The obligation to pay assessments shall run with the land so that each successive record Owner of a Condominium shall in turn become liable to pay all such assessments. No Owner may waive or otherwise escape personal liability for assessments or release the Condominium owned by the Owner from the liens and charges hereof by non-use of the Common Area, abandonment of the Condominium or any other attempt to renounce rights in the Common Area or the facilities or services within the Project. Each assessment shall constitute a separate assessment and shall also be a separate, distinct and personal obligation of the Owner of the Condominium at the time when the assessment was levied and shall bind the Owner's heirs, devisees,

personal representatives and assigns. Any assessment not paid within fifteen (15) days after it becomes due is delinquent. The personal obligation of an Owner for delinquent assessments shall not pass to a successor Owner unless the personal obligation is expressly assumed by the successor Owner. No such assumption of personal liability by a successor Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent assessments. After an Owner transfers fee title of record to the Owner's Condominium, the Owner shall not be liable for any charge thereafter levied against the Condominium.

6.1.2. Funds Held in Trust: The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Project as provided in this Declaration. Upon the sale or transfer of any Condominium, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner.

6.1.3. No Offsets: No offsets against any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

6.2. REGULAR ASSESSMENTS:

6.2.1. Commencement of Regular Assessments: Regular assessments for each fiscal year shall be established when the Association approves the budget for that fiscal year. Regular assessments shall be levied on a fiscal year basis. Unless otherwise specified by the Association, regular assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration. Regular assessments shall commence for all Condominiums on the first day of the first month following the month in which the first Condominium of the Project is conveyed to an Owner other than Declarant. If an Owner fails to pay an installment of a regular assessment within thirty (30) days of its due date, the Association may elect to declare the entire amount of the regular assessment for that fiscal year immediately due and payable.

6.2.2. Allocation of Assessments: The Association budget shall be allocated equally between the Units.

6.2.3. Restriction for Tax Exemption: Notwithstanding any other provision in this Declaration, the Association shall prepare its annual budget and otherwise conduct the business of the Association in such a manner that the Association shall qualify and be considered as an organization exempt from federal and state income taxes pursuant to Internal Revenue Code Section 528 and

California Revenue and Taxation Code Section 23701t and any amendments thereto. As long as either federal or state regulations may so require for the Association to receive tax exempt status, the following budgeting limitations shall be observed:

(a) On Gross Income: Sixty percent (60%) or more of the gross income of the Association for each taxable year shall consist solely of amounts received as membership dues, fees and assessments from Owners;

(b) On Nature of Expenditures: Ninety percent (90%) or more of the expenditures of the Association for the taxable year shall be expenditures solely for providing management, maintenance and care of the property of the Association or for the general welfare of the Owners;

(c) On Benefit to Individuals: No part of the net earnings of the Association shall inure to the benefit of any Owner or individual (other than those benefits provided by the Association's management, maintenance and care of property within the Project or by a rebate of excess assessments);

(d) On Expenditures for Utilities: The Association shall not provide or maintain facilities to provide utilities for its Owners (provided, however, that the Association may charge for commonly metered services provided to the Project by utility companies); and

(e) On Funds for Capital Improvements: Amounts received as assessments which are not expended for Association purposes during the taxable year (funds collected for contingencies and deferred maintenance, repair and replacement of capital improvements), not including excess funds in the current operation account, shall be transferred or deposited to and held in a separate trust account(s) to provide for management, maintenance and care of the property within the Project and to promote the general welfare of the Owners.

6.3. SPECIAL ASSESSMENTS: Subject to the limitations in this Declaration, special assessments may be levied in addition to regular assessments for (i) constructing capital improvements, (ii) correcting an inadequacy in the current operation account, (iii) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of improvements for which the Association is responsible, or (vi) paying for such other matters as the Association may deem appropriate. Special assessments shall be levied in the same manner as regular assessments.

6.4. REIMBURSEMENT ASSESSMENTS:

6.4.1. Levy of Reimbursement Assessments: The Association shall levy a reimbursement assessment against any Owner and the Owner's Condominium if a failure to comply with this Declaration has resulted in the imposition of a fine or penalty or has necessitated an expenditure of monies by the Association to bring the Owner or the Owner's Condominium into compliance. A reimbursement assessment shall be due and payable to the Association when levied. A reimbursement assessment shall not be levied by the Association until notice and hearing has been given.

6.4.2. No Lien For Discipline: Notwithstanding any other provision of this Declaration, a monetary penalty imposed by the Association as a disciplinary measure for failure of a Owner to comply with this Declaration or as a means of reimbursing the Association for costs incurred by the Association in the repair of Common Area for which the Owner is responsible or in bringing the Owner and the Owner's Unit into compliance with this Declaration shall not be a lien against the Owner's Condominium enforceable by a sale of the Condominium in accordance with the provisions of California Civil Code Sections 2924, 2924(b) and 2924(c).

6.4.3. Exception for Late Charges: The provisions of Section 6.4.2, above, do not apply to charges imposed against an Owner consisting of late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

6.5. ENFORCEMENT OF ASSESSMENTS:

6.5.1. Establishment of Lien: There is a present lien against each Condominium to secure payment of all assessments levied against the Condominium pursuant to this Declaration, all additional charges and all sums which become due and payable in accordance with this Declaration after the date of recordation of a notice of assessment due. Except for the transfer of a Condominium pursuant to a foreclosure proceeding, the sale or transfer of a Condominium shall not affect such a lien. The priority of all liens shall be in inverse order so that, upon foreclosure of the lien for a particular assessment, any foreclosure sale will be subject to all liens securing assessments on such Condominium previously levied. Any lien recorded shall be in favor of the Association.

6.5.2. Grant of Power of Sale: Each Owner hereby grants a present lien with power of sale to the Association, appoints the person or entity designated by the Association as "trustee" in the notice, or such substitute trustee as is

designated pursuant to California Civil Code Section 2934(a) as trustee, and empowers such trustee, to enforce the lien and to foreclose the lien by the private power of sale. Each Owner further grants to the trustee, the power and authority to sell the Condominium of any defaulting Owner to the highest bidder to satisfy such lien.

6.5.3. Enforcement: In the event that any monthly installment of the annual assessment levied against a Unit is not paid within thirty (30) days after the date that monthly installment becomes due, the Association may declare the entire unpaid balance of such annual installment due and payable in its entirety. In accordance with California Civil Code Section 1367(d), and in addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of the Owners to pay each assessment provided for in this Declaration in any manner provided by law or by either or both of the following procedures:

(a) By Suit: The Association may commence and maintain a suit at law against any Owner personally obligated to pay a delinquent assessment. The suit shall be maintained in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, additional charges and any other amounts as the court may award. A proceeding to recover a judgment for unpaid assessments shall be maintained without the necessity of foreclosing or waiving the lien established herein.

(b) By Lien: The Association may commence and maintain proceedings to foreclose the lien established herein. No action shall be brought to foreclose a lien until a notice authorized by the Association and signed by an authorized agent (or by any Owner if the Association fails or refuses to act) has been recorded in the Official Records of Alameda County, California, and a copy of the recorded notice has been delivered to the Owner(s) named in the notice. The notice shall state the amount of the delinquent assessments, the additional charges incurred to date, a description of the Owner's interest in the Condominium against which the assessment and other sums are levied, the name(s) of the record Owner(s) thereof, and the name and address of the trustee authorized by the Association to enforce the lien. Upon the recordation of the notice, the Association, at its option, may declare the entire unpaid balance of the annual regular assessment and all other sums then due or to become due from the Owner due and payable. This total sum may then be included in any suit, action or proceeding for collection. Once thirty (30) days has elapsed since the recordation of the notice, and ten (10) days has elapsed since the mailing or delivery of a copy of the recorded notice to the Owner, an action in the name of the Association may then be commenced to foreclose the lien for the delinquent assessment. When a notice has been recorded, such assessment shall constitute a

lien on each respective Condominium prior and superior to all other liens, except all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and the lien or charge of any first mortgage.

6.5.4. Additional Charges: In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such additional charges, as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent. All additional charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent assessments or may be levied against a Condominium as a reimbursement assessment. Additional charges shall include, but not be limited to, the following:

(a) Attorneys' Fees: Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to collect any assessment or sum due, whether by suit or otherwise;

(b) Late Charges: A late charge in an amount to be fixed by the Association in accordance with Civil Code Section 1366(c)(2) to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law; provided, however, that such late charge shall not exceed ten percent (10%) of the delinquent assessment or Ten Dollars (\$10.00), whichever is greater, or such greater amount as may, from time to time, be allowed by law;

(c) Costs of Suit: Costs of suit and court costs incurred as are allowed by the court;

(d) Interest: Interest on all sums imposed in accordance with this Article VI, including the delinquent assessment, reasonable costs of collection, reasonable attorneys' fees, and late charges, at an annual percentage rate to be established by the Association but in no event to exceed twelve percent (12%) interest, or such greater amount as may, from time to time, be allowed by law, commencing thirty (30) days after the assessment becomes due; and

(e) Other: Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

6.5.5. Certificate of Satisfaction of Lien: Upon payment of a delinquent assessment or other satisfaction thereof, the Association shall record a certificate stating the satisfaction and release of the assessment lien.

6.6. STATEMENT OF ASSESSMENT LIEN: Upon request, the Association shall furnish to any Owner liable for assessments a written certificate signed by an officer or authorized agent of the Association stating the amount of any assessment secured by the lien upon the Owner's Condominium and stating whether the assessment or any portion has been paid. The certificate shall be conclusive evidence as to the matters stated therein. A reasonable charge may be made for the issuance of such certificate.

6.7. SUBORDINATION OF LIEN: Notwithstanding any provision to the contrary, the liens for assessments created by this Declaration shall be subject and subordinate to and shall not affect the rights of the holder of First Mortgage made in good faith and for value. Upon the foreclosure of any First Mortgage on a Unit, any lien for assessments which became due prior to such foreclosure shall be extinguished; provided, however, that after the foreclosure of any such First Mortgage there shall be a lien on the interest of the purchaser at the foreclosure sale to secure all assessments, whether regular, special or reimbursement, charged to such Condominium after the date of such foreclosure sale, which lien shall have the same effect and shall be enforced in the same manner as provided herein. For purposes of this Section 6.7, a Mortgage may be given in good faith or for value even though the Mortgagee has constructive or actual knowledge of the assessment lien provisions of this Declaration.

6.8. BOOKS AND RECORDS: The Association shall cause a complete record of all of its acts and corporate affairs to be kept. All books, records and papers of the Association, including minutes of meetings of the Association, the membership register, including mailing addresses and telephone numbers of the Owners, and this Declaration shall be available for inspection and copying by any Owner or the Owner's duly appointed representative during reasonable business hours. Owners shall have such further rights to access to Association records provided by Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the California Corporations Code. Every Owner shall have the absolute right to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association at any reasonable time. An Owner shall be entitled to make extracts and copies of documents. The Association shall establish rules regarding: (i) notice to be given to the custodian of the records by an Owner desiring to make the inspection; (ii) hours and days of the week when an inspection may be made; and (iii) payment for costs of making copies of documents requested by an Owner.

6.9. USE OF RESERVES: The Association shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of,

major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. The Association may, however, authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses. The transferred funds shall be restored to the reserve fund within three (3) years of the date of the initial transfer, except that the Association may, upon making a finding supported by documentation that a delay would be in the best interests of the Project, delay the restoration until the time which the Association reasonably determines to be necessary. The Association shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this Section 6.9.

ARTICLE VII

THE ASSOCIATION

7.1. THE ORGANIZATION: The Association is an unincorporated membership association composed of all of the Unit Owners. The Association shall be governed by and shall have such powers as are set forth in this Declaration.

7.2. OWNERSHIP: Each Owner, by virtue of being an Owner, shall be a member of the Association. No other person shall be accepted as a member. Association membership is appurtenant to and may not be separated from the ownership of a Condominium. Membership shall terminate upon termination of Condominium ownership. Ownership of a Condominium shall be the sole qualification for Association membership. Membership shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Condominium (and then only to the transferee of title to such Condominium). Any attempt to make a prohibited transfer is void. The rights, duties, privileges and obligations of all Owners shall be provided in this Declaration.

7.3. VOTING: The Owners shall have one (1) vote in the Association for each Unit owned by an Owner. All decisions of the Association shall be made by majority vote of the Owners.

7.4. MEDIATION: Disputes between the Owners and/or deadlocks of the Association shall first be submitted to mediation prior to arbitration or litigation. Unless the Owners otherwise agree, the Owners shall use the mediation services provided by the American Arbitration Association. The cost of initiating mediation shall be paid by the Owners between or among whom the dispute occurs or by the Association if the dispute occurs among all of the

Owners or if there is a deadlock of the Association.

7.5. ARBITRATION: Disputes between the Owners which are not resolved by mediation pursuant to Section 7.4, above, shall be submitted to the American Arbitration Association for binding arbitration. The decision of the arbitrator(s) shall be final and binding. The decision of the arbitrator(s) may include, require, or permit the exercise of any of the rights and remedies to or for the Association or an Owner provided or permitted in this Declaration or by applicable law. The costs of arbitration, including attorneys' fees, shall be allocated by the arbitrator(s).

7.6. POWERS OF ASSOCIATION: The Association has the general power to do any and all things that a nonprofit membership association organized under the laws of the State of California may lawfully do for the benefit of its members, specifically including any and all lawful actions which may be authorized, required or permitted to be done under and by virtue of this Declaration or which may be necessary and proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety or general welfare of the Owners. The Association shall have all of the powers and duties set forth in this Declaration.

7.7. VOTING RIGHTS: The votes for each Unit shall be cast as a majority of co-Owners of the Condominium shall determine. Any votes cast by a single Owner shall be deemed the authorized votes for that Condominium. If the majority of co-Owners present in person or by proxy at a meeting cannot agree as to how to cast the votes for their Condominium, no votes shall be cast for that Condominium. The power to cast a particular Owner's votes may be exercised by the Owner's conservator, the guardian of the Owner's estate, the parent(s) entitled to custody of an Owner if the Owner is a minor, or the executor or administrator of a deceased Owner's estate if the Owner's interest in the Condominium is subject to administration in the Owner's estate.

7.8. PROXIES: Each Owner may vote in person or by proxy. Each proxy shall be in writing, signed and dated by the Owner and filed with the secretary of the Association. Every proxy shall be revocable and shall automatically cease upon actual notice to the Association of the conveyance by the Owner of the Owner's interest in the Owner's Condominium or the death or judicially declared incompetence of the Owner. Votes represented by proxies shall be counted in determining whether a quorum exists at a meeting.

7.9. ELECTION OF OFFICERS: Officers shall be elected by the Association.

7.10. REGULAR MEETINGS: The first regular meeting of the Association shall be held within six (6) months after the

recording of this Declaration. Regular meetings of the Association thereafter shall be held at intervals determined by the Association. Regular meetings shall be held within the Project or at a location as close to the Project as possible.

7.11. SPECIAL MEETINGS: A special meeting of the Owners may be scheduled by any Owner. Written notice of special meetings of the Owners shall be given by the Owner who has called the meeting. Notice of each special meeting shall be given to each Owner and shall be addressed to the Owner at either the most recent address appearing on the books of the Association or the address supplied by the Owner to the Association for the purpose of notice. Notices for special meetings shall be personally delivered or mailed first class with postage prepaid at least ten (10) days before the meeting. Notices of special meetings shall specify the place, day and hour of the meeting. Notices of special meetings shall also state the purpose of the special meeting.

7.12. NOTICE: Except where this Declaration requires otherwise, written notice of regular and special meetings of the Owners shall be given by or at the direction of the president of the Association or any other person authorized to call the meeting. Any matter may be presented at the meeting for action. Notice of each meeting shall be given to each Owner entitled to vote at the meeting and shall be addressed to the Owner at either (i) the most recent address appearing on the books of the Association or (ii) the address supplied by the Owner to the Association for the purpose of notice. Notices for meetings shall be personally delivered or mailed first class with postage prepaid at least ten (10) days before the meeting. Notices of meetings shall specify the place, day and hour of the meeting. Notices of special meetings shall also state the purpose of the special meeting.

7.13. CONDUCT OF MEETINGS: Meetings of the Owners shall be conducted in accordance with Roberts Rules of Order or such other parliamentary procedures as the Association may adopt. The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Association shall be available to Owners within thirty (30) days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any Owner upon request and upon reimbursement of the Association's costs in making that distribution.

7.14. HEARINGS:

7.14.1. Procedure: If a Owner appears to be in violation of any provision of this Declaration and this Declaration requires that notice and hearing be provided, the Association shall give written notice to the Owner specifying the nature of the violation and any other appropriate information and stating the

time, date and place that the Owner will have an opportunity to be heard by the Association. If an Owner's failure to correct a violation results in the expenditure of funds by the Association to correct the violation, the notice shall also state that the Association may vote to levy a reimbursement assessment if the Association finds that a violation has occurred. Written notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail at the address given by the Owner to the Association for the purpose of service of notice or to the address of the Owner's Condominium if no other address has been provided.

7.14.2. Determination: After the hearing has taken place, the Association shall (i) determine whether a violation has occurred and, if so, may impose a reimbursement assessment which shall become effective not less than five (5) days after the date of the hearing; or (ii) take such other action as may be appropriate. The determination of the Association shall be final. Nothing herein shall be construed to prevent the Association from making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing notice and hearing.

7.15. ACTION WITHOUT MEETING: Any action which may be taken by the vote of Owners at a regular or special meeting may be taken without a meeting if all of the Owners so consent in writing.

7.16. TIME AND EFFORTS: The Owners shall use their best efforts to devote and provide approximately equal amounts of time on Association business, including on the cleaning, maintenance and repair of the Project. The Owners shall take turns as officers of the Association.

7.17. RULES: The Association may adopt rules which may concern any subject within the jurisdiction of the Association. To the extent deemed necessary in order to preserve the benefits of the Project, the rules may establish architectural controls and may govern the use of the Common Area by Owners or their invitees. The rules may not discriminate between Owners and tenants of Owners. After adoption, a copy of the rules shall be furnished to each Owner. Owners shall be responsible for distributing the rules to their tenants.

7.18. MANAGER: The Association may appoint or hire any Owner or any other person or entity as manager of the Project. The Association may also hire such other employees (including Owners) as it deems necessary. Except as expressly prohibited, the Association may delegate to the manager any of its duties, powers or functions, including the authority to deposit or withdraw funds from the accounts of the Association. The manager may additionally be authorized to establish a common trustee account for the deposit of assessments collected. If a manager is not designated, the

president of the Association shall act as manager.

ARTICLE VIII

RIGHTS OF MORTGAGEES

8.1. CONFLICT: Notwithstanding any contrary provision contained elsewhere in the Declaration, the provisions of this Article VIII shall control with respect to the rights and obligations of Institutional Mortgagees specified herein.

8.2. LIABILITY FOR UNPAID ASSESSMENTS: Any Institutional Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall take the property free of any claims for unpaid assessments or charges against the Condominium which accrue prior to the acquisition of title to the Condominium by the Institutional Mortgagee.

8.3. RESERVE FUND: The Association shall maintain as reserve funds the reserve account pursuant to Section 6.5 hereof, which shall be sufficient to pay for maintenance, repair and periodic replacement of Common Area improvements which the Association is obligated to maintain. This reserve fund shall be funded by regular assessments payable in installments, as specified in Section 6.2 hereof, rather than by special assessments; provided, however, that this provision shall not be deemed to limit the power of the Association to levy any other type of assessment or charge authorized by this Declaration.

8.4. TERMINATION OF AGREEMENTS: Any agreement for professional management of the Project shall be for a term not to exceed one (1) year without the consent of all of the Owners; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days written notice.

8.5. NOTICES TO ELIGIBLE HOLDERS: An Eligible Holder is entitled to timely written notice of:

8.5.1. Any condemnation loss or casualty loss which affects either a material portion of the Project or the Condominium on which the Eligible Holder holds a First Mortgage;

8.5.2. Any delinquency in the payment of assessments or charges owed by the Owner of a Condominium which is subject to a First Mortgage held by the Eligible Holder if the delinquency is

not cured within sixty (60) days after its due date;

8.5.3. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

8.5.4. Any proposal to take any action specified in this Article VIII or in Section 9.1.2, below; or

8.5.5. Any default by an Owner-mortgagor of a Condominium in the performance of the Owner's obligations under this Declaration which is not cured within sixty (60) days.

8.6. INSPECTION OF BOOKS AND RECORDS: Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records and financial statements of the Associations, the Declaration and any amendments thereto during normal business hours or under other reasonable circumstances.

8.7. FINANCIAL STATEMENTS: If fifty-one percent (51%) of the Institutional Mortgagees desire to have audited financial statements of the Association for the immediately preceding fiscal year, the Institutional Mortgagees, at their expense, may cause an audited financial statement to be prepared, if one is not otherwise available.

8.8. TERMINATION OF PROJECT: Except as provided by statute in the case of condemnation or substantial loss to Units and/or the Common Area, any decision, by act or omission, to abandon or terminate the legal status of the Project as a condominium project shall require:

8.8.1. The approval of sixty-seven percent (67%) of the Institutional Mortgagees, based on one (1) vote for each First Mortgage owned, if the decision to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Project; or

8.8.2. The approval of sixty-seven percent (67%) of the total voting power of the Association and sixty-seven percent (67%) of the Eligible Holders, based on one (1) vote for each First Mortgage owned, if Section 8.8.1, above, is not applicable.

8.9. ACTIONS REQUIRING CONSENT: Except as provided by statute in the case of condemnation or substantial loss to Units and/or Common Area, unless sixty-seven percent (67%) of the Institutional Mortgagees, based on one (1) vote for each First Mortgage owned, or all of the Owners have given their prior written approval, the Association shall not be entitled to:

8.9.1. Use hazard insurance proceeds for losses to any

Project property (whether to Units or Common Area) for other than the repair, replacement or reconstruction of the Project property;

8.9.2. Partition or subdivide any Condominium;

8.9.3. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utilities or for the other public purposes consistent with the intended use of the Common Area by the Project shall not be deemed a transfer within the meaning of this clause; or

8.9.4. Change the pro rata interests or obligations of any individual Condominium for the purpose of levying assessments or charges or allocating distributions or hazard insurance proceeds or condemnation awards.

8.10. PARTIAL CONDEMNATION OR DESTRUCTION:

8.10.1. In the event a portion of the Project is condemned, destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of this Declaration and the original plans and specifications for the Project, unless fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each First Mortgage owned, approve the taking of other action by the Association.

8.10.2. After a partial condemnation or partial destruction of the Project, no reallocation of interest of Owners in the Common Area may be effected without the prior written approval of sixty-seven percent of the Institutional Mortgagees on all remaining condominiums, whether existing in whole or in part, based on one (1) vote for each First Mortgage owned.

8.11. SELF-MANAGEMENT: The vote or written consent of all of the Owners and fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each First Mortgage owned, shall be required to assume self-management of the Project, if professional management of the Project has been required by an Eligible Holder at any time.

8.12. MORTGAGE PROTECTION: No breach of any of the covenants, conditions and restriction nor the enforcement of any lien provisions contained in this Declaration shall render invalid the lien of any First Mortgage made in good faith and for value on any Condominium, but all of the covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

ARTICLE IX

AMENDMENT AND ENFORCEMENT

9.1. AMENDMENTS: Prior to the conveyance of the first Condominium, this Declaration may be amended by Declarant alone. After the conveyance of the first Condominium, this Declaration may be amended in accordance with the following provisions:

9.1.1. With respect to any action to be taken under this Section 9.1 which is also governed by provisions of Article VIII that require a specified vote of Owners and/or Mortgagees, the requirements of Article VIII must be satisfied before action may be taken under this Section 9.1. After the requirements of Article VIII have been satisfied, a vote to amend this Declaration in compliance with this Section 9.1 may then be taken.

9.1.2. The vote or written consent of a majority of the Owners and fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each First Mortgage owned, shall be required to add to, amend or modify, whether by formal amendment or otherwise, any material provision of this Declaration which establishes, provides for, governs or regulates any of the following subjects:

- (a) Voting;
- (b) Assessments, assessment liens or subordination or assessments liens;
- (c) Reserves for maintenance, repair and replacement of Common Area;
- (d) Insurance policies or fidelity bonds;
- (e) Rights to use the Common Area;
- (f) Responsibilities for maintenance and repair of any portion of the Project;
- (g) The boundaries of a Unit;
- (h) The interest of an Owner in Common Area or Restricted Common Area;
- (i) Convertibility of Units into Common Area or of Common Area into Units;
- (j) Leasing of Condominiums;

(k) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium;

(l) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;

(m) Restoration or repair of the Project after damage or partial condemnation in a manner other than as specified in this Declaration;

(n) The provisions of Section 6.8, Article VIII, and this Section 9.1.2.

9.1.3. Any amendment or addition to this Declaration regarding the matters specified in Section 9.1.2, above, shall not be considered material and need not be approved by Eligible Holders if the amendment or addition is solely for the purposes of correcting technical errors or for clarification. Any Eligible Holder who receives a written request to approve an addition or amendment and who does not deliver or have its response postmarked within thirty (30) days of the date contained within the written request shall be deemed to approve the addition or amendment. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when personally delivered against receipted copy, or mailed by certified or registered mail, postage prepaid, in either case to the parties at their last known address.

9.1.4. Other Provisions of Declaration: Any other provisions of this Declaration may be amended by the vote or written consent of all of the Owners.

9.1.5. Recordation of Amendment: Any amendment shall be effective upon the recordation in the Official Records of Alameda County, California, of an instrument setting forth the terms of the amendment, duly certified and executed by the president and secretary of the Association.

9.2. ENFORCEMENT AND NON-WAIVER:

9.2.1. Right of Enforcement: The Association shall have the power to enforce the provisions of this Declaration in any manner provided by law or in equity and in any manner provided in this Declaration. The Association may institute appropriate legal action, suspend an Owner's voting rights for a period not to exceed thirty (30) days and/or levy a fine against an Owner in an amount not to exceed Five Hundred Dollars (\$500.00) or such other standard maximum amount as may be approved by a majority of the Owners. No determination of whether a violation has occurred shall be made

until notice and hearing has been provided to the Owner. In the event legal action is instituted by the Association, any judgment rendered shall include all appropriate additional charges. Notwithstanding anything to the contrary contained in this Declaration, the Association shall not have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's individually owned Unit, including access thereto over and across the Common Area, due to the Owner's failure to comply with the provisions of this Declaration, unless the loss or forfeiture is the result of the judgment of a court, an arbitration decision or a foreclosure proceeding or a sale conducted pursuant to this Declaration. The provisions of this Declaration shall be equitable servitudes, enforceable by any Owner and/or the Association against the Association and/or any other Owner, tenant or occupant of the Project. Except as otherwise provided, Declarant, the Association or any Owner(s) shall have the right to enforce, in any manner permitted by law or in equity, any and all of the provisions of this Declaration, including any decision made by the Association, upon the Owners, the Association or upon any property in the Project.

9.2.2. Violation of Law: Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures herein set forth.

9.2.3. Remedies Cumulative: The remedies provided by this Declaration are cumulative and not exclusive.

9.2.4. Nonwaiver: The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1. TERM OF DECLARATION: This Declaration shall continue for a term of fifty (50) years from its date of recordation. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years until a vote of all of the Owners determines that this Declaration shall terminate.

10.2. CONSTRUCTION OF PROVISIONS: The provisions of this Declaration shall be liberally construed to effect its purpose of creating a uniform plan for the development and operation of a condominium project.

10.3. BINDING: This Declaration shall be for the benefit of and be binding upon all Owners, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, tenants, encumbrancers, donees, grantees, mortgagees, lienors and assigns.

10.4. SEVERABILITY OF PROVISIONS: The provisions hereof shall be deemed independent and severable, and the invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

10.5. GENDER, NUMBER AND CAPTIONS: As used herein, the singular shall include the plural and masculine, feminine, and neuter pronouns shall each include the other(s) where appropriate. The title and captions of each paragraph hereof are not a part thereof and shall not affect the construction or interpretation of any part hereof.

10.6. REDISTRIBUTION OF DECLARATION: Upon the resale or other conveyance of any Condominium by any Owner, the Owner shall supply to the buyer or other transferee of the Condominium a copy of this Declaration.

10.7. EXHIBITS: All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.

10.8. CONFLICT: In the event of a conflict between this Declaration and any rules adopted by the Association, the provisions of this Declaration shall prevail.

IN WITNESS WHEREOF, the undersigned have executed this Declaration on the date first above written.

DECLARANT:

Oswaldina S. Lima
Oswaldina S. Lima

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California)

County of Alameda)

On Nov. 6, 2007 before me, Craig Neidle, Notary Public
(here insert name and title of the officer)

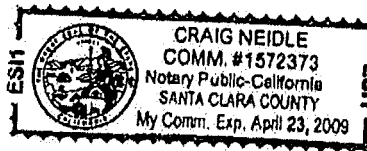
personally appeared Osvaldina S. Lima

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

WITNESS my hand and official seal.

[Handwritten Signature]

Signature of Notary Public



(Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

CC & P

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer

(Title)

- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

EXHIBIT "A"

NOTES AND DEFINITIONS

1. THIS PROJECT IS LOCATED IN PARCEL "A" OF PARCEL MAP 7739, IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK _____ PAGES _____ OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER. THIS PROJECT IS COMPOSED OF A COMMON AREA AND 4 UNITS.
2. THE CONDOMINIUM DELINEATED HEREIN IS SUBJECT TO THE PROVISIONS OF THE DAVIS-STIRLING COMMON INTEREST DEVELOPMENT ACT, TITLE 6 PART 4, DIVISION SECOND OF THE CIVIL CODE.
3. THE BOUNDARIES OF THE CONDOMINIUM UNITS ARE DEFINED HORIZONTALLY TO THE INTERIOR FINISHED SURFACES AND DOORS OF THE PERIMETER WALLS, AND DEFINED VERTICALLY TO THE BASE ELEVATION AND THE UPPER ELEVATION AS SHOWN HEREON.
4. THIS PLAN AND THE DIMENSIONS SHOWN HEREIN ARE INTENDED TO CONFORM TO CIVIL CODE 1351(c), WHICH REQUIRES A THREE DIMENSIONAL DESCRIPTION OF THE PROJECT IN SUFFICIENT DETAIL TO IDENTIFY THE COMMON AREAS AND EACH SEPARATE INTEREST. THE DIMENSIONS SHOWN HEREIN ARE NOT INTENDED TO BE SUFFICIENTLY ACCURATE TO USE FOR THE COMPUTATION OF THE FLOOR AREA OR AIR SPACE VOLUME IN ANY OR ALL OF THE UNITS.
5. THE DIAGRAMMATIC PLANS INTENTIONALLY OMIT DETAILED INFORMATION OF INTERNAL PARTITIONING WITHIN INDIVIDUAL UNITS. LIKEWISE, SUCH DETAILS AS PROTRUSIONS OF VENTS, BEAMS, COLUMNS, WINDOW CASINGS, AND OTHER SUCH FEATURES ARE NOT INTENDED TO BE REFLECTED ON THIS PLAN.
6. THE COMMON AREA IS ALL OF THE LAND AND REAL PROPERTY INCLUDED WITHIN THE BOUNDARY LINES OF SAID PARCEL "A", EXCEPT THOSE PORTIONS SHOWN AND DEFINED HEREIN AS CONDOMINIUM UNITS.
7. FOR ALL OTHER DEFINITIONS REFER TO THE "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF "1354-1356 81ST AVENUE CONDOMINIUMS", 1354 81ST AVENUE, OAKLAND, CALIFORNIA.
8. IF THERE ARE ANY MATTERS OF CONFLICT OR INCONSISTENCIES BETWEEN THIS CONDOMINIUM PLAN AND THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, THEN THE PROVISIONS OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS SHALL PREVAIL.

CONDOMINIUM PLAN FOR 1354-1356 81ST AVENUE CONDOMINIUMS

PORTION OF LOT 10, BLOCK E, MAP NO. 2 OF THE
BUENA VENTURA TRACT, MAP BOOK 13, PAGE 27,
ALAMEDA COUNTY RECORDS, CALIFORNIA

OWNER: OSVALDINA LIMA
1127 LIVORNA ROAD
ALAMO, CA 94507
TEL: 510-853-4462

SURVEYOR: AHMAD MOGHADDAS
1631 BERKELEY WAY
BERKELEY, CA 94703
TEL: 510-843-6580

LEGEND

- EXTERIOR BOUNDARY LINE
- OLD LOT LINE
- REFINEMENT LINE
- FOUND CITY BOUNDARY
- BEST AVAILABLE AERIAL PHOTO



PARCEL MAP 7739

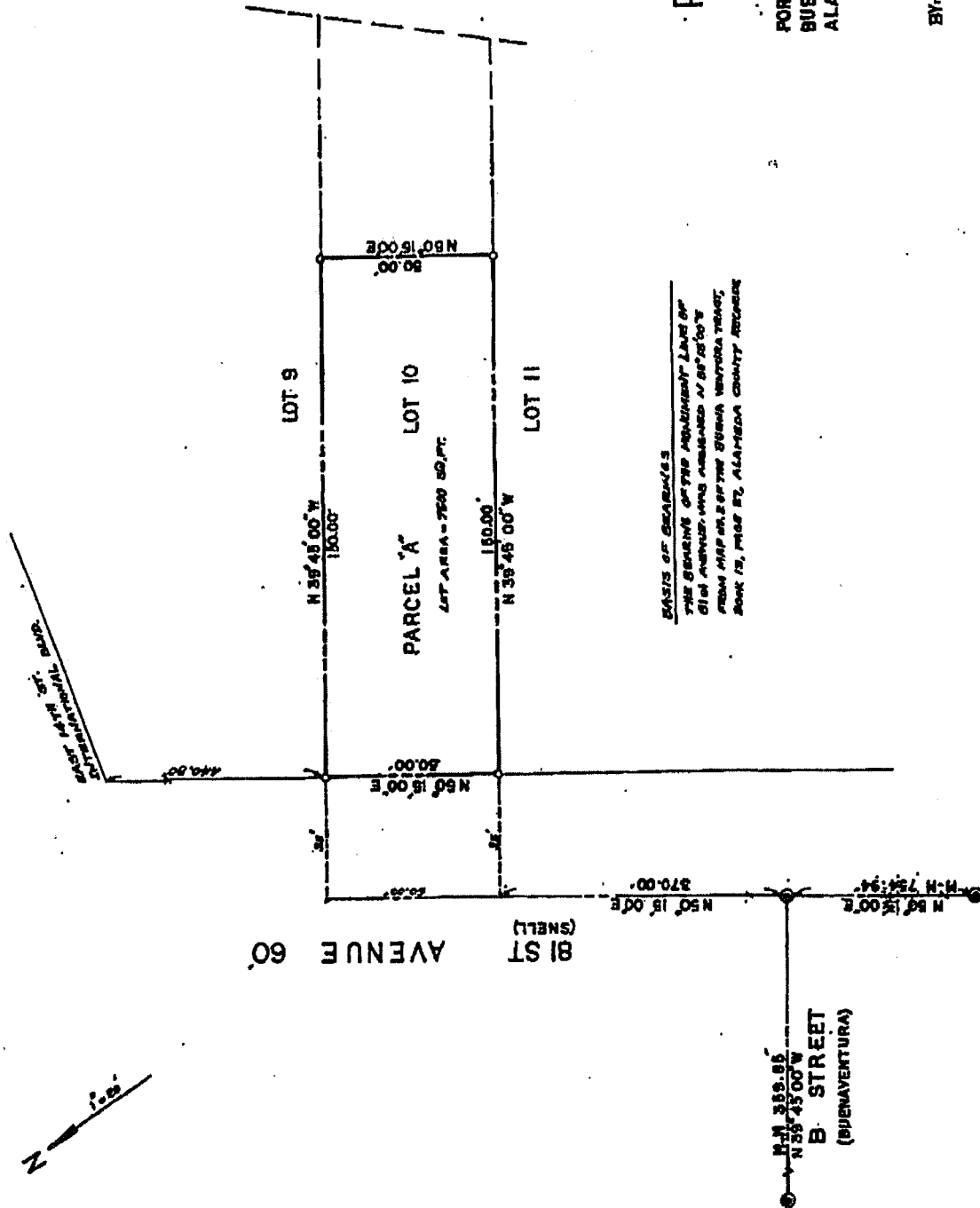
A ONE LOT SUBDIVISION

FOR CONDOMINIUM PURPOSES
PORTION OF LOT 10, BLOCK E, MAP NO. 2 OF THE
BUENA VENTURA TRACT, BOOK 13, PAGE 27,
ALAMEDA COUNTY RECORDS.

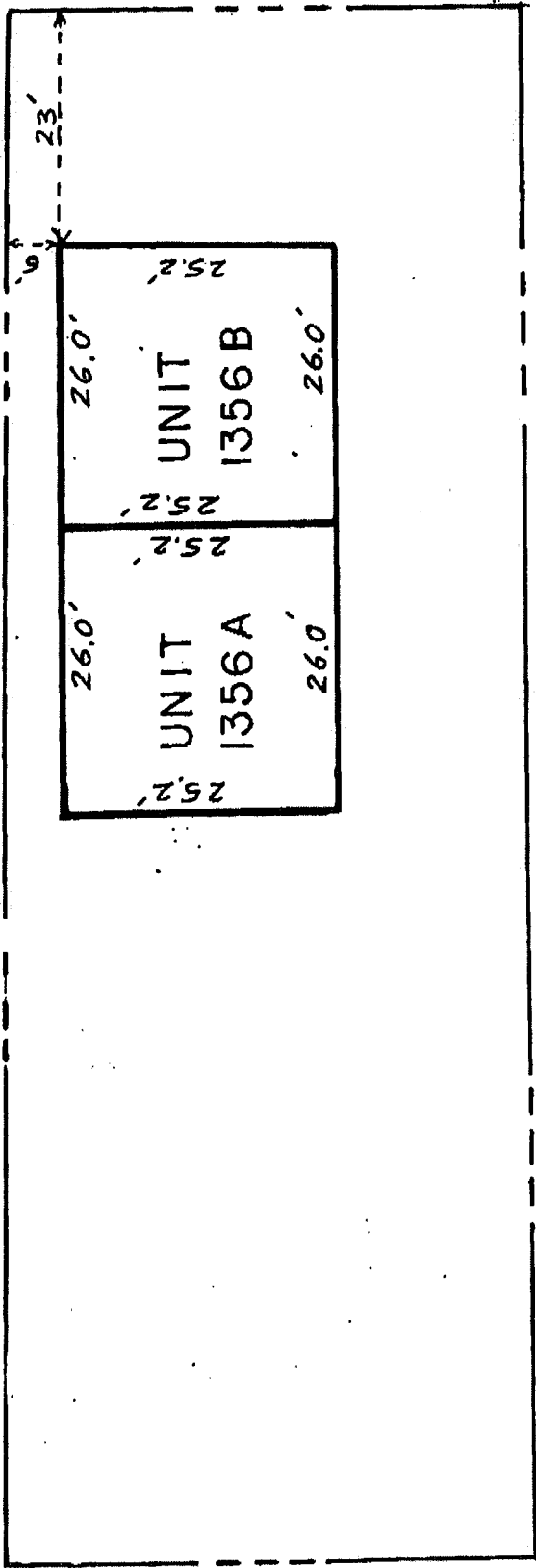
CITY OF OAKLAND
ALAMEDA COUNTY, CALIFORNIA

BY: AHMAD MOGHADDAS
1691 BERKELEY WAY,
BERKELEY, CA. 94709

NOVEMBER 2001 SCALE: 1"=20'
SHEET 2 OF 5



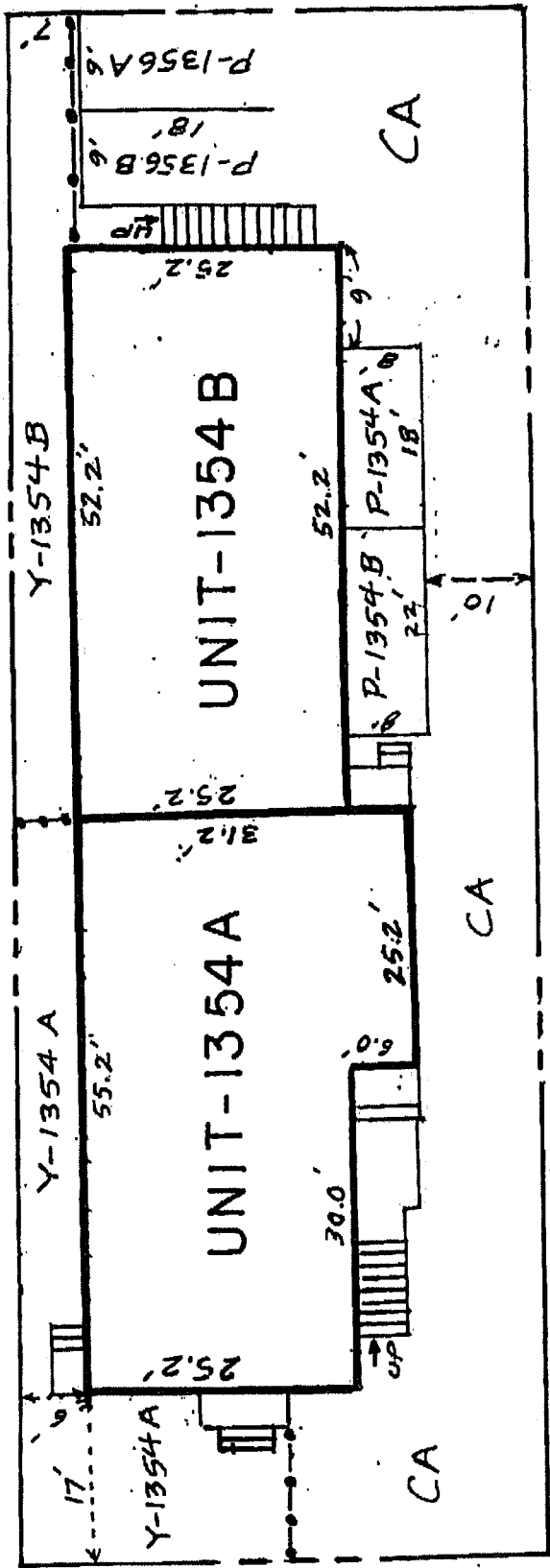
BASIS OF BEARINGS
THE BEARINGS OF THE ADJACENT LAND OF
LOT 10, WHICH WAS ADJACENT AT 84° 35' 00\"/>



UPPER FLOOR PLAN

NOT TO SCALE

81st AVENUE



LOWER FLOOR AND SITE PLAN

NOT TO SCALE

LEGEND

- PROPERTY LINE
- P-1354 A PARKING OF UNIT 1354 A
- P-1354 B " " 1354 B
- P-1356 A " " 1356 A
- P-1356 B " " 1356 B
- Y-1354 A YARD OF UNIT 1354 A
- Y-1354 B " " 1354 B
- YARD LIMIT
- CA COMMON AREA

AREAS AND ELEVATIONS			
UNIT NO.	AREA SQ. FT.	FLOOR ELEVATION FEET	CEILING ELEVATION FEET
UNIT 1354 A	1542	21.84'	30.84'
UNIT 1354 B	1315	21.84'	30.84'
UNIT 1356 A	655	31.84	39.84'
UNIT 1356 B	655	31.84	39.84'
LOT	7500		
COMMON	4510		

Exhibit D

Exhibit E

City of Oakland Rent Adjustment Program
Ana Salvador
Tenant Evidence Submission

Case Number: T19-0384

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

2020 FEB 13 PM 4:50

Exhibit F

000376

Question regarding condization file TPM 7739

Madani, Jason <JMadani@oaklandca.gov>
To: Noel Munger <nmunger@centrolegal.org>

Wed, Aug 7, 2019 at 12:42 PM

Noel, I do not see lot split application in our system as well. The project is subject to planning approval. As of now this is planning issue. Jason

From: Noel Munger [mailto:nmunger@centrolegal.org]
Sent: Wednesday, August 7, 2019 12:29 PM
To: Madani, Jason <JMadani@oaklandca.gov>
Subject: Re: Question regarding condization file TPM 7739

Thanks for the response Jason. This potentially has a huge impact for the tenants. If I am understanding correctly, in the eyes of the City, the conversion never was finished and thus, the residential units are not condominiums. What I can't quite wrap my head around is how the parcel got split if the project was never completed. Any ideas?

On Wed, Aug 7, 2019 at 11:53 AM Madani, Jason <JMadani@oaklandca.gov> wrote:

Noel, the subject property at 1354-1356 81st Ave was approved under Tentative Parcel Map (TPM07739) on March 2001. I do not see in our record that they filed a final map. Therefore, this project is expired . They need to file to file Tentative Parcel Map all over with Planning. Jason

From: Noel Munger [mailto:nmunger@centrolegal.org]
Sent: Wednesday, August 7, 2019 11:24 AM
To: Madani, Jason <JMadani@oaklandca.gov>
Subject: Question regarding condization file TPM 7739

Hi Jason,

My name is Noel Munger and I am a housing advocate and Centro Legal de la Raza. We spoke on the phone some time ago regarding some general condoization questions. I was hoping you would be able to offer some insight on a specific conversion that seems to have scant records available.

For context, I have been working with tenants at the property, 1354-1356 81st Avenue, who are now facing potential displacement due to a condo exemption from rent control. The property was purportedly converted to 4 condos starting in 2001. I believe the parcel was split around 2004. The actual result of that process was a 6 unit building that has been sold, bought, held, and operated as an apartment building by single owners ever since.

The conversion in question is TPM 7739. You may have seen or processed a public records request that I put in here <https://oaklandca.nextrequest.com/requests/19-3278> .

From what I understand, the planning department usually has a file with documentation of the process and approval from the city for these projects. In this case, I only received one document ("tpmOracle.pdf" in the PRR) that directly references the conversion. I don't see any documentation of the final approval prior to the subdivision of the lot. I previously did a PRR to the building department which also produced very little. I have not been able to find any documentation of approval from the city engineer, which I thought was necessary for any subdivision project.

I was hoping you could tell me if this situation and lack of records is normal and if the conversion history and current use appear to be in compliance with the planning code and regs. I imagine you are very busy, but myself and the several families that are at risk of losing their homes would appreciate it greatly if you could shed some light on this situation. If you feel there is someone else at planning or building who would be better suited to answer these questions please let me know.

Thank you.

Best,

Noel Munger

--



Noel Munger *he/him*

Tenants' Rights Housing Advocate
T 510-947-9898
centrolegal.org

--



Noel Munger *he/him*

Tenants' Rights Housing Advocate
T 510-947-9898
centrolegal.org

City of Oakland Rent Adjustment Program

Case Number: T19-0384

Ana Salvador

Tenant Evidence Submission

Exhibit G

000379

Request #19-1088

CLOSED

As of February 12, 2020, 1:23pm

Details

All permits, permit applications, zoning applications, zoning clearances, Tentative Parcel Maps, Tentative Tract Maps, and inspection reports, issued by the Planning and Building department or any other city agency since 1999 associated with the following addresses and parcel numbers:

1354 81st Avenue Oakland CA 94621

1356 81st Avenue Oakland CA 94621

42-4247-068

42-4247-081

42-4247-082

42-4247-083

42-4247-084

42-4247-085

This request also includes but is not limited to all documents related to the condominium conversion corresponding to record # TPM07739. Additionally this request includes but is not limited to all associated drawings, photos, estimates, invoices, attachments, receipts, notes by any city employee or employee of the Building and Planning Department, emails or other communications between any city employee or employee of the Building and Planning

— [Read less](#)

Received

March 1, 2019 via web

Due

March 11, 2019

Departments

Planning & Building

Documents

[19-1088-redacted.pdf](#)

[7-6-2001 - Special Residential Design Review Notice of Approval.pdf](#)

13005380

Staff

Point of Contact

David Guillory

Timeline

Request Closed

We released all of the requested documents.

June 27, 2019, 2:34pm

Public

Document(s) Released

7-6-2001 - Special Residential Design Review Notice of Approval.pdf

June 26, 2019, 1:24pm

Public

Document(s) Released

19-1088-redacted.pdf

April 11, 2019, 3:45pm

Public

Department Assignment

Planning & Building

March 1, 2019, 4:33pm

Public

Request Opened

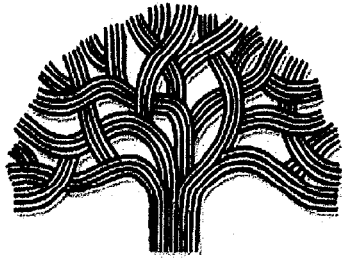
Request received via web

March 1, 2019, 4:33pm

Public



Update Results



CITY OF OAKLAND

Address History with Inspection Log

CONTACT_TYPE = Complainant, Neighbor, Tenant/Occupant, Applicant, Lienee
 CONTACT_TYPE = Blank
 STREET_NBR = 1354
 STREET_NAME : Begins With 81st
 STREET_TYPE : Begins With
 APN = ----
 DATE_OPENED >=
 DATE_OPENED <= 12/31/2019
 RECORD_TYPE_SUBTYPE <> Soft Story Retrofit Validation
 RECORD_TYPE_TYPE <> Lien

Record ID: 0006296

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: TRASH, DEBRIS AND OVERGROWN WEEDS

Date Opened: 6/22/2000

Record Status: Abated

Record Status Date: 7/13/2000

Job Value: \$0.00

Requestor:

:

Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
6/21/2000	JOSEPH DELAGRANGE	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Viol. verified / not corrected	
7/13/2000	JOSEPH DELAGRANGE	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Complaint ABated	Auto scheduled from "62" result of Insp 06/21/00

Record ID: 0103080

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: REAR CONCRETE STAIRS DEFECTIVE.WINDOWS AND DOORS BROKEN THROUGH-OUTWALLS,CEILING,FLOORS,FURNACES,PLUMBING FIXTURES,& WIRING DEFECTIVE.

Date Opened: 4/19/2001

Record Status: Abated

Record Status Date: 10/10/2002

Job Value: \$0.00

Requestor: CAMILLE - FIRE PREVENTION

:

Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
-----------------	----------------	-----------------	-----------------	-----------------

4/20/2001	KEN GUNARI	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Viol. verified / not corrected	
5/7/2001	KEN GUNARI	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Viol. verified / not corrected	Reinsp requested from Insp result 93 on 04/20/01
5/16/2001	KEN GUNARI	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Viol. verified / not corrected	Reinsp generated from Insp result 93 on 05/07/01
5/24/2001	KEN GUNARI	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Viol. verified / not corrected	Reinsp generated from Insp result 93 on 05/16/01
5/30/2001	KEN GUNARI	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Viol. verified / not corrected	Reinsp requested from Insp result 93 on 05/16/01
6/29/2001	KEN GUNARI	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Viol. verified / not corrected	Auto scheduled from 62 result on 05/30/01
7/25/2001	KEN GUNARI	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Complaint Suspended	Auto scheduled from 62 result on 06/29/01
8/2/2001	KEN GUNARI	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Viol. verified / not corrected	Reinsp generated from Insp result 96 on 07/25/01
8/24/2001	KEN GUNARI	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Complaint Suspended	Auto scheduled from 62 result on 08/02/01
9/25/2001	KEN GUNARI	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Substantial compliance/no fees	Reinsp requested from Insp result 96 on 08/24/01
10/3/2001	KEN GUNARI	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Viol. verified / not corrected	Reinsp generated from Insp result 95 on 09/25/01
11/15/2001	KEN GUNARI	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Substantial compliance/no fees	Reinsp requested from Insp result 93 on 10/03/01
11/28/2001	KEN GUNARI	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Complaint Suspended	Reinsp generated from Insp result 95 on 11/15/01
12/6/2001	KEN GUNARI	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Substantial compliance/no fees	Reinsp generated from Insp result 96 on 11/28/01
12/14/2001	KEN GUNARI	1st Inspection	No Violations	Reinsp generated from Insp result 95 on 12/06/01
12/28/2001	KEN GUNARI	1st Inspection	No Violations	Reinsp generated from Insp result 95 on 12/14/01
1/7/2002	KEN GUNARI	1st Inspection	No Violations	WORK PROGRESSING UNDER PERMIT LAST INSP 01/03/02
1/15/2002	KEN GUNARI	1st Inspection	No Violations	WORK PROGRESSING UNDER PERMITS C/B
4/11/2002	KEN GUNARI	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Complaint Suspended	Reinsp requested from Insp result 95 on 01/15/02
5/22/2002	KEN GUNARI	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Complaint Suspended	WORK PROGRESSING
10/10/2002	KEN GUNARI	1st Inspection	Violation Verified	Reinsp requested from Insp result 96 on 05/22/02

Record ID: 0603964

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: OVERGROWN VEGETATION

Date Opened: 6/1/2006

Record Status: Abated

Record Status Date: 7/5/2006

Job Value: \$0.00

Requestor:

:

Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
-----------------	----------------	-----------------	-----------------	-----------------

5/19/2006		OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Viol. verified / not corrected	
-----------	--	---	--------------------------------	--

7/5/2006		OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Complaint ABated	Auto scheduled from 62 result on 05/19/06
----------	--	---	------------------	---

Record ID: 1001586

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: WATER DAMAGE FROM UPSTAIRS, POSSIBLY CREATING MOLD.

Date Opened: 3/15/2010

Record Status: Abated

Record Status Date: 4/30/2010

Job Value: \$0.00

Requestor:

:

Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
3/16/2010	JAMES B ANDERS	1st Inspection	No Entry	Scheduled inspection voided by result code 98 on 04/30/10
3/16/2010	JAMES B ANDERS	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Viol. verified / not corrected	
4/30/2010	JAMES B ANDERS	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Complaint ABated	Reinsp requested from insp result 93 on 03/16/10

Record ID: 1203109

Address: 1354 81ST AVE, #C

APN: 042 424708500

Unit #: C

Description: DOING WORK W/O PERMITS-HOLES IN WALLS/ MATERIAL LEFT IN UNITS

Date Opened: 6/25/2012

Record Status: Abated

Record Status Date: 10/9/2012

Job Value: \$0.00

Requestor: MARIA TAPIA

:

Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
6/26/2012	ROBERT WALKER	OMC - BLIGHT ABATEMENT OMC-Injurious OMC-1	Viol. verified / not corrected	VERIFIED COMPLAINT
8/21/2012	ROBERT WALKER	1st Inspection	Unable to Verify	Reinsp requested from insp result 93 on 06/26/12
8/28/2012	ROBERT WALKER	1st Inspection	No Entry	BASE HEATER NEEDS TITLE 24 CALC
8/28/2012	ROBERT WALKER	1st Inspection	No Entry	TALKED TO OWNER BY PHONE
10/4/2012	ROBERT WALKER	1st Inspection	No Entry	OWNER TO OBTAIN PERMIT
10/9/2012	ROBERT WALKER	1st Inspection	Violation Verified	PERMIT #RE1201892 FINALLED CASE ABATED
10/10/2012	ROBERT WALKER	1st Inspection	Violation Verified	CASE ABATED
11/2/2012	ROBERT WALKER	1st Inspection	No Entry	Scheduled inspection voided by result code 98 on 10/09/12

Record ID: 1501950

Address: 1354 81ST AVE

APN: 042 424708200

Unit #:

Description: Unit B. Fire damage; work being done without permit. Cut wires, trash and debris in basement.

Date Opened: 6/10/2015

Record Status: Abated

Record Status Date: 7/21/2015

Job Value: \$0.00

Requestor:

:

Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
6/17/2015	Ivan G Ramirez	1st Inspection	Violation Verified	Unit B
7/6/2015		Monitoring Inspection	No Progress	

1300384

Tenant claims she is not receiving 24hr notice from handyman.

7/10/2015		Monitoring Inspection	Progress
7/21/2015	Ivan G Ramirez	Follow-up Inspection	Abated
12/22/2015	Ivan G Ramirez	Monitoring Inspection	Completed
	Ivan G Ramirez	Monitoring Inspection	Cancelled

Owner called to request proof of abatement and copy of NOV. Emailed her both documents.

Record ID: B0103918

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: Refinish and rehab entire 4 unit bldg. Relocate exterior stairs.

Date Opened: 8/28/2001

Record Status: Final

Record Status Date: 9/19/2002

Job Value: \$70,000.00

Requestor: LUIS CAMACHO

Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
10/30/2001		SHEARWALL/ROOF 03N	APPROVED	ROOF FRAMING AND ROOF NAIL
12/20/2001		FTG/SLAB/EMBED 01P	CORRECTION NOTICE	REV. REINSPT REQUIRED FOR INT. FTG AND SLAB
12/27/2001		FTG/SLAB/EMBED 01P	INSP CANCELLED	INSPECTION CANCELLED BY ED/RESCHED/ND
12/28/2001		FTG/SLAB/EMBED 01P	CORRECTION NOTICE	NOT READY
1/3/2002		FTG/SLAB/EMBED 01P	APPROVED	FTG. & SLAB APPRVL.
4/15/2002		SHEARWALL/ROOF 03N	CORRECTION NOTICE	NOTICE REINSPT REQUIRED
4/26/2002		SHEARWALL/ROOF 03N	PARTIAL APPROVAL	EXT. SHEAR & HOLES FOR H.D.'S
5/1/2002		LATH/CEILING 03N	CORRECTION NOTICE	NOTICE REV AND REINSPT REQ'D
5/10/2002		LATH/CEILING 03N	CORRECTION NOTICE	CORRECTION NOT MADE REINSPT REQUIRED
5/15/2002		LATH/CEILING 03N	NO PROGRESS	WORK NOT COMPLETE
5/22/2002		LATH/CEILING 03N	APPROVED	EXT. LATH -H.D.'S VERIFIED
5/28/2002	DAVID C MILES	ROUGH 03P	INSP CANCELLED	CANCELLED BY LUIS
6/18/2002	DAVID C MILES	WALLBRD/SHINGLE 03N	PARTIAL APPROVAL	S/R OK NO RECORD OF ROUGH BLD OK
9/5/2002		FINAL BUILDING 04P	CORRECTION NOTICE	FINAL/LUIS [REDACTED]
9/18/2002		FINAL BUILDING 04P	PARTIAL APPROVAL	
9/19/2002		FINAL BUILDING 04P	APPROVED	

Record ID: DR01327

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: Rehab existing fourplex

Date Opened: 7/17/2001

Record Status: TBD

Record Status Date:

Job Value: \$0.00

Requestor: LUIS CAMACHO

Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
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Record ID: E0104418

Address: 1354 81ST AVE

APN: 042 424706800

Requestor: MAY L,& GRANT W FONG, MICHAEL

Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
5/7/2012	LDF TERMINATED!!!	UTILITY RELEASE 04N	CORRECTION NOTICE	C/N - NOT READY - INFO
5/9/2012	LDF TERMINATED!!!	UTILITY RELEASE 04N	APPROVED	*UTILIEY RELEASE 400A (MULTI) (A-B-C-D-E) FINAL OK
5/9/2012	LDF TERMINATED!!!	FINAL ELECTRICAL 04P	APPROVED	*UTILITY RELEASE 400A (MULTI) (A-B-C-D-E) FINAL OK

Record ID: RE1201892

Address: 1354 81ST AVE, ##C

APN: 042 424708500

Unit #: #C

Description: Replace electric heaters in 4-plex. No gas to building.

Date Opened: 7/2/2012

Record Status: Final

Record Status Date: 10/9/2012

Job Value: \$0.00

Requestor: MAY L,& GRANT W FONG, MICHAEL

Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
10/9/2012	STEVE X JOHNSON	FINAL ELECTRICAL 04P	APPROVED	R/MAY [REDACTED]

Record ID: TPM07739

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: Convert 4 exist. vacant res. units to condos.

Date Opened: 3/2/2001

Record Status: Approved

Record Status Date: 3/2/2001

Job Value: \$0.00

Requestor: LUIS CAMACHO

Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
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Record ID: ZC112717

Address: 1354 81ST AVE

APN: 042 424708500

Unit #:

Description: home office for a handyman service note: no sales, services, or staorage on site.

Date Opened: 12/19/2011

Record Status: Approved

Record Status Date: 12/19/2011

Job Value: \$0.00

Requestor: HIRAM MARTINEZ

Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
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Record ID: ZC142100

Address: 1354 81ST AVE

APN: 042 424708500

Unit #:

Description: Zoning clearance for home office for off-site house cleaning; no customers/employees at home, no storage, 1 small vehicle for work

Date Opened: 9/8/2014
Record Status: Approved
Record Status Date: 9/8/2014
Job Value: \$0.00
Requestor:
: maria morales
Business Name:
License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
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Record ID: ZC151472

Address: 1354 81ST AVE

APN: 042 424708100

Unit #:

Description: Zoning Clearance @ 1354 8th Avenue #B (Home Occupation/Coliseum Flea Market)

Date Opened: 6/23/2015

Record Status: Withdrawn

Record Status Date: 6/23/2015

Job Value: \$0.00

Requestor:

: ALONDRA APODACA

Business Name:

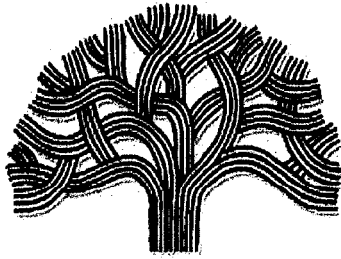
License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
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For real-time, direct access to
information via the Internet, 24 hours a
day - <https://aca.accela.com/oakland>



Update Results



CITY OF OAKLAND

Address History with Comments Log

CONTACT_TYPE = Complainant, Neighbor, Tenant/Occupant, Applicant, Lienee
 CONTACT_TYPE = Blank
 STREET_NBR = 1354
 STREET_NAME : Begins With 81st
 STREET_TYPE : Begins With
 APN = ----
 DATE_OPENED >=
 DATE_OPENED <= 12/31/2019
 RECORD_TYPE_SUBTYPE <> Soft Story Retrofit Validation
 RECORD_TYPE_TYPE <>

Record ID: 0006296

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: TRASH, DEBRIS AND OVERGROWN WEEDS

Date Opened: 6/22/2000

Record Status: Abated

Record Status Date: 7/13/2000

Job Value: \$0.00

Requestor:

:

Business Name:

License #:

COMMENT DATE	COMMENTER	COMMENTS
6/22/2000	PTS	TRASH, DEBRIS AND OVERGROWN WEEDS
1/21/2014	PTS	[6-21-00]Drive by survey, generated notice of violation (62) JRD 6/23/00 - Verified owner info, released ltr - nrl.[7-13-00]Case abated (98) JRD
1/21/2014	PTS	[6/23/00 - Verified owner info, released ltr - nrl.

Record ID: 0103080

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: REAR CONCRETE STAIRS DEFECTIVE.WINDOWS AND DOORS BROKEN THROUGH-OUTWALLS,CEILING,FLOORS,FURNACES,PLUMBING FIXTURES,& WIRING DEFECTIVE.

Date Opened: 4/19/2001

Record Status: Abated

Record Status Date: 10/10/2002

Job Value: \$0.00

Requestor: CAMILLE - FIRE PREVENTION

:

Business Name:

License #:

COMMENT DATE	COMMENTER	COMMENTS
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4/19/2001 PTS
1/21/2014 PTS

REAR CONCRETE STAIRS DEFECTIVE.WINDOWS AND DOORS BROKEN THROUGH-OUT WALLS,CEILING,FLOORS,FURNACES,PLUMBING FIXTURES,& WIRING DEFECTIVE.
[04-20-01]RECEIVED COMPLAINT OF UNSECURED BLDG.INSPECTED AND CONFIRMED.NOTICE|MAILED.|>>> 05/09/2001 13:59:34 GUNAR#KA OAK0874CA|05-07-01|RE-INSPECTED.NO PROGRESS.REQUESTED BIDS FROM CONTRACTORS TO ABATE|TRASH,DEBRIS,AND TO SECURE BLDG.,AND FENCE PARCEL AS REQUIRED.FEE FOR|RE-INSPECTION (\$727) REQUESTED DUE TO NON-COMPLIANCE.|>>> 05/09/2001 14:04:44 GUNAR#KA OAK0874CA|06/01/01: Forwarding Notice to Proceed for Invoicing and payment|processing.|>>> 06/01/2001 10:19:41 HOLLO#A OAK0929CA|INV #28206 RTN/ATTEMPTED NOT KNOWN|>>> 06/14/2001 16:40:51 MCKOY#JE OAK0820CA|INV #28263 RTN ATTEMPTED NOT KNOWN/JEM|>>> 06/22/2001 10:23:51 MCKOY#JE OAK0820CA|07/19/01 1:39 p.m. - I returned Mr. Luis Camacho, Agent for Mr. Jose|Patino, owner of this property's call in regards to this complaint.|Mr. Camacho called to speak with Mr. Ken Gunari, Inspector, however|Mr. Gunari is out in the field at this time. Mr. Camacho called to|Inquire about the fee charges that have been assessed on this property|I advised Mr. Camacho to call Mr. Gunari to discuss these fee charges.|Mr. Camacho may be reached at [REDACTED] he is calling for Mr.|Patino, because Mr. Patino is Spanish speaking. I informed Mr.|Camacho, that I am bilingual and to feel free to inform Mr. Patino to|call me if he would like to discuss this complaint with me. jmv|>>> 07/19/2001 13:46:43 MARQU#JJ OAK0817|inv #29247 rtn mail attempted not known -jem|>>> 08/13/2001 11:12:57 MCKOY#JE OAK0820CA|inv #29293 rtn mail attempted not known -jem|>>> 08/13/2001 11:16:44 MCKOY#JE OAK0820CA|INV #29944 MAIL RET/ATTEMPTED, NOT KNOWN/TRACI|>>> 09/05/2001 10:23:25 CAMPB#TE 0038

Record ID: 0603964

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: OVERGROWN VEGETATION

Date Opened: 6/1/2006

Record Status: Abated

Record Status Date: 7/5/2006

Job Value: \$0.00

Requestor:

Business Name:

License #:

COMMENT DATE	COMMENTER	COMMENTS
6/1/2006	PTS	OVERGROWN VEGETATION
1/21/2014	PTS	[OWNERSHIP VERIFIED PER WIN2DATA/LA WANDA]>>> 06/16/2006 08:13:01 WYRIC#L 0335

Record ID: 1001586

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: WATER DAMAGE FROM UPSTAIRS, POSSIBLY CREATING MOLD.

Date Opened: 3/15/2010

Record Status: Abated

Record Status Date: 4/30/2010

Job Value: \$0.00

Requestor:

Business Name:

License #:

COMMENT DATE	COMMENTER	COMMENTS
3/15/2010	PTS	WATER DAMAGE FROM UPSTAIRS, POSSIBLY CREATING MOLD.
1/21/2014	PTS	[03/03/10 - Observed property to have overgrown vegetation, tras, debris and discarde furniture (at curb). Informed inspector of this case of my findings. patchen >>> 03/19/2010 09:36:07 PATCH#W 0015 03/16/10 Unable to determine which unit has the water leak. Complai nant did not specify which unit. >>> 04/16/2010 08:54:09 ANDER#J 000Q 04/16/10 Sent Notice to abate blight. >>> 04/16/2010 09:01:52 ANDER#J 000Q 04/30/10 Complaint abated. >>> 05/19/2010 15:22:44 ANDER#J 0007

Record ID: 1203109

Address: 1354 81ST AVE, #C

14000389

APN: 042 424708500

Unit #: C

Description: DOING WORK W/O PERMITS-HOLES IN WALLS/ MATERIAL LEFT IN UNITS

Date Opened: 6/25/2012

Record Status: Abated

Record Status Date: 10/9/2012

Job Value: \$0.00

Requestor: MARIA TAPIA

:

Business Name:

License #:

COMMENT DATE	COMMENTER	COMMENTS
6/25/2012	PTS	DOING WORK W/O PERMITS-HOLES IN WALLS/ MATERIAL LEFT IN UNITS
1/21/2014	PTS	[6/26/12 Verified owner has pulled electrical permit RE1201007 Owner need to obtain permit for base board heater. Verified missing cover plates. Owner stated she will do repairs but tenant would not without 24hr notice. I seen 24 notice that owner gave tenant date for today.Owner states she will be in 6/27/12 To add electrical baseboard heaters to permit I verified 2 new heaters in bedrooms. May Lee Fong [REDACTED] >>> 06/26/2012 14:38:04 WALKE#R 000Q New owner May Lee Fong 415 812-9908 2340 Irving St. Suite 103 SF CA. 94122 Sending owner NTA letter. >>> 06/26/2012 14:39:22 WALKE#R 000Q Also sending letter to her address 358 Cerro Ct Daly City Ca 94015 CC a copy to DEUTSCHE BANK NATIONAL TRUST CO TR 4875 BELFORT RD 130, JACKSONVILLE FL 32256 >>> 06/26/2012 14:49:48 WALKE#R 000Q 8/29/12 Recieved letter from Homeward Residential Inc Stating they are Power REO no longer servicing property. 877 304-3100 RE: 4000165201 >>> 08/28/2012 10:28:16 WALKE#R 003B 8/28/12 Talked with owner May Lee Fong [REDACTED] Informed her title 24 calcs are needed. Due to surgery procedure of owner I gave 30 day extention to submit and obtain permits for base board electric heaters. >>> 08/28/2012 11:23:36 WALKE#R 003B 10/4/12 owner May Lee Fong 415 812-9908 came into office to obtain permits. >>> 10/04/2012 08:55:01 WALKE#R 0017 10/9/12 Verified with Inspector Johnson permit # RE1201892 is finaled case abated. >>> 10/09/2012 14:55:08 WALKE#R 000W

Record ID: 1501950

Address: 1354 81ST AVE

APN: 042 424708200

Unit #:

Description: Unit B. Fire damage; work being done without permit. Cut wires, trash and debris in basement.

Date Opened: 6/10/2015

Record Status: Abated

Record Status Date: 7/21/2015

Job Value: \$0.00

Requestor:

:

Business Name:

License #:

COMMENT DATE	COMMENTER	COMMENTS
6/23/2015	IRAMIREZ	Unapproved drain trap under kitchen sink. Replace in an approved manner. Obtain required permits, inspections and approvals. Unpermitted installation of stove exhaust vent in the kitchen. Base board heater detached from the wall in the living room. Exposed electrical wires in the crawlspace at the front of the house. Obtain required permits, inspections and approvals. Smoke stains in ceiling and top wall throughout the house. Remove stains and re-paint needed areas. Smoke alarms mssing or not working properly throughout the apartment. Provide a working smoke alarm in each bedroom and at the outside of the immediate vicinity of each bedroom such as the hallway. Carbon monoxide alarms are required on the outside the immediate vicinity of bedrooms.
12/22/2015	IRAMIREZ	Owner called to request proof of abatement and copy of NOV. Emailed her both documents
7/21/2015	IRAMIREZ	All abated except minnow smoke stain at the top of the door. Mateo said he will take care of it ASAP, notified Alondra.
7/6/2015	IRAMIREZ	Mateo, the handyman called to be clarified on what has to be done. [REDACTED]
7/6/2015	IRAMIREZ	previously spoke with owner at an earlier time where I answered question in detail. [REDACTED] 7/6 Left a message to both contact number for owner may.
7/6/2015	IRAMIREZ	Alondra, the tenant, called to inform me she believes there was a misunderstanding by the handy man as he is removing the water supply line to the refrigerator and that he was not informed by the owner to clean the smoked areas. I asked her to have the handyman contact me with any question or misunderstandings.
6/23/2015	KCHENG	

Ownership checked; NOV sent reg & cert w/ appeal form on 6/23/15, cert mailing # is 1795
5242

6/23/2015

IRAMIREZ

6/17/15 Violation verified 6/23/15 NOV 7/27/15 follow up

Record ID: B0103918

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: Refinish and rehab entire 4 unit bldg. Relocate exterior stairs.

Date Opened: 8/28/2001

Record Status: Final

Record Status Date: 9/19/2002

Job Value: \$70,000.00

Requestor: LUIS CAMACHO

:

Business Name:

License #:

COMMENT DATE COMMENTER

COMMENTS

Record ID: DR01327

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: Rehab existing fourplex

Date Opened: 7/17/2001

Record Status: TBD

Record Status Date:

Job Value: \$0.00

Requestor: LUIS CAMACHO

:

Business Name:

License #:

COMMENT DATE COMMENTER

COMMENTS

Record ID: E0104418

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: Electrical for rehab

Date Opened: 12/19/2001

Record Status: Final

Record Status Date: 9/3/2002

Job Value: \$0.00

Requestor: LUIS CAMACHO

:

Business Name:

License #:

COMMENT DATE COMMENTER

COMMENTS

Record ID: L014245

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: LIEN VOIDED DURING TRANSFER PROCESSING

Date Opened: 7/26/2001

Record Status: Lien Release Recorded

Record Status Date: 8/27/2002

Job Value: \$0.00

Requestor: PATINO JOSE

:

Business Name:

License #:

1005281
000391

COMMENT DATE COMMENTER

COMMENTS

Record ID: L014291

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: LIEN VOIDED DURING TRANSFER PROCESSING

Date Opened: 7/26/2001

Record Status: Lien Release Recorded

Record Status Date: 8/27/2002

Job Value: \$0.00

Requestor: PATINO JOSE

:

Business Name:

License #:

COMMENT DATE COMMENTER

COMMENTS

Record ID: L014720

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: LIEN VOIDED DURING TRANSFER PROCESSING

Date Opened: 9/26/2001

Record Status: Lien Release Recorded

Record Status Date: 8/29/2002

Job Value: \$0.00

Requestor: PATINO JOSE

:

Business Name:

License #:

COMMENT DATE COMMENTER

COMMENTS

Record ID: L014928

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: LIEN VOIDED DURING TRANSFER PROCESSING

Date Opened: 10/29/2001

Record Status: Lien Release Recorded

Record Status Date: 8/29/2002

Job Value: \$0.00

Requestor: PATINO JOSE

:

Business Name:

License #:

COMMENT DATE COMMENTER

COMMENTS

Record ID: M0102064

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: Mechanical for relab, replace one FAU, gas test.

Date Opened: 12/19/2001

Record Status: Final

Record Status Date: 8/28/2002

Job Value: \$0.00

Requestor: LUIS CAMACHO

:

Business Name:

License #:

COMMENT DATE COMMENTER

COMMENTS

Record ID: P0103566

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: Plumbing for rehab of 4 unit bldg.

Date Opened: 12/19/2001

Record Status: Expired

Record Status Date: 7/10/2003

Job Value: \$0.00

Requestor: LUIS CAMACHO

:

Business Name:

License #:

COMMENT DATE COMMENTER

COMMENTS

Record ID: P9801950

Address: 1354 81ST AVE

APN: 042 424706800

Unit #:

Description: 1 toilet

Date Opened: 11/2/1998

Record Status: Expired

Record Status Date: 11/4/1999

Job Value: \$0.00

Requestor: THERESA SHAVERS

:

Business Name:

License #:

COMMENT DATE COMMENTER

COMMENTS

Record ID: R1100661

Address: 1354 81ST AVE

APN: 042 424708500

Unit #:

Description: RE ROOF

Date Opened: 12/19/2011

Record Status: Permit Issued

Record Status Date: 12/19/2011

Job Value: \$0.00

Requestor: MLS ROOFING INC

:

Business Name:

License #: 879508

COMMENT DATE COMMENTER

COMMENTS

Record ID: R1700671

Address: 1354 81ST AVE

APN: 042 424708100

Unit #:

Description: Re-Roofing Certification - Obstruction permit required: Reserve curbside parking or obstruct sidewalk/street (scaffolding, canopy, fencing, dumpsters, traffic, etc.)

Date Opened: 8/8/2017

Record Status: Completed Cert Received

Record Status Date: 9/25/2017

Job Value: \$0.00

Requestor: BRIAN SAUER

:

Business Name:

License #: 764387

COMMENT DATE COMMENTER

COMMENTS

Record ID: RE1201007

Address: 1354 81ST AVE
APN: 042 424708100
Unit #:
Description: 400 AMP SERVICE UPGRADE
Date Opened: 4/6/2012
Record Status: Final
Record Status Date: 5/9/2012
Job Value: \$0.00
Requestor: MAY L,& GRANT W FONG, MICHAEL
:
Business Name:
License #:

COMMENT DATE COMMENTER COMMENTS

Record ID: RE1201892

Address: 1354 81ST AVE, ##C
APN: 042 424708500
Unit #: #C
Description: Replace electric heaters in 4-plex. No gas to building.
Date Opened: 7/2/2012
Record Status: Final
Record Status Date: 10/9/2012
Job Value: \$0.00
Requestor: MAY L,& GRANT W FONG, MICHAEL
:
Business Name:
License #:

COMMENT DATE COMMENTER COMMENTS

Record ID: TPM07739

Address: 1354 81ST AVE
APN: 042 424706800
Unit #:
Description: Convert 4 exist. vacant res. units to condos.
Date Opened: 3/2/2001
Record Status: Approved
Record Status Date: 3/2/2001
Job Value: \$0.00
Requestor: LUIS CAMACHO
:
Business Name:
License #:

COMMENT DATE COMMENTER COMMENTS

Record ID: ZC112717

Address: 1354 81ST AVE
APN: 042 424708500
Unit #:
Description: home office for a handyman service note: no sales, services, or storage on site.
Date Opened: 12/19/2011
Record Status: Approved
Record Status Date: 12/19/2011
Job Value: \$0.00
Requestor: HIRAM MARTINEZ
:
Business Name:
License #:

COMMENT DATE COMMENTER COMMENTS

Record ID: ZC142100

Address: 1354 81ST AVE
APN: 042 424708500

Unit #:

Description: Zoning clearance for home office for off-site house cleaning; no customers/employees at home, no storage, 1 small vehicle for work

Date Opened: 9/8/2014

Record Status: Approved

Record Status Date: 9/8/2014

Job Value: \$0.00

Requestor:

: maria morales

Business Name:

License #:

COMMENT DATE COMMENTER

COMMENTS

Record ID: ZC151472

Address: 1354 81ST AVE

APN: 042 424708100

Unit #:

Description: Zoning Clearance @ 1354 8th Avenue #B (Home Occupation/Coliseum Flea Market)

Date Opened: 6/23/2015

Record Status: Withdrawn

Record Status Date: 6/23/2015

Job Value: \$0.00

Requestor:

: ALONDRA APODACA

Business Name:

License #:

COMMENT DATE COMMENTER

COMMENTS

7/9/2015

IRAMIREZ

Spoke with Mai [REDACTED] she informed me they are making repairs 7/10 and the tenant has not been responding. I called Alondra with no answer goes straight to voice mail. I left her a message informing her of the repair on 7/10 and to call back with her availability.

For real-time, direct access to information via the internet, 24 hours a day - <https://aca.accela.com/oakland>



OFFICE OF PLANNING AND BUILDING

CODE COMPLIANCE
250 Frank H. Ogawa
Plaza, 2nd Floor
Oakland, CA 94612
(510) 238-3102

BLIGHT ABATEMENT

NOTICE TO PROCEED

PROPERTY ADDRESS 1354 - 81st Avenue. COMPLAINT 0103080 INSP / DIST CB-INSP/KG

PARCEL 042-4247-068-00 CONTRACT 01424 PERMIT _____

CONTRACT [] CLEAN LOT [] DEMOLITION START WORK BY _____ DURATION FIVE (5)
 DAYS WORK [] CLEAN PREMISES [] SURVEY HAZ MATL FUND [] 35447 - 45716 [] PROJECT _____
 [] PAINT PREMISES [] REMOVE HAZ MATL
 [] SECURE PREMISES [] OTHER _____

CONTRACTOR A Green & Shrubbery Service PROPERTY OWNER Theresa Shavers

ADDRESS 8908 Thermal Street ADDRESS 1354 - 81st Avenue

CITY / STATE Oakland, CA 94605 CITY / STATE Oakland, CA 94621

TELEPHONE (510) 632-3056 TELEPHONE () _____

GENERAL CONDITIONS

- o AUTHORIZED WORK SHALL BE PERFORMED STRICTLY IN ACCORDANCE WITH THE TERMS AND CONDITIONS SPECIFIED IN THE BID DOCUMENTS AND PERFORMANCE AGREEMENT AND NOTICE TO PROCEED.
- o AUTHORIZED WORK SHALL COMMENCE ON OR BEFORE THE DATE SPECIFIED HEREIN AND SHALL BE COMPLETED SATISFACTORILY WITHIN THE DURATION OF CALENDAR DAYS SPECIFIED HEREIN.
- o CONTRACTOR SHALL IMMEDIATELY NOTIFY OPB OF CHANGES WHICH MAY INCREASE OR DECREASE THE SCOPE OF AUTHORIZED WORK OR CONDITIONS WHICH MAY EFFECT THE PROSECUTION OF THE WORK. EXTRA WORK SHALL NOT BE PERFORMED WITHOUT PRIOR WRITTEN APPROVAL BY CHANGE ORDER.

SPECIAL CONDITIONS

CODICIL [X] DISPOSAL RECEIPTS [] INSURANCE LIMITS [] LIQUIDATED DAMAGES [X] LICENSE 510066

[] EXIGENT ISSUANCE [] PREVAILING WAGE [] SURETY / GUARANTEE [] OTHER _____

BASE BID \$ _____ DATE STARTED 5/10/01 DATE COMPLETED 5/21/01

ALTERNATE NO. _____ \$ _____ DELAY [] WEATHER [] DIRECTED RE - WORK [] CHANGE ORDER [] OTHER _____

CONTRACT TOTAL \$5,546.00 WORK CERTIFIED COMPLETE

CHANGE ORDER \$ _____

AMENDED TOTAL \$ _____

Kimeth A. Yunis 5/23/01
INSPECTOR SIGNATURE DATE

NOTICE TO PROCEED RECEIVED

A. B. Backsh 5/19/01
CONTRACTOR SIGNATURE DATE

NOTICE TO PROCEED ISSUED

Antoinette Holloway-Renwick 5/9/01
SUPERVISING INSPECTOR SIGNATURE DATE

354-47.F (08/98)
5/19/01

WHITE: CASE FILE MUSTARD: BILLING FILE SALMON: CONTRACTOR

000396



OFFICE OF PLANNING AND BUILDING

BLIGHT ABATEMENT
PERFORMANCE AGREEMENT

CODE COMPLIANCE
250 Frank H. Ogawa
Plaza, 2nd Floor
Oakland, CA 94612
(510) 238-3102

PROPERTY ADDRESS 1354 - 81ST AVENUE COMPLAINT 0103080 INSP /DIST CB-INSP/KG [df]

WORK [X] CLEAN LOT [] DEMOLITION PARCEL 042-4247-068-00
[] CLEAN PREMISES [] SURVEY HAZ MATL CONTRACTOR A Green and Shrubbery Service
[] PAINT PREMISES [] REMOVE HAZ MATL LICENSE 725218 CONTRACT 01424
[] SECURE PREMISES [] OTHER _____

THIS AGREEMENT IS MADE BETWEEN THE CONTRACTOR AND THE CITY OF OAKLAND, OFFICE OF PLANNING AND BUILDING (OPB), FOR AND IN CONSIDERATION OF THE PURPOSES SPECIFIED HEREIN.

IN WITNESS WHEREOF, THE CONTRACTOR AND THE CITY HAVE DULY EXECUTED THIS AGREEMENT AND ARE MUTUALLY BOUND BY THE TERMS AND CONDITIONS SPECIFIED HEREIN.

CONTRACTOR CITY OF OAKLAND
by by
A Green and Shrubbery Service RAYMOND M. DERANIA
PRINT NAME CODE COMPLIANCE MANGER
[Signature] 5/10/01 [Signature] 5/10/01
SIGNATURE DATE SIGNATURE DATE

1. STATEMENT OF WORK

CONTRACTOR SHALL PROVIDE ALL NECESSARY LABOR, MOTOR VEHICLES, SAFETY EQUIPMENT, MATERIALS, MACHINERY, TOOLS, APPARATUS, TESTING AND DISPOSAL FACILITIES, AND OTHER MEANS OF CONSTRUCTION TO COMPLETE THE WORK SAFELY AS SPECIFIED IN THE BID DOCUMENTS, AND WITHIN THE DATES AND DURATIONS AND FOR THE AMOUNTS SPECIFIED IN THE NOTICE TO PROCEED.

2. AGENCY

CONTRACTOR IS NOT AN AGENT OR EMPLOYEE OF THE CITY AND IS SOLELY RESPONSIBLE FOR THE SAFE PERFORMANCE OF ALL WORK SPECIFIED HEREIN, FOR CONTRACTOR'S OWN ACTS, AND FOR THE ACTS OF CONTRACTOR'S EMPLOYEES, SUBORDINATES, AND SUBCONTRACTORS. CONTRACTOR HAS NO AUTHORITY TO BIND THE CITY IN ANY MEANS TO ANY OBLIGATION.

3. SUBCONTRACTORS

CONTRACTOR SHALL NOT USE OR EMPLOY OR CONTRACT WITH ANY SUBCONTRACTOR WITHOUT PRIOR WRITTEN AUTHORIZATION FROM OPB. CONTRACTOR SHALL INCLUDE PROVISIONS SIMILAR TO THOSE SPECIFIED IN THIS AGREEMENT IN ALL SUBCONTRACTS.

4. SURETY

CONTRACTOR SHALL PROVIDE APPROVED SECURITIES GUARANTEEING PERFORMANCE OF THE WORK AND WARRANTING PAYMENT OF LABOR AND MATERIALS AS SPECIFIED IN THE BID DOCUMENTS.

BLIGHT ABATEMENT

PERFORMANCE AGREEMENT

5. FEES, TAXES, PERMITS, SECURITIES, AND LICENSES

CONTRACTOR SHALL INCUR THE COSTS OF AND MAINTAIN CURRENT ALL FEES, TAXES, PERMITS, SECURITIES, AND LICENSES REQUIRED BY FEDERAL, STATE, REGIONAL, AND CITY REGULATIONS, INCLUDING BUT NOT LIMITED TO CITY BUSINESS TAX AND STATE CONTRACTORS LICENSE.

6. NON-ASSIGNMENT

CONTRACTOR SHALL NOT SELL OR ASSIGN THIS AGREEMENT OR SUBLET ANY RIGHT HEREIN WITHOUT PRIOR WRITTEN AUTHORIZATION FROM THE CITY. IN THE EVENT OF THE DEATH OR INCAPACITATION OF THE CONTRACTOR TO PERFORM UNDER THIS AGREEMENT, NO RIGHTS SHALL ACCRUE TO ANY HEIRS, SUCCESSORS, ADMINISTRATORS, EXECUTORS, ASSIGNS OR ANY OTHER PERSON.

7. COMPENSATION

CONTRACTOR WILL BE REIMBURSED FOR THE AMOUNTS SPECIFIED IN THE NOTICE TO PROCEED FOR WORK SATISFACTORILY COMPLETED UPON RECEIPT BY OPB OF AN ITEMIZED INVOICE WITH SUBSTANTIATING DOCUMENTATION, INCLUDING BUT NOT LIMITED TO CERTIFICATIONS FOR MATERIALS AND TESTING, TO EMPLOYEE PAYROLL AND SUPPLIER DISBURSEMENTS, TO RECEIPTS FOR DISPOSAL, PERMITS, AND LICENSES, TO PHOTOGRAPHIC RECORDS, AND TO HAZARDOUS MATERIAL MANIFESTS.

OPB MAY AT ITS OPTION REJECT OR RETAIN AMOUNTS INVOICED FOR WHICH CHANGE ORDERS WERE NOT APPROVED (INCREASE/DECREASE IN SCOPE OF WORK) OR RETAIN AMOUNTS FOR COMPLETION BY OTHERS OF UNSATISFACTORY WORK OR FOR CLEANING OR REMOVAL OR REPAIR OR REPLACEMENT BY OTHERS OF DAMAGED WORK OR DAMAGED PRIVATE PROPERTY OR PUBLIC INFRASTRUCTURE.

8. INDEMNIFICATION

CONTRACTOR SHALL SAVE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF OAKLAND, ITS COUNCILMEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND VOLUNTEERS FROM ANY AND ALL CLAIMS, LOSSES AND EXPENSES, INCLUDING ATTORNEYS' FEES, OF LIABILITY OR INJURY OR DAMAGES TO PERSONS OR PROPERTY RESULTING FROM THE NEGLIGENT PERFORMANCE OF THE WORK.

9. COMMENCEMENT AND COMPLETION

CONTRACTOR SHALL PROMPTLY COMMENCE THE WORK AND SHALL EXPEDITIOUSLY PROSECUTE THE WORK AND SHALL SATISFACTORILY COMPLETE THE WORK STRICTLY IN ACCORDANCE WITH THE DATES AND TIME DURATIONS SPECIFIED IN THE NOTICE TO PROCEED.

CONTRACTOR HAS INVESTIGATED THE WORK SITE AND DETERMINED THAT THE TIME DURATIONS SPECIFIED ARE REASONABLE AND SUFFICIENT TO COMPLETE THE WORK, INCLUDING BUT NOT LIMITED TO CONSIDERATION FOR HISTORIC WEATHER CONDITIONS AND UNUSUAL WORK SITE CONDITIONS.

BECAUSE ACTUAL DAMAGES SUSTAINED BY THE CITY SHOULD THE WORK NOT BE COMPLETED SATISFACTORILY WITHIN THE DURATIONS SPECIFIED ARE DIFFICULT AND IMPRACTICAL TO DETERMINE, CONTRACTOR SHALL COMPENSATE THE CITY WITH LIQUIDATED DAMAGES AS SPECIFIED IN THE BID DOCUMENTS.

10. INSPECTION

CONTRACTOR SHALL MAINTAIN UNIMPEDED AND SAFE ACCESS FOR INSPECTION OF THE WORK SITE AND PREMISES AT ALL TIMES DURING THE PROSECUTION OF AND AT THE COMPLETION OF THE WORK.

11. PRECEDENCE

CONTRACTOR SHALL ALSO COMPLY WITH THE CURRENT EDITION OF THE APWA "STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION" AND THE CITY'S MODIFICATIONS THERETO. WHERE A CONFLICT EXISTS, THE MORE SPECIFIC REQUIREMENT SHALL BE APPLICABLE.

**BLIGHT ABATEMENT
PERFORMANCE AGREEMENT**

12. CONFLICT OF INTEREST

CONTRACTOR SHALL HAVE NO FINANCIAL INTERESTS IN PROPERTIES OR PERSONAL OR FAMILIAL RELATIONSHIPS WITH PROPERTY OWNERS EFFECTED BY THE WORK.

CONTRACTOR SHALL NOT ENGAGE IN ACTIVITIES ASSOCIATED WITH NOR GIVE THE APPEARANCE OF BEING MOTIVATED BY A DESIRE FOR PRIVATE GAIN RELATED TO THE WORK PERFORMED.

CONTRACTOR SHALL NOT BID WORK, NOR SHALL CONTRACTOR PERFORM WORK, NOR SHALL CONTRACTOR RECEIVE COMPENSATION FOR WORK PERFORMED FOR SO LONG AS A RELATION BY BLOOD OR MARRIAGE WITHIN THE THIRD DEGREE EXISTS WITH THE MAYOR OR COUNCILMEMBERS OR CITY MANAGER OR DEPARTMENT HEADS OF THE CITY OF OAKLAND.

13. INSURANCE

CONTRACTOR SHALL MAINTAIN WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE COVERAGE IN ACCORDANCE WITH THE CALIFORNIA LABOR CODE (SECT 3700).

CONTRACTOR SHALL ALSO MAINTAIN GENERAL LIABILITY INSURANCE, INCLUDING COMPREHENSIVE BODILY INJURY AND PROPERTY DAMAGE, AUTOMOBILE AND PRODUCT LIABILITY, AND COMPLETE OPERATION COVERAGE, SPECIFICALLY INCLUDING CONTRACTUAL LIABILITY COVERING LIABILITY ASSUMED HEREUNDER, PROVIDING BODILY INJURY LIMITS OF NOT LESS THAN \$500,000 FOR EACH PERSON, AND NOT LESS THAN \$500,000 FOR EACH ACCIDENT OR OCCURRENCE, AND PROPERTY DAMAGE LIABILITY LIMITS OF NOT LESS THAN \$100,000 FOR EACH ACCIDENT OR OCCURRENCE FOR CLAIMS WHICH MAY OR DO ARISE FROM THE OPERATION OF CONTRACTOR OR ANY SUBCONTRACTOR IN THE PERFORMANCE OF THE WORK SPECIFIED HEREIN.

IN LIEU OF CONTRACTUAL LIABILITY FOR THE CITY, SAID COMPREHENSIVE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE POLICY OR POLICIES SHALL INCLUDE AS A NAMED ADDITIONAL INSURED THE CITY, ITS COUNCILMEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS. THE PREMIUMS FOR SUCH INSURANCE SHALL BE PAID BY THE CONTRACTOR. EACH POLICY OF INSURANCE SHALL CONTAIN A CLAUSE SUBSTANTIALLY IN THE FOLLOWING WORDS:

"IT IS HEREBY UNDERSTOOD AND AGREED THAT THIS POLICY MAY NOT BE CANCELED NOR THE AMOUNT OF THE COVERAGE THEREOF BE REDUCED UNTIL THIRTY (30) CALENDAR DAYS AFTER RECEIPT BY THE CITY OF OAKLAND, OFFICE OF PLANNING AND BUILDING, OF THE WRITTEN NOTICE OF SUCH CANCELLATION OR REDUCTION OF COVERAGE, AS EVIDENCED BY RECEIPT OF A REGISTERED LETTER."

14. AFFIRMATIVE ACTION AND MINORITY AND FEMALE OWNED BUSINESS ENTERPRISES (MBE/WBE)

CONTRACTOR SHALL COMPLY WITH FEDERAL, STATE, AND CITY REGULATIONS FOR AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT.

CONTRACTOR SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, COLOR, RELIGIOUS CREED, GENDER, SEXUAL ORIENTATION, PHYSICAL HANDICAP, MEDICAL CONDITION, AGE, ANCESTRY, OR NATIONAL ORIGIN.

CONTRACTOR SHALL TAKE AFFIRMATIVE ACTION TO ENSURE THAT BOTH APPLICANTS FOR EMPLOYMENT ARE EMPLOYED AND THOSE EMPLOYED ARE TREATED WITHOUT REGARD TO SUCH DISCRIMINATORY PRACTICES. SUCH ACTION SHALL INCLUDE BUT NOT BE LIMITED TO EMPLOYMENT UPGRADING.

CONTRACTOR SHALL COMPLY WITH CURRENT FEDERAL, STATE, AND CITY REGULATIONS FOR MINORITY AND FEMALE OWNED BUSINESS ENTERPRISES AND SHALL USE ITS BEST EFFORTS TO OBTAIN THE MAXIMUM USE OF SUCH ENTERPRISES BASED IN THE CITY OF OAKLAND AND SUCH ENTERPRISES SHALL HAVE MAXIMUM PRACTICABLE OPPORTUNITY TO COMPETE FOR SUBCONTRACTED WORK.

**BLIGHT ABATEMENT
PERFORMANCE AGREEMENT**

15. WAGES

CONTRACTOR SHALL COMPLY WITH FEDERAL LABOR STANDARDS ACT (FLSA) REGULATIONS FOR EMPLOYEE RATES OF PER DIEM WAGES.

CONTRACTOR SHALL ALSO COMPLY WITH THE GENERAL PREVAILING RATES OF PER DIEM WAGES APPLICABLE IN ALAMEDA COUNTY (LABOR CODE SECT 1770) AS SPECIFIED IN THE BID DOCUMENTS.

16. CHANGES

CONTRACTOR SHALL IMMEDIATELY NOTIFY OPB OF CHANGES WHICH MAY INCREASE OR DECREASE THE SCOPE OF WORK OR OF CONDITIONS WHICH MAY EFFECT THE PROSECUTION OF THE WORK. EXTRA WORK SHALL NOT BE PERFORMED WITHOUT PRIOR WRITTEN APPROVAL BY CHANGE ORDER.

OPB MAY AT ITS OPTION INCREASE OR DECREASE THE SCOPE OF WORK SPECIFIED OR CANCEL THIS AGREEMENT OR TERMINATE THIS AGREEMENT IN WHOLE OR IN PART IMMEDIATELY FOR CAUSE, INCLUDING BUT NOT LIMITED TO FAILURE BY THE CONTRACTOR FOR ANY REASON TO FULFILL ANY OBLIGATION PROPERLY OR IN A TIMELY MANNER.

17. DAMAGES

CONTRACTOR SHALL BE RESPONSIBLE FOR THE CARE AND PRESERVATION OF THE WORK UNTIL FINAL ACCEPTANCE BY OPB.

CONTRACTOR SHALL ALSO BE RESPONSIBLE FOR COLLATERAL DAMAGE TO THE WORK SITE, THE PREMISES, SERVING UTILITIES, PROPERTIES COTERMINOUS TO THE WORK SITE, AND PUBLIC INFRASTRUCTURE DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO CONTRACTOR'S ACTIONS OR LACK THEREOF IN PERFORMANCE OF THE WORK.

18. NUISANCE

CONTRACTOR SHALL AVOID, CONTROL, MITIGATE, AND ELIMINATE PUBLIC AND PRIVATE NUISANCES AT THE WORK SITE, INCLUDING BUT NOT LIMITED TO NOISE, FUGITIVE AIRBORNE PARTICULATES AND CONTAMINANTS, HOURS OF OPERATION, EMPLOYEE CONDUCT, CARE AND PRESERVATION OF ACCOUTREMENTS (FENCING, LANDSCAPING, ETC.), OPEN OF EXCAVATIONS, STORAGE OF MATERIALS AND EQUIPMENT, AND ACCUMULATION AND DISPOSAL OF DEBRIS AND HAZARDOUS WASTE.

19. TRAFFIC CONTROL

CONTRACTOR SHALL NOT CLOSE OR OBSTRUCT OR EXCAVATE WITHIN THE PUBLIC RIGHT-OF-WAY WITHOUT PRIOR APPROVAL BY OPB OF A TRAFFIC CONTROL PLAN AND ISSUANCE OF PERMITS.

CONTRACTOR SHALL MAINTAIN UNIMPEDED AND SAFE ACCESS AT ALL TIMES TO PRIVATE PROPERTIES AND SHALL PROSECUTE THE WORK WITH MINIMAL INTERFERENCE TO DRIVEWAYS, WALKWAYS, PASSAGEWAYS, ALLEYS, AND SIMILAR INGRESS/EGRESS FACILITIES.

20. SAFETY

CONTRACTOR SHALL COMPLY WITH CALIFORNIA DIVISION OF INDUSTRIAL SAFETY REGULATIONS AND WITH FEDERAL, STATE, AND LOCAL REGULATIONS FOR USE AND DISPOSAL OF HAZARDOUS MATERIALS.

CONTRACTOR SHALL PROVIDE AND MAINTAIN ALL MEANS, INCLUDING BUT NOT LIMITED TO COMPETENT AND CONTINUOUS SUPERINTENDENCE, FLAGMEN, SECURITY PERSONNEL, SCREENS, SIGNAGE, FENCING, BARRICADES, AND SHORING, NECESSARY TO ENSURE THE SAFETY OF THE PUBLIC AND THE CARE AND PRESERVATION OF PRIVATE PROPERTY AND THE PRECLUSION OF UNAUTHORIZED ACCESS DURING PROSECUTION OF THE WORK.

AB
INITIALS

Emergency

HAAB 39
BID DEVELOPMENT REQUEST

Do not put on bid list - prepare contract

CONTRACT CANCELED = \$220 FEE

Site Information

ADDRESS 1354-81st ave DATE 5/7/01
PARCEL 042-4247-068-00 PTS No. 0103880
SUPERVISOR Renuick Initials [initials] SDS 1.1 1.2 1.3 1.4 1.5 1.6
(circle one)
INSPECTOR K. Gunari Initials [initials] USE Residential Commercial vacant lot
Description Apt. Building

ASAP start work

Site Conditions

PREMISES OCCUPIED Yes No LOCKED GATE Yes No GUARD DOG Yes No
PROPERTY LINE SURVEY Yes No BEAT HEALTH Yes No VEHICLE TOW Yes No
(required if not readily identifiable)

Bid Conditions

TENANT RELOCATION Yes No FENCE & GATE Yes No "H 7" BOARD UP Yes No
FACADE TREATMENT Yes No INSP WARRANT Yes No OTHER _____
(lead paint analysis required)

Required Attachments

- a. recent photograph of site and blighting conditions ✓
- b. copy of Chronological Log notes AND/ OR PTS F24 screen print-out ✓
- c. copy of HAAB 39 or PTS 62 Notice AND/ OR 504 screen print-out with "57" notice ✓
- d. copy of Assessor's Map AND ownership either from TRW (CD ROM) or title company (fax) ✓
- e. copy of certified mail "green card" and/or returned envelope AND/ OR 504 screen print-out with cert. mail no. ✓
- f. written description of work to be performed by Bidder, including special limitations or additions (g, h, i, j, k, etc.) ✓

- g. copy of notice to BH (officer & PST names) for towing/ Warrant coordination, etc. (see Site Conditions above)
- h. copy of "Joan Curtis" public right-of-way map indicating setback from curb face (see Bid Conditions above)
- i. copy of Inspection Warrant (issued by judge) and 24 hour posting placard (see Site Conditions above)
- j. copy of Notice to PG&E requesting gas and electric utility termination (see Site Conditions above)
- k. City survey crew request and Work Order (Tom Sheets) (see Site Conditions above)
- l. copy of notice to CEDA - Relocation (see Bid Conditions above)
- m. copy of notice to Animal Control (see Site Conditions above)
- n. copy of Prospective Lien (see Bid Conditions above)

SEE OVER FOR PAGE 2

BIDDER'S SCOPE OF WORK

Bid Packages must be received by staff no later than 4:00 p.m. Thursdays.

Bid Conditions

TENANT RELOCATION Yes No FENCE & GATE Yes No "H 7" INTERIOR CLEAN Yes No
FACADE TREATMENT Yes No INSP WARRANT Yes No TERMINATE UTILITIES Yes No

Work Requirements

- Contractor must submit disposal receipts with invoice for work completed.
- Contractor must stencil parcel number on curb face for vacant lots.
- Exterior cleaning of premises:

*Special Note:
Contractor to
contact R. Guzman*

Front yard Remove trash debris and weed overgrowth.
Install fence and 3' wide MAN gate to
City Specifications (6' High) - Place gate at walkway
in front of building

Rear yard Remove trash, debris and weed overgrowth

Left sideyard Remove trash, debris and weed overgrowth.
Install fence to City specifications - Remove
old dilapidated/fallen fence.

Right sideyard Remove trash, debris and weed overgrowth
Install fence at right front portion.

Interior cleaning of premises ("H 7" specifications):
 Main building Accessory building Detached garage Other _____

Securing of premises:
Secure all openings to City Specifications.

No. exterior doors _____ No. garage doors _____ No. windows _____ No. other openings 36
Fencing 150 lin. ft. Setback from curb face _____ ft. Gate width 3 ft.

Rev: 7/00 50 feet in front - approx 50' right side, the remainder of
it - 100 feet along left side



OFFICE OF PLANNING AND BUILDING

CODE COMPLIANCE
250 Frank H. Ogawa
Plaza, 2nd Floor
Oakland, CA 94612
(510) 238-3102

BLIGHT ABATEMENT

BID QUOTATION

PROPERTY ADDRESS 1354 81st Avenue COMPLAINT 0103080 Control NO. 010509
PARCEL 042-4247-068-00 LICENSE [] C12 [] C21 [] C33 [] C57 [] C61
WORK ISSUANCE [] CLEAN LOT [] DEMOLITION DURATION Five (5) CALENDAR DAYS [] EXIGENT
[] CLEAN PREMISES [] SURVEY HAZ MATL
[] PAINT PREMISES [] REMOVE HAZ MATL SPECIAL [X] DISPOSAL RECEIPTS []
PERMITS [] SECURE PREMISES [] OTHER CONDITIONS [] INSURANCE LIMITS [] SURETY
[] LIQUIDATED DAMAGES [] PREVAIL WAGE
INSPECTOR Ken Guanari STATION CB-INSP/KG 238-6207 [] OTHER

DESCRIPTION OF PARCEL

[] VACANT LOT [] VACANT BUILDING [] OCCUPIED PREMISES [] ACCESSORY BUILDING [] INOPERATIVE VEHICLE
[] ABANDONED POOL / OPEN EXCAVATION [] INSPECTION WARRANT [] OTHER

DESCRIPTION OF WORK

Front: Remove trash, debris, weeds and overgrowth. Install fence and 3' wide man gate to
City specifications (6' high) - place gate at walkway in front of building.
Rear: Remove trash, debris, weeds and overgrowth.
L/sideyard: Remove trash, debris, weeds and overgrowth. Install fence to City
specifications - remove old dilapidated/fallen fence.
R/sideyard: Remove trash, debris, weeds and overgrowth. Install fence at right front
portion.
Securing: Secure all openings to City specifications.
Fencing: 150: 50 feet in front - approx 50' right side, the remainder of the 150 feet
along left side towards rear of parcel.
Total number of openings: 36

FRONT YARD same as above REAR YARD same as above

LEFT SIDYARD same as above RIGHT SIDYARD same as above

PREMISES

ALTERNATE BID

UNIT BID NO. 1 LUMP SUM BID NO. 1
DESCRIPTION DESCRIPTION
\$ X EACH = \$

UNIT BID NO. 2 LUMP SUM BID NO. 2
DESCRIPTION DESCRIPTION
\$ X EACH = \$

ALTERNATE BID TOTAL BID

DESCRIPTION UNIT BID(S) + LUMP SUM BID(S) + ALTERNATE BID
\$

(OVER)

OFFICE OF PLANNING AND BUILDING

BLIGHT ABATEMENT

BID QUOTATION

PROPERTY

ADDRESS 1354 81st Avenue

COMPLAINT 0103080

Control NO. 010509

GENERAL CONDITIONS

- o TOTAL BID AMOUNT SHALL BE FULL COMPENSATION FOR THE WORK SPECIFIED.
- o BID QUOTATION SHALL BE EXECUTED BY AN AUTHORIZED REPRESENTATIVE OF THE CONTRACTOR.
- o BID QUOTATIONS WILL BE RECEIVED BY OPB UNTIL 3:30 PM ON THE DAY OF BID OPENING.
- o OPB MAY REJECT ANY OR ALL BID QUOTATIONS FOR ANY REASON OR WAIVE ANY INFORMALITY OR IRREGULARITY, WHETHER MATERIAL OR OTHERWISE.
- o BID QUOTATIONS SHALL BE FULLY COMPLETED ON OPB FORMS AND SHALL INCLUDE ALL ATTACHMENTS AND SHALL BE WITHOUT ERASURES, DELETIONS, EXCLUSIONS, OR QUALIFICATIONS.
- o THE SUCCESSFUL BID QUOTATION WILL BE THE LOWEST COMBINED AMOUNT OF LUMP SUM BID PLUS UNIT BID EXTENSIONS PLUS ACCEPTED ALTERNATE BIDS TENDERED BY A RESPONSIBLE BIDDER. BID QUOTATIONS SHALL BE TENDERED FOR A MINIMUM OF 30 DAYS AFTER THE DATE OF BID OPENING.
- o EXTRA WORK SHALL NOT BE PERFORMED WITHOUT PRIOR WRITTEN AUTHORIZATION BY CHANGE ORDER.
- o WORK SPECIFIED SHALL BE PERFORMED STRICTLY IN ACCORDANCE WITH THE PROVISIONS OF THE PERFORMANCE AGREEMENT AND THE PERFORMANCE SPECIFICATIONS.
- o WORK SPECIFIED SHALL COMMENCE WITHIN 24 HOURS OF ISSUANCE OF THE NOTICE TO PROCEED (OR IMMEDIATELY FOR EXIGENT ISSUANCE) AND BE COMPLETED WITHIN THE TIME DURATION SPECIFIED.

SPECIAL CONDITIONS

- o DISPOSAL RECEIPTS REQUIRED o _____
- o _____ o _____
- o _____ o _____

ATTACHMENTS

[x] CITY BUSINESS LICENSE [x] CONTRACTORS LICENSE [x] BIDDERS AFFIDAVITS [x] INSURANCE CERTIFICATES
 [] SURETY
 [] OTHER All required documents are on file!

CONTRACTOR

8908 Thermal Street
STREET ADDRESS

A Green and Shrubbery Service
COMPANY NAME

Oakland, CA 94605
CITY ZIP

A. Blakesh 5/16/01
CONTRACTOR'S SIGNATURE DATE

() _____
TELEPHONE LICENSE NO.

SIGNATURE SHALL ALSO CONSTITUTE ENDORSEMENTS
OF THE BIDDER'S AFFIDAVIT ATTACHED HERETO.



CODE COMPLIANCE
250 Frank H. Ogawa
Plaza, 2nd Floor
Oakland, CA 94612
(510) 238-3102

OFFICE OF PLANNING AND BUILDING

BLIGHT ABATEMENT

BIDDER'S AFFIDAVIT

CITY OF OAKLAND

(SIGNATURE ON THE BID QUOTATION SHALL CONSTITUTE ENDORSEMENTS OF EACH OF THE CERTIFICATIONS BELOW)

- o CERTIFICATION OF NO PRIOR EXCLUSIONS (PUBLIC CONTRACT CODE SECT. 10162)

UNDER PENALTY OF PERJURY, THE BIDDER CERTIFIES THAT NEITHER HE OR SHE, NOR ANY OFFICER OF THE BIDDER, NOR ANY EMPLOYEE OF THE BIDDER WHO HAS A PROPRIETARY INTEREST IN THE BIDDER, HAS EVER BEEN DISQUALIFIED, REMOVED, OR OTHERWISE PREVENTED FROM BIDDING ON, OR COMPLETING A FEDERAL, STATE, OR LOCAL GOVERNMENT PROJECT BECAUSE OF A VIOLATION OF LAW OR SAFETY REGULATION.

- o CERTIFICATION OF NO PRIOR SANCTIONS (PUBLIC CONTRACT CODE SECT. 10232)

UNDER PENALTY OF PERJURY, THE BIDDER CERTIFIES THAT NO MORE THAN ONE (1) FINAL UNAPPEALABLE FINDING OF CONTEMPT BY A FEDERAL COURT HAS BEEN ISSUED AGAINST THE BIDDER WITHIN THE IMMEDIATELY PRECEDING TWO (2) YEAR PERIOD BECAUSE OF THE BIDDER'S FAILURE TO COMPLY WITH AN ORDER OF A FEDERAL COURT WHICH ORDERS THE BIDDER TO COMPLY WITH AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD (NLRB).

- o CERTIFICATION OF NO PRIOR CONVICTIONS (PUBLIC CONTRACT CODE SECT. 10285.1)

UNDER PENALTY OF PERJURY, THE BIDDER CERTIFIES THAT HE OR SHE HAS NOT BEEN CONVICTED WITHIN THE PRECEDING THREE (3) YEARS OF ANY FRAUD, BRIBERY, COLLUSION, CONSPIRACY, OR ANY OTHER ACT IN VIOLATION OF ANY STATE OR FEDERAL ANTITRUST LAW IN CONNECTION WITH THE BIDDING UPON, AWARD OF, OR PERFORMANCE OF, ANY PUBLIC CONTRACT WITH ANY PUBLIC ENTITY, AS DEFINED IN PCC SECT. 1101, INCLUDING THE REGENTS OF THE UNIVERSITY OF CALIFORNIA OR THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY. THE TERM "BIDDER" IS UNDERSTOOD TO INCLUDE ANY PARTNER, MEMBER, OFFICER, DIRECTOR, RESPONSIBLE MANAGING OFFICER, OR RESPONSIBLE MANAGING EMPLOYEE THEREOF, AS REFERRED TO IN PCC SECT. 10285.1.

- o CERTIFICATION OF NO CURRENT COLLUSION (PUBLIC CONTRACT CODE SECT. 7106)

UNDER PENALTY OF PERJURY, THE BIDDER CERTIFIES THAT THE BID PROPOSAL IS NOT MADE IN THE INTEREST OF, OR ON BEHALF OF, ANY UNDISCLOSED PERSON, PARTNERSHIP, ASSOCIATION, COMPANY, ORGANIZATION, OR CORPORATION; THAT THE BID PROPOSAL IS GENUINE AND NOT COLLUSIVE OR SHAM; THAT THE BIDDER HAS NOT DIRECTLY OR INDIRECTLY INDUCED OR SOLICITED ANY OTHER BIDDER TO PUT IN A FALSE OR SHAM BID, AND HAS NOT DIRECTLY OR INDIRECTLY COLLUDED, CONSPIRED, CONNIVED, OR AGREED WITH ANY BIDDER OR ANYONE ELSE TO PUT IN A SHAM BID, OR THAT ANYONE SHALL REFRAIN FROM BIDDING; THAT THE BIDDER HAS NOT DIRECTLY OR INDIRECTLY IN ANY MANNER SOUGHT BY AGREEMENT, COMMUNICATION, OR CONFERENCE WITH ANYONE TO FIX THE BID PRICE OF THE BIDDER OR ANY OTHER BIDDER, OR TO FIX ANY OVERHEAD, PROFIT, OR COST ELEMENT OF THE BID PRICE, OR OF THAT OF ANY OTHER BIDDER, OR TO SECURE ANY ADVANTAGE AGAINST THE PUBLIC BODY AWARDING THE CONTRACT OF ANYONE INTERESTED IN THE PROPOSED CONTRACT; THAT ALL STATEMENTS CONTAINED IN THE BID PROPOSAL ARE TRUE; AND, FURTHER, THAT THE BIDDER HAS NOT DIRECTLY OR INDIRECTLY SUBMITTED HIS OR HER BID PRICE OR ANY BREAKDOWN THEREOF, OR THE CONTENTS THEREOF, OR DIVULGED INFORMATION OR DATA RELATIVE THERETO, OR PAID, AND WILL NOT PAY, ANY FEE TO ANY CORPORATION, PARTNERSHIP, COMPANY ASSOCIATION, ORGANIZATION, BID DEPOSITORY, OR TO ANY MEMBER OF AGENT THEREOF TO EFFECTUATE A COLLUSIVE OR SHAM BID.

- o CERTIFICATION OF NO CURRENT COLLUSION (TITLE 23, UNITED STATES CODE SECT. 112)

UNDER PENALTY OF PERJURY, THE BIDDER CERTIFIES THAT HE OR SHE HAS NOT DIRECTLY OR INDIRECTLY ENTERED INTO ANY AGREEMENT, PARTICIPATED IN ANY COLLUSION, OR OTHERWISE TAKEN ACTION IN RESTRAINT OF FREE COMPETITIVE BIDDING IN CONNECTION WITH THIS BID PROPOSAL.


INITIALS



CITY OF OAKLAND

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

BLIGHT ABATEMENT

CODE COMPLIANCE
250 Frank H. Ogawa
Plaza, 2nd Floor
Oakland, CA 94612
(510) 238-3102

K. Gumeri

BID QUOTATION

PROPERTY ADDRESS 1354 81 Ave

COMPLAINT 0103080 BID NO. _____

PARCEL 042-4247-068-00

LICENSE [] C12 [] C21 [] C33 [] C57 [X] C61

WORK [] CLEAN LOT [] DEMOLITION
[X] CLEAN PREMISES [] SURVEY HAZ MATL
[X] PAINT PREMISES [] REMOVE HAZ MATL
[] SECURE PREMISES [] OTHER

DURATION 5 days duration CALENDAR DAYS [] EXIGENT ISSUANCE

SPECIAL [X] DISPOSAL RECEIPTS [] PERMITS
CONDITIONS [] INSURANCE LIMITS [] SURETY
[] LIQUIDATED DAMAGES [] PREVAIL WAGE

INSPECTOR K. Gumeri STATION _____

[] OTHER _____

DESCRIPTION OF PARCEL

[] VACANT LOT [] VACANT BUILDING [] OCCUPIED PREMISES [] ACCESSORY BUILDING [] INOPERATIVE VEHICLE
[] ABANDONED POOL / OPEN EXCAVATION [] INSPECTION WARRANT [] OTHER _____

DESCRIPTION OF WORK

FRONT YARD SAME AS ABOVE

REAR YARD SAME AS ABOVE

LEFT SIDEYARD SAME AS ABOVE

RIGHT SIDEYARD SAME AS ABOVE

PREMISES YES

ALTERNATE BID _____

UNIT BID NO. 1

LUMP SUM BID NO. 1

DESCRIPTION Board up

DESCRIPTION _____

\$ 40 X 36 EACH = \$ 1646⁰⁰

\$ _____

UNIT BID NO. 2

LUMP SUM BID NO. 2

DESCRIPTION Clean up

DESCRIPTION _____

\$ _____ X _____ EACH = \$ 750⁰⁰

\$ _____

ALTERNATE BID

TOTAL BID

DESCRIPTION Fence 150' x 25.0% = 3750⁰⁰

UNIT BID(S) + LUMP SUM BID(S) + ALTERNATE BID

\$ _____

\$ 3546⁰⁰

A. Blacksh
CONTRACTOR SIGNATURE

354-47.110.01 F1 (03 / 00)
(OVER)



CITY OF OAKLAND

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

BLIGHT ABATEMENT

CODE COMPLIANCE
250 Frank H. Ogawa
Plaza, 2nd Floor
Oakland, CA 94612
(510) 238-3102

BID QUOTATION

PROPERTY ADDRESS 1354 81st A.D.

COMPLAINT _____ BID NO. _____

PARCEL _____

LICENSE [] C12 [] C21 [] C33 [] C57 [X] C61

WORK [] CLEAN LOT [] DEMOLITION
[] CLEAN PREMISES [] SURVEY HAZ MATL
[] PAINT PREMISEXS [] REMOVE HAZ MATL
[] SECURE PREMISES [] OTHER _____

DURATION 5 days duration CALENDAR DAYS [] EXIGENT ISSUANCE

SPECIAL [X] DISPOSAL RECEIPTS [] PERMITS
CONDITIONS [] INSURANCE LIMITS [] SURETY
[] LIQUIDATED DAMAGES [] PREVAIL WAGE

INSPECTOR _____ STATION _____

[] OTHER _____

DESCRIPTION OF PARCEL

[] VACANT LOT [] VACANT BUILDING [] OCCUPIED PREMISES [] ACCESSORY BUILDING [] INOPERATIVE VEHICLE
[] ABANDONED POOL / OPEN EXCAVATION [] INSPECTION WARRANT [] OTHER _____

DESCRIPTION OF WORK

FRONT YARD SAME AS ABOVE
LEFT SIDEYARD SAME AS ABOVE
PREMISES YES

REAR YARD SAME AS ABOVE
RIGHT SIDEYARD SAME AS ABOVE

ALTERNATE BID _____

UNIT BID NO. 1

LUMP SUM BID NO. 1

DESCRIPTION sec

DESCRIPTION clean

\$ 40 X 36 EACH = \$ 1,440.00

\$ 1,200.00

UNIT BID NO. 2

LUMP SUM BID NO. 2

DESCRIPTION _____

DESCRIPTION _____

\$ _____ X _____ EACH = \$ _____

\$ _____

ALTERNATE BID

TOTAL BID

DESCRIPTION 150ft Fence

UNIT BID(S) + LUMP SUM BID(S) + ALTERNATE BID

\$ 4,050.00

\$ 6,690.00

CONTRACTOR SIGNATURE

354-47.110.01 F1 03 / 00

(OVER)

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

BLIGHT ABATEMENT
BID QUOTATION

PROPERTY ADDRESS _____ COMPLAINT _____ BID NO. _____

GENERAL CONDITIONS

- o TOTAL BID AMOUNT SHALL BE FULL COMPENSATION FOR THE WORK SPECIFIED.
- o BID QUOTATION SHALL BE EXECUTED BY AN AUTHORIZED REPRESENTATIVE OF THE CONTRACTOR.
- o BID QUOTATIONS WILL BE RECEIVED BY CEDA UNTIL 3:30 PM ON THE DAY OF BID OPENING.
- o CEDA MAY REJECT ANY OR ALL BID QUOTATIONS FOR ANY REASON OR WAIVE ANY INFORMALITY OR IRREGULARITY, WHETHER MATERIAL OR OTHERWISE.
- o BID QUOTATIONS SHALL BE FULLY COMPLETED ON CEDA FORMS AND SHALL INCLUDE ALL ATTACHMENTS AND SHALL BE WITHOUT ERASURES, DELETIONS, EXCLUSIONS, OR QUALIFICATIONS.
- o THE SUCCESSFUL BID QUOTATION WILL BE THE LOWEST COMBINED AMOUNT OF LUMP SUM BID PLUS UNIT BID EXTENSIONS PLUS ACCEPTED ALTERNATE BIDS TENDERED BY A RESPONSIBLE BIDDER. BID QUOTATIONS SHALL BE TENDERED FOR A MINIMUM OF 30 DAYS AFTER THE DATE OF BID OPENING.
- o EXTRA WORK SHALL NOT BE PERFORMED WITHOUT PRIOR WRITTEN AUTHORIZATION BY CHANGE ORDER.
- o WORK SPECIFIED SHALL BE PERFORMED STRICTLY IN ACCORDANCE WITH THE PROVISIONS OF THE PERFORMANCE AGREEMENT AND THE PERFORMANCE SPECIFICATIONS.
- o WORK SPECIFIED SHALL COMMENCE WITHIN 24 HOURS OF ISSUANCE OF THE NOTICE TO PROCEED (OR IMMEDIATELY FOR EXIGENT ISSUANCE) AND BE COMPLETED WITHIN THE TIME DURATION SPECIFIED.

SPECIAL CONDITIONS

- o DISPOSAL RECEIPTS REQUIRED _____ o _____
- o _____ o _____
- o _____ o _____

ATTACHMENTS

CITY BUSINESS LICENSE CONTRACTORS LICENSE BIDDERS AFFIDAVITS INSURANCE CERTIFICATES SURETY
 OTHER DOCUMENTS ALREADY ON FILE

Contractor's initials _____

CONTRACTOR

ARTHUR YOUNG DEBRIS REMOVAL
 1441 - ^{STREET ADDRESS} 58th AVENUE
 OAKLAND, CA 94621
 (510) 568-9465 ZIP
 FAX (510) 568-9467
 () TELEPHONE LICENSE NO.

COMPANY NAME _____
 CONTRACTOR'S SIGNATURE *Arthur Young* DATE 5/8/01

SIGNATURE SHALL ALSO CONSTITUTE ENDORSEMENTS OF THE BIDDER'S AFFIDAVIT ATTACHED HERETO.

*NOTE TO CONTRACTORS: Please initial if these documents already on file with this office. If not, please provide documents with this quote.

4247
2

ASSESSOR'S MAP 42

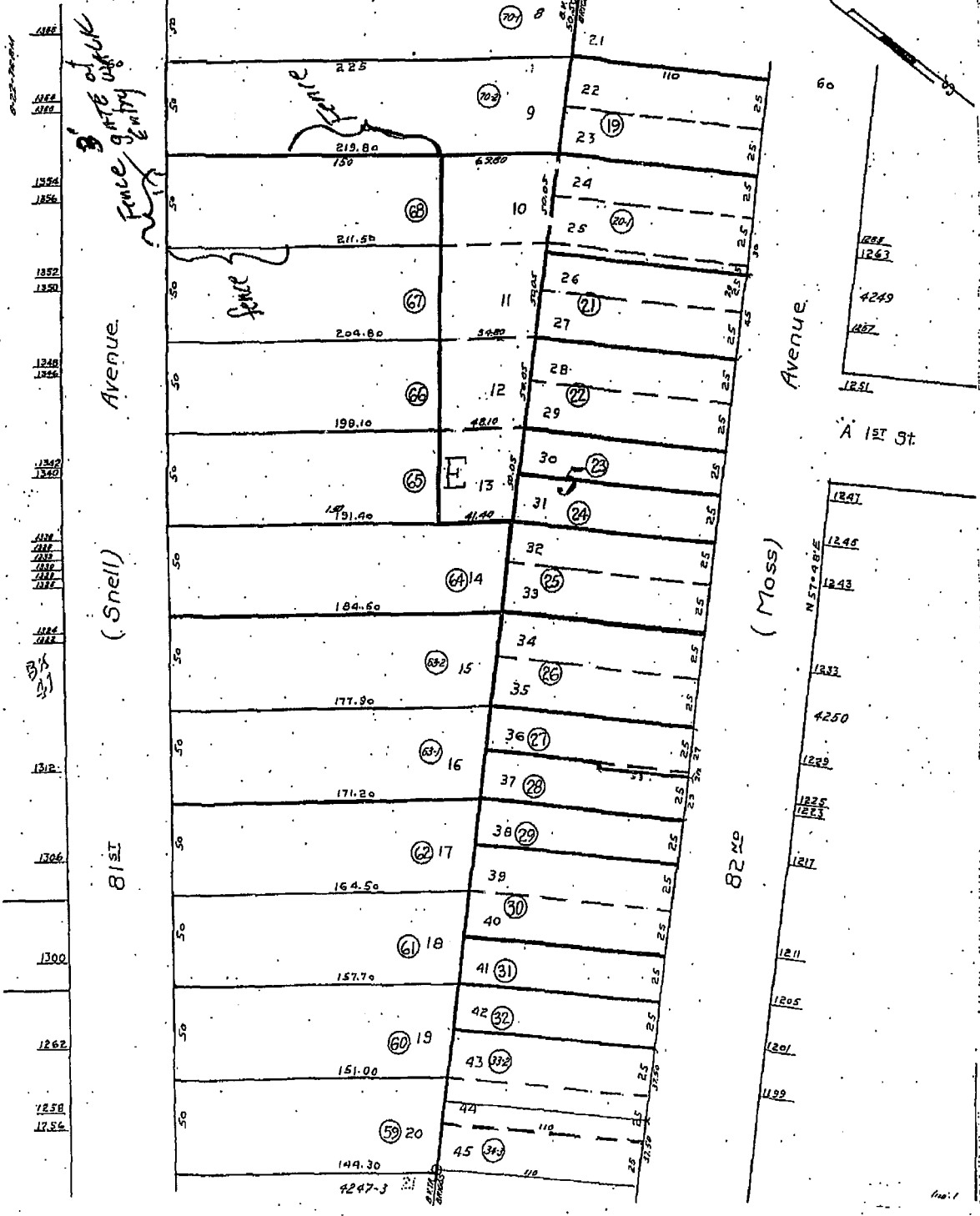
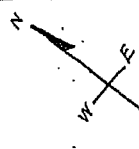
Map No. 2 of the Buena Ventura Tract. (Pl. 13, Pg. 27)

Map of the Briggs Tract, Brooklyn Township. (Pl. 21, Pg. 20)

17-038
17-032

Scale 1 in = 40 ft

4247-1-7



= METROSCAN PROPERTY PROFILE =
Alameda (CA)

OWNERSHIP INFORMATION

Parcel Number : 042 4247 068 00
 Owner : Patino Jose
 CoOwner :
 Site Address : 1354 81St Ave Oakland 94621
 Mail Address : 1354-1356 81St Ave Oakland Ca 94621
 Owner Phone :
 Tenant Phone :

SALES AND LOAN INFORMATION

Transferred	: 12/20/2000	Loan Amount	: \$200,000
Document #	: 370239	Lender	: Private
Sale Price	: \$247,000 Full	Loan Type	: Private
Deed Type	: Grant.Deed	Interest Rate	: Fixed
% Owned	: 100	Vesting Type	: Single Person

ASSESSMENT AND TAX INFORMATION

Land	: \$85,800	Exempt Type	:
Structure	: \$200,100	Exempt Amount	:
Other	:	Incorporated	: 254
Total	: \$285,900	Tax Rate Area	: 17032
% Improved	: 70	00-01 Taxes	: \$5,648.82

PROPERTY DESCRIPTION

Map Grid : 670 H4
 Census : Tract : 4089.00 Black : 1
 Land Use : 240 Res,Multi,4 Units

PROPERTY CHARACTERISTICS

TotalRms	: 16	Pool	:	Lot Acres	: .17	Bldg Matl	: Frame
Bedrooms	: 8	Units	: 4	Lot SqFt	: 7,500	Bldg Shape	:
Bathrooms	: 4.00	Bldg Num	: 2	Bldg SqFt	: 3,016	Bldg Class	: S.S
Stories	: 1.5	Elevator	:	Year Blt	: 1952	View Qual	:
Unit Flr	:	Garage	: Carport	Eff YrBlt	: 1952	Topography	:

Information compiled from various sources. Real Estate Solutions makes no representations or warranties as to the accuracy or completeness of information contained in this report.

7 155 130 732

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	
Jose Patino	
Street & Number	
1354-1356 - 81st Avenue	
Post Office, State, & ZIP Code	
Oakland, CA 94621-2464	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	
4/20/01	

PS Form 3800, April 1995

AND

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

250 Frank H. Ogawa Plaza, Suite 2340 OAKLAND, CALIFORNIA 94612
38-3381; FAX (510) 238-2959; TDD: (510) 238-6312

**NOTICE TO ABATE A BLIGHT
LIPLIANCE SECTION (510) 238-3381**

Date: 4/20/01
Affected Address: 1354/56 81st Ave

ave.
321-2464

Assessor's Parcel No.:
042-4247-068
PTS Case No.: 0103080
Combination/Specialty Inspector:
Kenneth A. Guano
Inspector Phone: (510)

VIOLATIONS: The property(ies) located at 1354/56 - 81st Ave, Oakland, California, was(were) observed by a Combination/ Specialty Inspector/Code Enforcement, on or about 4/20/01, to contain one or more of the following conditions:

The structure(s), premises, or vacant lot(s) was/were:

- Vacant and unsecured, permitting entry to unauthorized persons;**
- The premises contained trash, debris, overgrowth, recyclables, graffiti, and/or disabled vehicles or vehicle parts, and/or the structure was not properly secured; Interior TRASH Included.**
- The dwelling or other structure was deteriorated, abandoned, hazardous, illegally constructed, or was not being put to its permitted use. Including fence**
- SEE THE ATTACHED NOTICE TO ABATE (REQUIREMENTS).**

This is in violation of Chapter 8.24 of the Oakland Municipal Code (OMC), the Blight Ordinance, or the Building Conservation Code (BCC). This letter constitutes your Official Notice to Abate the violation(s) listed above.

DUE DATE, FEES AND CHARGES: Failure to secure the building(s) and/or remove all trash, debris, overgrowth, and/or graffiti and to commence reasonable action to abate the remaining items on the List of Violations within ten (10) days of the date of this Notice, shall result in the City cleaning, removing the graffiti, installing galvanized chain link fencing, and/or securing the premises as necessary. The owner of record will be billed for all incurred charges. Estimated charges to clean, secure premises, remove any junk, trash, debris, graffiti and secure openings: To be determined by bid.



CITY OF OAKLAND

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

Code Compliance Division 250 Frank H. Ogawa Plaza, Suite 2340 OAKLAND, CALIFORNIA 94612
(510) 238-3381; FAX (510) 238-2959; TDD: (510) 238-6312

**OFFICIAL NOTICE TO ABATE A BLIGHT
CODE COMPLIANCE SECTION (510) 238-3381**

TO: Jose Patino
1354-1356-81st ave.
Oakland, Ca. 94621-2464

Date: 4/20/01
Affected Address: 1354/56 81st ave
Assessor's Parcel No.: 042-4247-068
PTS Case No.: 0103080
Combination/Specialty Inspector: Kenneth A. Gunnar
Inspector Phone: (510)

VIOLATIONS: The property(ies) located at 1354/56-81st ave, Oakland, California, was(were) observed by a Combination/ Specialty Inspector/Code Enforcement, on or about 4/20/01, to contain one or more of the following conditions:

The structure(s), premises, or vacant lot(s) was/were:

- 1. ~~*~~ Vacant and unsecured, permitting entry to unauthorized persons;
- 2. ~~*~~ The premises contained trash, debris, overgrowth, recyclables, graffiti, and/or disabled vehicles or vehicle parts, and/or the structure was not properly secured; *Interior Trash Included.*
- 3. ~~*~~ The dwelling or other structure was deteriorated, abandoned, hazardous, illegally constructed, or was not being put to its permitted use. *Including fence*
- 4. ~~*~~ SEE THE ATTACHED NOTICE TO ABATE (REQUIREMENTS).

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OFFICIAL NOTICE TO ABATE A BLIGHT

Page - 2 -

In addition to these charges, there will be an Administrative Fee of \$380, or 25% of contract, whichever is greater, and Fee-Charged Reinspections of \$220 each, to cover the City's costs. Section 15.08.130 BCC stipulates that all charges not paid within five (5) days shall be secured by the recording of a lien filed with the Alameda County Recorder's Office, for which there is a fee of \$125. The fee for releasing of same lien is \$125. Therefore, to forestall any further action by this Department, you are advised to abate the above-listed conditions immediately.

IF YOU HAVE RECENTLY SOLD THE PROPERTY, YOU MAY BE LIABLE FOR COSTS IF YOU HAVE NOT MADE A GOOD FAITH EFFORT TO NOTIFY THE NEW OWNER OF THIS NOTICE AND ITS CONTENTS. Please call the Inspector if this is the situation or if you need help with this problem.

Without further notice to the property owner, the City may contract with licensed contractors (Third Party) to enter the property and abate the violations (remove graffiti, board unsecured vacant building, paint vacant building exterior, remove trash/debris/vegetation/abandoned vehicles, install galvanized chain link fencing, etc.). Third Party work may be done even after the property owner has attempted to correct the violation if the work completed by the owner does not conform to minimum City standards.

Third Party charges are substantive and are invoiced to the property owner and subsequently liened against the property title and collected with property taxes. The property owner is responsible for immediately notifying the Inspector shown on the Notice of Violation/Order to Abate when the owner will correct the violations and for determining how the corrective work must be done to avoid additional abatement charges.

Property owners must contact the Inspector shown on the notice of Violations/Order to Abate before starting any work to ensure all requirements are understood. Unsatisfactory corrective work will result in continuing abatement charges.

QUESTIONS: If you have any questions about this notice, please contact the Combination/Specialty Inspector, Kenneth A. Gunnard, at (510) 238- 6207, within ten (10) days from the date of this Notice, during the Inspector's office hours: Monday through Friday, from 8:00 a.m. to 9:00 a.m. or 3:00 p.m. to 4:00 p.m. **A phone call to the Inspector will often clear up many problems.**

Kenneth A. Gunnard
Combination/Specialty Inspector, (for)

Antoinette Renwick
Principal Inspection Supervisor

HAAB39/blight frm
(rev.11/99)

000415 167

LIST OF VIOLATIONS

Date: 4/20/01

PTS No.: 0103080

Affected Address: 1354-81st ave.

YOU ARE HEREBY DIRECTED TO CORRECT THE FOLLOWING VIOLATION(S):

ITEM NO.	**	Life-threatening conditions requiring immediate correction Hazardous conditions seriously affecting habitability
①	*	Rear exterior concrete stairs not structurally sound.
②	*	Windows and doors broken throughout building.
③	*	Exposed Electrical wiring interior and exterior
④	*	Plumbing fixtures defective or missing throughout building
⑤		Rain gutter downspouts missing/defective
⑥	*	Open gas lines throughout building.
⑦	*	Wall furnace defective/damaged or not operational
⑧		Walls, ceilings and floors damaged/defective throughout building.
		NOTE: A complete inspection was not performed on this day. OTHER violations may exist and must be corrected and shall become a component part of this report.

Code Violations (indicate Sections):

Housing: 15.08.340(C.I.); 15.08.340(F, G, E, H, K.); 15.08.340 B
 Building: _____
 Plumbing/Mechanical _____
 Electrical _____
 Zoning _____
 Municipal/Others _____

DATE ABATED: _____

* Permits required for all the above violations prior to doing the work. LOV:rev:2/99/ml



The Dalziel Building ■

■ OAKLAND, CALIFORNIA 94612-2032

FIRE PREVENTION BUREAU

250 Frank Ogawa Plaza, 3rd Floor, STE. 3341

510-238-3851
TTY/TDD 238-6884

Theresa Shavers
1354 81St Ave
Oakland CA 94621

RE: 1354 81ST AVE OAKLAND 94621

Initial Inspection Date Time District
Wed, Apr 4, 2001 11:20 AM ELM

Reinspection Date Time Closed Finaled
 Yes No Yes No

Rescheduled Date Time In Co At First Phone #
 Yes No

2nd Reinspection Date Time

No Shows
 1ST 2ND 3RD

INSPECTION HISTORY:

*Boarded up by Code Compliance
Unit windows broken and front door
open. Bottom unit. Debris & Broken
glass around building
Blight*

INSPECTOR
Inspector Camille Rodgers at
510-238-7392

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Jose Patino
 1354-1356 - 81st Avenue
 Oakland, CA 94621-2464

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X Agent Addressee

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Copy from service label)

Z 155 130 732

PS Form 3811, July 1999

Domestic Return Receipt

102565-00-M-0952



Made from Recycled Paper

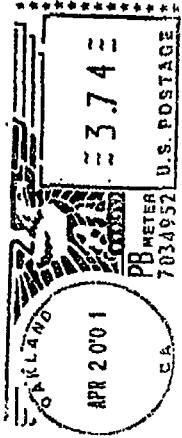
CITY OF OAKLAND

Kenneth Gunari, Specialty/Combo Inspector
COMMUNITY & ECONOMIC DEVELOPMENT AGENCY
250 FRANK H. OGAWA PLAZA, SUITE 2328
OAKLAND, CALIFORNIA 94612-2031

CERTIFIED

Z 155 130 732

MAIL



Jose Palumbo
1357 81st Avenue
Oakland, CA 94621-2464

Handwritten signature

ADDRESSSEE UNKNOWN



The Dalziel Building ■

■ OAKLAND, CALIFORNIA 94612-2032

FIRE PREVENTION BUREAU

250 Frank Ogawa Plaza, 3rd Floor, STE. 3341

510-238-3851

TTY/TDD 238-6884

Theresa

Shavers

1354 81St Ave

Oakland

CA 94621

RE: 1354 81ST AVE OAKLAND 94621

Initial Inspection Date Time District
Wed, Apr 4, 2001 11:20 AM ELM

Reinspection Date Time Closed Finaled
 Yes No Yes No

Rescheduled Date Time In Co At First Phone #
 Yes No

2nd Reinspection Date Time

No Shows

1ST 2ND 3RD

INSPECTION HISTORY:

*Boarded up by Code Compliance
Unit windows broken and front door
open. Bottom unit. Debris & Broken
glass around building
Blight.*

INSPECTOR

Inspector Camille Rodgers at
510-238-7392

172



CITY OF OAKLAND

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

Code Compliance Division-250 Frank H. Ogawa Plaza, Suite 2340 OAKLAND, CALIFORNIA 94612
(510) 238-3381; FAX (510) 238-2959; TDD: (510) 238-3254

May 17, 2001

Pacific Gas & Electric
4801 Oakport Street
Oakland, CA 94601

Attention: John Wharton
Services Planning Supervisor

Subject: **1354 – 81st Avenue, Oakland, CA**
Electrical and Gas Service Disconnect

Reference: Complaint No.: 0103080
Oakland Municipal Code Section 15.04.395.F

The property listed above is currently occupied, unsecured, and has been recently vandalized. The City has not received any response from the (absentee) owner, and therefore we are securing the building from unauthorized entry (openings boarded and yard fenced) to abate this Public Nuisance.

Please immediately terminate the electrical and gas utility service (meters removed and service drop connectors disconnected at joint pole) at the subject address, and do not reconnect either of the services until notified by the City of our release.

Should you have any questions concerning this matter, please contact Ken Gunari, Combination/Specialty Inspector, at (510) 238-6207.

Sincerely,

KENNETH A. GUNARI
Community and Economic Development Agency
Building Services

KG:ml

0004213

1354-81 Ave
turned in 5/17/2001

DAVIS STREET TRANSFER STATION
2615 Davis Street
San Leandro, CA 94577
510-638-2303

TICKET: 1013032
DATE: 05/10/2001
TIME: 12:22 - 12:42

CUSTOMER: 216 / A Green & Shrubbery
ORIGIN: 10 / Oakland
ROUTE: 001 / Public Customer Default
TRUCK: SE86890
LICENSE:
COMMENT:

P. D. :
GROSS: 13160 LBS
TARE: 9020 LBS
NET: 4140 LBS

WASTE	QUANTITY	UNIT	RATE	AMOUNT
42 / Equipment Time / Additional	1.00	U	\$ 35.00	\$ 35.00
30 / Refuse Tons-Include County Fee	2.07	T	\$ 74.50	\$ 154.22

WASTE MANAGEMENT

IN: M. C. B: COLLECTOR1 OUT: S. V. \$ 189.22
B: COLLECTORS

DRIVER: *A. B...*

WEIGHMASTER:

BEFORE

AFTER

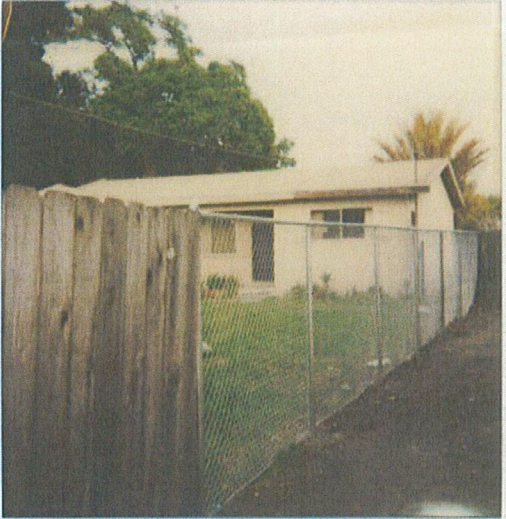
Date

5/15/01

Address

1354 - 81st ave

5/9/01 PHOIO MOUNIS



5-15-01
1354-81st Ave
Back-Done
L-Side Fencing



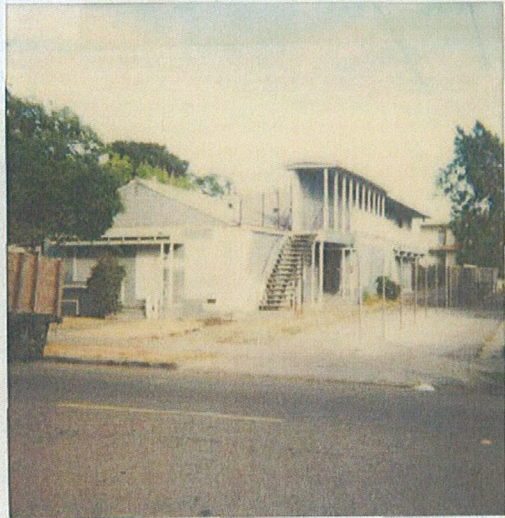
5-9
1354 81st Ave
APT-13
Done Front room



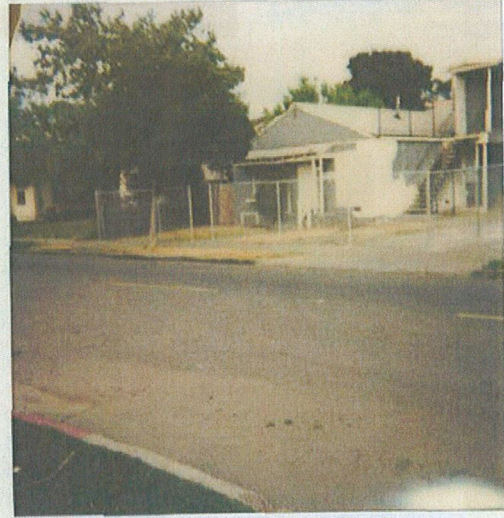
5-9
1354 81st Ave
APT-13
Done Bedroom / 10th side



5-9
1354 81st Ave
APT-13
Done Bedroom / 10th side



5-14-01
1354-81st Ave
Fencing Front
start



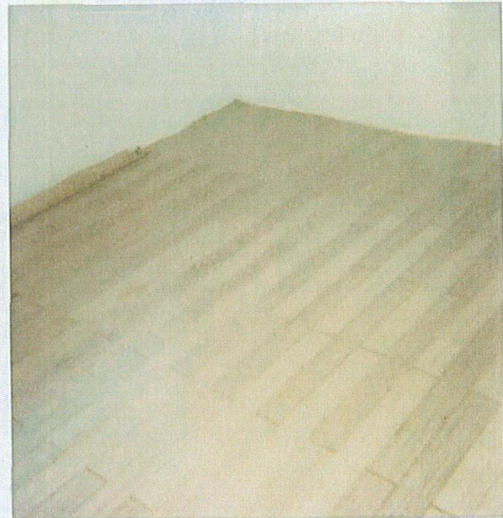
5-15-01
1354 81st Ave
Front Done Fencing



5-9
1354-81st Ave
APT-A
Done Front room



5-9
1354-81st Ave
APT-A
Done Bedroom/



5-9
1354-81st Ave
APT-A
Done Bedroom/R-side

BEFORE AFTER Date

5-15-01

Address

1354-81st Ave

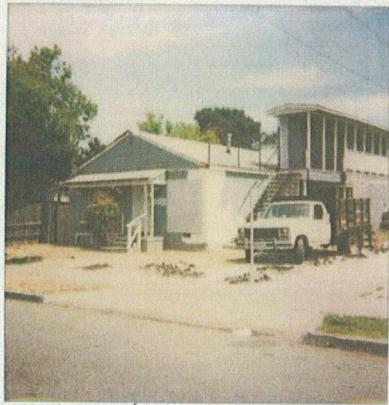
PHOTO MOUNTS

progress PHOTOS

PHOTO MOUNTS

BEFORE AFTER Date 5/14/01

Address 1354-81st ave



1354-81st Ave

K. Gunari 5/14/01



1354-81st ave

K. Gunari 5/14/01

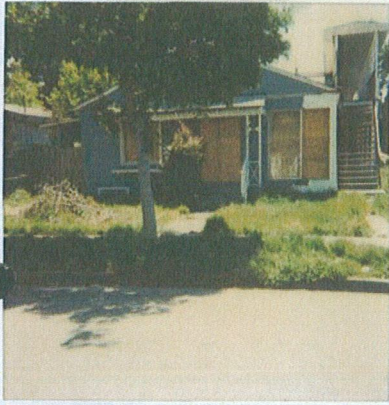
PHOTO MOUNTS

BEFORE AFTER

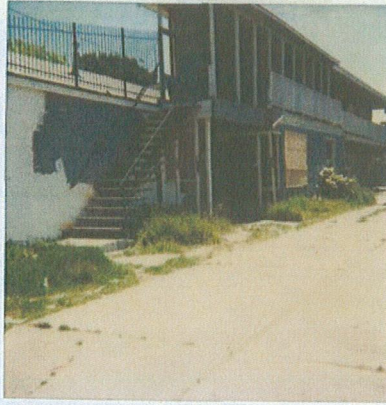
Date 5-7-01

Address

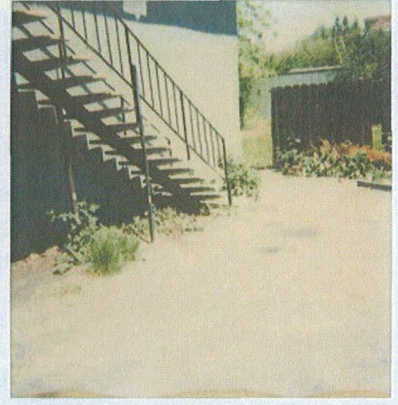
1354-81st ave



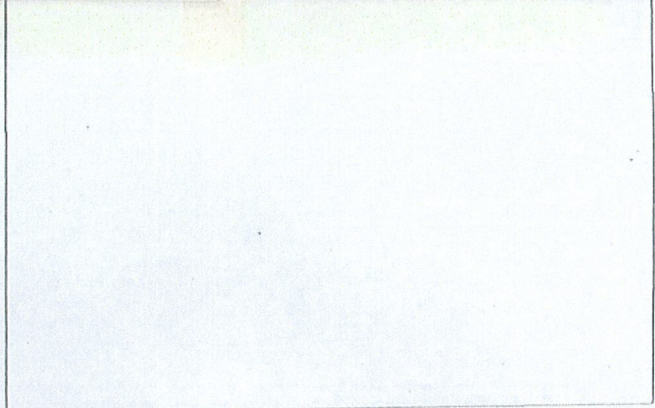
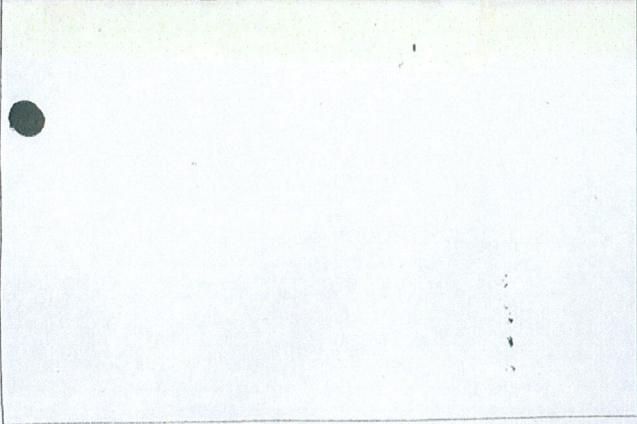
5-7-01
1354-81st ave
K. Sunari

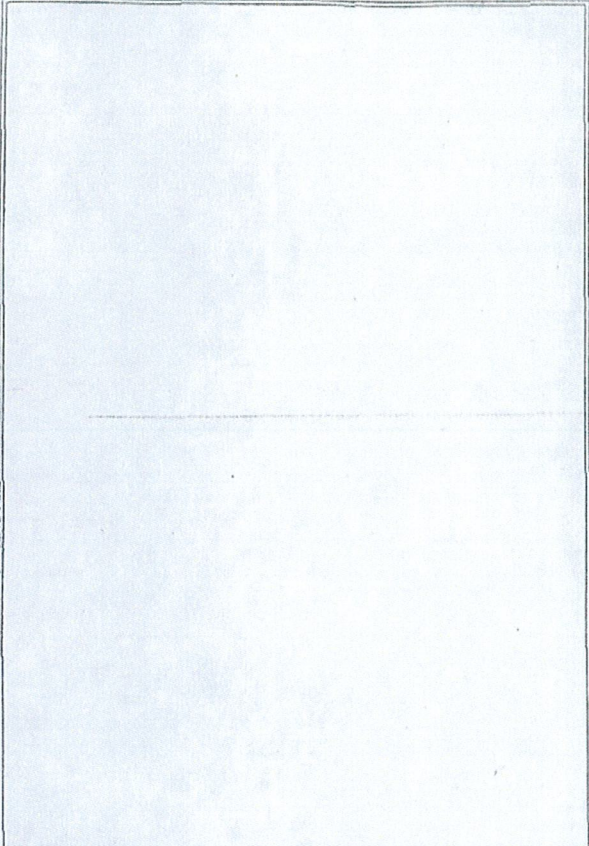


5-7-01
1354-81st ave
K. Sunari



5-7-01
~~5-7-01~~ 1354-81st ave
K. Sunari





5/21/01

K. Gonnari

Address

1354 81st Ave.

PHOTOGRAPHS

Date

Before

After



CITY OF OAKLAND

OFFICE OF PLANNING AND BUILDING

CODE COMPLIANCE
250 Frank H. Ogawa
Plaza, 2nd Floor
Oakland, CA 94612
(510) 238-3102

BLIGHT ABATEMENT

NOTICE TO PROCEED

PROPERTY ADDRESS 1354 - 81st Avenue. COMPLAINT 0103080 INSP / DIST CB-INSP/KG

PARCEL 042-4247-068-00 CONTRACT 01424 PERMIT _____

CONTRACT [] CLEAN LOT [] DEMOLITION START WORK BY _____ DURATION Five (5)
 DAYS WORK [] CLEAN PREMISES [] SURVEY HAZ MATL
 [] PAINT PREMISES [] REMOVE HAZ MATL
 [] SECURE PREMISES [] OTHER _____

FUND [] 35447 - 45716 [] PROJECT _____

CONTRACTOR A Green & Shrubbery Service PROPERTY OWNER Theresa Shavers

ADDRESS 8908 Thermal Street ADDRESS 1354 - 81st Avenue

CITY / STATE Oakland, CA 94605 CITY / STATE Oakland, CA 94621

TELEPHONE (510) 632-3056 TELEPHONE () _____

GENERAL CONDITIONS

- o AUTHORIZED WORK SHALL BE PERFORMED STRICTLY IN ACCORDANCE WITH THE TERMS AND CONDITIONS SPECIFIED IN THE BID DOCUMENTS AND PERFORMANCE AGREEMENT AND NOTICE TO PROCEED.
- o AUTHORIZED WORK SHALL COMMENCE ON OR BEFORE THE DATE SPECIFIED HEREIN AND SHALL BE COMPLETED SATISFACTORILY WITHIN THE DURATION OF CALENDAR DAYS SPECIFIED HEREIN.
- o CONTRACTOR SHALL IMMEDIATELY NOTIFY OPB OF CHANGES WHICH MAY INCREASE OR DECREASE THE SCOPE OF AUTHORIZED WORK OR CONDITIONS WHICH MAY EFFECT THE PROSECUTION OF THE WORK. EXTRA WORK SHALL NOT BE PERFORMED WITHOUT PRIOR WRITTEN APPROVAL BY CHANGE ORDER.

SPECIAL CONDITIONS

CODICIL [X] DISPOSAL RECEIPTS [] INSURANCE LIMITS [] LIQUIDATED DAMAGES [X] LICENSE 510066

[] EXIGENT ISSUANCE [] PREVAILING WAGE [] SURETY / GUARANTEE [] OTHER _____

BASE BID \$ _____ DATE STARTED 5/10/01 DATE COMPLETED 5/21/01

ALTERNATE NO. _____ \$ _____ DELAY [] WEATHER [] DIRECTED RE - WORK [] CHANGE ORDER [] OTHER _____

CONTRACT TOTAL \$5,546.00 WORK CERTIFIED COMPLETE

CHANGE ORDER \$ _____

AMENDED TOTAL \$ _____

Kenneth A. Humari 5/23/01
INSPECTOR SIGNATURE DATE

NOTICE TO PROCEED RECEIVED

A. B. Blackman 5/10/01
CONTRACTOR SIGNATURE DATE

NOTICE TO PROCEED ISSUED

Antoinette Hollway-Renwick 5/9/01
SUPERVISING INSPECTOR SIGNATURE DATE

354-47.F (08/98)
 4/21/01

WHITE: CASE FILE MUSTARD: BILLING FILE SALMON: CONTRACTOR

2020 FEB 13 PM 4:50

PLANNING AND BUILDING DEPARTMENT
CITY OF OAKLAND

000428 80



OFFICE OF PLANNING AND BUILDING

CODE COMPLIANCE
250 Frank H. Ogawa
Plaza, 2nd Floor
Oakland, CA 94612
(510) 238-3102


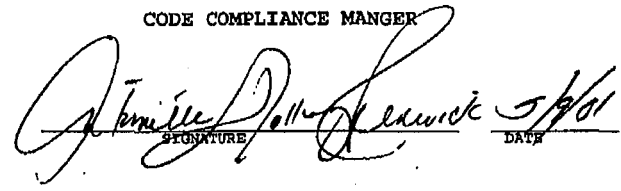
**BLIGHT ABATEMENT
PERFORMANCE AGREEMENT**

PROPERTY ADDRESS 1354 - 81ST AVENUE COMPLAINT 0103080 INSP /DIST CB-INSP/KG [df]

WORK	[X]	CLEAN LOT	[]	DEMOLITION	PARCEL	<u>042-4247-068-00</u>
	[]	CLEAN PREMISES	[]	SURVEY HAZ MATL	CONTRACTOR	<u>A Green and Shrubbery Service</u>
	[]	PAINT PREMISES	[]	REMOVE HAZ MATL	LICENSE	<u>725218</u> CONTRACT <u>01424</u>
	[]	SECURE PREMISES	[]	OTHER		

THIS AGREEMENT IS MADE BETWEEN THE CONTRACTOR AND THE CITY OF OAKLAND, OFFICE OF PLANNING AND BUILDING (OPB), FOR AND IN CONSIDERATION OF THE PURPOSES SPECIFIED HEREIN.

IN WITNESS WHEREOF, THE CONTRACTOR AND THE CITY HAVE DULY EXECUTED THIS AGREEMENT AND ARE MUTUALLY BOUND BY THE TERMS AND CONDITIONS SPECIFIED HEREIN.

CONTRACTOR	CITY OF OAKLAND
by	by
<u>A Green and Shrubbery Service</u> <small>PRINT NAME</small>	RAYMOND M. DERANIA CODE COMPLIANCE MANGER
 <small>SIGNATURE</small>	 <small>SIGNATURE</small>
<u>5/10/01</u> <small>DATE</small>	<u>5/10/01</u> <small>DATE</small>

1. STATEMENT OF WORK

CONTRACTOR SHALL PROVIDE ALL NECESSARY LABOR, MOTOR VEHICLES, SAFETY EQUIPMENT, MATERIALS, MACHINERY, TOOLS, APPARATUS, TESTING AND DISPOSAL FACILITIES, AND OTHER MEANS OF CONSTRUCTION TO COMPLETE THE WORK SAFELY AS SPECIFIED IN THE BID DOCUMENTS, AND WITHIN THE DATES AND DURATIONS AND FOR THE AMOUNTS SPECIFIED IN THE NOTICE TO PROCEED.

2. AGENCY

CONTRACTOR IS NOT AN AGENT OR EMPLOYEE OF THE CITY AND IS SOLELY RESPONSIBLE FOR THE SAFE PERFORMANCE OF ALL WORK SPECIFIED HEREIN, FOR CONTRACTOR'S OWN ACTS, AND FOR THE ACTS OF CONTRACTOR'S EMPLOYEES, SUBORDINATES, AND SUBCONTRACTORS. CONTRACTOR HAS NO AUTHORITY TO BIND THE CITY IN ANY MEANS TO ANY OBLIGATION.

3. SUBCONTRACTORS

CONTRACTOR SHALL NOT USE OR EMPLOY OR CONTRACT WITH ANY SUBCONTRACTOR WITHOUT PRIOR WRITTEN AUTHORIZATION FROM OPB. CONTRACTOR SHALL INCLUDE PROVISIONS SIMILAR TO THOSE SPECIFIED IN THIS AGREEMENT IN ALL SUBCONTRACTS.

4. SURETY

CONTRACTOR SHALL PROVIDE APPROVED SECURITIES GUARANTEEING PERFORMANCE OF THE WORK AND WARRANTING PAYMENT OF LABOR AND MATERIALS AS SPECIFIED IN THE BID DOCUMENTS.


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5. FEES, TAXES, PERMITS, SECURITIES, AND LICENSES

CONTRACTOR SHALL INCUR THE COSTS OF AND MAINTAIN CURRENT ALL FEES, TAXES, PERMITS, SECURITIES, AND LICENSES REQUIRED BY FEDERAL, STATE, REGIONAL, AND CITY REGULATIONS, INCLUDING BUT NOT LIMITED TO CITY BUSINESS TAX AND STATE CONTRACTORS LICENSE.

6. NON-ASSIGNMENT

CONTRACTOR SHALL NOT SELL OR ASSIGN THIS AGREEMENT OR SUBLET ANY RIGHT HEREIN WITHOUT PRIOR WRITTEN AUTHORIZATION FROM THE CITY. IN THE EVENT OF THE DEATH OR INCAPACITATION OF THE CONTRACTOR TO PERFORM UNDER THIS AGREEMENT, NO RIGHTS SHALL ACCRUE TO ANY HEIRS, SUCCESSORS, ADMINISTRATORS, EXECUTORS, ASSIGNS OR ANY OTHER PERSON.

7. COMPENSATION

CONTRACTOR WILL BE REIMBURSED FOR THE AMOUNTS SPECIFIED IN THE NOTICE TO PROCEED FOR WORK SATISFACTORILY COMPLETED UPON RECEIPT BY OPB OF AN ITEMIZED INVOICE WITH SUBSTANTIATING DOCUMENTATION, INCLUDING BUT NOT LIMITED TO CERTIFICATIONS FOR MATERIALS AND TESTING, TO EMPLOYEE PAYROLL AND SUPPLIER DISBURSEMENTS, TO RECEIPTS FOR DISPOSAL, PERMITS, AND LICENSES, TO PHOTOGRAPHIC RECORDS, AND TO HAZARDOUS MATERIAL MANIFESTS.

OPB MAY AT ITS OPTION REJECT OR RETAIN AMOUNTS INVOICED FOR WHICH CHANGE ORDERS WERE NOT APPROVED (INCREASE/DECREASE IN SCOPE OF WORK) OR RETAIN AMOUNTS FOR COMPLETION BY OTHERS OF UNSATISFACTORY WORK OR FOR CLEANING OR REMOVAL OR REPAIR OR REPLACEMENT BY OTHERS OF DAMAGED WORK OR DAMAGED PRIVATE PROPERTY OR PUBLIC INFRASTRUCTURE.

8. INDEMNIFICATION

CONTRACTOR SHALL SAVE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF OAKLAND, ITS COUNCILMEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND VOLUNTEERS FROM ANY AND ALL CLAIMS, LOSSES AND EXPENSES, INCLUDING ATTORNEYS' FEES, OF LIABILITY OR INJURY OR DAMAGES TO PERSONS OR PROPERTY RESULTING FROM THE NEGLIGENT PERFORMANCE OF THE WORK.

9. COMMENCEMENT AND COMPLETION

CONTRACTOR SHALL PROMPTLY COMMENCE THE WORK AND SHALL EXPEDITIOUSLY PROSECUTE THE WORK AND SHALL SATISFACTORILY COMPLETE THE WORK STRICTLY IN ACCORDANCE WITH THE DATES AND TIME DURATIONS SPECIFIED IN THE NOTICE TO PROCEED.

CONTRACTOR HAS INVESTIGATED THE WORK SITE AND DETERMINED THAT THE TIME DURATIONS SPECIFIED ARE REASONABLE AND SUFFICIENT TO COMPLETE THE WORK, INCLUDING BUT NOT LIMITED TO CONSIDERATION FOR HISTORIC WEATHER CONDITIONS AND UNUSUAL WORK SITE CONDITIONS.

BECAUSE ACTUAL DAMAGES SUSTAINED BY THE CITY SHOULD THE WORK NOT BE COMPLETED SATISFACTORILY WITHIN THE DURATIONS SPECIFIED ARE DIFFICULT AND IMPRACTICAL TO DETERMINE, CONTRACTOR SHALL COMPENSATE THE CITY WITH LIQUIDATED DAMAGES AS SPECIFIED IN THE BID DOCUMENTS.

10. INSPECTION

CONTRACTOR SHALL MAINTAIN UNIMPEDED AND SAFE ACCESS FOR INSPECTION OF THE WORK SITE AND PREMISES AT ALL TIMES DURING THE PROSECUTION OF AND AT THE COMPLETION OF THE WORK.

11. PRECEDENCE

CONTRACTOR SHALL ALSO COMPLY WITH THE CURRENT EDITION OF THE APWA "STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION" AND THE CITY'S MODIFICATIONS THERETO. WHERE A CONFLICT EXISTS, THE MORE SPECIFIC REQUIREMENT SHALL BE APPLICABLE.

BLIGHT ABATEMENT

PERFORMANCE AGREEMENT

12. CONFLICT OF INTEREST

CONTRACTOR SHALL HAVE NO FINANCIAL INTERESTS IN PROPERTIES OR PERSONAL OR FAMILIAL RELATIONSHIPS WITH PROPERTY OWNERS EFFECTED BY THE WORK.

CONTRACTOR SHALL NOT ENGAGE IN ACTIVITIES ASSOCIATED WITH NOR GIVE THE APPEARANCE OF BEING MOTIVATED BY A DESIRE FOR PRIVATE GAIN RELATED TO THE WORK PERFORMED.

CONTRACTOR SHALL NOT BID WORK, NOR SHALL CONTRACTOR PERFORM WORK, NOR SHALL CONTRACTOR RECEIVE COMPENSATION FOR WORK PERFORMED FOR SO LONG AS A RELATION BY BLOOD OR MARRIAGE WITHIN THE THIRD DEGREE EXISTS WITH THE MAYOR OR COUNCILMEMBERS OR CITY MANAGER OR DEPARTMENT HEADS OF THE CITY OF OAKLAND.

13. INSURANCE

CONTRACTOR SHALL MAINTAIN WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE COVERAGE IN ACCORDANCE WITH THE CALIFORNIA LABOR CODE (SECT 3700).

CONTRACTOR SHALL ALSO MAINTAIN GENERAL LIABILITY INSURANCE, INCLUDING COMPREHENSIVE BODILY INJURY AND PROPERTY DAMAGE, AUTOMOBILE AND PRODUCT LIABILITY, AND COMPLETE OPERATION COVERAGE, SPECIFICALLY INCLUDING CONTRACTUAL LIABILITY COVERING LIABILITY ASSUMED HEREUNDER, PROVIDING BODILY INJURY LIMITS OF NOT LESS THAN \$500,000 FOR EACH PERSON, AND NOT LESS THAN \$500,000 FOR EACH ACCIDENT OR OCCURRENCE, AND PROPERTY DAMAGE LIABILITY LIMITS OF NOT LESS THAN \$100,000 FOR EACH ACCIDENT OR OCCURRENCE FOR CLAIMS WHICH MAY OR DO ARISE FROM THE OPERATION OF CONTRACTOR OR ANY SUBCONTRACTOR IN THE PERFORMANCE OF THE WORK SPECIFIED HEREIN.

IN LIEU OF CONTRACTUAL LIABILITY FOR THE CITY, SAID COMPREHENSIVE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE POLICY OR POLICIES SHALL INCLUDE AS A NAMED ADDITIONAL INSURED THE CITY, ITS COUNCILMEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS. THE PREMIUMS FOR SUCH INSURANCE SHALL BE PAID BY THE CONTRACTOR. EACH POLICY OF INSURANCE SHALL CONTAIN A CLAUSE SUBSTANTIALLY IN THE FOLLOWING WORDS:

"IT IS HEREBY UNDERSTOOD AND AGREED THAT THIS POLICY MAY NOT BE CANCELED NOR THE AMOUNT OF THE COVERAGE THEREOF BE REDUCED UNTIL THIRTY (30) CALENDAR DAYS AFTER RECEIPT BY THE CITY OF OAKLAND, OFFICE OF PLANNING AND BUILDING, OF THE WRITTEN NOTICE OF SUCH CANCELLATION OR REDUCTION OF COVERAGE, AS EVIDENCED BY RECEIPT OF A REGISTERED LETTER."

14. AFFIRMATIVE ACTION AND MINORITY AND FEMALE OWNED BUSINESS ENTERPRISES (MBE/WBE)

CONTRACTOR SHALL COMPLY WITH FEDERAL, STATE, AND CITY REGULATIONS FOR AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT.

CONTRACTOR SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, COLOR, RELIGIOUS CREED, GENDER, SEXUAL ORIENTATION, PHYSICAL HANDICAP, MEDICAL CONDITION, AGE, ANCESTRY, OR NATIONAL ORIGIN.

CONTRACTOR SHALL TAKE AFFIRMATIVE ACTION TO ENSURE THAT BOTH APPLICANTS FOR EMPLOYMENT ARE EMPLOYED AND THOSE EMPLOYED ARE TREATED WITHOUT REGARD TO SUCH DISCRIMINATORY PRACTICES. SUCH ACTION SHALL INCLUDE BUT NOT BE LIMITED TO EMPLOYMENT UPGRADING.

CONTRACTOR SHALL COMPLY WITH CURRENT FEDERAL, STATE, AND CITY REGULATIONS FOR MINORITY AND FEMALE OWNED BUSINESS ENTERPRISES AND SHALL USE ITS BEST EFFORTS TO OBTAIN THE MAXIMUM USE OF SUCH ENTERPRISES BASED IN THE CITY OF OAKLAND AND SUCH ENTERPRISES SHALL HAVE MAXIMUM PRACTICABLE OPPORTUNITY TO COMPETE FOR SUBCONTRACTED WORK.


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15. WAGES

CONTRACTOR SHALL COMPLY WITH FEDERAL LABOR STANDARDS ACT (FLSA) REGULATIONS FOR EMPLOYEE RATES OF PER DIEM WAGES.

CONTRACTOR SHALL ALSO COMPLY WITH THE GENERAL PREVAILING RATES OF PER DIEM WAGES APPLICABLE IN ALAMEDA COUNTY (LABOR CODE SECT 1770) AS SPECIFIED IN THE BID DOCUMENTS.

16. CHANGES

CONTRACTOR SHALL IMMEDIATELY NOTIFY OPB OF CHANGES WHICH MAY INCREASE OR DECREASE THE SCOPE OF WORK OR OF CONDITIONS WHICH MAY EFFECT THE PROSECUTION OF THE WORK. EXTRA WORK SHALL NOT BE PERFORMED WITHOUT PRIOR WRITTEN APPROVAL BY CHANGE ORDER.

OPB MAY AT ITS OPTION INCREASE OR DECREASE THE SCOPE OF WORK SPECIFIED OR CANCEL THIS AGREEMENT OR TERMINATE THIS AGREEMENT IN WHOLE OR IN PART IMMEDIATELY FOR CAUSE, INCLUDING BUT NOT LIMITED TO FAILURE BY THE CONTRACTOR FOR ANY REASON TO FULFILL ANY OBLIGATION PROPERLY OR IN A TIMELY MANNER.

17. DAMAGES

CONTRACTOR SHALL BE RESPONSIBLE FOR THE CARE AND PRESERVATION OF THE WORK UNTIL FINAL ACCEPTANCE BY OPB.

CONTRACTOR SHALL ALSO BE RESPONSIBLE FOR COLLATERAL DAMAGE TO THE WORK SITE, THE PREMISES, SERVING UTILITIES, PROPERTIES COTERMINOUS TO THE WORK SITE, AND PUBLIC INFRASTRUCTURE DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO CONTRACTOR'S ACTIONS OR LACK THEREOF IN PERFORMANCE OF THE WORK.

18. NUISANCE

CONTRACTOR SHALL AVOID, CONTROL, MITIGATE, AND ELIMINATE PUBLIC AND PRIVATE NUISANCES AT THE WORK SITE, INCLUDING BUT NOT LIMITED TO NOISE, FUGITIVE AIRBORNE PARTICULATES AND CONTAMINANTS, HOURS OF OPERATION, EMPLOYEE CONDUCT, CARE AND PRESERVATION OF ACCOUTREMENTS (FENCING, LANDSCAPING, ETC.), OPEN OF EXCAVATIONS, STORAGE OF MATERIALS AND EQUIPMENT, AND ACCUMULATION AND DISPOSAL OF DEBRIS AND HAZARDOUS WASTE.

19. TRAFFIC CONTROL

CONTRACTOR SHALL NOT CLOSE OR OBSTRUCT OR EXCAVATE WITHIN THE PUBLIC RIGHT-OF-WAY WITHOUT PRIOR APPROVAL BY OPB OF A TRAFFIC CONTROL PLAN AND ISSUANCE OF PERMITS.

CONTRACTOR SHALL MAINTAIN UNIMPEDED AND SAFE ACCESS AT ALL TIMES TO PRIVATE PROPERTIES AND SHALL PROSECUTE THE WORK WITH MINIMAL INTERFERENCE TO DRIVEWAYS, WALKWAYS, PASSAGEWAYS, ALLEYS, AND SIMILAR INGRESS/EGRESS FACILITIES.

20. SAFETY

CONTRACTOR SHALL COMPLY WITH CALIFORNIA DIVISION OF INDUSTRIAL SAFETY REGULATIONS AND WITH FEDERAL, STATE, AND LOCAL REGULATIONS FOR USE AND DISPOSAL OF HAZARDOUS MATERIALS.

CONTRACTOR SHALL PROVIDE AND MAINTAIN ALL MEANS, INCLUDING BUT NOT LIMITED TO COMPETENT AND CONTINUOUS SUPERINTENDENCE, FLAGMEN, SECURITY PERSONNEL, SCREENS, SIGNAGE, FENCING, BARRICADES, AND SHORING, NECESSARY TO ENSURE THE SAFETY OF THE PUBLIC AND THE CARE AND PRESERVATION OF PRIVATE PROPERTY AND THE PRECLUSION OF UNAUTHORIZED ACCESS DURING PROSECUTION OF THE WORK.

Do not put on bid list - prepare contract

Emergency

HAAB 39
BID DEVELOPMENT REQUEST

CONTRACT CANCELED = \$220 FEE

Site Information

ADDRESS 1354-81st ave DATE 5/7/01 *ASAP start work*

PARCEL 042-4247-068-00 PTS No. 0103080

SUPERVISOR Rausick Initials [Signature] SDS 1 2 3 4 5 6
(circle one)

INSPECTOR K. Gunari Initials [Signature] USE Residential Commercial vacant lot
Description Apt. Building

Site Conditions

PREMISES OCCUPIED Yes No LOCKED GATE Yes No GUARD DOG Yes No

PROPERTY LINE SURVEY Yes No (required if not readily identifiable) BEAT HEALTH Yes No VEHICLE TOW Yes No

Bid Conditions

TENANT RELOCATION Yes No FENCE & GATE Yes No "H7" BOARD UP Yes No

FACADE TREATMENT Yes No (lead paint analysis required) INSP WARRANT Yes No OTHER _____

Required Attachments

- a. recent photograph of site and blighting conditions ✓
- b. copy of Chronological Log notes AND/ OR PTS F24 screen print-out ✓
- c. copy of HAAB 39 or PTS 62 Notice AND/ OR 504 screen print-out with "57" notice ✓
- d. copy of Assessor's Map AND ownership either from TRW (CD ROM) or title company (fax) ✓
- e. copy of certified mail "green card" and/or returned envelope AND/ OR 504 screen print-out with cert. mail no. ✓
- f. written description of work to be performed by Bidder, including special limitations or additions (g, h, i, j, k, etc.) ✓
- g. copy of notice to BH (officer & PST names) for towing/ Warrant coordination, etc. (see Site Conditions above)
- h. copy of "Joan Curtis" public right-of-way map indicating setback from curb face (see Bid Conditions above)
- i. copy of Inspection Warrant (issued by judge) and 24 hour posting placard (see Site Conditions above)
- j. copy of Notice to PG&E requesting gas and electric utility termination (see Site Conditions above)
- k. City survey crew request and Work Order (Tom Sheets) (see Site Conditions above)
- l. copy of notice to CEDA - Relocation (see Bid Conditions above)
- m. copy of notice to Animal Control (see Site Conditions above)
- n. copy of Prospective Lien (see Bid Conditions above)

SEE OVER FOR PAGE 2

BIDDER'S SCOPE OF WORK

Bid Packages must be received by staff no later than 4:00 p.m. Thursdays.

Bid Conditions

TENANT RELOCATION Yes No FENCE & GATE Yes No "H 7" INTERIOR CLEAN Yes No
FACADE TREATMENT Yes No INSP WARRANT Yes No TERMINATE UTILITIES Yes No

Work Requirements

- Contractor must submit disposal receipts with invoice for work completed.
- Contractor must stencil parcel number on curb face for vacant lots.
- Exterior cleaning of premises:

*Special Note:
Contractor to
Contact R. Gamari*

Front yard Remove trash debris and weed overgrowth.
Install fence and 3' wide man gate to
City Specifications (6' High) - Place gate at walkway
in front of building

Rear yard Remove trash, debris and weed overgrowth

Left sideyard Remove trash, debris and weed overgrowth.
Install fence to City specifications - Remove
old dilapidated/fallen fence.

Right sideyard Remove trash, debris and weed overgrowth
Install fence at right front portion.

Interior cleaning of premises ("H 7" specifications):
 Main building Accessory building Detached garage Other _____

Securing of premises:
Secure all openings to City Specifications.

No. exterior doors _____ No. garage doors _____ No. windows _____ No. other openings 36
Fencing 150 lin. ft. Setback from curb face _____ ft. Gate width 3 ft.

Rev: 7/00

50 feet in front - approx 50' right side, the remainder of
the 150 feet along left side towards rear of



OFFICE OF PLANNING AND BUILDING

CODE COMPLIANCE
250 Frank H. Ogawa
Plaza, 2nd Floor
Oakland, CA 94612
(510) 238-3102

BLIGHT ABATEMENT

BID QUOTATION

PROPERTY ADDRESS 1354 81st Avenue COMPLAINT 0103080 Control NO. 010509
PARCEL 042-4247-068-00 LICENSE [] C12 [] C21 [] C33 [] C57 [] C61
WORK ISSUANCE [] CLEAN LOT [] DEMOLITION DURATION Five (5) CALENDAR DAYS [] EXIGENT
PERMITS [] CLEAN PREMISES [] SURVEY HAZ MATL SPECIAL [X] DISPOSAL RECEIPTS []
[] PAINT PREMISES [] REMOVE HAZ MATL CONDITIONS [] INSURANCE LIMITS [] SURETY
[] SECURE PREMISES [] OTHER [] LIQUIDATED DAMAGES [] PREVAIL WAGE
INSPECTOR Ken Guanari STATION CB-INSP/KG 238-6207 [] OTHER

DESCRIPTION OF PARCEL

[] VACANT LOT [] VACANT BUILDING [] OCCUPIED PREMISES [] ACCESSORY BUILDING [] INOPERATIVE VEHICLE
[] ABANDONED POOL / OPEN EXCAVATION [] INSPECTION WARRANT [] OTHER

DESCRIPTION OF WORK

Front: Remove trash, debris, weeds and overgrowth. Install fence and 3' wide man gate to
City specifications (6' high) - place gate at walkway in front of building.
Rear: Remove trash, debris, weeds and overgrowth.
L/sideyard: Remove trash, debris, weeds and overgrowth. Install fence to City
specifications - remove old dilapidated/fallen fence.
R/sideyard: Remove trash, debris, weeds and overgrowth. Install fence at right front
portion.
Securing: Secure all openings to City specifications.
Fencing: 150: 50 feet in front - approx 50' right side, the remainder of the 150 feet
along left side towards rear of parcel.
Total number of openings: 36

FRONT YARD same as above REAR YARD same as above

LEFT SIDYARD same as above RIGHT SIDYARD same as above

PREMISES

ALTERNATE BID

UNIT BID NO. 1 LUMP SUM BID NO. 1
DESCRIPTION DESCRIPTION
\$ X EACH = \$

UNIT BID NO. 2 LUMP SUM BID NO. 2
DESCRIPTION DESCRIPTION
\$ X EACH = \$

ALTERNATE BID TOTAL BID

DESCRIPTION UNIT BID(S) + LUMP SUM BID(S) + ALTERNATE BID
\$

00043587

(OVER)

OFFICE OF PLANNING AND BUILDING

BLIGHT ABATEMENT

BID QUOTATION

PROPERTY ADDRESS 1354 81st Avenue COMPLAINT 0103080 Control NO. 010509

GENERAL CONDITIONS

- o TOTAL BID AMOUNT SHALL BE FULL COMPENSATION FOR THE WORK SPECIFIED.
o BID QUOTATION SHALL BE EXECUTED BY AN AUTHORIZED REPRESENTATIVE OF THE CONTRACTOR.
o BID QUOTATIONS WILL BE RECEIVED BY OPB UNTIL 3:30 PM ON THE DAY OF BID OPENING.
o OPB MAY REJECT ANY OR ALL BID QUOTATIONS FOR ANY REASON OR WAIVE ANY INFORMALITY OR IRREGULARITY, WHETHER MATERIAL OR OTHERWISE.
o BID QUOTATIONS SHALL BE FULLY COMPLETED ON OPB FORMS AND SHALL INCLUDE ALL ATTACHMENTS AND SHALL BE WITHOUT ERASURES, DELETIONS, EXCLUSIONS, OR QUALIFICATIONS.
o THE SUCCESSFUL BID QUOTATION WILL BE THE LOWEST COMBINED AMOUNT OF LUMP SUM BID PLUS UNIT BID EXTENSIONS PLUS ACCEPTED ALTERNATE BIDS TENDERED BY A RESPONSIBLE BIDDER. BID QUOTATIONS SHALL BE TENDERED FOR A MINIMUM OF 30 DAYS AFTER THE DATE OF BID OPENING.
o EXTRA WORK SHALL NOT BE PERFORMED WITHOUT PRIOR WRITTEN AUTHORIZATION BY CHANGE ORDER.
o WORK SPECIFIED SHALL BE PERFORMED STRICTLY IN ACCORDANCE WITH THE PROVISIONS OF THE PERFORMANCE AGREEMENT AND THE PERFORMANCE SPECIFICATIONS.
o WORK SPECIFIED SHALL COMMENCE WITHIN 24 HOURS OF ISSUANCE OF THE NOTICE TO PROCEED (OR IMMEDIATELY FOR EXIGENT ISSUANCE) AND BE COMPLETED WITHIN THE TIME DURATION SPECIFIED.

SPECIAL CONDITIONS

- o DISPOSAL RECEIPTS REQUIRED
o
o

ATTACHMENTS

[x] CITY BUSINESS LICENSE [x] CONTRACTORS LICENSE [x] BIDDERS AFFIDAVITS [x] INSURANCE CERTIFICATES
[] SURETY
[] OTHER All required documents are on file.

CONTRACTOR

8908 Thermal Street
STREET ADDRESS
Oakland, CA 94605
CITY ZIP

A Green and Shrubbery Service
COMPANY NAME
A.B. B... 5/16/01
CONTRACTOR'S SIGNATURE DATE

() TELEPHONE LICENSE NO. SIGNATURE SHALL ALSO CONSTITUTE ENDORSEMENTS OF THE BIDDER'S AFFIDAVIT ATTACHED HERETO.



CODE COMPLIANCE
250 Frank H. Ogawa
Plaza, 2nd Floor
Oakland, CA 94612
(510) 238-3102

OFFICE OF PLANNING AND BUILDING

BLIGHT ABATEMENT

BIDDER'S AFFIDAVIT

CITY OF OAKLAND

(SIGNATURE ON THE BID QUOTATION SHALL CONSTITUTE ENDORSEMENTS OF EACH OF THE CERTIFICATIONS BELOW)

o CERTIFICATION OF NO PRIOR EXCLUSIONS (PUBLIC CONTRACT CODE SECT. 10162)

UNDER PENALTY OF PERJURY, THE BIDDER CERTIFIES THAT NEITHER HE OR SHE, NOR ANY OFFICER OF THE BIDDER, NOR ANY EMPLOYEE OF THE BIDDER WHO HAS A PROPRIETARY INTEREST IN THE BIDDER, HAS EVER BEEN DISQUALIFIED, REMOVED, OR OTHERWISE PREVENTED FROM BIDDING ON, OR COMPLETING A FEDERAL, STATE, OR LOCAL GOVERNMENT PROJECT BECAUSE OF A VIOLATION OF LAW OR SAFETY REGULATION.

o CERTIFICATION OF NO PRIOR SANCTIONS (PUBLIC CONTRACT CODE SECT. 10232)

UNDER PENALTY OF PERJURY, THE BIDDER CERTIFIES THAT NO MORE THAN ONE (1) FINAL UNAPPEALABLE FINDING OF CONTEMPT BY A FEDERAL COURT HAS BEEN ISSUED AGAINST THE BIDDER WITHIN THE IMMEDIATELY PRECEDING TWO (2) YEAR PERIOD BECAUSE OF THE BIDDER'S FAILURE TO COMPLY WITH AN ORDER OF A FEDERAL COURT WHICH ORDERS THE BIDDER TO COMPLY WITH AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD (NLRB).

o CERTIFICATION OF NO PRIOR CONVICTIONS (PUBLIC CONTRACT CODE SECT. 10285.1)

UNDER PENALTY OF PERJURY, THE BIDDER CERTIFIES THAT HE OR SHE HAS NOT BEEN CONVICTED WITHIN THE PRECEDING THREE (3) YEARS OF ANY FRAUD, BRIBERY, COLLUSION, CONSPIRACY, OR ANY OTHER ACT IN VIOLATION OF ANY STATE OR FEDERAL ANTITRUST LAW IN CONNECTION WITH THE BIDDING UPON, AWARD OF, OR PERFORMANCE OF, ANY PUBLIC CONTRACT WITH ANY PUBLIC ENTITY, AS DEFINED IN PCC SECT. 1101, INCLUDING THE REGENTS OF THE UNIVERSITY OF CALIFORNIA OR THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY. THE TERM "BIDDER" IS UNDERSTOOD TO INCLUDE ANY PARTNER, MEMBER, OFFICER, DIRECTOR, RESPONSIBLE MANAGING OFFICER, OR RESPONSIBLE MANAGING EMPLOYEE THEREOF, AS REFERRED TO IN PCC SECT. 10285.1.

o CERTIFICATION OF NO CURRENT COLLUSION (PUBLIC CONTRACT CODE SECT. 7106)

UNDER PENALTY OF PERJURY, THE BIDDER CERTIFIES THAT THE BID PROPOSAL IS NOT MADE IN THE INTEREST OF, OR ON BEHALF OF, ANY UNDISCLOSED PERSON, PARTNERSHIP, ASSOCIATION, COMPANY, ORGANIZATION, OR CORPORATION; THAT THE BID PROPOSAL IS GENUINE AND NOT COLLUSIVE OR SHAM; THAT THE BIDDER HAS NOT DIRECTLY OR INDIRECTLY INDUCED OR SOLICITED ANY OTHER BIDDER TO PUT IN A FALSE OR SHAM BID, AND HAS NOT DIRECTLY OR INDIRECTLY COLLUDED, CONSPIRED, CONNIVED, OR AGREED WITH ANY BIDDER OR ANYONE ELSE TO PUT IN A SHAM BID, OR THAT ANYONE SHALL REFRAIN FROM BIDDING; THAT THE BIDDER HAS NOT DIRECTLY OR INDIRECTLY IN ANY MANNER SOUGHT BY AGREEMENT, COMMUNICATION, OR CONFERENCE WITH ANYONE TO FIX THE BID PRICE OF THE BIDDER OR ANY OTHER BIDDER, OR TO FIX ANY OVERHEAD, PROFIT, OR COST ELEMENT OF THE BID PRICE, OR OF THAT OF ANY OTHER BIDDER, OR TO SECURE ANY ADVANTAGE AGAINST THE PUBLIC BODY AWARDING THE CONTRACT OF ANYONE INTERESTED IN THE PROPOSED CONTRACT; THAT ALL STATEMENTS CONTAINED IN THE BID PROPOSAL ARE TRUE; AND, FURTHER, THAT THE BIDDER HAS NOT DIRECTLY OR INDIRECTLY SUBMITTED HIS OR HER BID PRICE OR ANY BREAKDOWN THEREOF, OR THE CONTENTS THEREOF, OR DIVULGED INFORMATION OR DATA RELATIVE THERETO, OR PAID, AND WILL NOT PAY, ANY FEE TO ANY CORPORATION, PARTNERSHIP, COMPANY ASSOCIATION, ORGANIZATION, BID DEPOSITORY, OR TO ANY MEMBER OF AGENT THEREOF TO EFFECTUATE A COLLUSIVE OR SHAM BID.

o CERTIFICATION OF NO CURRENT COLLUSION (TITLE 23, UNITED STATES CODE SECT. 112)

UNDER PENALTY OF PERJURY, THE BIDDER CERTIFIES THAT HE OR SHE HAS NOT DIRECTLY OR INDIRECTLY ENTERED INTO ANY AGREEMENT, PARTICIPATED IN ANY COLLUSION, OR OTHERWISE TAKEN ACTION IN RESTRAINT OF FREE COMPETITIVE BIDDING IN CONNECTION WITH THIS BID PROPOSAL.


INITIALS



CITY OF OAKLAND

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

BLIGHT ABATEMENT

BID QUOTATION

CODE COMPLIANCE
250 Frank H. Ogawa
Plaza, 2nd Floor
Oakland, CA 94612
(510) 238-3102

K. Gunnari

PROPERTY ADDRESS 1354 81 Ave

COMPLAINT 0103080 BID NO. _____

PARCEL 042-4247-068-00

LICENSE () C12 () C21 () C33 () C57 (X) C61

WORK [] CLEAN LOT [] DEMOLITION
[X] CLEAN PREMISES [] SURVEY HAZ MATL
[X] PAINT PREMISES [] REMOVE HAZ MATL
[X] SECURE PREMISES [] OTHER

DURATION 5 days duration CALENDAR DAYS () EXIGENT ISSUANCE

SPECIAL (X) DISPOSAL RECEIPTS () PERMITS
CONDITIONS () INSURANCE LIMITS () SURETY
() LIQUIDATED DAMAGES () PREVAIL WAGE

INSPECTOR H. Gunnari STATION _____

() OTHER _____

DESCRIPTION OF PARCEL

[] VACANT LOT [] VACANT BUILDING [] OCCUPIED PREMISES [] ACCESSORY BUILDING [] INOPERATIVE VEHICLE
[] ABANDONED POOL / OPEN EXCAVATION [] INSPECTION WARRANT [] OTHER _____

DESCRIPTION OF WORK

FRONT YARD SAME AS ABOVE

REAR YARD SAME AS ABOVE

LEFT SIDEYARD SAME AS ABOVE

RIGHT SIDEYARD SAME AS ABOVE

PREMISES YES

ALTERNATE BID _____

UNIT BID NO . 1

LUMP SUM BID NO . 1

DESCRIPTION Board up
\$ 40 X 36 EACH = \$ 1440.00

DESCRIPTION _____
\$ _____

UNIT BID NO . 2

LUMP SUM BID NO . 2

DESCRIPTION Clean up
\$ _____ X _____ EACH = \$ 750.00

DESCRIPTION _____
\$ _____

ALTERNATE BID

TOTAL BID

DESCRIPTION Fence 150' x 25.0% = 3750.00
\$ _____

UNIT BID(S) + LUMP SUM BID(S) + ALTERNATE BID

\$ 5546.00

A. Black
CONTRACTOR SIGNATURE

354-47.110.01 F1 (03 / 00)
(OVER)



COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

CODE COMPLIANCE
250 Frank H. Ogawa
Plaza, 2nd Floor
Oakland, CA 94612
(510) 238-3102

BLIGHT ABATEMENT

BID QUOTATION

PROPERTY ADDRESS 1354 8th St A.D. COMPLAINT _____ BID NO. _____

PARCEL _____ LICENSE C12 C21 C33 C57 C61

WORK CLEAN LOT DEMOLITION DURATION 5 days duration CALENDAR DAYS EXIGENT ISSUANCE

CLEAN PREMISES SURVEY HAZ MATL. SPECIAL DISPOSAL RECEIPTS PERMITS

PAINT PREMISES REMOVE HAZ MATL. CONDITIONS INSURANCE LIMITS SURETY

SECURE PREMISES OTHER _____ LIQUIDATED DAMAGES PREVAIL WAGE

INSPECTOR _____ STATION _____ OTHER _____

DESCRIPTION OF PARCEL

VACANT LOT VACANT BUILDING OCCUPIED PREMISES ACCESSORY BUILDING INOPERATIVE VEHICLE

ABANDONED POOL / OPEN EXCAVATION INSPECTION WARRANT OTHER _____

DESCRIPTION OF WORK

FRONT YARD SAME AS ABOVE REAR YARD SAME AS ABOVE

LEFT SIDEYARD SAME AS ABOVE RIGHT SIDEYARD SAME AS ABOVE

PREMISES YES

ALTERNATE BID _____

UNIT BID NO. 1

DESCRIPTION sec

\$ 40 X 36 EACH = \$ 1,440.00

LUMP SUM BID NO. 1

DESCRIPTION clean

\$ 1,200.00

UNIT BID NO. 2

DESCRIPTION _____

\$ _____ X _____ EACH = \$ _____

LUMP SUM BID NO. 2

DESCRIPTION _____

\$ _____

ALTERNATE BID

DESCRIPTION 150ft Fence

\$ 4,050.00

TOTAL BID

UNIT BID(S) + LUMP SUM BID(S) + ALTERNATE BID

\$ 6,690.00

Arthur Jones
CONTRACTOR SIGNATURE
354-47.110.01 F1 / 03 / 00
(OVER)

192

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

BLIGHT ABATEMENT
BID QUOTATION

PROPERTY ADDRESS _____ COMPLAINT _____ BID NO. _____

GENERAL CONDITIONS

- o TOTAL BID AMOUNT SHALL BE FULL COMPENSATION FOR THE WORK SPECIFIED.
- o BID QUOTATION SHALL BE EXECUTED BY AN AUTHORIZED REPRESENTATIVE OF THE CONTRACTOR.
- o BID QUOTATIONS WILL BE RECEIVED BY CEDA UNTIL 3:30 PM ON THE DAY OF BID OPENING.
- o CEDA MAY REJECT ANY OR ALL BID QUOTATIONS FOR ANY REASON OR WAIVE ANY INFORMALITY OR IRREGULARITY, WHETHER MATERIAL OR OTHERWISE.
- o BID QUOTATIONS SHALL BE FULLY COMPLETED ON CEDA FORMS AND SHALL INCLUDE ALL ATTACHMENTS AND SHALL BE WITHOUT ERASURES, DELETIONS, EXCLUSIONS, OR QUALIFICATIONS.
- o THE SUCCESSFUL BID QUOTATION WILL BE THE LOWEST COMBINED AMOUNT OF LUMP SUM BID PLUS UNIT BID EXTENSIONS PLUS ACCEPTED ALTERNATE BIDS TENDERED BY A RESPONSIBLE BIDDER. BID QUOTATIONS SHALL BE TENDERED FOR A MINIMUM OF 30 DAYS AFTER THE DATE OF BID OPENING.
- o EXTRA WORK SHALL NOT BE PERFORMED WITHOUT PRIOR WRITTEN AUTHORIZATION BY CHANGE ORDER.
- o WORK SPECIFIED SHALL BE PERFORMED STRICTLY IN ACCORDANCE WITH THE PROVISIONS OF THE PERFORMANCE AGREEMENT AND THE PERFORMANCE SPECIFICATIONS.
- o WORK SPECIFIED SHALL COMMENCE WITHIN 24 HOURS OF ISSUANCE OF THE NOTICE TO PROCEED (OR IMMEDIATELY FOR EXIGENT ISSUANCE) AND BE COMPLETED WITHIN THE TIME DURATION SPECIFIED.

SPECIAL CONDITIONS

- o DISPOSAL RECEIPTS REQUIRED _____ o _____
- o _____ o _____
- o _____ o _____

ATTACHMENTS

[X] CITY BUSINESS LICENSE [X] CONTRACTORS LICENSE [X] BIDDERS AFFIDAVITS [X] INSURANCE CERTIFICATES [] SURETY
[X] OTHER DOCUMENTS ALREADY ON FILE

Contractor's initials _____

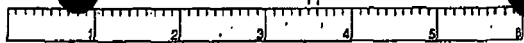
CONTRACTOR

ARTHUR YOUNG DERRIS REMOVAL
STREET ADDRESS
 1441 - 68th AVENUE
 OAKLAND, CA 94621
PHONE (510) 568-9465 ZIP
 FAX (510) 568-9467
 () TELEPHONE LICENSE NO.

COMPANY NAME
Arthur Young 5/8/01
CONTRACTOR'S SIGNATURE DATE

SIGNATURE SHALL ALSO CONSTITUTE ENDORSEMENTS OF THE BIDDER'S AFFIDAVIT ATTACHED HERETO.

*NOTE TO CONTRACTORS: Please initial if these documents already on file with this office. If not, please provide documents with this quote.



SCALE IN 1/10 OF AN INCH

ASSESSOR'S MAP 42

Code Area No. 11-032

4247
2

Map No. 2 of the Buena Ventura Tract. (Bk. 13 Pg. 21)

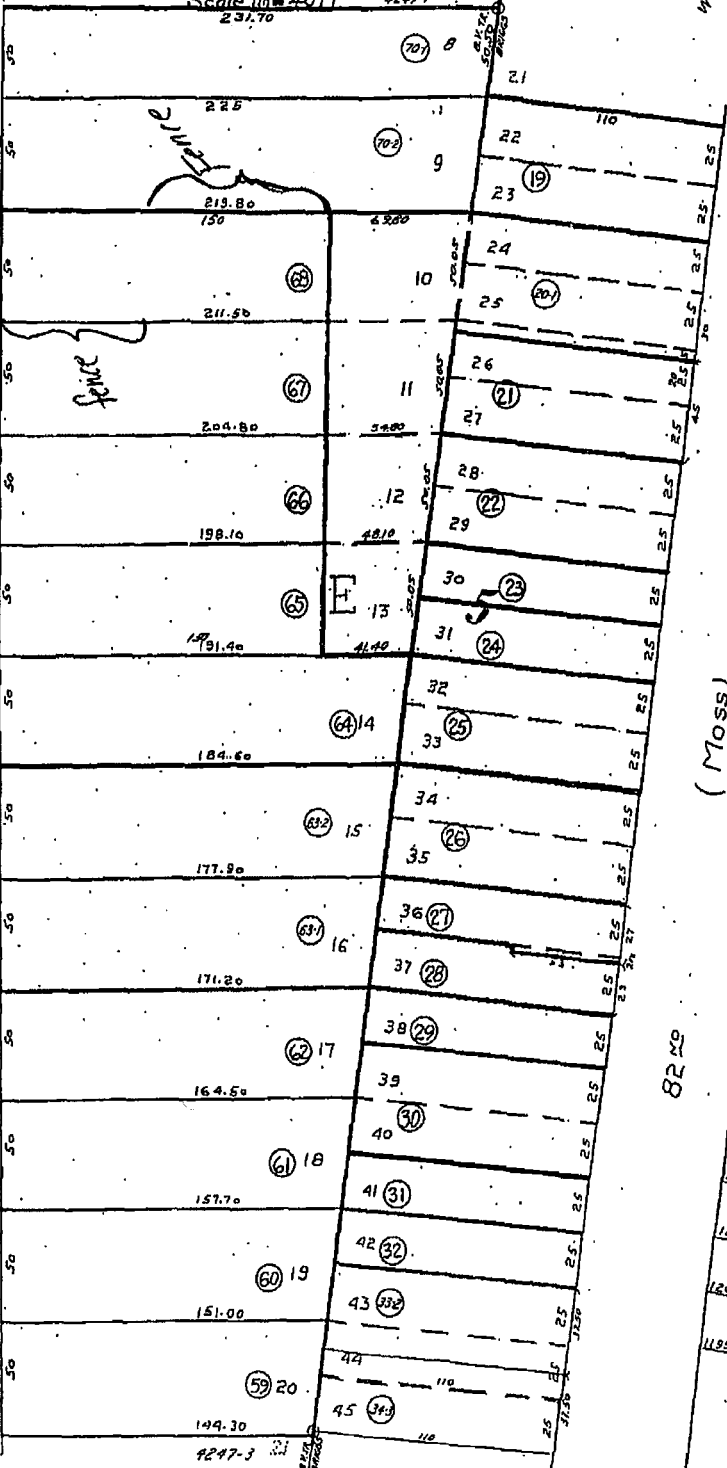
Map of the Briggs Tract, Brooklyn Township. (Bk. 21 Pg. 20)

Scale 1" = 40 ft
4247-1 - 7

11-038
11-032

- 1354
- 1356
- 1372
- 1370
- 1378
- 1376
- 1362
- 1360
- 1346
- 1344
- 1332
- 1330
- 1318
- 1316
- 1306
- 1300
- 1282
- 1258
- 1254

*3' gate width
Fence gully
Entry*



- 1263
- 1267
- 1281
- A 1st St
- 1247
- 1245
- 1243
- 1233
- 4250
- 1229
- 1225
- 1223
- 1217
- 1211
- 1205
- 1201
- 1199

=METROSCAN PROPERTY PROFILE
Alameda (CA)

OWNERSHIP INFORMATION

Parcel Number : 042 4247 068 00
Owner : Patino Jose
CoOwner :
Site Address : 1354 81St Ave Oakland 94621
Mail Address : 1354-1356 81St Ave Oakland Ca 94621
Owner Phone :
Tenant Phone :

SALES AND LOAN INFORMATION

Transferred : 12/20/2000
Document # : 370239
Sale Price : \$247,000 Full
Deed Type : Grant Deed
% Owned : 100
Loan Amount : \$200,000
Lender : Private
Loan Type : Private
Interest Rate : Fixed
Vesting Type : Single Person

ASSESSMENT AND TAX INFORMATION

Land : \$85,800
Structure : \$200,100
Other :
Total : \$285,900
% Improved : 70
Exempt Type :
Exempt Amount :
Incorporated : 254
Tax Rate Area : 17032
00-01 Taxes : \$5,648.82

PROPERTY DESCRIPTION

Map Grid : 670 H4
Census : Tract : 4089.00 Block : 1
Land Use : 240 Res,Multi,4 Units

PROPERTY CHARACTERISTICS

TotalRms : 16
Bedrooms : 8
Bathrooms : 4.00
Stories : 1.5
Unit Flr :
Pool :
Units : 4
Bldg Num : 2
Elevator :
Garage : Carport
Lot Acres : .17
Lot SqFt : 7,500
Bldg SqFt : 3,016
Year Blt : 1952
Eff YrBlt : 1952
Bldg Mail : Frame
Bldg Shape :
Bldg Class : 5.5
View Qual :
Topography :

Information compiled from various sources Real Estate Solutions makes no representations or warranties as to the accuracy or completeness of information contained in this report.

Z 155 130 732

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	
Jose Patino	
Street & Number	
1354-1356 - 81st Avenue	
Post Office, State, & ZIP Code	
Oakland, CA 94621-2464	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	
4/20/01	

PS Form 3800, April 1995

AND

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

250 Frank H. Ogawa Plaza, Suite 2340 OAKLAND, CALIFORNIA 94612
38-3381; FAX (510) 238-2959; TDD: (510) 238-6312

**NOTICE TO ABATE A BLIGHT
APPLIANCE SECTION (510) 238-3381**

Date: 4/20/01
Affected Address: 1354/56 81st Ave

t ave.
321.2464

Assessor's Parcel No.:
042-4247-068
PTS Case No.: 0103080
Combination/Specialty Inspector:
Kenneth A. Guarec
Inspector Phone: (510)

VIOLATIONS: The property(ies) located at 1354/56-81st Ave, Oakland, California, was(were) observed by a Combination/ Specialty Inspector/Code Enforcement, on or about 4/20/01, to contain one or more of the following conditions:

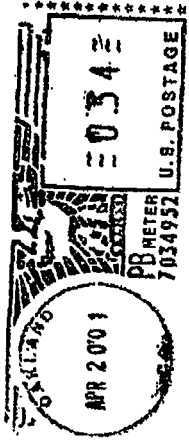
The structure(s), premises, or vacant lot(s) was/were:

1. * Vacant and unsecured, permitting entry to unauthorized persons;
2. * The premises contained trash, debris, overgrowth, recyclables, graffiti, and/or disabled vehicles or vehicle parts, and/or the structure was not properly secured; *Interior TRASH Included.*
3. * The dwelling or other structure was deteriorated, abandoned, hazardous, illegally constructed, or was not being put to its permitted use. *Including fence*
4. * **SEE THE ATTACHED NOTICE TO ABATE (REQUIREMENTS).**

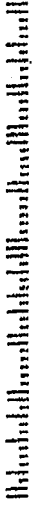
This is in violation of Chapter 8.24 of the Oakland Municipal Code (OMC), the Blight Ordinance, or the Building Conservation Code (BCC). This letter constitutes your Official Notice to Abate the violation(s) listed above.

DUE DATE, FEES AND CHARGES: Failure to secure the building(s) and/or remove all trash, debris, overgrowth, and/or graffiti and to commence reasonable action to abate the remaining items on the List of Violations within ten (10) days of the date of this Notice, shall result in the City cleaning, removing the graffiti, installing galvanized chain link fencing, and/or securing the premises as necessary. The owner of record will be billed for all incurred charges. Estimated charges to clean, secure premises, remove any junk, trash, debris, graffiti and secure openings: To be determined by bid.

CITY OF OAKLAND
Kenneth Gunari, Speciality/Combo Inspector
COMMUNITY & ECONOMIC DEVELOPMENT AGENCY
250 FRANK H. OGAWA PLAZA, SUITE 2328
OAKLAND, CALIFORNIA 94612-2031



Handwritten: *Handwritten mark*
Jose Patino
1354 - 1356 - 81st Avenue
Oakland, CA 94621-2464
Handwritten: *UNKNOWN*



396421228844293



CITY OF OAKLAND

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

Code Compliance Division 250 Frank H. Ogawa Plaza, Suite 2340 OAKLAND, CALIFORNIA 94612
(510) 238-3381; FAX (510) 238-2959; TDD: (510) 238-6312

**OFFICIAL NOTICE TO ABATE A BLIGHT
CODE COMPLIANCE SECTION (510) 238-3381**

TO: Jose Patino
1354-1356-81st ave.
Oakland, Ca. 94621-2464

Date: 4/20/01
Affected Address: 1354/56 81st ave
Assessor's Parcel No.: 042-4247-068
PTS Case No.: 0103080
Combination/Specialty Inspector: Kenneth A. Gunnar
Inspector Phone: (510)

VIOLATIONS: The property(ies) located at 1354/56-81st ave, Oakland, California, was(were) observed by a Combination/ Specialty Inspector/Code Enforcement, on or about 4/20/01, to contain one or more of the following conditions:

The structure(s), premises, or vacant lot(s) was/were:

1. ~~*~~ Vacant and unsecured, permitting entry to unauthorized persons;
2. ~~*~~ The premises contained trash, debris, overgrowth, recyclables, graffiti, and/or disabled vehicles or vehicle parts, and/or the structure was not properly secured; Interior Trash Included.
3. ~~*~~ The dwelling or other structure was deteriorated, abandoned, hazardous, illegally constructed, or was not being put to its permitted use. Including fence
4. ~~*~~ SEE THE ATTACHED NOTICE TO ABATE (REQUIREMENTS).

This is in violation of Chapter 8.24 of the Oakland Municipal Code (OMC), the Blight Ordinance, or the Building Conservation Code (BCC). This letter constitutes your Official Notice to Abate the violation(s) listed above.

DUE DATE, FEES AND CHARGES: Failure to secure the building(s) and/or remove all trash, debris, overgrowth, and/or graffiti and to commence reasonable action to abate the remaining items on the List of Violations within ten (10) days of the date of this Notice, shall result in the City cleaning, removing the graffiti, installing galvanized chain link fencing, and/or securing the premises as necessary. The owner of record will be billed for all incurred charges. Estimated charges to clean, secure premises, remove any junk, trash, debris, graffiti and secure openings: To be determined by bid.

OFFICIAL NOTICE TO ABATE A BLIGHT

Page - 2 -

In addition to these charges, there will be an Administrative Fee of \$380, or 25% of contract, whichever is greater, and Fee-Charged Reinspections of \$220 each, to cover the City's costs. Section 15.08.130 BCC stipulates that all charges not paid within five (5) days shall be secured by the recording of a lien filed with the Alameda County Recorder's Office, for which there is a fee of \$125. The fee for releasing of same lien is \$125. Therefore, to forestall any further action by this Department, you are advised to abate the above-listed conditions immediately.

IF YOU HAVE RECENTLY SOLD THE PROPERTY, YOU MAY BE LIABLE FOR COSTS IF YOU HAVE NOT MADE A GOOD FAITH EFFORT TO NOTIFY THE NEW OWNER OF THIS NOTICE AND ITS CONTENTS. Please call the Inspector if this is the situation or if you need help with this problem.

Without further notice to the property owner, the City may contract with licensed contractors (Third Party) to enter the property and abate the violations (remove graffiti, board unsecured vacant building, paint vacant building exterior, remove trash/debris/vegetation/abandoned vehicles, install galvanized chain link fencing, etc.). Third Party work may be done even after the property owner has attempted to correct the violation if the work completed by the owner does not conform to minimum City standards.

Third Party charges are substantive and are invoiced to the property owner and subsequently liened against the property title and collected with property taxes. The property owner is responsible for immediately notifying the Inspector shown on the Notice of Violation/Order to Abate when the owner will correct the violations and for determining how the corrective work must be done to avoid additional abatement charges.

Property owners must contact the Inspector shown on the notice of Violations/Order to Abate before starting any work to ensure all requirements are understood. Unsatisfactory corrective work will result in continuing abatement charges.

QUESTIONS: If you have any questions about this notice, please contact the Combination/Specialty Inspector, Kenneth A. Gunnard, at (510) 238-6207, within ten (10) days from the date of this Notice, during the Inspector's office hours: Monday through Friday, from 8:00 a.m. to 9:00 a.m. or 3:00 p.m. to 4:00 p.m. A phone call to the Inspector will often clear up many problems.

Kenneth A. Gunnard
Combination/Specialty Inspector, (for)

Antoinette Renwick
Principal Inspection Supervisor

HAAB39/blight frm
(rev.11/99)

000447

199

LIST OF VIOLATIONS

Date: 4/20/01 PTS No.: 0103080

Affected Address: 1354-81st ave.

YOU ARE HEREBY DIRECTED TO CORRECT THE FOLLOWING VIOLATION(S):

ITEM NO.	**	Life-threatening conditions requiring immediate correction Hazardous conditions seriously affecting habitability
①	*	Rear exterior concrete stairs not structurally sound.
②	*	Windows and doors broken throughout building.
③	*	Exposed electrical wiring interior and exterior
④	*	Plumbing fixtures defective or missing throughout building
⑤		Rain gutter downspouts missing/defective
⑥	*	Open gas lines throughout building.
⑦	*	Wall furnaces defective/damaged or not operational
⑧		Walls, ceilings and floors damaged/defective throughout building.
		NOTE: A complete inspection was not performed on this day. OTHER violations may exist and must be corrected and shall become a component part of this report.

Code Violations (indicate Sections):

Housing: 15.08.340(C.I.); 15.08.340(F, G, E, H, K.); 15.08.340 B
 Building: _____
 Plumbing/Mechanical _____
 Electrical _____
 Zoning _____
 Municipal/Others _____

DATE ABATED: _____

* Permits required for all the above violations prior to doing the work. LOV:rev:2/99:ml



The Dalziel Building
FIRE PREVENTION BUREAU

250 Frank Ogawa Plaza, 3rd Floor, STE. 3341

OAKLAND, CALIFORNIA 94612-2032
510-238-3851
TTY/TDD 238-6884

Theresa Shavers
1354 81St Ave
Oakland CA 94621

RE: 1354 81ST AVE OAKLAND 94621

Initial Inspection Date Time District
Wed, Apr 4, 2001 11:20 AM ELM

Reinspection Date Time Closed Finaled
 Yes No Yes No

Rescheduled Date Time In Co At First Phone #
 Yes No

2nd Reinspection Date Time

No Shows
 1ST 2ND 3RD

INSPECTION HISTORY:

*Boarded up by Code Compliance
Unit windows broken and front door
open. Bottom unit. Debris & Broken
glass around building
Blight*

INSPECTOR
Inspector Camille Rodgers at
510-238-7392

Sender's name and address must be printed in the space provided on the front of the mailpiece.

SENDER - COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Jose Patino
1354-1356 - 81st Avenue
Oakland, CA 94621-2464

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) _____ B. Date of Delivery _____

C. Signature _____ Agent Addressee

X

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Certified Mail
- Registered
- Insured Mail
- Express Mail
- Return Receipt for Merchandise
- C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Copy from service label)

Z 155 130 732

PS Form 3811, July 1999

Domestic Return Receipt


102595-00-14-0952

000450

202



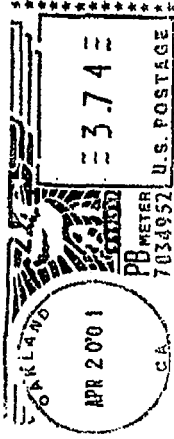
Made from Recycled Paper



CITY OF OAKLAND
Kenneth Gunari, Speciality/Combo Inspector
COMMUNITY & ECONOMIC DEVELOPMENT AGENCY
250 FRANK H. OGAWA PLAZA, SUITE 2328
OAKLAND, CALIFORNIA 94612-2031

CERTIFIED

Z 155 130 732

MAIL



 ADDRESSSEE UNKNOWN

THANK
Jose Parillo
1357 81st Avenue
Oakland, CA 94621-2464



The Dalziel Building ■
FIRE PREVENTION BUREAU

250 Frank Ogawa Plaza, 3rd Floor, STE. 3341

■ OAKLAND, CALIFORNIA 94612-2032

510-238-3851
TTY/TDD 238-6884

Theresa Shavers
1354 81St Ave
Oakland CA 94621

RE: 1354 81ST AVE OAKLAND 94621

Initial Inspection Date *Time* **District**
Wed, Apr 4, 2001 11:20 AM ELM

Reinspection Date *Time* **Closed** **Finalled**
 Yes No Yes No

Rescheduled Date *Time* **In Co At First** **Phone #**
 Yes No

2nd Reinspection Date *Time*

No Shows
 1ST 2ND 3RD

INSPECTION HISTORY:

*Boarded up by Code Compliance
Unit windows broken and front door
open. Bottom unit. Debris & Broken
Glass around building
Blight*

INSPECTOR
Inspector Camille Rodgers at
510-238-7392



CITY OF OAKLAND

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

Code Compliance Division-250 Frank H. Ogawa Plaza, Suite 2340 OAKLAND, CALIFORNIA 94612
(510) 238-3381; FAX (510) 238-2959; TDD: (510) 238-3254

May 17, 2001

Pacific Gas & Electric
4801 Oakport Street
Oakland, CA 94601

Attention: John Wharton
Services Planning Supervisor

Subject: **1354 – 81st Avenue, Oakland, CA**
Electrical and Gas Service Disconnect

Reference: Complaint No.: 0103080
Oakland Municipal Code Section 15.04.395.F

The property listed above is currently occupied, unsecured, and has been recently vandalized. The City has not received any response from the (absentee) owner, and therefore we are securing the building from unauthorized entry (openings boarded and yard fenced) to abate this Public Nuisance.

Please immediately terminate the electrical and gas utility service (meters removed and service drop connectors disconnected at joint pole) at the subject address, and do not reconnect either of the services until notified by the City of our release.

Should you have any questions concerning this matter, please contact Ken Gunari, Combination/Specialty Inspector, at (510) 238-6207.

Sincerely,

KENNETH A. GUNARI
Community and Economic Development Agency
Building Services

KG:ml

000453

205

1354-81 Ave
Turned in 5/17/2001

DAVIS STREET TRANSFER STATION
2615 Davis Street
San Leandro, CA 94577
510-638-2303

TICKET: 1013032
DATE: 05/10/2001
TIME: 12:22 - 12:42

CUSTOMER: 216 / A Green & Shrubbery
ORIGIN: 10 / Oakland
ROUTE: 001 / Public Customer Defaul
TRUCK: SE86890 LICENSE:
COMMENT:

P.D. :
GROSS: 13160 LBS
TARE: 9020 LBS
NET: 4140 LBS

WASTE	QUANTITY	UNIT	RATE	AMOUNT
42 / Equipment Tise / Additional	1.00	U	\$ 35.00	\$ 35.00
30 / Refuse Tons-Include County Fee	2.07	T	\$ 74.50	\$ 154.22

WASTE MANAGEMENT

IN: M. C. B: COLLECTOR1 OUT: S. V. \$ 189.22
B: COLLECTORS

DRIVER: A. Black

WEIGHMASTER: _____

BEFORE

AFTER

Date

5/15/01

Address

1354 - 81st ave

S/9/6/ PHOIO MOUNIS



5-15-01
1354-81st Ave
Back-Done
L-Side Fencing



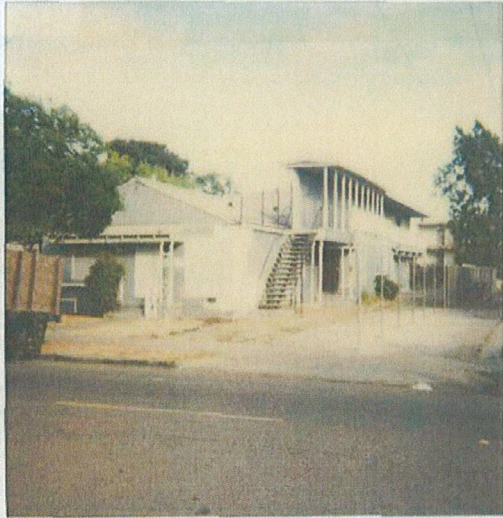
5-9
1354 81st Ave
APT-13
Done Front room



5-9
1354 81st Ave
APT-13
Done Bedroom/A-Side



5-9
1354 81st Ave
APT-13
Done Bedroom/A-Side



5-14-01
1354-81st Ave

Fencing Front
start



5-15-01
1354 81st Ave

Front. Done Fencing

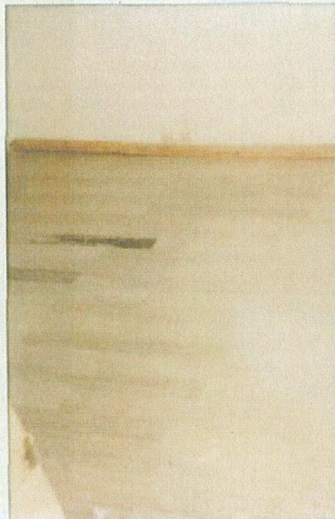
BEFORE AFTER Date

5-15-01

PHUUMUNIS

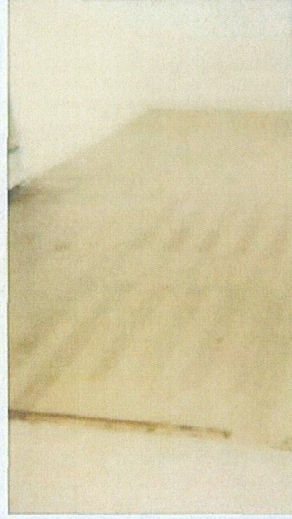
Address

1354-81st Ave



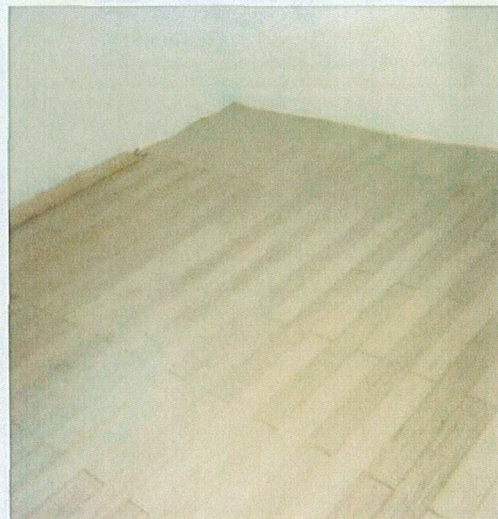
5-9
1354-81st Ave

APT-A
Done Front room



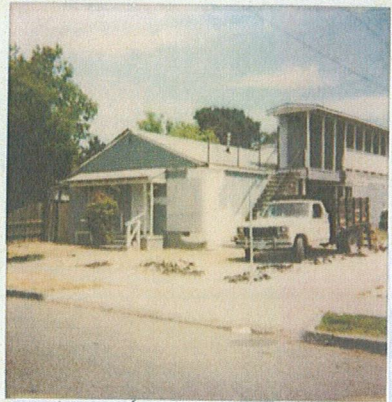
5-9
1354-81st Ave
APT-A

Done Bedroom/



5-9
1354-81st Ave

APT-A
Done Bedroom/R-side



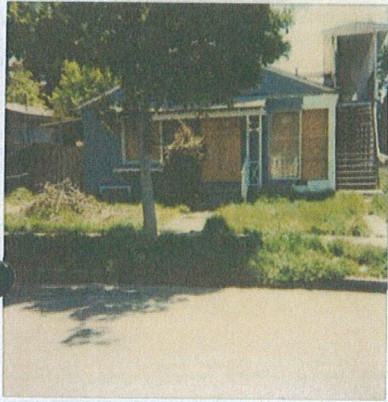
1354-81st Ave
K. Gunari 5/14/01



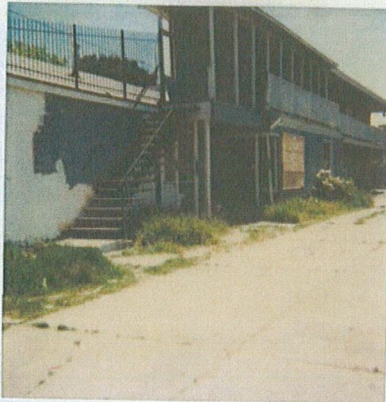
1354-81st Ave
K. Gunari 5/14/01

PHOTO MOUNTS

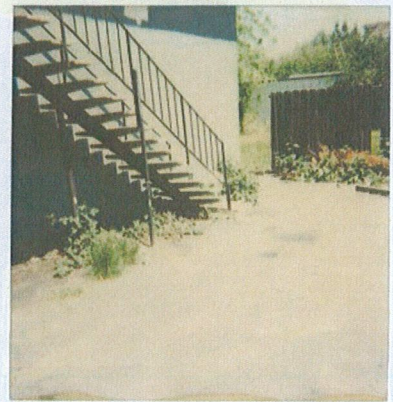
BEFORE AFTER Date 5-7-01 Address 1354-81st ave



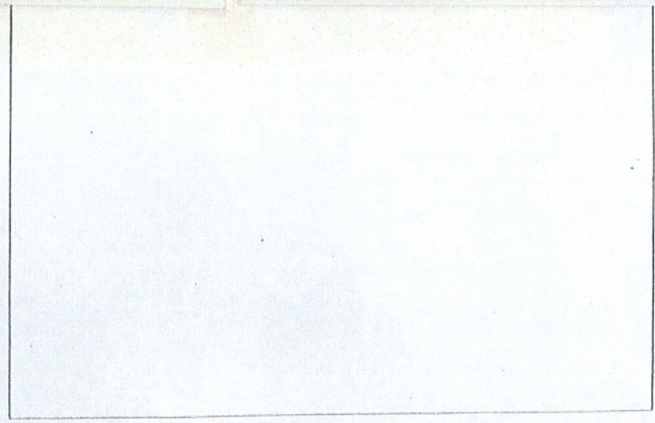
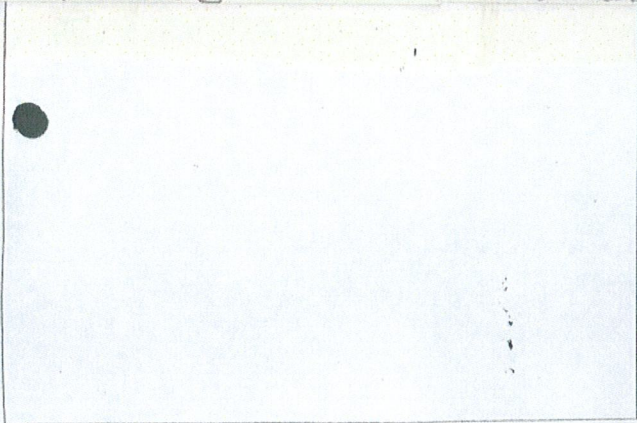
5-7-01
1354-81st ave
K. Sunari

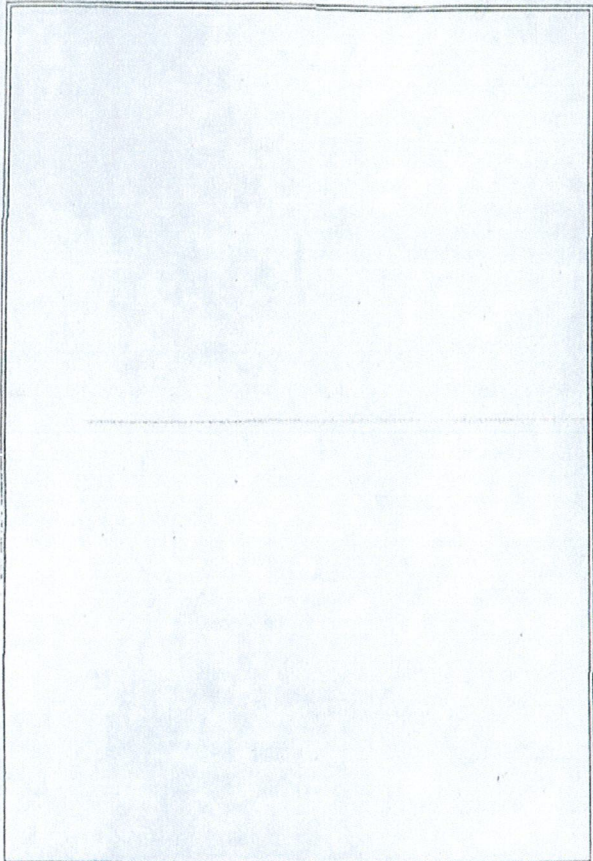


5-7-01
1354-81st ave
K. Sunari



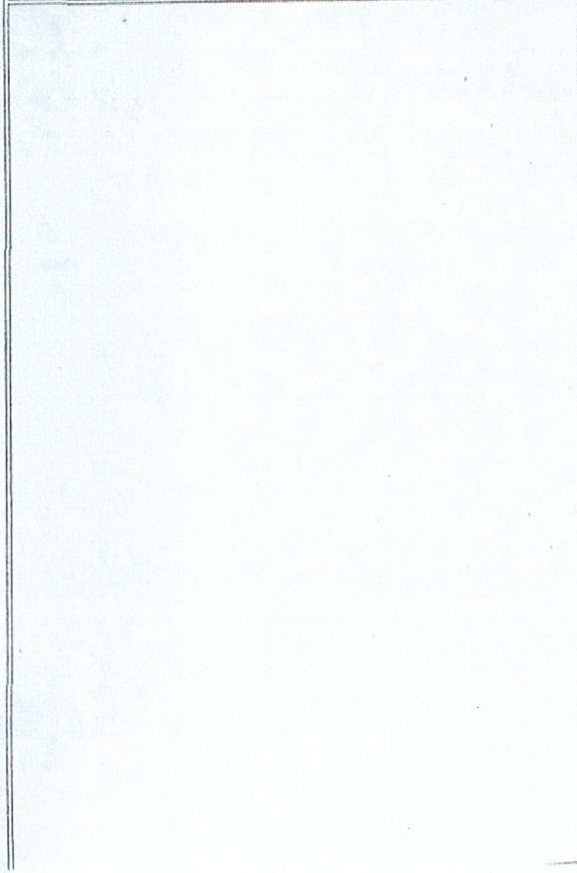
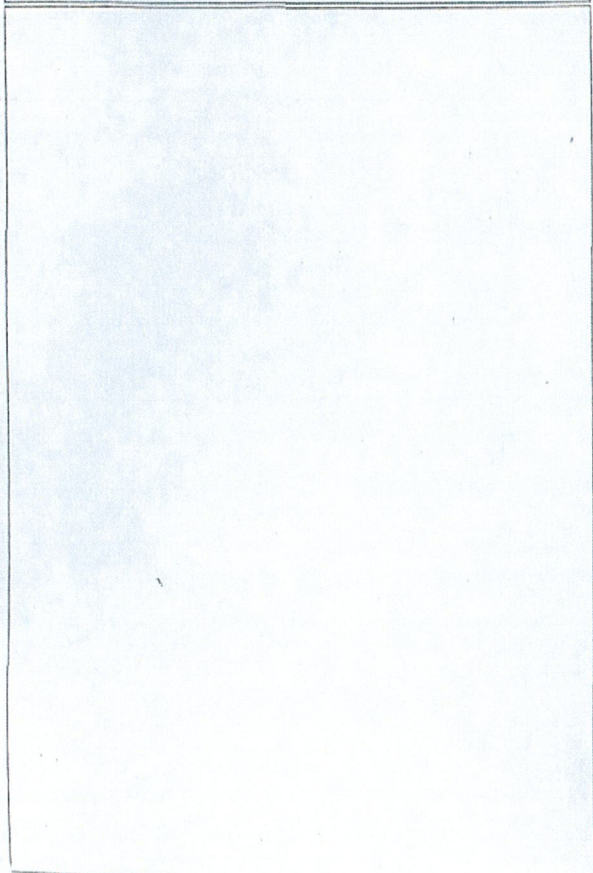
5-7-01
~~5-7-01~~ 1354-81st ave
K. Sunari





5/21/01

K. Camari



Address

1354 91st Ave.

PHOTOGRAPHS

Date

Before

After



CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA • SUITE 2340 • OAKLAND, CALIFORNIA 94612-2031

Planning and Building Department

(510) 238-6402

Bureau of Building

FAX: (510) 238-2959

Building Permits, Inspections and Code Enforcement Services

TDD: (510) 238-3254

www.oaklandnet.com

NOTICE OF VIOLATION

June 23, 2015

Certified and Regular mail

To: GRANT W & MAY L FONG ETAL
358 CERRO CT
DALY CITY CA 94015

Code Enforcement Case No.: 1501950
Property: 1354 81ST AVE
Parcel Number: 42-4247-85
Re-inspection Date: 07/27/15

Code Enforcement Services inspected your property on 06/17/15 and confirmed:

- that the violations of the Oakland Municipal Code (OMC) marked below are present.
- that work was performed without permit or beyond the scope of the issued permit and you are receiving this Notice of Violation because you did not get the required permit within three (3) days of receiving the Stop Work Order. You must contact the inspector indicated below before the Re-inspection Date to stop further code enforcement action.

Photo	Description of Violation	Location	OMC Section
	Property Maintenance		
	Building Maintenance (Code)		
yes	Smoke detectors missing or not working properly throughout the apartment. Provide a working smoke detector in each bedroom and at the outside of the immediate vicinity of each bedroom such as the hallway. Carbon monoxide detectors are required on the outside the immediate vicinity of bedrooms.	Bedrooms and hallway	15.08.320 15.08.050 15.08.140
yes	Unapproved drain trap under kitchen sink. Replace in an approved manner. Obtain required permits, inspections and approvals.	Kitchen	15.08.230.D 15.08.230.G 15.08.050
yes	Unpermitted installation of stove exhaust vent in the kitchen. Base board heater detached from the wall in the living room. Exposed electrical wires in the crawlspace at the front of the house. Obtain required permits, inspections and approvals.	Kitchen and Living Room	15.08.260.A-C 15.08.050 15.08.140
yes	Smoke stains in ceiling and top wall throughout the house. Remove stains and re-paint areas id needed.	Throughout the house	15.08.230.O 15.08.050

000460 212

At this point no fees or other charges have been assessed for these violations. To stop further code enforcement action, you are advised to correct the above violations and contact Inspector **Ivan Ramirez**, who is assigned to your case, before the re-inspection date shown above to schedule an inspection. Your inspector is available by phone at 510-238-6212 and by email at **IRamirez2@oaklandnet.com**.

If the Property Owner Certification is included in this notice you may also complete the form and include photographs of the corrected violations.

If you do not contact your inspector to discuss why you cannot comply or if applicable, complete the Property Owner Certification form and the re-inspection verifies that all violations have not been corrected, you may be charged for inspection and administrative costs, which can total **\$2,045.00**. The City may also abate the violations and charge you for the contracting and administrative costs, which can also total over \$1,000.00. In addition, Priority Lien fees in the amount of \$1,194.00 may be assessed if fees are not paid within 30 days from the date of the invoice. Charges may be collected by recording liens on your property and adding the charges to your property taxes or by filing in Small Claims or Superior Court. Furthermore, this Notice of Violation may be recorded on your property.

You have a right to appeal this Notice of Violation. You must complete the enclosed Appeal form and return it with supporting documentation in the enclosed envelope. If Code Enforcement Services does not receive your written Appeal within 30 days of the date of this notice, you will waive your right for administrative review. *Note: Incomplete appeals including, but not limited to an oral notification of your intention to appeal, a written appeal postmarked but not received by us within the time prescribed or a written appeal received by us without a filing fee are not acceptable and will be rejected.*

If you choose to file an appeal no further action can be taken by Code Enforcement Inspectors until you have had the opportunity to be heard by an independent Administrative Hearing Examiner pursuant to the Oakland Municipal Code Section 15.08.380 (B)(3) and a Final Decision is determined. An appeal will be scheduled within 60 days from the date the appeal was filed. A filing fee in the amount of **\$113.61** is due at the time of submittal. Payments may be made in person at the Bureau of Building, 250 Frank Ogawa Plaza, 2nd Floor, Cashiering Section or by phone by calling 510-238-4774 (**Please include the receipt number and date on your appeal**). MasterCard and Visa are accepted.

Administrative Hearing Fees	
Filing Fee	\$ 113.61*
Conduct Appeals Hearing	Actual Cost Appeal (Fee charged only if Appellant loses appeal)
Processing Fee	\$ 681.62*
Reschedule Hearing	\$ 113.61*

**Fee Includes 9.5% Records Management Fee and 5.25% Technology Enhancement Fee*

Sincerely,

Planning and Building Department

Enclosures as applicable:

- | | | |
|---|--|--|
| <input type="checkbox"/> Blight brochure | <input type="checkbox"/> Residential Code Enforcement brochure | <input type="checkbox"/> Vehicular Food Vending brochure |
| <input type="checkbox"/> Property Owner Certification | <input type="checkbox"/> Mold and Moisture brochure | <input type="checkbox"/> Pusheart Food Vending brochure |
| <input type="checkbox"/> Lead Paint brochure | <input type="checkbox"/> Undocumented Dwelling Units brochure | <input type="checkbox"/> Smoke Alarms brochure |
| <input type="checkbox"/> Photographs | <input type="checkbox"/> Stop Work brochure | <input type="checkbox"/> Condominium Conversion brochure |

CC:
April, 2015
Scan to: Code Enforcement-Chronology-Abatement Activities



CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA • SUITE 2340 • OAKLAND, CALIFORNIA 94612-2031
Planning and Building Department

Bureau of Building
www.oaklandnet.com

PROPERTY OWNER CERTIFICATION

CORRECTED OR REMOVED VIOLATIONS

Property: 1354 81ST AVE

Parcel no. 42-4247-85

Case no.: 1501950

Owner: GRANT W & MAY L FONG ETAL

Courtesy Notice date: N/A

Re-inspection date: 07/27/15

Instructions

1. Review the property address and owner information shown at the left and make any necessary corrections.
2. If applicable, before the Re-inspection date shown at the left, complete and return this signed form with dated photographs of your property to verify the violations were removed or not present:

E-mail: inspectioncounter@oaklandnet.com

Facsimile: 510/ 238-2959

Mail: City of Oakland
Bureau of Building
250 Frank H. Ogawa Plaza Suite 2340
Oakland, CA 94612-2031
(Envelope enclosed – no postage required)

I certify that I have corrected the following violations identified in the Notice of Violation I received from the City of Oakland:

Property Owner Certification

Print Name (print) _____

Date _____

Property Owner Signature _____

Day time telephone (_____) _____

E-mail: _____

Return to:

County Assessor Display

Assessor Parcel Record for APN 042- -4247-085-00

Parcel Number:	42-4247-85
Property Address:	1354 81ST AVE, OAKLAND 94621
Owner Name:	FONG GRANT W & MAY L ETAL
Care of:	
Attention:	
Mailing Address:	358 CERRO CT, DALY CITY CA 94015-4087
Use Code:	CONDOMINIUM COMMON AREA
Recorder Number:	2012-107555
Recorder Date:	3/29/2012
Mailing Address Effective Date:	3/29/2012
Last Document Input Date:	6/20/2012
Deactivation Date:	
Exemption Code:	

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 [Alameda County Web Site](#)
 [Use Codes](#)

7034 1620 0002 1795 5242

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Restricted Delivery Fee (Endorsement Required)		

Postmark Here

GRANT W & MAY L FONG ETAL

To: **358 CERRO CT**

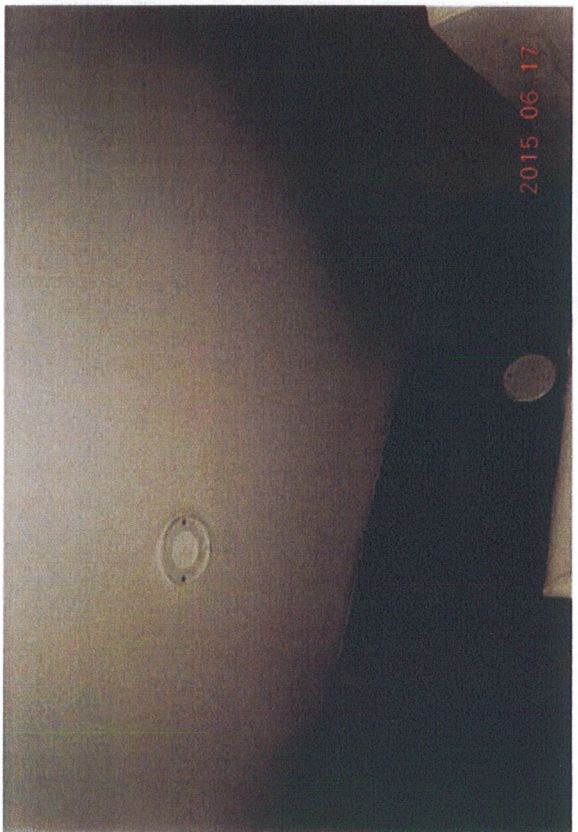
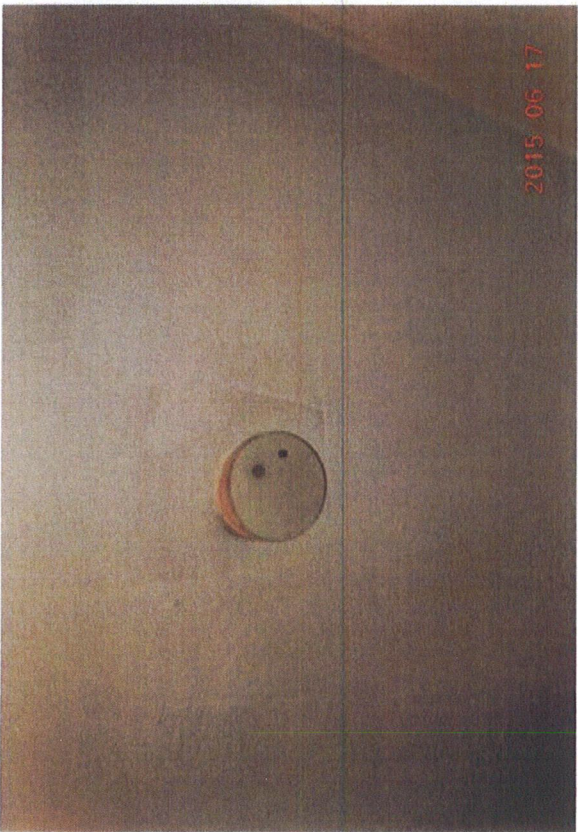
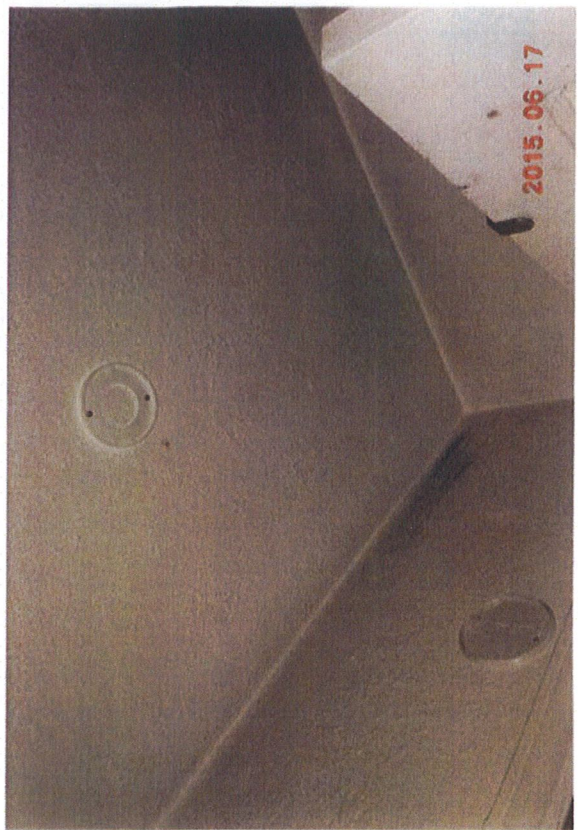
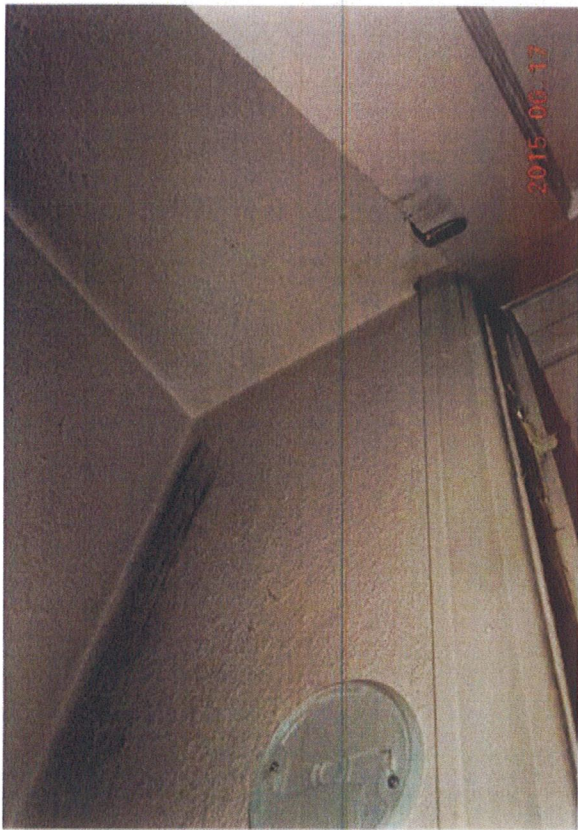
Sent **DALY CITY CA 94015**

Street or PO **1501950 / IR / KXC / 6-23-15**

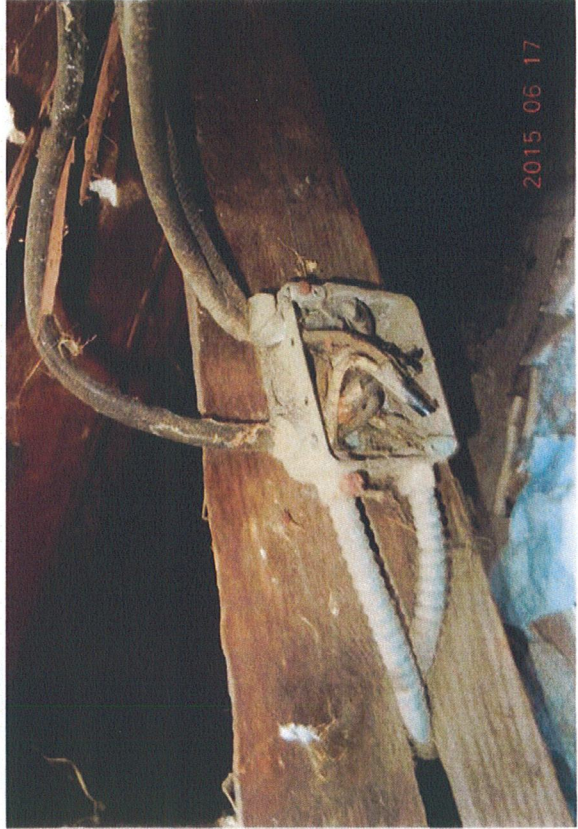
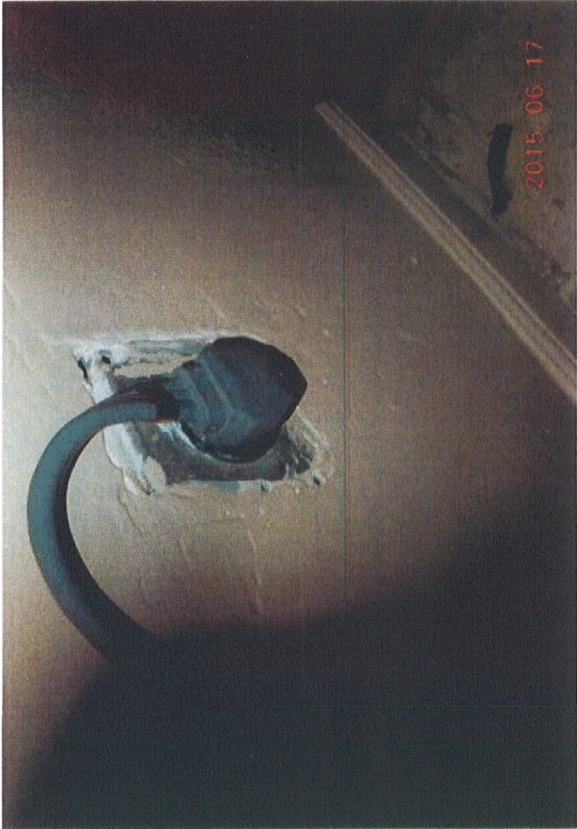
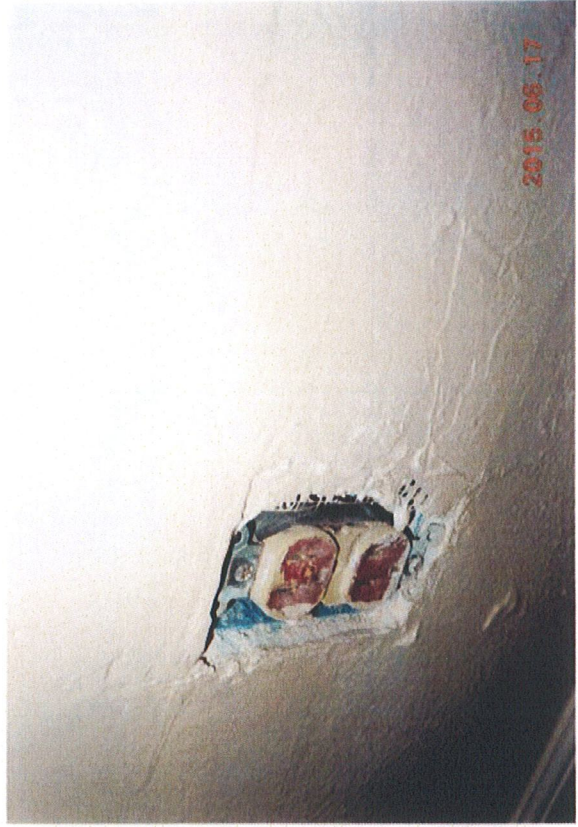
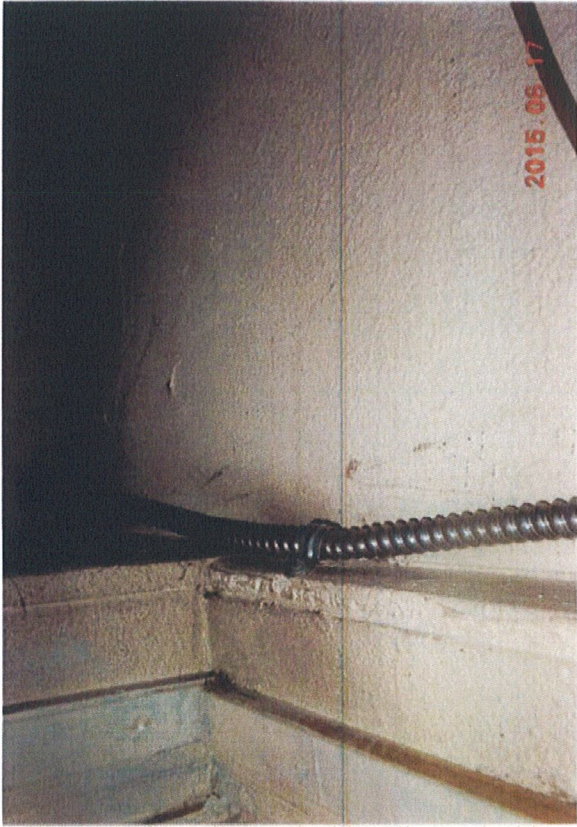
City, State, ZIP+4

PS Form 3800, July 2014 See Reverse for Instructions

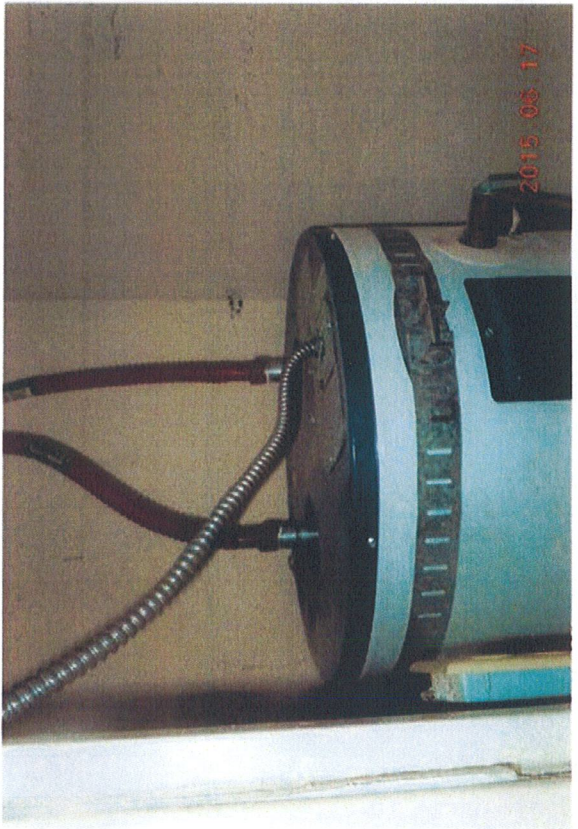
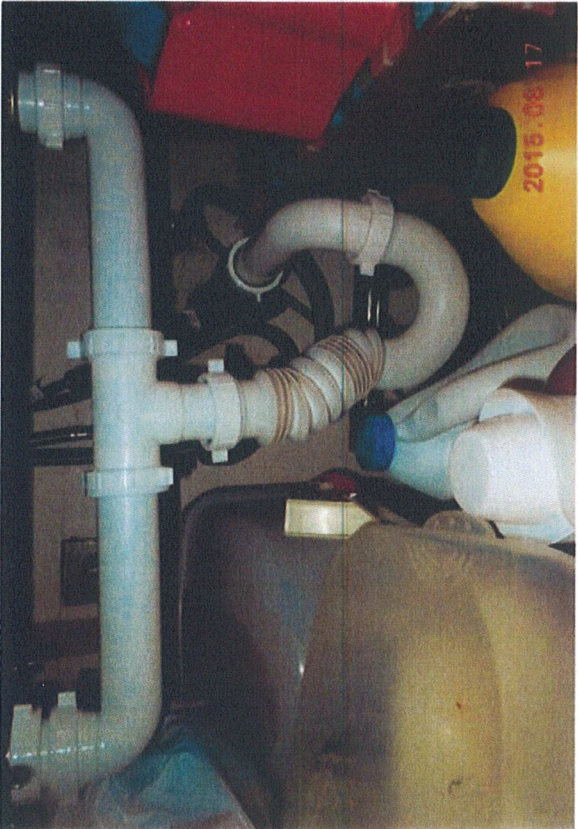
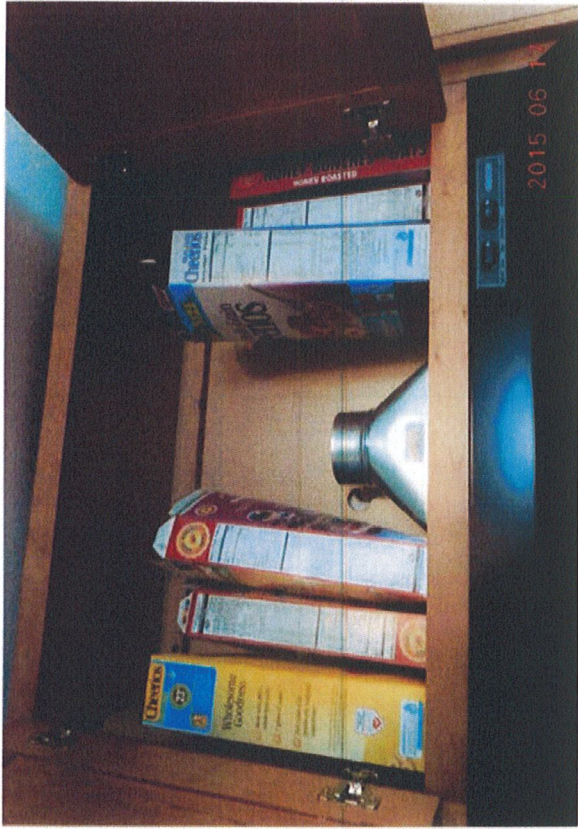
000463215



1354 81st Ave



1354 81st AVE



1354 81st Ave

Incident Report
2015-0036790 -000

Oakland Fire Department
1601 MARTIN LUTHER KING
Custodian of Records
Oakland, CA 94612
510 238 4038
afountain@oaklandnet.com
Printed: 05/27/2015 11:18:09
Number of Pages: 2

Basic	
Alarm Date and Time	11-07-18 Tuesday, May 26, 2015
Arrival Date and Time	
Controlled Time	
Last Unit Cleared Date and Time	00:00:00
Did Not Arrive	11-56-41 Tuesday, May 26, 2015
Priority Response	Yes
Completed	Yes
Fire Department Station	Yes
Shift	8-118
Incident Type	A
Aid Given or Received	611 - EMS Dispatched & cancelled en route
Action Taken 1	N - None
Casualties	01 - Attended en route
Apparatus - Suppression	Yes
Personnel - Suppression Personnel	21
Location Type	
Address	Address
City, State Zip	1354 81ST AVE OAKLAND, CA 94601
Directions	1354 81ST AV
Map Page	670-4G

Person Involved - Arias, Kaila

Last Name	Arias
First Name	Kaila

2015.06.17

Address	1354 81ST AVE OAKLAND, CA 94601
City, State Zip	1354 81ST AV OAKLAND, CA
Directions	670-4G
Map Page	
Person Involved - Arias, Kaila	
Last Name	Arias
First Name	Kaila
Street Address	1354 81ST AVE
City, State Zip	OAKLAND, CA
Person Involved - Unknown	
Involvement Code	
Last Name	
Street Address	
Phone	
Narrative	
Narrative Name	
Narrative Type	
Narrative Date	
Author	
Author Rank	
Author Assignment	
Narrative Text	Assisted with the removal of oven fire contained, no extension, assisted with appliance removal, and left electrical off to unit pending owners inspection, secured property with resident's party Santos Diaz for occupant. Fromio, to CHO by PMP 2129 for possible smoke exposure.

2015.06.17

1354 81st Ave



CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA • SUITE 2340 • OAKLAND, CALIFORNIA 94612-2031

Department of Planning, Building and
Neighborhood Preservation
www.oaklandnet.com

(510) 238-6402
FAX (510) 238-2959
TDD (510) 238-3254

NOTICE OF VIOLATION

June 26, 2012

Certified and Regular mail

To: FONG, MAY LEE & GRANT WAI
358 CERRO CT
DALY CITY CA
94015

Code Enforcement Case No.: 1203109
Property: 1354 81st Ave # C
Parcel Number: 042 -4247-085-00
Re-inspection Date: 8/21/12

The Code Enforcement Division inspected your property on 6/26/12 and confirmed that the violations of the Oakland Municipal Code (OMC) marked below are present. Photographs of the violations and a brochure explaining how to correct them are enclosed.

Photo	Description of Violation	Location	OMC Section
	Property Maintenance		
	Building Maintenance (Code)		
X	Electrical baseboard heaters installed without permits. Obtain permits	Bedrooms	150.08.260 A 15.08.140 15.04.015
	Zoning		

At this point no fees or other charges have been assessed for these violations. To stop further code enforcement action, you are advised to correct the above violations and either mail or fax the enclosed Owner Certification form with photographs or contact Inspector **Robert Walker**, who is assigned to your case, before the re-inspection date shown above. Your inspector is available by phone at 510-238-4773 and by email at Rwalker@oaklandnet.com.

If you do not return the Owner Certification form or notify your inspector why you cannot comply and if the re-inspection verifies that all violations have not been corrected, you may be charged for inspection and administrative costs, which can total \$2,045.00. The City may also abate the violations and charge you for the contracting and administrative costs, which can also total over \$1,000.00. In addition, Priority Lien fees in the amount of \$1,194.00 may be assessed if fees are not paid within 30 days from the date of the invoice. Charges may be collected by recording liens on your property and adding the charges to your property taxes or by filing in Small Claims or Superior Court. Furthermore, this Notice of Violation may be recorded on your property.

You have a right to appeal this Notice of Violation. You must complete the enclosed Appeal form and return it with supporting documentation in the enclosed envelope. If the Code Enforcement Division does not receive your written Appeal within 30 days of the date of this notice, you will waive your right for administrative review.

Sincerely,



Robert Walker

Department of Planning, Building and
Neighborhood Preservation

Encl: Blight Brochure
Violation Appeal Form

Surface mold present on _____ . See enclosed brochure for remediation guidelines. (Description required, e.g. bedroom walls)

City of Oakland



Code Enforcement-Chronology-Abatement Activities

000469

221

Complaint#: 1203109

Filed: 06/25/12 Rcvd by: KLT Station* CLERICAL Source* 2 TELEPHONE CALL
Address: 1354 81ST AV Suite: C Parcel: 042 -4247-085-00

-----COMMENTS-----

Complaint#: 1203109

6/26/12 Verified owner has pulled electrical permit RE1201007
Owner need to obtain permit for base board heater. Verified missing
cover plates. Owner stated she will do repairs but tenant would not
without 24hr notice. I seen 24 notice that owner gave tenant date for
today. Owner states she will be in 6/27/12 To add electrical baseboard
heaters to permit i verified 2 new heaters in bedrooms.

May Lee Fong 415 812-9908

>>> 06/26/2012 14:38:04 WALKE#R QPADEV000Q

New owner May Lee Fong [REDACTED] 2340 IRVING St. Suite 103

SF CA. 94122 Sending owner NTA letter.

>>> 06/26/2012 14:39:22 WALKE#R QPADEV000Q

Also sending letter to her address 358 CERRO Ct Daly City Ca 94015 /
CC a copy to DEUTSCHE BANK NATIONAL TRUST CO TR

4875 BELFORT RD 130, JACKSONVILLE FL 32256

F14=Print

F3=Cancel ENTER=Update F6=Open F9=Compress

More...

9
o
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m

County Assessor Display

Assessor Parcel Record for APN 042- -4247-085-00

Parcel Number:	42-4247-85
Property Address:	1354 81ST AVE, OAKLAND-94621
Owner Name:	DEUTSCHE BANK NATIONAL TRUST CO TR
Care of:	
Attention:	
Mailing Address:	4875 BELFORT RD 130, JACKSONVILLE FL 32256-6059
Use Code:	CONDOMINIUM COMMON AREA
Recorder Number:	2011-194366
Recorder Date:	7/12/2011
Mailing Address Effective Date:	7/12/2011
Last Document Input Date:	9/1/2011
Deactivation Date:	
Exemption Code:	

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CITY OF OAKLAND COMMUNITY AND ECONOMIC DEVELOPMENT

AGENCY - BUILDING SERVICES DEPARTMENT 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland, CA 94612
Inspection Services: 238-3381 FAX: 238-2959 TDD: 238-3254

OFFICIAL NOTICE TO ABATE BLIGHT

April 16, 2010

LIMA OSVALDINA S
1127 LIVORNA RD
ALAMO CA 94507-1217

Assessor's Parcel#: 042-4247-081-00

Complaint #: 1001586

Inspector: James Anders

Phone #: 510-238-6144

The property (ies) located at 1354 81ST AVE
Oakland, California, was (were) observed by a Combination/Specialty Inspector, on or about
03/16/10 to contain one or more of the following conditions:

The structure(s), premises, or vacant lot(s) was (were):

- Vacant and unsecured, permitting entry to unauthorized persons;
- The premises contained trash, debris, overgrowth, recyclables, graffiti, and/or disabled vehicles or vehicle parts, and/or the structure was not properly secured;
- The dwelling or other structure was deteriorated, abandoned, hazardous, illegally constructed, or was not being put to its permitted use.
- SEE the attached "Notice to Abate" requirements.**
- Razor Wire/Barb Wire (OMC 17.102.420)
- Garbage cans stored in public view. Remove or enclose.**

Any of the above is in violation of the Blight Ordinance, OMC 8.24; The Building Conservation Code (OMC) 15.08, and/or OMC 17.102.420. This notice constitutes your **Official Notice to Abate** the violation (s) listed above.

DUE DATE, FEES AND CHARGES: Failure to secure the buildings(s) and/or remove all trash, debris, overgrowth, and/or graffiti and to commence reasonable action to abate the remaining items on the List of Violations within ten (10) days of the date of this Notice, shall result in the City cleaning, removing the graffiti, installing galvanized chain link fencing, and/or securing the premises as necessary. The owner of record will be billed for all incurred charges.

OFFICIAL NOTICE TO ABATE A BLIGHT

Estimated charges to clean, secure premises, remove any junk, trash, debris, graffiti and secure openings: To Be Determined by Final Bid Cost.

In addition to these charges, there will be an Administrative Fee of \$616.00*, or 31% of contract, whichever is greater, and Fee-Charged Re-inspections of \$371.00* each, to cover the City's costs. Section 15.08.130 OMC stipulates that all charges not paid within five (5) days shall be secured by the recording of lien filed with the Alameda County Recorder's Office, for which there is a fee of \$210.00. The fee for releasing of the same lien is \$210.00. Therefore, to forestall any further action by this department, you are advised to abate the above-listed conditions immediately.

If you have recently sold the property, you may be liable for the costs if you have not made a good faith effort to notify the new owner of this notice and its contents. Please call the Inspector if this is the situation or if you need help with this problem.

Without further notice to the property owner, the City may contract with licensed Contractors (Third Party) to enter the property and abate the violations (remove graffiti, Board unsecured vacant building, paint vacant building exterior, remove trash/debris/vegetation/abandoned vehicles, installed galvanized chain link fencing, etc.). Third party work may be done even after the property owner has attempted to correct the violation if the work completed by the owner does not conform to minimum City standards. Third Party charges are substantive and are invoiced to the property owner and subsequently liened against the property title and collected with property taxes. The property owner is responsible for immediately notifying the inspector shown on the Notice of Violation/Order to abate when the owner will correct the violations and for determining how the corrective work must be done to avoid additional abatement charges.

Property owners must contact the inspector shown on the notice of Violations/Order to Abate before starting any work to ensure all requirements are understood. Unsatisfactory corrective work will result in continuing abatement charges.

QUESTIONS: If you have any questions about this notice, please contact the Combination/Specialty Inspector **James Anders**, at (510) 238-6144 within ten (10) days from the date of this Notice, during the Inspector's office hours: Monday through Friday, from 8:00 a.m. to 9:00 a.m. or 3:00p.m.to 4:00 p.m. A phone call to the inspector will often clear up many problems.


Specialty Combination Inspector, (for)

Isaac Wilson
Principal Inspection Supervisor

Official Notice to Abate
July 09

*Fee Does Not Include 9.5% Records Management Fee and 5.25% Technology Enhancement Fee

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Sent to **LIMA OSVALDINA S**
1127 LIVORNA RD
Street /
or POB **ALAMO, CA 94507**
City, St **1001586/JGA**
PS Form **04/16/2010/TEC**

000474 *226*

CITY OF OAKLAND.



250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2031

Community and Economic Development Agency
Planning & Zoning Services Division

(510) 238-3911
FAX (510) 238-4730
TDD (510) 839-6451

March 23, 2001

Luis Camacho
1127 Livorna Road
Alamo, CA 94507

RE: **CASE FILE NO.: TPM 7739, 1354-1356 81st Avenue**

Dear Mr. Camacho

Tentative Parcel Map 7739 to create four residential condominium units located at 1354-1356 81st Avenue in the Mixed Housing Type Residential General Plan Land Use Classification and the R-50 Medium Density Residential Zone has been approved. (Environmental Determination: Exempt, Section 15303, State CEQA Guidelines; tentative parcel maps with four or fewer lots) In accordance with provisions of Article 4 (Real Estate Subdivision Regulations) and Article 5 (Parcel Maps), Chapter 7 of the Oakland Municipal Code.

In order for the Tentative Parcel Map to be approved, it must meet the following requirements (citations relate to sections of the Oakland Municipal Code):

- (1) It must conform, as set forth in Section 7-4.011, with the Oakland Comprehensive Plan (General Plan), with any applicable specific plan, and to the Zoning Regulations.
- (2) It must conform with the prescribed street design, lot design and other design standards set forth in Sections 7-4.15 to 7-4.331 and Section 7-5.05, if these standards are applicable to the proposal.

This approval is subject to conditions of approval as stated in the Building Services Division memo dated March 9, 2001 (attached), the Fire Prevention Bureau report dated March 22, 2001 (attached), and following conditions:

1. That the subdivider shall defend, indemnify, and hold harmless the City of Oakland, its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, its agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the City Planning Department, Planning Commission, or City Council. The City shall promptly notify the applicant/subdivider of any claim, action or proceeding and the

City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

2. The subdivider shall provide a "Joint Use and Maintenance Agreement" or a "Covenant, Codes and Restrictions" document for review and approval prior to the approval of any final map for the site. This document shall provide for the easement or other rights of all property owners using the common driveway, and/or landscaping to be maintained in good condition and repair at all times and should provide remedies should this not occur. Upon approval of said document it shall be recorded with the County Recorder with each and every deed applicable to this map.


This decision becomes effective ten (10) days from the date of this letter unless appealed to the City Planning Commission. An appeal is made by completing an application and paying the required fee (\$413,00).

A Parcel Map may be certified by the City Engineer at the expiration of the ten (10)-day appeal period from the date of this approval.

A Parcel Map shall be filed with the City Engineer within two (2) years from the date of approval of the Tentative Parcel Map, or within such additional time as may be granted by the Advisory Agency. Failure to file a Parcel Map within these time limits shall nullify the previous approval or conditional approval of the Tentative Parcel Map.

If you have any questions please call case planner Jason Madani at (510) 238- 4790.

Sincerely,


WILLIE YEE
Zoning Administrator
Community & Economic Development Agency

CC: Ahmad Moghaddas, 1631 Berkeley Way, Berkeley, CA 94703
Jose Patino, 1127 Livorna Road Alamo, CA 94507
Lourdes Barrozo, Engineering Services
Philip Basada, Fire Prevention Bureau



CITY OF OAKLAND ZONING CLEARANCE FOR BUSINESS TAX LICENSE

A Zoning Clearance is required for all new or relocated businesses in order to verify that the type of business you are proposing is permitted by the City's Zoning Regulations at that location.

BUSINESS ADDRESS: 1354 81st AVE OAKLAND CA.

APPLICANT INFO: NAME: Hiram Martinez

HOME ADDRESS: 1354 81st AVE

CITY, STATE, ZIP: OAKLAND CA. 94621

PHONE NUMBER: [REDACTED]

BUSINESS NAME: MARMOR HANDYMAN

TYPE OF BUSINESS / DESCRIPTION OF BUSINESS ACTIVITIES: CONSTRUCTION

PROPOSED HOURS OF OPERATION: 8:00 TO 5:00 NUMBER OF EMPLOYEES: 2

WILL THE BUSINESS BE LOCATED WITHIN YOUR HOME OR APARTMENT? YES NO

WILL THE BUSINESS INVOLVE ANY MANUFACTURING ON THE PROPERTY? YES NO

WILL THE BUSINESS REQUIRE ANY NEW OR MODIFIED SIGNS? YES NO

WILL THE BUSINESS REQUIRE ANY CHANGES TO THE BUILDING? YES NO

(Please note that certain buildings may need a change in building occupancy prior to establishing new uses)

Please take this worksheet to the 2nd floor and go to the INFORMATION SERVICE counter. When your number is called a planner will assist you at the Zoning Counter. Please fill out this form while you wait.

PLEASE NOTE: THIS CLEARANCE COVERS ZONING PERMITS ONLY. OTHER PERMITS SUCH AS BUILDING, FIRE, CITY ADMINISTRATOR OR OTHER COUNTY/STATE PERMITS MAY BE REQUIRED PRIOR TO COMMENCING YOUR BUSINESS. PLEASE CONTACT THE APPROPRIATE AGENCY TO DETERMINE IF FURTHER PERMITS ARE NECESSARY.

I have read and understand the above: Hiram Martinez Date: 12/19/11

Version 4.21.09

APN# 042-4247-085-00 20# 12/19/11
112717

000477 229



250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2031

Community and Economic Development Agency
Planning & Zoning Services Division

(510) 238-3911
FAX (510) 238-4730
TDD (510) 839-6451

**SPECIAL RESIDENTIAL DESIGN REVIEW
NOTICE OF PROJECT APPROVAL**

July 6, 2001

Cuong Huy & Tai Suy Lai
1354 East 31st Street
Oakland, CA 94602

Re: Case Number: DRD01-249
Project Address: 1354 East 31st Street

NOTICE TO ALL PARTIES: The time within which judicial review must be sought of disposition of the Director of City Planning is governed by Section 1094.6 of the Code of Civil Procedure of the State of California. With certain exceptions, the time is ninety (90) days from date of the decision.

Dear Applicant:

Your application for Special Residential Design Review for the above referenced project has been found to comply with the Special Residential Design Review standards and is hereby approved subject to the conditions noted at the on Attachment "A".

All conditions must be met prior to the issuance of a Notice of Completion. Please note that any desired modifications to the approved plans must be submitted for review by the Planning Department prior to the changes taking place.

This approval becomes effective immediately and shall terminate in one (1) year unless valid building permits are obtained. This date may be extended upon application filed at any time prior to the expiration date.

In order to apply for a building permit you must complete an application form and submit additional plans to the Building Department. For more information about building permit requirements, please call (510) 238-3443, or visit the Permit Counter located at 250 Frank Owaga Plaza, 2nd Floor. Please staple a copy of the attached Approval Certificate to the building permit application and to each of the two sets of drawings required for that application.

If you have any questions, please contact Maurice Brenyah-Addow, by calling (510) 238-6342

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Patton".

GARY V. PATTON, Deputy Planning Director
Community and Economic Development Agency

**ATTACHMENT A: CONDITIONS OF APPROVAL ATTACHED AND INCORPORATED INTO CASE:
DRD01-249 (1354 East 31st Street)**

Standard Conditions of Approval:

1. The project is to be constructed according to the plans submitted on July 17, 2001 and as modified by the conditions below.
2. While this project is under construction, the above referenced plans, along with this Approval Letter and Conditions of Approval shall be kept at the job site at all times.
3. If applicable, the parking and driveway design shall be approved by the Engineering Services Division.
4. Any desired alterations that affect the exterior appearance of the building shall be resubmitted for review and approval by the Planning & Zoning Department prior to the changes taking place.
5. All landscaping areas shown on the approved plans shall be permanently maintained, and that paving shall occur only on approved areas.
6. This approval shall terminate in one (1) year unless actual construction under valid permits commences. This date may be extended upon application filed at any time prior to the expiration date.

Additional Conditions of Approval:

7. Recordation of the Notice of Exemption (NOE) is optional pursuant to Section 15062(c)(4) of the California Environmental Quality Act (CEQA) Guidelines. Recordation of the NOE reduces the statute of limitations on challenges to your project, based on environmental issues, to 35 days after the approval date. In the absence of a recorded NOE, the statute of limitations for challenges extends to 180 days. A signed Notice of Exemption (NOE) is enclosed certifying that the project has been found to be exempt from CEQA review. You may record the NOE at the Alameda County Clerk's office at 1106 Madison Street, Oakland, CA 94612, at a cost of \$25.00 made payable to the Alameda County Clerk. Please bring the original NOE and three copies to the Alameda County Clerk, and return one date stamped copy to the Zoning Division, attention to (insert name of project planner) so that the City of Oakland has a file copy of this document.
8. Construction vehicles, materials and other equipment shall not block the road so that neighbors would be adversely affected in getting to and from their houses.
9. Construction shall only take place between 7:30 A. M. and 7:30 P. M. Monday through Saturday. No construction shall occur on Sundays.
10. Prior to issuance of a building permit, removal of any protected tree shall be approved by the Director of Parks, Recreation and Cultural services.
11. No grading shall occur without a valid grading and obstruction permit issued by the Building Services Department and all graded slopes shall be planted to prevent erosion according to an erosion control plan approved by the Building Services Department prior to the issuance of a grading permit.
12. **That prior to application for building permits, the following items shall be incorporated into the plans and a revised set of plans showing these items shall be submitted to the Planning Department for review:**
 - a) **Double or single-hung windows with 1"x3" minimum trims for all street-facing windows, including the bay window**
 - b) **Section details through windows and roof eaves**
 - c) **Additional decorative detailing or ornamentation consistent with the architectural style of the building and the neighborhood**

Exhibit H

Request #19-3278

CLOSED

As of February 12, 2020, 2:50pm

Details

All certificates of occupancy, parcel maps, tentative parcel maps, and final maps, ever issued, received, or maintained by the city of Oakland for the following parcel numbers:

42-4247-068

42-4247-080

42-4247-081

42-4247-082

42-4247-083

42-4247-084

42-4247-085

The complete case file for planning project TPM 7739 (TPM07739 on Accela) and any other documents or communications related to the planning project TPM 7739 ever created, received, or maintained by the Planning department.

Any and all documents ever created, received, or maintained by the Planning department related to lot changes including, but not limited to, boundary adjustments, merges, and subdivisions, involving the following parcel numbers.

42-4247-068

42-4247-080

42-4247-081

42-4247-082

42-4247-083

42-4247-084

42-4247-085

[— Read less](#)

Received

June 28, 2019 via web

Due

July 8, 2019

Documents

[1354 81ST AVE PARCEL MAP.pdf](#)

[42-4247-068 History.pdf](#)

[42-4247-080 History.pdf](#)

[42-4247-081 History.pdf](#)

[42-4247-082 History.pdf](#)

[42-4247-083 History.pdf](#)

[42-4247-084 History.pdf](#)

[42-4247-085 History.pdf](#)

[CO.pdf](#)

[Microfiche 2.pdf](#)

[Microfiche.pdf](#)

[Parcel Map.log](#)

[Site Plan and Survey 2.pdf](#)

[Site Plan and Survey.pdf](#)

[tpmOracle.pdf](#)

Staff

Point of Contact

David Guillory

Timeline

Request Closed

Public

We released all of the requested documents.

August 9, 2019, 10:40am

Request Reopened

Public

August 9, 2019, 10:39am

Document(s) Released Public

1354 81ST AVE PARCEL MAP.pdf

August 9, 2019, 10:39am

Request Closed Public

We released all of the requested documents.

July 12, 2019, 2:40pm

Document(s) Released Public

tpmOracle.pdf

July 12, 2019, 2:40pm

Document(s) Released Public

CO.pdf

Microfiche 2.pdf

Microfiche.pdf

Site Plan and Survey 2.pdf

Site Plan and Survey.pdf

July 12, 2019, 11:43am

Document(s) Released Public

July 12, 2019, 11:33am

Department Assignment Public

Planning & Building

June 28, 2019, 10:24am

Request Opened Public

Request received via web

June 28, 2019, 10:24am



Address History (Beginning ≈ 1987)

For real-time, direct access to information via the Internet, 24 hours a day - <https://aca.accela.com/oakland>

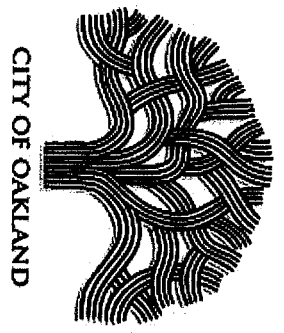
1354, 81ST, AVE

APN	Unit #	Record ID	Date Opened	Status	Status Date	Description
042		<u>1001586</u>	3/15/2010	Abated	4/30/2010 12:00:00 AM	WATER DAMAGE FROM UPSTAIRS, POSSIBLY CREATING MOLD.
424706800		<u>0603964</u>	6/1/2006	Abated	7/5/2006 12:00:00 AM	OVERGROWN VEGETATION
042		<u>E0104418</u>	12/19/2001	Final	9/3/2002 12:00:00 AM	Electrical for rehab
424706800		<u>M0102064</u>	12/19/2001	Final	8/28/2002 12:00:00 AM	Mechanical for rehab, replace one FAU, gas test.
042		<u>P0103566</u>	12/19/2001	Expired	7/10/2003 12:00:00 AM	Plumbing for rehab of 4 unit bldg.
424706800		<u>B0103918</u>	8/28/2001	Final	9/19/2002 12:00:00 AM	Refinish and rehab entire 4 unit bldg. Relocate exterior stairs.
424706800		<u>DR01322</u>	7/17/2001	TBD		Rehab existing fourplex
042		<u>0103080</u>	4/19/2001	Abated	10/10/2002 12:00:00 AM	REAR CONCRETE STAIRS DEFECTIVE WINDOWS AND DOORS BROKEN THROUGH- OUTWALLS,CEILING,FLOORS,FURNACES,PLUMBING FIXTURES,& WIRING DEFECTIVE.
424706800		<u>TPM07739</u>	3/2/2001	Approved	3/2/2001 12:00:00 AM	Convert 4 exist. vacant res. units to condos.
424706800		<u>0006296</u>	6/22/2000	Abated	7/13/2000 12:00:00 AM	TRASH, DEBRIS AND OVERGROWN WEEDS
042		<u>P9801950</u>	11/2/1998	Expired	11/4/1999 12:00:00 AM	1 toilet

1356, 81ST, AVE

APN	Unit #	Record ID	Date Opened	Status	Status Date	Description
042		<u>P9801950</u>	11/2/1998	Expired	11/4/1999 12:00:00 AM	1 toilet

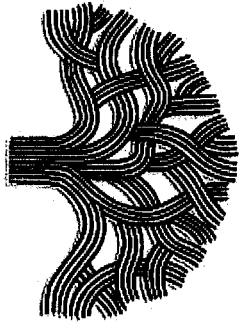
For real-time, direct access to information via the Internet, 24 hours a day - <https://aca.accela.com/oakland>



No Results

Address History (Beginning ~ 1987)

For real-time, direct access to information via the Internet, 24 hours a day - <https://aca.accela.com/oakland>



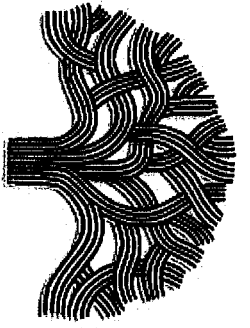
CITY OF OAKLAND

Address History (Beginning ≈ 1987)

1354, 81ST, AVE

APN	Unit #	Record ID	Date Opened	Status	Status Date	Description
042		R1700671	8/8/2017	Completed Cert	9/25/2017	Re-Roofing Certification – Obstruction permit required: Reserve curbside parking or obstruct sidewalk/street
424708100				Received	12:00:00 AM	(scaffolding, canopy, fencing, dumpsters, traffic, etc.)
042		ZC151472	6/23/2015	Withdrawn	6/23/2015	Zoning Clearance @ 1354 8th Avenue #B (Home Occupation/Coliseum Flea Market)
424708100					12:00:00 AM	
042		RE1201007	4/6/2012	Final	5/9/2012	400 AMP SERVICE UPGRADE
424708100					12:00:00 AM	

For real-time, direct access to information via the Internet, 24 hours a day - <https://aca.accela.com/oakland>



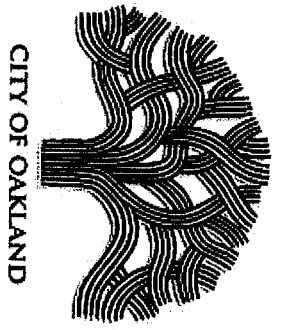
CITY OF OAKLAND

Address History (Beginning ≈ 1987)

1354, 81ST, AVE

APN	Unit #	Record ID	Date Opened ▼	Status	Status Date	Description
042 424708200		<u>1501950</u>	6/10/2015	Abated	7/21/2015 12:00:00 AM	Unit B: Fire damage; work being done without permit. Cut wires, trash and debris in basement.

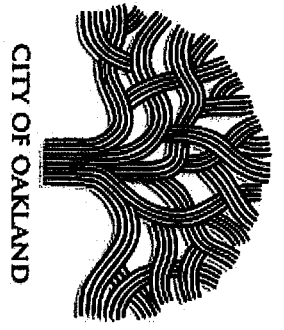
For real-time, direct access to information via the Internet, 24 hours a day - <https://aca.accela.com/oakland>



No Results

Address History (Beginning ≈ 1987)

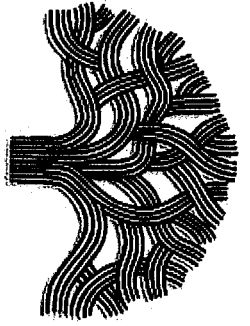
For real-time, direct access to information via the Internet, 24 hours a day - <https://aca.accela.com/oakland>



No Results

Address History (Beginning ≈ 1987)

For real-time, direct access to information via the Internet, 24 hours a day - <https://aca.accela.com/oakland>



CITY OF OAKLAND

Address History (Beginning ≈ 1987)

APN	Unit #	Record ID	Date Opened	Status	Status Date	Description
1354, 81ST, AVE 042 424708500		ZC142100	9/8/2014	Approved	9/8/2014 12:00:00 AM	Zoning clearance for home office for off-site house cleaning; no customers/employees at home, no storage, 1 small vehicle for work
042 424708500	#C	RE1201892	7/2/2012	Final	10/9/2012 12:00:00 AM	Replace electric heaters in 4-plex. No gas to building.
042 424708500	C	1203109	6/25/2012	Abated	10/9/2012 12:00:00 AM	DOING WORK W/O PERMITS-HOLES IN WALLS/ MATERIAL LEFT IN UNITS
042 424708500		R1100661	12/19/2011	Permit Issued	12/19/2011 12:00:00 AM	RE ROOF
042 424708500		ZC112717	12/19/2011	Approved	12/19/2011 12:00:00 AM	home office for a handyman service note: no sales, services, or storage on site.

For real-time, direct access to information via the Internet, 24 hours a day - <https://aca.accela.com/oakland>

CITY OF OAKLAND BUILDING DEPARTMENT CERTIFICATE OF OCCUPANCY

No. 7832 ED APARTMENT HOUSE January 4, 19 63
 TYPE V TWO STORY building

THIS IS TO CERTIFY that the GROUP H TYPE V which is owned
 at 1354 - 56-56A - 56B 81st Avenue of 322 1/2 Boise Street, Berkeley

by Paul Clark Dated _____
 in FIRE ZONE 4 USE ZONE B OHC Variance No. _____
 Building Permit No. C-1942 Building Completion Date December 28, 1962 has been inspected

and the following occupancy thereof is hereby authorized:

Occupancies:

	Number Habitable Rooms
Collar _____	_____
Basement _____	_____
1st Floor <u>2-4 room units - living room, kitchen, 2 bedrooms, bath - 5 garages</u>	<u>8</u>
2nd Floor <u>2-4 room units - living room, kitchen, 2 bedrooms, bath</u>	<u>8</u>
3rd Floor _____	_____
4th Floor _____	_____
Attic Story _____	_____
Add Floors as necessary _____	_____
Prior Cert. of Occup. <u>no</u> Date _____	Rental Units (Yes or No) <u>Yes</u>
Cert. of Occup. void on _____	License (Yes or No) _____
Re-Inspt. Dates _____	
	TOTAL <u>16</u>

Lawrence P. Lane
 Building Inspector

The Certificate of Occupancy shall not be construed as authority to violate, cancel, alter or set aside any of the provisions or requirements of any laws or ordinances of the City of Oakland nor shall such issuance thereafter prevent requiring corrections of errors or of violations of any applicable law or ordinance of the City of Oakland.
 Necessary licenses shall be obtained, as this Certificate does not of itself constitute a license.

24000493

**MICROTRON
INDUSTRIES
INCORPORATED**

703 Market Street, Suite 213
San Francisco, California 94103
415 / 777-2440

"E" Size Drawing

See 35

mm

Fiche

FOR OFFICE USE ONLY

BUILDING & HOUSING DEPARTMENT - CITY OF OAKLAND
WRITE IN INK - FILE ALL COPIES

HOUSING DIVISION _____
 FIRE MARSHAL APPROVAL _____
 CITY MANAGER PERMIT NO. _____
 MOVING PERMIT NO. _____
 PLAN OF OAKLAND APPROVAL _____
 PLUMBING PERMIT NO. _____
 HEALTH DEPT. APPROVAL _____
 ZONING OR PLANNING NO. _____
 B OF E & A ITEM NO. _____
 4 A & A B-RES. NO. _____

DATE FILED _____
 DATE ISSUED AUG - 2 1956
 PERMIT NO. 532110

APPLICATION FOR PERMIT TO:
 ALTER ADD TO NEW CONSTR.
 REPAIR WRECK OTHER

JOB LOCATION 1356 81 Ave
 OWNER'S NAME Edward J. Gumb
 OWNER'S ADDRESS 545 10 Ave - S.F.
 OWNER'S PHONE NO. EV. 6-0671

FIELD CHECK BY SWITZER DATE 8-2-56
 Approved YES NO
 REMARKS (conditions noted) Rep. Eng. etc.

NEW CONSTRUCTION

Size of new building _____
 Height to highest point _____
 No. of Stories _____
 Specific type of Occupancy _____
 State how many buildings new on lot and give use of each _____

Footing Width _____ Depth in Ground _____ Width of Wall _____
 Studs _____ @ _____ cfs. Floor Joists _____ @ _____ cfs. Ceiling Joists _____ @ _____ cfs.
 Rafters _____ @ _____ cfs. Roof covering _____

VALUATION OF PROPOSED WORK

Including all labor and material and all permanent lighting, heating, ventilating, water supply, plumbing, fire, fire sprinkler, electric wiring and elevator equipment therein or thereon.
 COST OF WORK TO BE CHECKED BEFORE FINAL INSPECTION.
 GENERAL INSTRUCTIONS: If the work herein described is not commenced within one hundred twenty (120) days after the issuing of this permit, or if the work is suspended or abandoned at any time after the work is commenced for a period of one hundred twenty (120) days, this permit shall expire by limitation and become null and void as provided in the Oakland Building Code.
 Permission is hereby granted to do the work described in this application in accordance with the provisions of the Oakland Building Code and related ordinances.

Approved: LAWRENCE A. LANE
 Building Inspector

BY _____

TO BE SIGNED ONLY WHEN ISSUED TO OWNER.
 I hereby certify that _____ the applicant for Building Permit, and that in the performance of the work for which such permit is issued, I will not employ any person or persons in any manner so as to become sublet to the provisions of the Labor Code of the State of California relating to workmen's compensation insurance.
 Signature of Owner E. Gumb

FORM 139-6-53 DEPARTMENT COPY

Address 1356 81 Ave.
 VALUE \$1,000.05
 Address Fee \$ _____
 General Fee \$ _____
 Checking Fee \$ _____
 Receipt # _____

ADDITIONAL COST: 10.00
 TOTAL VALUE \$ _____
 Add'l Fee \$ _____
 Check'g Fee \$ _____
 TOTAL FEES \$ _____

PLANS FILED: YES NO SURVEYS FILED: YES NO
 MAP NO. 6666 TRACT NAME/NO. _____
 TYPE OF BUILDING: 1 A 2 B 3 C 4 D 5 E 6 F 7 G 8 H 9 I 10 J 11 K 12 L 13 M 14 N 15 O 16 P 17 Q 18 R 19 S 20 T 21 U 22 V 23 W 24 X 25 Y 26 Z
 OCCUPANCY GROUP: A B C D E F G H I J K L M N O P Q R S T U V W X Y Z
 ZONING DISTRICT: AK AL AM AN AO AP AQ AR AS AT AV AW AX AY AZ BA BB BC BD BE BF BG BH BI BJ BK BL BM BN BO BP BQ BR BS BT BU BV BW BX BY BZ CA CB CC CD CE CF CG CH CI CJ CK CL CM CN CO CP CQ CR CS CT CU CV CW CX CY CZ DA DB DC DD DE DF DG DH DI DJ DK DL DM DN DO DP DQ DR DS DT DU DV DW DX DY DZ EA EB EC ED EE EF EG EH EI EJ EK EL EM EN EO EP EQ ER ES ET EU EV EW EX EY EZ FA FB FC FD FE FF FG FH FI FJ FK FL FM FN FO FP FQ FR FS FT FU FV FW FX FY FZ GA GB GC GD GE GF GG GH GI GJ GK GL GM GN GO GP GQ GR GS GT GU GV GW GX GY GZ HA HB HC HD HE HF HG HH HI HJ HK HL HM HN HO HP HQ HR HS HT HU HV HW HX HY HZ IA IB IC ID IE IF IG IH II IJ IK IL IM IN IO IP IQ IR IS IT IU IV IW IX IY IZ JA JB JC JD JE JF JG JH JI JJ JK JL JM JN JO JP JQ JR JS JT JU JV JW JX JY JZ KA KB KC KD KE KF KG KH KI KJ KL KM KN KO KP KQ KR KS KT KU KV KW KX KY KZ LA LB LC LD LE LF LG LH LI LJ LK LL LM LN LO LP LQ LR LS LT LU LV LW LX LY LZ MA MB MC MD ME MF MG MH MI MJ MK ML MM MN MO MP MQ MR MS MT MU MV MW MX MY MZ NA NB NC ND NE NF NG NH NI NJ NK NL NM NN NO NP NQ NR NS NT NU NV NW NX NY NZ OA OB OC OD OE OF OG OH OI OJ OK OL OM ON OO OP OQ OR OS OT OU OV OW OX OY OZ PA PB PC PD PE PF PG PH PI PJ PK PL PM PN PO PP PQ PR PS PT PU PV PW PX PY PZ QA QB QC QD QE QF QG QH QI QJ QK QL QM QN QO QP QQ QR QS QT QU QV QW QX QY QZ RA RB RC RD RE RF RG RH RI RJ RK RL RM RN RO RP RQ RR RS RT RU RV RW RX RY RZ SA SB SC SD SE SF SG SH SI SJ SK SL SM SN SO SP SQ SR SS ST SU SV SW SX SY SZ TA TB TC TD TE TF TG TH TI TJ TK TL TM TN TO TP TQ TR TS TT TU TV TW TX TY TZ UA UB UC UD UE UF UG UH UI UJ UK UL UM UN UO UP UQ UR US UT UU UV UW UX UY UZ VA VB VC VD VE VF VG VH VI VJ VK VL VM VN VO VP VQ VR VS VT VU VV VW VX VY VZ WA WB WC WD WE WF WG WH WI WJ WK WL WM WN WO WP WQ WR WS WT WU WV WW WX WY WZ XA XB XC XD XE XF XG XH XI XJ XK XL XM XN XO XP XQ XR XS XT XU XV XW XX XY XZ YA YB YC YD YE YF YG YH YI YJ YK YL YM YN YO YP YQ YR YS YT YU YV YW YX YY YZ ZA ZB ZC ZD ZE ZF ZG ZH ZI ZJ ZK ZL ZM ZN ZO ZP ZQ ZR ZS ZT ZU ZV ZW ZX ZY ZZ

ADDITION ALTERATION REPAIR
 Present use of building Apartments Families 4 Rooms _____
 Proposed use of building Same Families _____ Rooms _____

Size of existing building _____ Number of stories high 2
 Describe briefly all proposed construction work: Fence 6' on roof
Repair roof - that window 5'
Miscellaneous repairs to interior
plaster & trim.

Contractor: (if any) _____ Certified Architect _____
 Address _____
 Phone No. _____ City License No. _____
 City License No. _____ City License No. _____
 Licensed Civil Engineer _____

I hereby agree to save, indemnify and keep harmless the City of Oakland and its officers, employees and agents against all liabilities, judgments, costs and expenses which may in any wise accrue to or be incurred by the City in consequence of the granting of this permit or from the use or occupancy of any sidewalk, street or sub-sidewalk or otherwise by the contractor and will comply with all conditions strictly comply with the conditions under which this permit is granted.

Signature of Applicant _____
 FOR INSPECTIONS TELEPHONE 273-3441

PLOT PLAN

APPROVAL REQUIRED BY STREET AND ENGINEERING DEPARTMENT:

There are no PROPOSED STREET OPENINGS, PUBLIC PLACEMENTS OF RECORD

or

in this Department which are in conflict with this application.

REMARKS:

STREET AND ENGINEERING DEPARTMENT

By _____ Date _____

FORMS OK

FIREPLACE OK

WIRE (EXT.) OK

LATH (INT.) OK

ROUGH OK

GYPSUM OR PLASTER

FINAL OK 1-3-67 JPB

FOR OFFICE USE ONLY

BUILDING & HOUSING DEPARTMENT - CITY OF OAKLAND

WRITE IN INK - FILE ALL COPIES

Inspected

HOUSING DIVISION
 FIRE MARSHAL APPROVAL
 CITY MANAGER PERMIT NO.
 MOVING PERMIT NO.
 PORT OF OAKLAND APPROVAL
 PLUMBING PERMIT NO.
 HEALTH DEPT. APPROVAL
 ZONING OR PLANNING NO.
 B. OF E. A. ITEM NO.
 H. A. B. RES. NO.

DATE FILED
 DATE ISSUED **SEP 29 1965**
 PERMIT NO. **025918**

APPLICATION FOR PERMIT TO

ALTER ADD TO NEW CONSTR.

REPAIR WRECK OTHER

JOB LOCALITY **81st Ave**

OWNER'S NAME **Edmund**

OWNER'S ADDRESS **1751 81st Ave**

OWNER'S PHONE NO. **632-4482**

FIELD CHECK BY _____ DATE _____

Approved YES _____ NO _____

REMARKS (conditions noted)

NEW CONSTRUCTION

Number of Families _____

Size of Lot _____

Material of Exterior Walls _____

Specific type of Occupancy _____

State how many buildings now on lot and give use of each _____

Footing Width _____ Depth in Ground _____ Width of Wall _____

Studs _____ @ _____ cfs. Floor Joists _____ @ _____ cfs.

Roofers _____ @ _____ cfs. Roof covering _____

VALUATION OF PROPOSED WORK

Including all labor and material and all permanent lighting, heating, ventilating, water supply, plumbing, fire sprinkler, electric wiring and elevator equipment (herein of hereon) \$ _____

COST OF WORK TO BE CHECKED BEFORE FINAL INSPECTION

GENERAL INSTRUCTIONS: If the work herein described is not commenced within one hundred twenty (120) days after its issuing of this permit, or if the work is suspended or abandoned at any time after the work is commenced for a period of one hundred twenty (120) days, this permit shall expire by limitation and become null and void as provided in the Oakland Building Code.

Permittee is hereby granted to do the work described in this application in accordance with the provisions of the Oakland Building Code and all related ordinances.

Approved: **LAWRENCE A. JANE**

Building Inspector

By: **[Signature]**

TO BE SIGNED ONLY WHEN ISSUED TO OWNER

I hereby certify that I am the applicant for a Building Permit, and that in the performance of the work for which such permit is issued, I will not employ any person or persons in any manner so as to become subject to the provisions of the Labor Code of the State of California relating to workmen's compensation insurance.

Signature of Owner _____

FOR 3395-0-64

DEPARTMENT COPY

FOR INSPECTIONS TELEPHONE 273-3441

Signature of Applicant **[Signature]**

Certified Architect

State License No. _____ City License No. _____

I hereby agree to save, indemnify and keep harmless the City of Oakland and its officers, employees and agents against all losses, judgments, suits and expenses which may in any wise accrue against the City in consequence of the granting of this permit or from the use or occupancy of any sidewalk, street or sub-sidewalk, or otherwise by virtue hereof, and will in all things strictly comply with the conditions under which this permit is granted.

Contractor (if any) _____ Address _____ Phone No. _____ City License No. _____

Trained Civil Engineer

Present use of building _____ Proposed use of building _____

Size of existing building _____ Number of stories high _____

VALUE **1356 81 AVE**
 Address Fee \$ _____
 General Fee \$ **6.00**
 Checking Fee \$ _____

ADDITIONAL COST
 Add'l Fee \$ _____
 Date _____
 Checking Fee \$ _____

TOTAL VALUE \$ _____ TOTAL FEES \$ _____

PLAN FILED Yes _____ No
 MAP NO. **666** TRACT NAME/NO. _____
 TYPE OF BUILDING **I** H **W** **S** H **I** **N**
 OCCUPANCY GROUP **A** B C D E F G H **I** J K L M
 ZONING DISTRICT **A** A B C C D E F G H I S T U R
 FIRE ZONE **1** 2 **3**

ALTERATION **REPAIR**
 Present use of building **DUPLEX**
 Proposed use of building _____
 Size of existing building _____
 Number of stories high **2**

Describe briefly all proposed construction work
Install 2 new down pipes
Install 2 new down pipes

Contractor (if any) _____ Address _____ Phone No. _____ City License No. _____

I hereby agree to save, indemnify and keep harmless the City of Oakland and its officers, employees and agents against all losses, judgments, suits and expenses which may in any wise accrue against the City in consequence of the granting of this permit or from the use or occupancy of any sidewalk, street or sub-sidewalk, or otherwise by virtue hereof, and will in all things strictly comply with the conditions under which this permit is granted.

Contractor (if any) _____ Address _____ Phone No. _____ City License No. _____

I hereby agree to save, indemnify and keep harmless the City of Oakland and its officers, employees and agents against all losses, judgments, suits and expenses which may in any wise accrue against the City in consequence of the granting of this permit or from the use or occupancy of any sidewalk, street or sub-sidewalk, or otherwise by virtue hereof, and will in all things strictly comply with the conditions under which this permit is granted.

Contractor (if any) _____ Address _____ Phone No. _____ City License No. _____

I hereby agree to save, indemnify and keep harmless the City of Oakland and its officers, employees and agents against all losses, judgments, suits and expenses which may in any wise accrue against the City in consequence of the granting of this permit or from the use or occupancy of any sidewalk, street or sub-sidewalk, or otherwise by virtue hereof, and will in all things strictly comply with the conditions under which this permit is granted.

Contractor (if any) _____ Address _____ Phone No. _____ City License No. _____

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PIOT PLAN

APPROVAL REQUIRED BY STREET AND ENGINEERING DEPARTMENT:

There are no PROPOSED STREET OPENINGS, PUBLIC EASEMENTS, OF RECORD

REMARKS: in the Department which are in conflict with this application.

STREET AND ENGINEERING DEPARTMENT
By _____ Date _____

FORMS OK

LATH OK

*18' CEILING Installation windows of
19' 6" No. Fisher program. APP
and R9*

ROUGH OK

GYPSUM
PLASTER OK

WIRE OK

FINAL OK *8-3-66 GMD*

FIREPLACE OK

81ST AVE

13511-56

25000499

12-31-62

HOUSING DEPARTMENT - CITY OF OAKLAND

WRITE IN INK - FILE ALL COPIES

Inspected

1354-56-56A-56B 81ST AVE

4-26-62

MAV - 7 1962 PERMIT NO. C 1962

APPLICATION FOR PERMIT TO:

REPAIR WRECK OTHER
1354-56 81ST AVE.

ALTER ADD TO NEW CONSTR.

PAUL CLARK

NO. 02-5-3183

DATE

PETERS

NO.

DATE

PLAN FILED

NO.

DATE

NO.

DATE

NO.

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NO.

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VALUE \$ 12,500
GENERAL FEE \$ 56.00
CHECKING FEE \$ 25.00
TOTAL FEES \$ 87.00

ADDITIONAL COST:
Addl Fee \$
Dwn. \$
TOTAL VALUE \$
TOTAL FEES \$

PLAN FILED YES NO SURVEYS FILED YES NO

TYPE OF BUILDING I II III IV HT. 1 2 3 4 5
OCCUPANCY GROUP A B C D E F G H I J DIV. 1 2 3 4 5
ZONING DISTRICT MA A B C C D E F G H I S T L T UR
FIRE ZONE 1 2 3
PRIOR CERTIFICATE OF OCCUPANCY NO. DATE

ADDITION ALTERATION REPAIR

Proposed use of building: DUPLEX WITH 6 GARAGE SPACES BELOW

Size of existing building: 32'2" x 56'9" Number of stories high: 1 TO 2

Proposed use of building: DUPLEX WITH 6 GARAGE SPACES BELOW

Size of existing building: 32'2" x 56'9" Number of stories high: 1 TO 2

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Size of existing building: 32'2" x 56'9" Number of stories high: 1 TO 2

Proposed use of building: DUPLEX WITH 6 GARAGE SPACES BELOW

Size of existing building: 32'2" x 56'9" Number of stories high: 1 TO 2

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87.00

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56.00

25.00

APPROVAL REQUIRED BY STREET AND ENGINEERING DEPARTMENT.
These are the PROPOSED STREET OPENINGS, PUBLIC EASEMENTS OF RECORD.

In this Department which are in conflict with the application.
REMARKS:

STREET AND ENGINEERING DEPARTMENT

By _____ Date _____

Approved 11-23-62 CP
FORMS OK 11-23-62

LATH OK

RE: 11-23-62

ROUGH OK

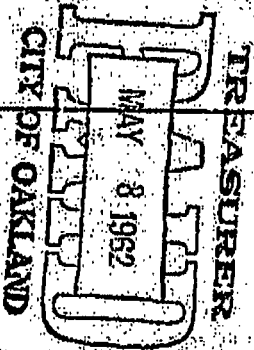
GYPSUM OK
PLASTER OK

11-23-62

WIRE OK

FINAL OK 11-25-62

REPLACE OK



FOR PLAN

Handwritten notes: 11R-213R + 64th. 1st floor 144R-213R + 64th - 5 garage

No. 3 1136

APPLICATION
FRAME BUILDING

Sol. J. Schumann Owner

Sol. J. Schumann Builder

For a permit to erect a building located at

Corner S of E 14th
Side of SE Ave.

135th - 56 81st Ave

feet of SE Ave.

Cost \$ 5000.00 Fee \$ 22.00

Date JAN - 6 1944



Permission is hereby granted to erect the building described in this application in accordance with the Building Ordinances of the City of Oakland, and to the satisfaction of the Building Inspector.

Approved E. U. ROUSSELL
Chief Building Inspector.

By [Signature]

1-24-44
3-13-44
3-21-44
3-25-44
5-29-44

AFFIDAVIT

I hereby make affidavit the contents in this application and specifications is true and correct description of the proposed work to be done in accordance with Act. I am authorized to act as owner.

Subscribed and sworn to before

May of _____

De

3711

WRITE IN INK - FILE TWO APPLICATION FOR A BUILDING PERMIT FRAME BUILDING

Application is hereby made to the Building Department of the City of Oakland for permission to build a one story 2 room, Duplicate 1100 8th St. in accordance with plans filed herewith.

Location 1354 - 56 8th St. Oakland

Entire cost of building (this must include everything necessary for the complete construction of the building), \$ 5,500.00 Building to be occupied as Family Res.

by (No.) 2 families. Distance from lot line to sides of building 6' 0" 12' 6"

Size of lot 50 by 150 ft. Is there any other building on lot? No

Size of proposed building 31 ft. by 56 ft. Foundation material Concrete

Extreme height of building 16' 0" feet

Basement height 4 ft. 6 in. Solid Walls 6" x 8" Height 22 in. Min. 22 in. Max. 22 in. Piers 6" x 8" Height 22 in. Min. 22 in. Max. 22 in.

Ceiling height 8 ft. 8 in. Mud sills - Redwood 2 by 6 in. Main sills 4 by 6 in. Girders 4 by 11 inches. 5 feet on centers.

Posts under girders 4 by 11 inches. 5 feet on centers.

Size of studs in basement 2 by 4 inches. 16 inches on centers.

Size of studding for bearing walls 2 by 4 inches. 16 inches on centers.

Size of studding for non-bearing walls 2 by 4 inches. 16 inches on centers.

All exterior and light shaft walls must be close boarded.

Exterior wall covering to be of Plaster and Plaster.

Light shaft wall covering to be of None and None.

Size of floor joists 2 by 6 inches. 16 inches on centers. Longest span between support 8 ft.

Ceiling joists 2 by 4 inches. 16 inches on centers. Longest span between support 12 ft.

Rafters 2 by 4 inches. 16 inches on centers. Longest span between support 6 ft.

Roof covered with Shingles. Penthouse covered with None.

Number of patent chimneys 2. Size of flue 6 with 6 inlets.

Number of brick chimneys None. Size of flue None with None inlets.

Number of gas boilers and heating appliances 2. Vented to gas vent or chimney None.

Is there a garage under or attached to dwelling? No. If so, it must be fireproofed and vented.

I hereby agree to save, indemnify and keep harmless the City of Oakland and its officers, employees and agents against all liabilities, judgments, costs and expenses which may in any way accrue against the City in consequence of the granting of this permit, or from the use or occupancy of any sidewalk, street or sub-sidewalk, or otherwise by virtue thereof, and will in all things strictly comply with the conditions under which this permit is granted.

Contractor (if any) S. J. ... Address 3805 ... By [Signature]

Architect [Signature] Address [Address]

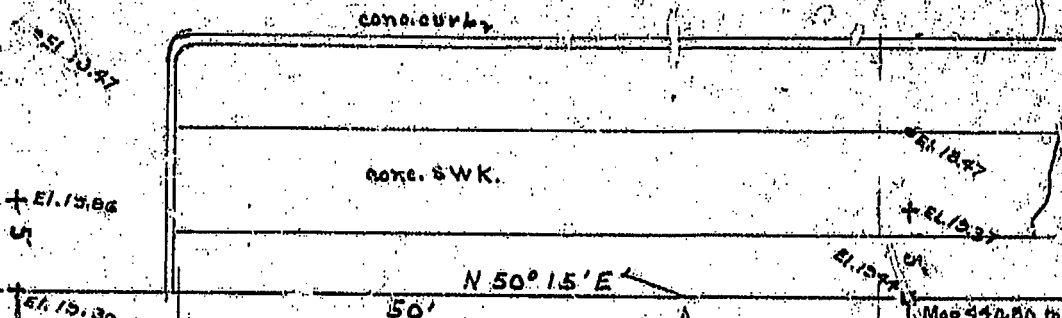
Do not lath, sheath, or otherwise conceal any portion of walls or ceiling until the inspection card has been signed by the BUILDING, ELECTRICAL and PLUMBING INSPECTORS.

The Department will call up Telephone No. 222-2222 if any alterations or changes are necessary on the plans submitted.

CITY LICENSE NO. 222-2222 000503

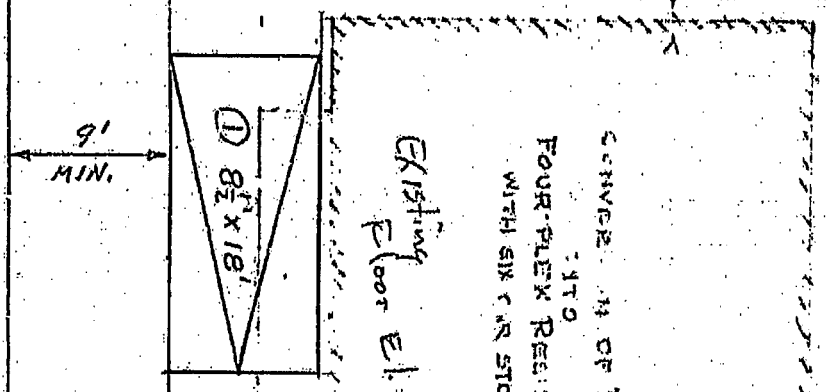
NEW - SET - OF - PLANS

In the indicated street area
without first obtaining necessary
sidewalk, driveway or curb permits,
work as shown on this plan, in street area,
is neither checked nor approved.

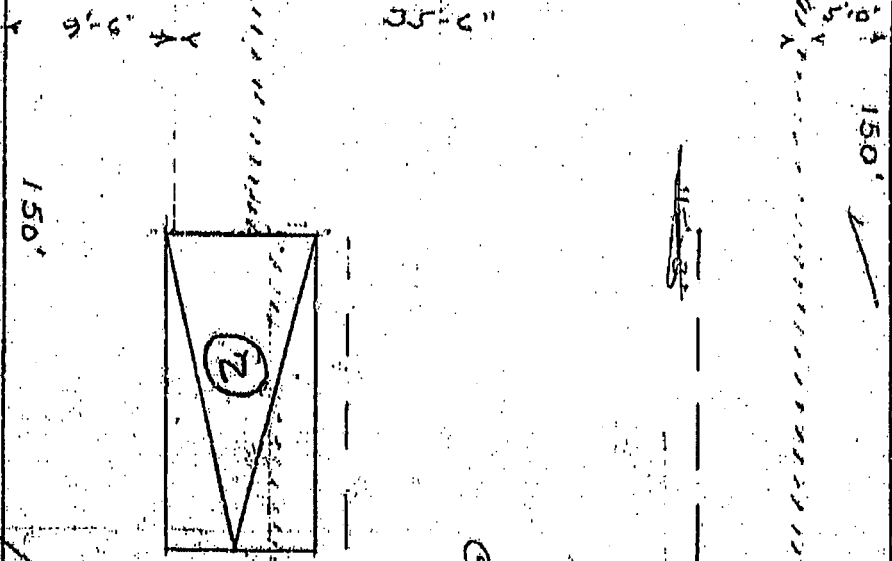


Map 44-20 to Cor.
Field 425-43

U.O.S.
512.50 FT.
15'-9"



CARRY ALL STORM DRAINAGE
UNDER SIDEWALK TO
STREET GUTTER



25800584

BUENA VENTURA TRACT

APPROVED	
ZONING DIVISION	
City Plan No. 1000000000	
CASE NO.	REQUIRE THE USE OF THE INSTALLATIONS
<i>Need to your regulations</i>	
DATE <i>4/16/68</i>	INITIALS <i>RD</i>

25800585

150'

S 39° 45' E

150'

150'

150'

150'

150'

150'

150'

150'

150'

150'

150'

150'

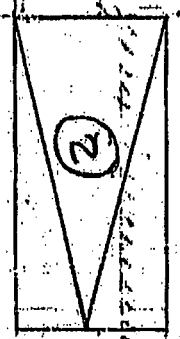
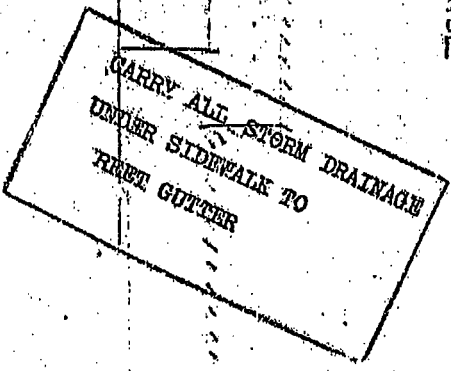
150'

150'

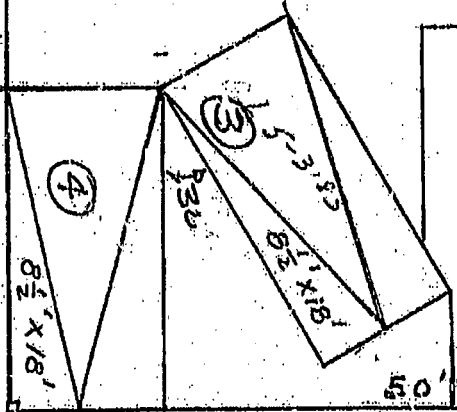
150'

150'

3rd DUPLEX
RESIDENCE
STORAGE



Garage E.L.
20'-6"



U.O.S.
560 SQ. FT.

"E"

N 39° 45' W

LORD ENGINEERING COMPANY

1228 - 17th AVENUE

PHOENIX, ARIZONA

LEGATION PORTION LOT 10 - BUENA VENTURA TRACT OAKLAND CALIF.

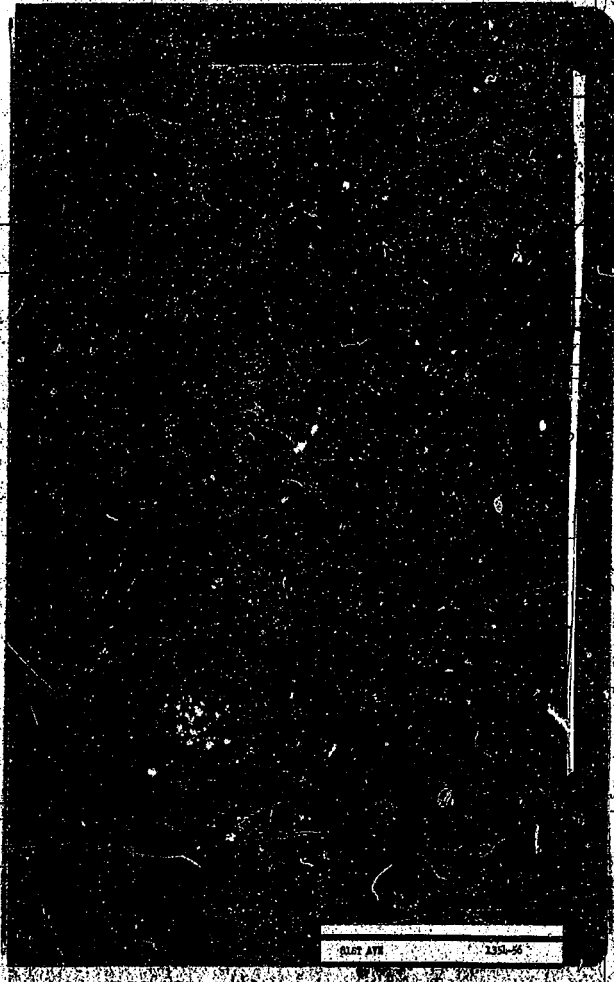
FOR JOHN ROBERTSON

SCALE 1" = 8'

LEGEND
STRIKE WITH TACK
+ CROSS 5/16 SWK.

J. A. Ford
LICENSED SURVEYOR # 1663

FEW - SET - OF - PLANS



SECRET 1350-26

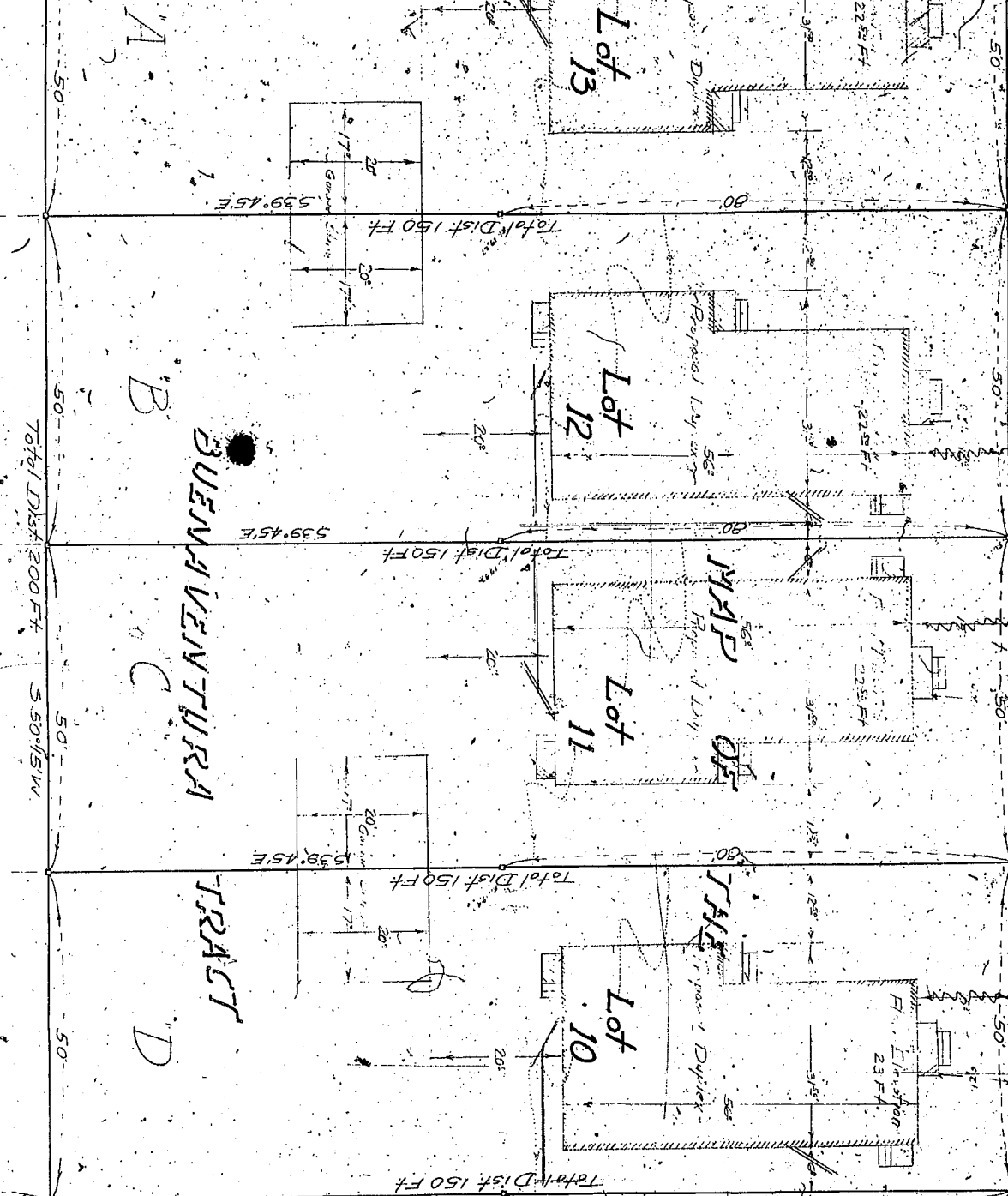
81ST AVENUE

150'± E

150'± E

150'± E

150'± E



A

B

C

D

BUENAVENTURA TRACT

Total Dist. 200 FT. 550'± SW

Original Line of Street
 EAST 14TH STREET
 BLOCK "E"
 425 FT. to Cor. 188'±

8950092

LORD ENGINEERING COMPANY
 1209 4TH AVENUE
 PHILADELPHIA, PA.
 LOCATION: LOTS 10-11-12+13, Block "E", Map of the Buena Ventura Tract
 SCALE: 1" = 20'
 DRAWN BY: J. SCHERMAN 11-24-43-4352
 CHECKED BY: [Signature]
 2 COPIES IN CONDUIT WALK
 1 COPY IN RECORD ROOM

CITY OF OAKLAND.



250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2031

Community and Economic Development Agency
Planning & Zoning Services Division

(510) 238-3911
FAX (510) 238-4730
TDD (510) 839-6451

March 23, 2001

Luis Camacho
1127 Livorna Road
Alamo, CA 94507

RE: **CASE FILE NO.: TPM 7739, 1354-1356 81st Avenue**

Dear Mr. Camacho

Tentative Parcel Map 7739 to create four residential condominium units located at 1354-1356 81st Avenue in the Mixed Housing Type Residential General Plan Land Use Classification and the R-50 Medium Density Residential Zone has been approved. (Environmental Determination: Exempt, Section 15303, State CEQA Guidelines; tentative parcel maps with four or fewer lots) In accordance with provisions of Article 4 (Real Estate Subdivision Regulations) and Article 5 (Parcel Maps), Chapter 7 of the Oakland Municipal Code.

In order for the Tentative Parcel Map to be approved, it must meet the following requirements (citations relate to sections of the Oakland Municipal Code):

- (1) It must conform, as set forth in Section 7-4.011, with the Oakland Comprehensive Plan (General Plan), with any applicable specific plan, and to the Zoning Regulations.
- (2) It must conform with the prescribed street design, lot design and other design standards set forth in Sections 7-4.15 to 7-4.331 and Section 7-5.05, if these standards are applicable to the proposal.

This approval is subject to conditions of approval as stated in the Building Services Division memo dated March 9, 2001 (attached), the Fire Prevention Bureau report dated March 22, 2001 (attached), and following conditions:

1. That the subdivider shall defend, indemnify, and hold harmless the City of Oakland, its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, its agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the City Planning Department, Planning Commission, or City Council. The City shall promptly notify the applicant/subdivider of any claim, action or proceeding and the

26500591

City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

2. The subdivider shall provide a "Joint Use and Maintenance Agreement" or a "Covenant, Codes and Restrictions" document for review and approval prior to the approval of any final map for the site. This document shall provide for the easement or other rights of all property owners using the common driveway, and/or landscaping to be maintained in good condition and repair at all times and should provide remedies should this not occur. Upon approval of said document it shall be recorded with the County Recorder with each and every deed applicable to this map.

This decision becomes effective ten (10) days from the date of this letter unless appealed to the City Planning Commission. An appeal is made by completing an application and paying the required fee (\$413,00).

A Parcel Map may be certified by the City Engineer at the expiration of the ten (10)-day appeal period from the date of this approval.

A Parcel Map shall be filed with the City Engineer within two (2) years from the date of approval of the Tentative Parcel Map, or within such additional time as may be granted by the Advisory Agency. Failure to file a Parcel Map within these time limits shall nullify the previous approval or conditional approval of the Tentative Parcel Map.

If you have any questions please call case planner Jason Madani at (510) 238- 4790.

Sincerely,



WILLIE YEE
Zoning Administrator
Community & Economic Development Agency

CC: Ahmad Moghaddas, 1631 Berkeley Way, Berkeley, CA 94703
Jose Patino, 1127 Livorna Road Alamo, CA 94507
Lourdes Barrozo, Engineering Services
Philip Basada, Fire Prevention Bureau

Exhibit I

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60-DAY NOTICE TO CHANGE THE TERMS OF YOUR RENTAL AGREEMENT

To: Ricardo Dominguez, Ana Jeronimo, et al, Resident(s) and all others in
possession of Apt. No. A, located at (Street Address) 1354-81st Avenue
in the city of Oakland, California

PLEASE TAKE NOTICE that in accordance with the governing State and local laws and ordinances, that sixty (60) days
after service upon you of this notice or beginning September 1, 2019, whichever is later, the terms of
your rental agreement for the above described property are hereby changed as follows:

YOUR MONTHLY RENT shall be increased from \$1,375 per month to \$ 2,000 per month, an
increase of \$ 625 per month.

YOUR SECURITY DEPOSIT shall be increased from \$ _____ to \$ _____, an increase of
\$ _____.

TOTAL AMOUNT DUE and payable by the above stated time period:

New Monthly Rent:	\$ <u>2,000</u>
Security Deposit Increase:	\$ _____
Other:	\$ _____
Total Due:	<u>\$ <u>2,000</u></u>

OTHER CHANGES:

Except for the above changes, all other terms of your Rental Agreement shall remain in full force and effect.

Dated: (Month/Day) June 11, 2019

May Fong, OWNER(S)

By: _____, AGENT



Exhibit J

ANA S. JERONIMO-SALVADORI
1354 81ST AVE APT
OAKLAND, CA 94621

02-7110 / 2011
3713

127

date 05/04/2019

May Lee Fong
pay to the order of

\$ 1375.00

One thousand three hundred
Seventy five.

dollars

citibank
CITIBANK, N.A.

name Bent



Seq: 111

Batch: 797311

Date: 05/04/19

Seq: 00111 05/04/19
BAT: 797311 CC: 3180000586
WT: 01 LTPS, Jacksonville FL
BC: Fruitvale BC CA#-134

Cashed To The Account Of
The Within Named Payee
Endowment Guaranteed
Bank Of America, N.A.

ANA S. JERONIMO-SALVADORI
1354 81ST AVE APT
OAKLAND, CA 94621

92-7118 / 201
0211

128

date 06/03/19

MAY LEE FONG

\$1375.00

Pay to the order of ONE THOUSAND THREE HUNDRED SEVENTY FIVE Dollars

citibank
CITIBANK, N.A.

MEMO BENEFIT

Seq: 195

Batch: 624615

Date: 06/05/19

Seq: 00195 06/05/19
BAT: 624615 CC: 3180000548
WT: 01 LTPS: Jacksonville PT
BC: Fruitvale BC CA4-134

Credited To The Account Of
The Within Named Payee
Endorsement Guaranteed
Bank of America, N.A.

ANA S. JERONIMO-SALVADOR
 1334 ST STEVE APT
 OAKLAND, CA 94621

92-7118 / 201
 2011

129


DATE: 5/27/19

MAY 27 2019

PAY TO THE ORDER OF: ONE THOUSAND THREE HUNDRED SEVENTY FIVE AND ZERO CENTS \$1,375.00

citibank
 CITIBANK, N.A.

RENT MONEY



ENDORSE HERE
 Credited To The Account Of:
 The Within Named Payee
 Endorsement Guaranteed
 Bank of America, N.A.

ANA S. JERONIMO-SALVADORI
1354 81ST AVE APT
OAKLAND, CA 94621

RP-2118 / 204
211

130

date 08-03-19

pay to the order of May Lee Fong

\$ 1375⁰⁰

ONE THOUSAND THREE HUNDRED

dollars

citibank
CITIBANK, N.A.

SEVENTY FIVE

memo RENT



Seq: 97

Batch: 436673

Date: 08/03/19

Seq: 00097 08/03/19
BAT: 436673 CC: 3180000546
WT: 01 LTPS: Jacksonville PT
BC: Fruitvale BC CA4-134

Credited To The Account Of
The Within Named Payee
Endorsement Guaranteed
Bank of America, N.A.

ANA S. JERONIMO-SALVADORI
1354 81ST AVE APT
OAKLAND, CA 94621

80-7116 / 804
2011

131

date 09/04/19.

pay to the order of May Lee Fong

\$ 2000.00

TWO THOUSAND

dollars

citibank
CITIBANK, N.A.

RENT

ads



Seq: 32

Batch: 235377

Date: 09/04/19

Seq: 80032 09/04/19
BAT: 235377 CC: 3180009546
WT: 01 LTPS: Jacksonville PT
BC: Fruitvale BC CA4-134

Credited To The Account Of
The Within Named Payee
Endorsement Guaranteed
Bank of America, N.A.

ANA S. JERONIMO-SALVADORI
1354 81ST AVE APT
OAKLAND, CA 94621

02-7110 / 204
2011

133

date 11/04/19.

to the order of May Lee Tong
Two thousand

\$ 2000.00
dollars

citibank
CITIBANK, N.A.

memo Dent



Seq: 188

Batch: 195159

Date: 11/04/19

Seq: 83188 11/04/19
BA#: 195159 CC: 3158888536
WT: 01 LTPS: Jacksonville PT
BC: Fruitvale BC CA4 134

Credited To The Account Of
The Within Named Payee
Endorsement Guaranteed
Bank of America, N.A.

ANA S. JERONIMO-SALVADORI
1354 81ST AVE APT
OAKLAND, CA 94621

80-7119 / 702
2011

135

date 12/04/19

MAY LEE FONG

pay to the order of

TWO THOUSAND

\$ 2,000⁰⁰

dollars

citibank
CITIBANK, N.A.

memo

RENT



Seq: 182

Batch: 951059

Date: 12/04/19

Seq: 00182 12/04/19
BAT: 951059 CC: 3180009546
WT: 01 LTPS: Jacksonville PT
BC: Fruitvale BC CAA-134

Credited To The Account Of
The Within Named Payee
Employment Guaranteed
EFT/ACH - Citibank, N.A.

ANAS JERONIMO SALVADOR
1354 81ST AVE APT
OAKLAND, CA 94621

2019

136

date 01/03/2020

MAY LEE FONG.

\$ 2,000⁰⁰

TWO THOUSAND DOLLARS

dollars

citibank
CITIBANK, N.A.

MEMO RENT

[Signature]



Credited To The Account Of
The Within Named Payee
Endorsement Guaranteed
Bank of America, N.A.

ANA S. JERONIMO-SALVADORI
1354 81ST AVE APT
OAKLAND, CA 94621

20-7118 / 804
8211

137

date 02/04/20

MAY LEE FONG

pay to the order of

\$ 2000.00

TWO THOUSAND

dollars

citibank
CITIBANK N.A.

memo RENT.



Seq: 30

Batch: 492991

Date: 02/04/20

Seq: 09930 02/04/20
BA: 402201 CC: 318300000
Attn: 01 LTFS, Jacksonville PT
60 Visitation Valley BC CA5-135

Printed To The Account Of
Within Named Payee
Payment Guaranteed
C/America, N.A.

Exhibit K

To view your Insert
Click the link below:
INSERT1

Customer ID:
Customer Name:
Service Period:
Invoice Date:
Invoice Number:

10-87087-5301
RICARDO DOMINGU
JUL-AUG-SEP SERVI
07/01/20
2493045-2216

How To Contact Us

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Customer Service:
(510) 613-8710

Your Payment Is Due

Due Upon Receipt

Pymt due upon receipt of invoice & delinquent 45 days later. Delinquent invoices are subject to monthly late charges of a minimum of \$5.00 up to 1.5% of the invoice amount, and are subject to property assessment, and a City subscription charge. See NOTICE on last page of invoice for details.

Your Total Due

\$668.62

See Reverse for Important Messages


Previous Balance	+	Payments	+	Adjustments	+	Current Charges	=	Total Due
625.32		(156.34)		0.00		199.64		668.62

Details for Service Location:
Fong, May Unit A, 1354 81st Ave, Unit A, Oakland CA 94621-2445

Customer ID: 10-87087-53001

Description	Date	Ticket	Quantity	Amount
64 Gallon cart service - organics	07/01/19			
32 Gallon toter	07/01/19		1.00	0.00
Late payment charge for 01/01/2019 invoice 2219040	04/18/19		1.00	149.64
Late payment charge for 10/01/2018 invoice 2064186	04/19/19			5.00
Late payment charge for 07/01/2018 invoice 1940949	04/20/19			5.00
Late payment charge for 04/01/2019 invoice 2362714	05/16/19			5.00
Late payment charge for 01/01/2019 invoice 2219040	05/19/19			5.00
Late payment charge for 10/01/2018 invoice 2064186	05/20/19			5.00
Late payment charge for 07/01/2018 invoice 1940949	05/21/19			5.00
Late payment charge for 04/01/2019 invoice 2362714	06/16/19			5.00
Late payment charge for 01/01/2019 invoice 2219040	06/19/19			5.00
Late payment charge for 10/01/2018 invoice 2064186	06/20/19			5.00
Total Current Charges				199.64

----- Please detach and send the lower portion with payment --- (no cash or staples) -----



WASTE MANAGEMENT
WASTE MANAGEMENT OF ALAMEDA COUNTY
172 98TH AVENUE
OAKLAND CA 94603

(510) 613-8710
(510) 562-2854 FAX
caloakland@wm.com

Invoice Date	Invoice Number	Customer ID (Include with your payment)
07/01/2019	2493045-2216-5	10-87087-53001
Payment Terms	Total Due	Amount
Due Upon Receipt	\$668.62	

2216000108708753001024930450000001996400000066862 5

12216R87

RICARDO DOMINGUEZ
1354 81ST AVE
OAKLAND CA 94621-2445

WASTE MANAGEMENT OF ALAMEDA COUNTY
PO BOX 541008
LOS ANGELES, CA 90054-1008

THINK GREEN

277 000526 



INVOICE

To view your Insert
Click the link below:
INSERT1

Customer ID:
Customer Name:
Service Period:
Invoice Date:
Invoice Number:

10-87087-5300
RICARDO DOMINGUE
OCT-NOV-DEC SERVIC
10/01/201
2639320-2216-

How To Contact Us

Visit **wm.com**

To setup your online profile, sign up for paperless statements, manage your account, view holiday schedules, pay your invoice or schedule a pickup

Customer Service:
(510) 613-8710

Your Payment Is Due

Due Upon Receipt

Pymt due upon receipt of invoice & delinquent 45 days later. Delinquent invoices are subject to monthly late charges of a minimum of \$5.00 up to 1.5% of the invoice amount, and are subject to property assessment, and a City subscription charge. See NOTICE on last page of invoice for details.

Your Total Due

\$430.58

See Reverse for Important Messages

Previous Balance	+	Payments	+	Adjustments	+	Current Charges	=	Total Due
668.62		(312.68)		(115.00)		189.64		430.58

Details for Service Location:
Fong, May Unit A, 1354 81st Ave, Unit A, Oakland CA 94621-2445

Customer ID: 10-87087-53001

Description	Date	Ticket	Quantity	Amount
64 Gallon cart service - organics	10/01/19			
32 Gallon toter	10/01/19		1.00	0.00
Late payment charge for 04/01/2019 invoice 2362714	10/01/19		1.00	149.64
Late payment charge for 01/01/2019 invoice 2219040	07/17/19			5.00
Late payment charge for 10/01/2018 invoice 2064186	07/20/19			5.00
Late payment charge for 07/01/2019 invoice 2493045	07/21/19			5.00
Late payment charge for 04/01/2019 invoice 2362714	08/15/19			5.00
Late payment charge for 01/01/2019 invoice 2219040	08/17/19			5.00
Late payment charge for 07/01/2019 invoice 2493045	08/20/19			5.00
Late payment charge for 04/01/2019 invoice 2362714	09/15/19			5.00
Total Current Charges	09/17/19			189.64

----- Please detach and send the lower portion with payment --- (no cash or staples) -----

WASTE MANAGEMENT
WASTE MANAGEMENT OF ALAMEDA COUNTY
172 98TH AVENUE
OAKLAND CA 94603

(510) 613-8710
(510) 562-2854 FAX
caloakland@wm.com

Invoice Date	Invoice Number	Customer ID (Include with your payment)
10/01/2019	2639320-2216-7	10-87087-53001
Payment Terms	Total Due	Amount
Due Upon Receipt	\$430.58	

221600010870875300102639320000001896400000043058 2

12216R06

RICARDO DOMINGUEZ
1354 81ST AVE
OAKLAND CA 94621-2445

WASTE MANAGEMENT OF ALAMEDA COUNTY
PO BOX 541008
LOS ANGELES, CA 90054-1008

THINK GREEN:

278 00527 Printed on

FINAL DELINQUENT NOTICE

SERVICE ADDRESS 1354 81ST AVE
*CUSTOMER NUMBER 065-4406080
Online WM ezPay ID 108708753001
PARCEL NUMBER 042 424708500
SERVICE PERIOD 10/01/2019 TO 12/31/2019

STATEMENT DATE 12/02/2019
DELINQUENT AMOUNT \$189.64
LATE FEES
TOTAL AMOUNT DUE \$289.07

OWNER NAME FONG GRANT W & MAY L ETAL
ADDRESS 358 CERRO CT
DALY CITY, CA 94015

The delinquent amount indicated on this notice is due immediately. If payment is not made within the next 10 days, then Waste Management may terminate service and the City of Oakland may subscribe to service on behalf of the property owner. Once the City subscribes, the property owners may be subject to (a) a City subscription charge of \$116 or 10% of the delinquent amount (whichever is greater); and (b) Alameda County Property Tax special assessment. See the back of this notice for additional information.

Payment may be made by check, credit card, or cash through one or more of the following methods:

- Mail payment with the Payment Coupon to the address provided on this statement
- Pay online, go to wm.com and use the Online WM ezPay ID number listed above, 24 hours a day/7 days a week
- Call the automated ezPay phone number at 1-866-964-2729, 24 hours a day/7 days a week
- Call the Customer Service Call Center at 510-613-8710, Monday - Friday 8:00 am to 6:00 pm
- Visit the Waste Management cashier office at 172 98th Ave. Oakland, Monday - Friday 8:00 am to 6:00 pm

To discuss this past due account before the Final Delinquent Notice is issued at the end of this month, choose any of the following:

- Call the Customer Service Call Center at (510) 613-8710, Monday - Friday 8:00 am to 6:00 pm
- Visit the Waste Management office at 172 98th Ave. Oakland, Monday - Friday 8:00 am to 6:00 pm
- Email Waste Management at csnorthbay@wm.com, 24 hours a day/7 days a week

An agent will be available at the Waste Management office at 172 98th Ave. Oakland, Monday - Friday 8:00 am to 6:00 pm for an in-person administrative appeal conference to review any disputed balance or other issue.

DETACH AND RETURN BOTTOM PORTION WITH PAYMENT IN ENCLOSED ENVELOPE



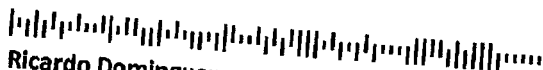
WASTE MANAGEMENT
WASTE MANAGEMENT OF ALAMEDA COUNTY
172 98TH AVENUE
OAKLAND, CA 94603

(510) 613-8710
csnorthbay@wm.com

Payment Coupon

Please detach and send with checks only (no cash).
To pay this bill online and switch to paperless billing,
go to wm.com/paperless

Your Account Number	Total Due	Amount Paid
065-4406080	\$289.07	
	Method	Check #
	Upon Receipt	



Ricardo Dominguez
1354 81st Avenue
Oakland, CA 94621-2445

WASTE MANAGEMENT OF ALAMEDA COUNTY
PO BOX 541008
LOS ANGELES CA 90054-1008

Profile

Customer

Payment

[← Back](#)

Email communication language

English

French

Payment Information

[Resend Confirmation Email](#)

Date	Status	Confirmation Number	Email	Total Amount	Char
2/12/2020	Approved	80009469119	Nathan.r.dominguez510@gmail.com	USD \$160.00	One

Payment Details

Status	Approved	Date	2/12/2020
IVR / CYBS ID	5815357733006279203280	Confirmation Number	80009469119
Invoice Number	Paid On Account	Payment Date	2/12/2020
Payment Creation Date	2/12/2020 12:29 PM	Payment Amount	USD \$160.00
Payment Handling Charge Amount	USD \$0.00	Total Paid	USD \$160.00
Payment Method Nickname	MC-xxxxxxxxxxxx6146	Payment Method	CREDIT
Payment Channel	One-Time	Reconciliation	73050283
Customer ID	10-87087-53001	User Email	mortega6@wm.com (mailto:mortega6@wm.com)
View Address			
Memo			

Exhibit L

City of Oakland - Rent Adjustment Program

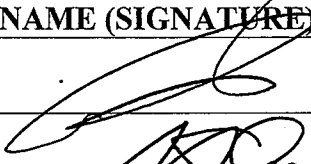

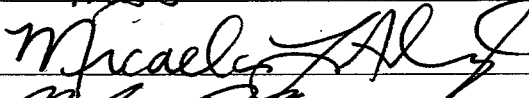
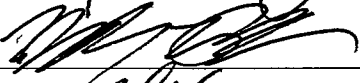
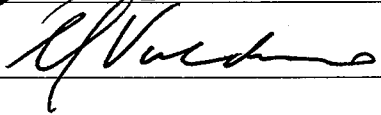
Statement of Appearance

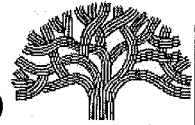
Date of Hearing: 2-19-20

Petition Case Number and Name: 19-0384 (SALVADOR V. FONG)

I am appearing at the Rent Adjustment Hearing of the above-referenced petition before the City of Oakland Rent Adjustment Program on the above-captioned date. I hereby swear or affirm that any testimony that I give in the hearing in the above-entitled matter shall be the whole truth, under penalty of perjury, pursuant to the laws of the State of California.

*Tenant, Landlord, Landlord Agent, Tenant Witness, Landlord Witness, Attorney, Non Attorney Representative, Other

NAME (SIGNATURE)	PRINT NAME	CAPACITY*
	Mary Fong	Owner
	Michael Lee	Owner
Asks	ANA JERONIMO Salvador	INQUILINA. (tenant)
	Micaela Alvarez	Attorney for tenant
	Noel Munger	Paralegal with tenant attorney/witness
	Maria Valdivieso	interpreter



250 FRANK OGAWA PLAZA, STE. 5313, OAKLAND, CALIFORNIA 94612

Department of Housing and Community Development
Rent Adjustment Program

(510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

NOTICE OF HEARING

File name: Salvador v. Fong
Property address: 1354 - 81st Ave. #A, Oakland, California
Case number: T19-0384

A further Hearing in your case will be held, as follows:

Date: April 15, 2020
Time: 10:00 A. M.
Place: 250 Frank H. Ogawa Plaza, Ste. #5313
Oakland, CA

The Hearing is public and will continue from day to day until completed.

Reason for a Further Hearing: The tenant filed a petition that contests a rent increase, and the Hearing was begun on February 19, 2020. The Hearing is being continued to allow the tenant to subpoena one or more witnesses.

ALL PROVISIONS IN THE ORIGINAL NOTICE OF HEARING REMAIN IN EFFECT.

Dated: February 19, 2020



STEPHEN KASDIN
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T19-0384

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Documents Included

Notice of Hearing

Owner

May Lee Fong
358 Cerro Court
Daly City, CA 94015

Tenant

Ana Jeronimo Salvador
1354 81st Avenue Unit A
Oakland, CA 94621

Tenant Representative

Jackie Zaneri, Centro Legal de la Raza
3022 International Blvd. Suite 410
Oakland, CA 94601

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **February 20, 2020** in Oakland, CA.



Raven Smith

Oakland Rent Adjustment Program

000534

CC&Rs (Required Civil Code Sec. 4525)

Lee Fong Master Association Inc

NOTICE:

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.



OFFICIAL RECORDS OF ALAMEDA COUNTY
MELISSA WILK, CLERK-RECORDER
RECORDING FEES: \$285.00

Recording Requested By &
When Recorded Return To:

Lee Fong Master Association, Inc.
c/o May Fong
358 Cerro Court
Daly City, CA 940015
Telephone: 415-812-9908

**DECLARATION OF COVENANTS, CONDITIONS &
RESTRICTIONS LEE FONG MASTER
ASSOCIATION, INC.**

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**DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
OF LEE FONG MASTER ASSOCIATION, INC.**

RECITALS

R1. Whereas, Lee Fong Master Association, Inc. is herein executed a Declaration of Covenants, Conditions and Restrictions- Lee Fong Master Association, Inc. ; and

R2. Whereas, the above-referenced Declaration of Covenants, Conditions and Restrictions established a plan of common interest ownership with certain limitations, easements, covenants, restrictions, conditions, liens and charges which run with and are binding upon all parties having or acquiring any right, title or interest in that certain parcel of real property consisting of 1 Lot and various common areas located in the City of Oakland, County of Alameda, State of California, and more particularly described in Exhibit "A" hereto;

R3. Whereas, the Members of Lee Fong Master Association, Inc., constituting at least fifty-one percent (51%) of the total voting power of Lee Fong Master Association, Inc., desire to amend, modify change and otherwise restate the limitations, easements, covenants, restrictions, conditions, liens and charges which run with and are binding upon all parties having or acquiring any right, title or interest in the real property described above;

R4. Therefore, the Members of Lee Fong Master Association, Inc. do hereby declare that the above-referenced limitations, easements, covenants, restrictions, conditions, liens and charges set forth in the above described declaration and amendments thereto, if any, be and are hereby RESTATED in their entirety. In the place and stead of the limitations, easements, covenants, restrictions, conditions, liens and charges set forth in the above described declaration and amendments thereto, if any, the Members hereby adopt and substitute this Restated Declaration of Covenants, Conditions & Restrictions of Lee Fong Master Association, Inc.; and

R5. It is further hereby declared that all of the real property described herein constitutes a "Planned Development" within the meaning of Section 4175 of the California Civil Code; and

R6. It is further hereby declared that all of the real property described herein is held and owned and shall be held, owned, operated, managed, conveyed, assigned, rented, hypothecated, encumbered, leased, used, occupied and improved subject to the following Declaration of Covenants, Conditions & Restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving and enhancing the value, desirability and attractiveness of the said real property and every part thereof and of fostering the development, management, improvement, enjoyment, use and sale of the said real property and any part thereof; and

R7. It is further hereby declared that all of the Covenants, Conditions and Restrictions herein set forth shall constitute enforceable equitable servitudes as provided in Section 5975 of the California Civil Code and shall constitute covenants that shall run with the real property and shall be binding upon and for the benefit of each Owner of any portion of the real property or of any interest therein, each party having or acquiring any right, title or interest in and to the real property or any part thereof and their heirs, successors and assigns.

R8. It is further hereby declared that each Owner, by acceptance of a deed to a Lot, shall be deemed to have agreed, for any and all purposes, for Owner and for the members of Owner's family, Owner's contract purchasers, tenants or lessees, guests, invitees and/or licensees to abide by, and to be bound by, each and every provision of this Declaration of Covenants, Conditions and Restrictions that subjects such Owner or other person to a contractual, fiduciary or other duty, obligation or agreement, regardless of whether the deed refers specifically to this Declaration of Covenants, Conditions and Restrictions or to any such duty, obligation or agreement.

ARTICLE I: DEFINITIONS.

Section 1.1. "Articles" means the Articles of Incorporation of Lee Fong Master Association, Inc., which are filed in the Office of the Secretary of State of the State of California, as such Articles may be amended from time to time.

Section 1.2. "Assessment" means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article V of this Declaration.

Section 1.3. "Association" or "Master Association" means and refers to Lee Fong Master Association, Inc., a California non-profit mutual benefit corporation or any successors or assigns organized for the purpose of managing this common interest development. All references herein to Association mean the Master Association.

Section 1.4. "Association Manager" means the person or entity, if any, retained by the Association to manage its affairs, as authorized in the Bylaws.

Section 1.5. "Association Rules" means the rules, regulations and policies adopted by the Board of Directors of the Association (or in the case of Architectural Rules and Policies by the Architectural Committee) pursuant to this Declaration, as the same may be in effect from time to time.

Section 1.6. "Board of Directors" or "Board" means the Board of Directors or the governing body of the Association.

Section 1.7. "Building" means any structure located within the Development that is used as a Residence, or for the storage or placement of property and/or equipment, or for meetings or gatherings of Members and their guests.

Section 1.8. "Bylaws" means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.9. "Common Area" means and refers to all the real property owned by the Association for the common use and enjoyment of the Owners, including all lettered Parcels described in Exhibit "A" attached hereto.

Section 1.10. "Common Expense" means the actual, estimated, or expected costs, charges, or other financial liabilities of the Association, including, without limitation: (a) all costs or charges incurred by or on behalf of the Association for the management, maintenance, administration, operation, repairs, additions, alterations or reconstruction of Common Area, or any portion of the Lots for which the Association has maintenance or repair obligations; (b) all costs or charges reasonably incurred to procure insurance for the protection of the Association and its Board; (c) any amounts reasonably necessary for reserves to maintain,

repair or replace the Common Area, any portion of the Lots for which the Association has maintenance or repair responsibility or to cover unpaid (delinquent) assessments; and (d) any other costs or charges necessary for the Board to perform its functions and fulfill its responsibilities under the Governing Documents.

Section 1.11. "Declaration" means this Declaration of Covenants, Conditions and Restrictions of Lee Fong Master Association, Inc., recorded in the Office of the County Recorder of Alameda County, California as it may be amended from time to time.

Section 1.12. "Development" means all real property and the Improvements thereon that are located within the geographical area to which this Declaration applies, as described in the Recitals above, and that are intended to create a Planned Development as defined in California Civil Code Section 4175.

Section 1.13. "Director" means a member of the Association's board of directors.

Section 1.14. "Eligible First Mortgagee" means a First Mortgagee who has sent a written request for notice to the Association, stating its name and address and the Lot number or address of the Lot on which it has the Mortgage.

Section 1.15. "Family" means two or more persons who live together and maintain a common household in a Lot whether or not they are all related to each other by birth, marriage or legal adoption.

Section 1.16. "First Mortgage" means a mortgage having priority over all other Mortgages.

Section 1.17. "First Mortgagee" means any person or entity, including, but not limited to, banks, savings and loan associations, insurance companies and other financial institutions, holding a recorded mortgage that constitutes an encumbrance upon one or more Lots first in priority of lien over all other encumbrances upon said Lot(s) securing payment of money, other than this Declaration and liens for real estate taxes and assessments.

Section 1.18. "Governing Documents" is a collective term that means and refers to this Declaration and to the Association's Articles, Bylaws, Association Rules and the policies and resolutions adopted by the Board and distributed to the Members.

Section 1.19. "Improvement" means an addition to or alteration of the real property comprising the Development or any portion thereof and includes, but is not restricted to, any Building, outbuilding, structure, shed, driveway, Parking Area, paving, walk, fence, wall, stair, arbor, pole, sign, tank, ditch, landscaping (including trees, hedges, plantings, lawns, shrubs), landscape structures, berms, fencing, pond, solar heating equipment, antennas, utilities, utility lines, gates, statues, markers, pipes, lines, lighting fixtures, and anything deemed to be a "work of improvement" as defined in Section 3106 of California Civil Code or any structure of any kind. In no event shall the term "Improvement" be interpreted to include projects that are either (a) restricted to the interior of a Residence or (b) are not visible from adjacent Common Area or Lots, so long as such projects do not involve modifications to load bearing walls or the structural framing of a Building, and do not interfere with other Members' use and enjoyment of their property.

Section 1.20. "Lien" means any lien, whether voluntary or involuntary.

Section 1.21. "Lot" means any parcel of real property designated by a number on the Map of the Development, excluding the Common Area. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other improvements constructed or to be constructed on a Lot.

Section 1.22. "Maintenance" means the exercise of reasonable care to keep Buildings, landscaping, lighting and other Common Area(s), Improvements and/or real or personal property in which the Association or an Owner holds an interest in a state similar to their original condition, normal wear and tear excepted. Maintenance of landscaping shall include the exercise of regular fertilization, irrigation or other garden management practices necessary to promote a healthy and weed free environment.

Section 1.23. "Maps" means the subdivision maps listed on Exhibit "C".

Section 1.24. "Member" means each person (or entity) who is named as an Owner on the recorded grant deed (or other valid title document) for any Lot within the Development. However persons (or entities) who hold an interest in a Lot merely as security for the performance of an obligation (*e.g.*, banks and other types of mortgage lenders) are not Owners or Members. When more than one person is an Owner of a Lot, all such persons shall be Members. However in no event shall more than one vote be cast with respect to any Lot.

Section 1.25. "Mortgage" means any security device encumbering all or any portion of the Development, including any deed of trust. The terms mortgage and deed of trust may be used interchangeably.

Section 1.26. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

Section 1.27. "Mortgage Lien" means the lien or charge or equivalent security interest of any mortgage or deed of trust.

Section 1.28. "Mortgagor" shall refer to the trustor under a deed of trust, as well as a mortgage.

Section 1.29. "Owner" means any person, firm, corporation or other entity that owns a fee simple interest in any Lot. However the term Owner shall not include persons (or entities) who hold an interest in a Lot merely as security for the performance of an obligation (*e.g.*, banks and other types of mortgage lenders).

Section 1.30. "Owner of Record" includes an Owner and means any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the Office of the Alameda County Recorder. If a Lot is transferred or conveyed to a trust, the Owner is the trustee or co-trustees of such trust.

Section 1.31. "Parking Area" means those areas within the Development designated for the parking of motor vehicles, including driveways, but not including enclosed garages.

Section 1.32. "Regular Assessment" means an Assessment levied on an Owner and his or her Lot in accordance with Section 5.2 hereof.

Section 1.33. "Residence" means a private residential dwelling constructed on any Lot in the Development.

Section 1.34. "Special Assessment" means an Assessment levied on an Owner and his or her Lot in accordance with Section 5.3 hereof.

Section 1.35. "Special Individual Assessment" means an Assessment made against an Owner and/or his or her Lot in accordance with Section 5.4 hereof.

Section 1.36. "Town House Area" means those particular Lots within the Development upon which Town House Units are constructed.

ARTICLE II: OWNERS' PROPERTY RIGHTS & OBLIGATIONS.

Section 2.1. Elements of Separate Interest. Ownership of each separate interest within the Development includes:

(a) **Lot.** A separate Lot as defined, depicted and described herein and identified by number on one of the Maps.

(b) **Nonexclusive Easements.** Nonexclusive easements appurtenant to the Lot for the use and enjoyment of the Common Area and as more particularly described in Section 2.2.

(c) **All Interests Subject to Governing Documents.** All of the above interests in real property shall be subject to all of the covenants, conditions, restrictions, easements, limitations, reservations, liens, and charges contained elsewhere in this Declaration, the Articles, the Bylaws, and the Association Rules.

Section 2.2. Owners' Right to Use and Enjoy Common Area. Subject to the provisions of this Declaration, the Common Area shall be owned by the Association and held and maintained for the use and enjoyment of the Members of the Association, their families, tenants, lessees, resident contract purchasers and/or guests as provided in the Governing Documents. There shall be no use of the Common Area except by the above specified persons. (See Section 2.4, below, regarding use by non-members).

(a) **Nonexclusive Easements.** Every Owner (and Owner's Family, resident contract purchasers, lessees, tenants, and/or guests) shall have a nonexclusive right and easement of enjoyment in and to the Common Area, including ingress and egress to and from the Owner's Lot, which shall be appurtenant to and shall pass with the title to every Lot, subject to the rights and restrictions set forth in this Section.

(b) **Limitations on Nonexclusive Easements.** The Owners' nonexclusive easements for use and enjoyment of the Common Area as described above are subject to the following limitations and restrictions:

(1) The right of the Association to adopt Association Rules as provided in Section 4.6(a)(2)(v) hereof, regulating the use and enjoyment of the Development for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or of any provision of the Governing Documents by any Owner or Tenant, to temporarily suspend the voting rights and/or right to use the Common Area, by any Owner and/or the Owner's Tenants and guests, subject to compliance with the due process requirements of Section 12.6 hereof.

(2) The right of the Association, in accordance with this Declaration, and/or the Association's Articles and Bylaws, to borrow money for the purpose of improving, restoring or maintaining the Common Area and/or the interests of the Owners and/or for the benefit of the Association, and in aid thereof, to mortgage said property; provided, however, that the rights of any such Mortgagee in said property shall be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of Section 5.3 hereof.

(3) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer shall be effective unless an instrument,

approved by at least two-thirds of the voting power of the Members consenting to such dedication or transfer has been recorded. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any Lot. Said instrument may be executed in counterparts so long as each counterpart is in recordable form. The Association shall, without a vote of the Members, have the right to grant licenses and or right of entry to the Common Area and/or easements through the Common Area for purposes consistent with the purposes of the Association that do not interfere with the use and enjoyment of the Common Area by the Members.

(4) The non-exclusive easements granted herein shall be subordinate to and shall not interfere with exclusive easements, if any.

(5) The right of any Owner to the full use and enjoyment of any mechanical or electrical service connections as may serve the Owner's Lot in conjunction with other Lots within the Development. The Owner of each Lot served by a sanitary sewer, water, gas, electric, telephone, television line or connection, heating or air conditioning conduit, duct, flue, or system, or similar utility/service connection shall be entitled to the full use and enjoyment of such portions of said connections as service Owners' Lot.

(6) The right of the Association to charge reasonable admission, use and/or other fees for the use of the Common Area or any portion thereof.

Section 2.3. Persons Subject to Governing Documents. All present and future Owners, tenants, lessees, contract purchasers and/or occupants of Lots within the Development (on behalf of themselves, their Family, guests, tenants, invitees, agents, servants, employees, licensees and/or any other persons that might use the facilities of the Planned Development Project in any manner, etc.) shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.).

Section 2.4. Delegation of Use.

(a) Delegation of Use and Membership Rights and the Leasing or Sale of Lots.

(1) **Assignment of Rights to Family Members.** Any Owner may delegate the Owner's rights to use and enjoy the Common Area to members of the Owner's Family residing at the Development.

(2) **Use by Invitees and Guests.** The invitees and guests of a Member shall have the right to use and enjoy the Common Areas within the Development, as long as the guest or invitee is in the company and supervision of the Member. Any such guest or invitee shall be subject to the same obligations imposed on the Member to observe the Rules, restrictions, and regulations of the Association as set forth in the Governing Documents.

(3) **Assignment of Rights to Tenants/Lessees.** Any Member who has leased or rented the Member's Lot to another person or persons shall in all events be deemed to have delegated to his or her tenants all rights of use and enjoyment of the Common Area. (Any such lease or rental shall be subject to any additional restrictions, limitations and/or requirements set forth in this Declaration or the other Governing Documents.). It is the express purpose and intent of the provisions of this Subsection 2.4(a) to limit the right of use and enjoyment of the Common Area to residents of the Development and members of their household and their guests. During any period when a Lot has been rented or leased, the Owner-lessor, his or her Family, guests and invitees shall not be entitled to use and enjoy the Common Areas of the Development, except to the extent reasonably necessary to perform the Owner's responsibilities as a lessor of the Lot, provided that this restriction shall not apply to an Owner-lessor who is contemporaneously residing in another Lot within the Development.

(4) Assignment of Rights to Contract Purchasers. Further, any Member who has sold that Member's Lot to a contract purchaser shall be entitled to delegate to such contract purchaser Member's rights and privileges of membership in the Association. Such Member shall be deemed to have delegated all rights to use and enjoyment of the Common Area to a contract purchaser who has assumed occupancy of said Lot. No delegation of any membership rights or privileges to a non-resident contract purchaser shall be binding, however, until the Board of Directors has been notified in writing pursuant to Section 2.7, below. Notwithstanding any delegation, until fee title to the Lot has been transferred of record, a contract seller shall remain liable for all assessments, fines and other charges imposed by the Board and for compliance with the Governing Documents by all Residents of Member's Lot/Residence.

(b) Association Rules. The right of any person to use and enjoy the Association Common Area shall at all times be subject to the regulations, policies, limitations, and restrictions set forth in the Association Rules, in this Declaration, and in the other Governing Documents.

Section 2.5. Obligations of Owners. Owners of Lots within the Development shall be subject to the following:

(a) Owner's Duty to Notify Association of Tenants & Contract Purchasers. Within ten (10) days of the execution of any agreement for sale of an Owner's Lot or any other transaction that will result in a change in the record ownership of the Lot, and/or within thirty (30) days of the execution of any lease of a Lot, the Lot Owner shall notify the Association in writing of the name and mailing address of the buyers, transferees or lessees, the name, address of any escrow holder for any sale or transfer, the escrow number of any escrow, and the date when the buyer, transferee or lessee will take possession of the Lot.

(b) New Owner's Duty to Notify Association. Each new owner shall within ten days of taking title to a Lot within the Development notify the Association in writing of the address to which all notices shall be sent.

(c) Effect of Failure to Notify. Until such time as the Association receives the notification required in Subsection (a) or (b), above, a transferee or lessee shall be deemed to have received any and all notices or other communications required or permitted to be given by the Association hereunder that are duly provided to the transferor or lessor. Pursuant to Section 4.6(a)(2)(v), the Board has the power to adopt Association Rules consistent with this Declaration relating to enforcement of these notice requirements and/or to impose penalties, including fines, for failures to give timely notice.

(d) Contract Purchasers. As provided in Section 2.4(a) above, a contract seller may delegate the seller's Member rights, including voting rights. Notwithstanding any delegation of rights to the contract purchaser, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

(e) Notification Regarding Governing Documents. Each owner shall provide copies of the Association's current Governing Documents to his or her lessees, who shall be subject to all restrictions set forth in the documents. Copies of the Governing Documents shall also be provided in a timely manner to all prospective purchasers.

(f) Payment of Assessments and Compliance With Association Rules. Each Owner shall pay when due each Regular, Special and Special Individual Assessment levied against the Owner and his or her Lot and shall observe, comply with and abide by any and all Association Rules set forth in, or promulgated by the Board pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area.

(g) Responsibility for Conduct of Others. Each Owner shall be fully responsible for informing members of Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees of the provisions of the Governing Documents and shall be fully responsible for any violation of the provisions of the Governing Documents by members of Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees. Each Owner shall further be fully responsible for the conduct and activities of Owner's pets and the pets of Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees.

(h) Indemnification for Damage & Injury.

(1) Each Owner shall be liable to the remaining Owners and the Association for any damage to the Common Area that may be sustained by reason of the willful misconduct, negligent act or omission of the Owner, Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, or licensees (to the extent any such damage is not covered by insurance).

(2) Each Owner, Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, and licensees, shall indemnify each and every other Owner and/or the Association against, and hold them harmless from, and defend them against, any claim of any person for personal injury or property damage occurring within the Common Area due to the willful misconduct, negligent act or omission of the Owner, Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, or licensees.

(3) Each Owner, by acceptance of his or her deed, agrees personally and for Family members, contract purchasers, tenants, guests, and invitees, to indemnify each and every other Owner, and to hold such Owner(s) harmless from, and to defend them against, any claim of any person for personal injury or property damage occurring within the Lot of that particular Owner except to the extent that the injury or damage occurred by reason of the willful or negligent act or omission of the Association or another Owner or other person temporarily visiting said Owner's Lot or the Development. No decision resulting in the liability of an Owner pursuant to this subsection shall be reached without providing such Owner with notice and hearing pursuant to Section 12.6.

(i) Discharge of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot.

(j) Joint Ownership of Lots. In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this Subsection (i) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(k) Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area, renunciation or abandonment of the Owner's Lot, any other act of renunciation or abandonment or otherwise, may avoid the burdens and obligations imposed on such Owner (by virtue of being an Owner or Association Member) by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Lot pursuant to this Declaration. Nor may any Owner divest itself of any such burden or obligation by attempting to assign responsibility therefore to a tenant, manager or any third person.

(l) Obligation To Permit Entry by Association and/or Adjacent Owners. Each Owner shall be obligated to permit the Owners of adjacent Lots or the representatives of such adjacent Owners to enter the Owner's Lot for purposes of performing installations, alterations or repairs to mechanical or electrical services that are reasonably necessary for the use and enjoyment of his or her Lot, provided that the adjacent

Owner furnishes the Owner whose Lot is being entered upon with at least twenty-four (24) hours written notice of his or her intent to enter the Lot, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform his or her use and schedule his or her entry in a manner that respects the privacy of the persons residing within the Lot and the convenience of the Owner of the Lot. Each Owner shall also honor the right of the Association and its agents to enter Lots as provided in Section 4.5(b) of this Declaration.

Section 2.6. Nonseverability of Component Interests.

(a) Severance Prohibited. An Owner shall not be entitled to sever his or her Lot from his or her membership in the Association. None of the component interests in a Lot can be severally sold, conveyed, encumbered or hypothecated. Any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any easement appurtenant to his or her Lot for the use and enjoyment of the Common Area from the Owner's Lot. Any attempt to do so shall be void. However, if permitted by the Association Rules, an Owner (or tenant) can sublet portions of the Owner's Lot. The Association shall be promptly notified of any sublet pursuant to Section 2.5(a) and any such sublease shall terminate upon the Owners' sale, conveyance or transfer of ownership of the Lot.

(b) Limitation on Interests Conveyed. Unless otherwise expressly stated, any conveyance of a Lot or any portion of it by an Owner shall be presumed to convey the entire Lot. However, nothing contained in this subsection shall preclude the Owner of any Lot estate from creating an estate for life or an estate for years or from creating a cotenancy or joint tenancy in the ownership of the Lot with any other person or persons.

Section 2.7. Transfer or Conveyance of Lot Terminates Obligations. Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any Assessments levied with respect to such Lot after the date of recording of the deed evidencing said transfer. No person, after the termination of said person's status as an Owner and prior to said person again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration. The voluntary conveyance of a Lot to a new Owner, however, will not extinguish any obligations of the transferring Owner for unpaid Assessments and other charges that were levied against said Lot and transferring Owner prior to the subject transfer.

Section 2.8. Separate Townhouse Declarations. Those Lots within the Town House Area are also subject to one or more additional declarations of covenants, conditions and restrictions. This Declaration does not supersede such declarations or any amendments thereto, and they remain in full effect. In the event of a conflict between those declarations and this Declaration, the provisions of this Declaration shall control.

ARTICLE III: RESTRICTIONS & USE OF PROPERTY.

Section 3.1. Occupancy and Use.

(a) Occupancy. In no event shall a Lot be occupied by more individuals than permitted by applicable zoning laws or governmental regulations

(b) Restriction on Businesses. Each Lot shall be used exclusively for residential purposes except as provided in this Section. No business of any kind shall be established, maintained, operated, permitted or conducted within the Development except home offices and/or such professional or administrative businesses as may be permitted by applicable statutes and/or ordinances provided, however, that there shall be no external evidence of such business/home office (*i.e.*, no increased pedestrian and/or vehicular traffic,

no signs, and no activities that are apparent or detectable by sight, sound or smell from outside of the Lot) and such activities do not increase Association's insurance obligations and/or premiums, and/or such activities are not inconsistent with residential nature of Development.

Section 3.2. Rental and Lease Restrictions. As used in this Article, the terms " lease" or "rental" shall mean any and all agreements, including, but not limited to leases, subleases and/or rental agreements, for the occupancy of any Lot. Any Owner who wishes to lease the Owner's Lot must comply with all of the provisions of this Section 3.2 and any applicable Association Rules.

(a) All Leases to be in Writing. All leases for a Lot within the Development shall be in writing.

(b) No Short-Term Leases/Subleases/Rentals and No Hotel Services. No lease may be for less than sixty (60) days, and no Owner, contract purchaser, tenant or lessee shall be permitted to lease or sublease a Lot for transient or hotel purposes (*i.e.*, a rental that includes providing the occupants with customary hotel service such as room service for food and beverage, maid service, laundry and linen service, or bellboy service). Subleasing of a portion of a Lot is not permitted unless expressly authorized by the Association Rules.

(c) All Lessees and Tenants Subject to Governing Documents. Any lease or rental of any Lot within the Development shall be subject to all provisions of the Governing Documents, all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents and all subsequent Amendments. Each Owner shall be responsible for compliance by such Owner's tenant(s) or lessee(s) with all of the provisions of the Governing Documents during the tenant's or lessee's occupancy and use of the Lot. The failure of any tenant or lessee to comply with the terms of the Governing Documents shall be a default under the lease/rental agreement and a failure to perform a condition and covenant of the lease/rental agreement.

(d) Owner's Duty of Notification. Owners of Lots shall disclose to potential buyers the existence of the rental restriction provisions set forth in this section. Each Owner shall notify the secretary of the Association or the Association Manager, if any, of the names of any tenant or lessee of the Owner's Lot pursuant to Section 2.5(a) and provide a copy of the current lease.

(e) Discipline of Lessors.

(1) Lessor's Responsibility for Tenant. An Owner who leases Owner's Lot to any person or entity shall be responsible for assuring compliance by the lessee and any other occupants with the provisions of the Governing Documents, including but not limited to, all easements, reservations, assessments, liens and charges created in accordance with this Declaration, all as amended and supplemented from time to time during the tenant's or lessee's occupancy and use of the Lot.

(2) Fine or Penalties for Violations of Governing Documents by Tenants. Subject to subsection (iii), below, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances, which may include the imposition of fines and penalties against the Owner. Any fine or penalty levied pursuant to this Section shall be considered a Special Individual Assessment as defined in Section 5.4, below.

(3) Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Development, or any part thereof, or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to take any disciplinary action against an Owner-lessor on account of the misconduct of the Owner's lessee or

tenant unless and until the notice and hearing requirements of Article XII of this Declaration have been fulfilled, and the Owner-lessor has been given a reasonable opportunity to obtain the compliance of his or her tenant with the Governing Documents or to terminate the lease. Any lessee or tenant whose conduct is the basis of such disciplinary action shall have the same notice and hearing rights as the Owner.

(f) Discipline of Lessees; Exercise of Eviction Authority. Whether or not such right is stated in any rental agreement, every Owner who rents his or her Lot automatically grants to the Association the right to determine a tenant's default under the Governing Documents and of terminating the tenancy and evicting the tenant for such default. If the Board brings such eviction action, either in its own name or in the Owner's name, the Owner shall be responsible for all costs thereof, including reasonable attorney's fees, and shall reimburse the Association upon demand for the entire amount of such costs. If the Owner refuses to make such reimbursement, the sums shall constitute a Special Individual Assessment (see Section 5.4 below) for which a lien may be imposed against the Owner's Lot. The Association's right to maintain an eviction action hereunder is derived from Sections 1165 and 383 of the California Code of Civil Procedure and shall only arise if, in the Board's sole discretion, the tenant's or lessee's conduct involves continuing or repeated damage to or destruction of Common Areas, or constitutes a continuing nuisance or unreasonable interference with the quiet enjoyment of other residents.

Section 3.3. Offensive Conduct, Nuisance, Obstructions, Hazards or Drilling. The following activities are prohibited and shall not be performed on, upon or within the Development:

(a) Activities that are nuisances, or that cause unreasonable embarrassment, disturbance or annoyance to any residents of the Development, Owners, Board Members and/or Association agents, service providers and/or employees or that shall, in any way, interfere with residents' use and enjoyment of their Lots and/or the Common Area and facilities thereon, provided, however, that the Board may decline to involve itself or the Association in disputes concerning adjacent Lot Owners if such dispute does not involve the Common Area or any other Owner or resident of the Development and if the Board determines that in view of the possible expenditure of time, effort and costs involved in attempting to resolve the dispute, it would not be in the best interests of the Association to become involved;

(b) Activities that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Association;

(c) Activities that are in violation of any governmental statute, ordinance, rule and/or regulation, including specifically the brandishing and/or discharging of firearms within the Development;

(d) Drilling, refining, quarrying or mining operations of any kind;

(e) Use of machinery or equipment of any kind, except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private residence or appurtenant structures within the Development;

(f) Activities that will obstruct the sidewalks, streets or Common Area within the Development or interfere with the free use thereof, except such obstruction as may reasonably be required in connection with repairs;

(g) Activities that impede, alter or otherwise interfere with the drainage patterns or facilities in, over, under, across and through the Development without the prior written consent of the Board and all public authorities with jurisdiction;

(h) Activities or conditions that would induce, breed, or harbor infectious plant diseases, noxious

insects, rodents and/or vermin;

(i) Harassment, or physical or verbal abuse of the Association's contractors, employees, agents, or manager, or any obstruction or interference with such persons while they are performing duties for the Association.

Without limiting any of the foregoing, no Owner or other resident shall permit noise, sound(s) or sight(s) that would unreasonably disturb another's enjoyment of his or her Lot and/or the Common Area.

Section 3.4. Signs. No signs of any type shall be placed upon the General Common Area without the prior written consent of the Board. No commercial signs except "For Sale" or "For Lease" signs not over five (5) square feet; no noncommercial signs and posters greater than nine (9) square feet and no noncommercial flags or banners that are more than fifteen (15) square feet are permitted within the Development, unless such signs, posters or flags are not visible from outside the Lot.

Section 3.5. Antennas and Satellite Dishes. No owner shall construct, install and/or use and operate any radio and/or television antenna, satellite dish, other signal reception or transmission devices or related equipment within the Common Area except with the express written permission of the Board. No satellite dish or antenna greater than one meter (39.4 inches) in diameter shall be installed within any Lot so as to be visible at ground level from any adjacent Lot or Common Area. Lot Owners shall notify the Board of the installation of any other antenna, satellite dish or signal reception or transmission device (except those installed within the interior of the Residence) and shall comply with all Association Rules regarding installation, safety and maintenance of such equipment. All such Association Rules shall conform to the requirements of state and federal law.

Section 3.6. Pets. No animals, fowl, reptiles, insects or poultry shall be kept within the Development, except that cats, dogs or ordinary household pets, such as birds or fish, may be kept, subject to the Association Rules adopted by the Board.

Pets shall be retained on leashes or under control of the Owner or attendant at all times while in or upon the Common Area.

No animals shall be kept, bred or raised anywhere in the development or on a Lot for commercial purposes or in unreasonable numbers. After notice and an opportunity for a hearing has been provided by the Board, the Board may order the removal of any animal or fowl from the Common Area which causes excessive noise or otherwise creates a nuisance or safety concern. The Board may order the immediate permanent removal of any animal or fowl which, in the Board's discretion, causes a nuisance or danger to other Owners, provided that notice and an opportunity for a hearing will then be afforded to the Owner within a reasonable time after said removal.

If any pet shall defecate on any portion of the Common Area, the Owner thereof must immediately remove the feces and properly dispose of it.

Section 3.7. Garages and Driveways. When garages are not in use, garage doors shall be closed. Garages shall be used only for the purpose of parking vehicles and normal household storage. No additions or modifications other than normal household storage purposes shall be allowed. No vehicle shall be parked in any driveway so that any portion of such vehicle extends into the street or walkway.

Section 3.8. Vehicles. No mobile home, boat, trailer, or commercial vehicle of any kind (except regular sized vehicles or pickup trucks, (one ton or less in size), shall be kept, stored or parked on any portion of the Development; provided, however, that such vehicles may be kept, stored or parked inside garages.

Recreational vehicles may be considered for approval to be parked on certain Lots conducive to side yard parking behind a fence.

Commercial vehicles being used in the furnishing of services to the Association or to an Owner's dwelling or Lot shall be permitted to park temporarily within the Development in areas designated by the Board for service vehicles. No automobile, boat or other vehicle shall be constructed, reconstructed or undergo major repair on any portion of the Residence Lots (except wholly within closed garages) or Common Area within the Development.

The Association may have unauthorized vehicles or vehicles which are improperly parked towed from the Development at the owner's expense.

Section 3.9. Rubbish. No weeds, rubbish, debris, objects or materials of any kind shall be placed or permitted to accumulate upon any Common Area, any Lot, or any area within the Development which render the area unsanitary, unsightly, offensive or detrimental to any property in the vicinity. Trash, garbage, rubbish and other waste shall be kept only in sanitary containers provided by the City or local waste management company. All containers must be kept out of sight in garages or backyard areas. Sanitary containers must be set out no sooner than the night before pickup and put away by the evening of the same day of pickup.

Section 3.10. Clotheslines, Wood Piles, Storage/Stored Items. No clotheslines, wood piles, storage, equipment or stored items shall be constructed, placed or permitted on any part of the Development unless obscured from view of adjoining Lots and/or street by a fence or screening approval by the Architectural Committee.

Section 3.11. Diseased Plants. No plants or seeds infected with noxious insects or plant diseases shall be brought upon, grown or maintained upon any Common Area or Residence Lot with the Development.

Section 3.12. Use/Presence of Wheeled Vehicles. No wheeled vehicle or items of transportation of any type including, but not limited to, bicycles, tricycles, big wheels, roller skates, roller blades or skateboards, shall be operated in, or over any landscaped areas except for service vehicles required to maintain the landscape. Use of all these items are also subject to local ordinances. If any use constitutes a nuisance or safety hazard, the Board has authority to restrict or prohibit further use or operation of the subject item.

Section 3.13. Fences. No part of any fence or wall that can be seen from Common Area or streets, or adjacent Lots, may exceed six (6) feet in height, unless approved by the Architectural Committee.

Section 3.14. Windows. No windows shall be covered with aluminum foil or similar material.

Section 3.15. Common Areas. Common Area shall be used by the Owners and Occupants of Lots, and their guests, subject to rules established by the Board of Directors of the Association.

No Owner of a Lot or any resident shall make any alteration or improvement to the Common Area, or remove any planting, structure, furnishing or other object therefrom, except with the written consent of the Association's Board of Directors.

Nothing shall be stored or dumped in the Common Area without the prior consent of the Board. Where

no consent is sought, the Association has the right to remove stored items at the Owner's expense. If storage facilities are required to accommodate this action, all charges for same will be assessed to the homeowner under Article V herein.

Section 3.17. Variances. Upon application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article III, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. In considering and acting upon any request for a variance, the Board shall follow the procedures set forth in Section 8.10 of this Declaration for the granting of architectural variances.

Section 3.18. Enforcement of Property Use Restrictions.

(a) Voluntary Compliance. The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and other residents with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under Section 12.6 hereof, the Owner or Tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her appeal rights.

(b) Board's Discretion Concerning Enforcement. The Board shall have the discretion to decide the type of enforcement action which is appropriate for any violation of the restrictions contained in this Article III, taking into consideration the potential benefits to the Association (and/or its members) resulting from any such enforcement action as compared with the anticipated financial costs.

ARTICLE IV: HOMEOWNERS ASSOCIATION.

Section 4.1. Management and Operation. The Association shall manage and operate the Development in accordance with applicable provisions of the Governing Documents and California law, including law applicable to non-profit mutual benefit corporations and common interest developments.

Section 4.2. Association Membership. Every record Owner of a Lot shall be a Member of the Association. The Owner(s) of a Lot shall hold jointly one membership in the Association for each Lot owned. The membership shall be appurtenant to each Lot and may not be separated from ownership of the Lot to which it relates. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or deed. Tenants who are delegated rights of use pursuant to Section 2.4 hereof do not thereby become Members, although the tenant and members of the tenant's Family shall, at all times, be subject to the provisions of all Governing Documents.

Each Owner shall remain a Member of the Association until his or her ownership in every Lot in the Development ceases, at which time his or her membership in the Association shall automatically cease. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant and then only to the purchaser. In the case of a sale, membership passes automatically to the purchaser upon recording of a deed evidencing transfer of title to the Lot.

Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his or her Lot, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

Section 4.3. Voting. Only Members shall be entitled to vote, and votes shall be cast for each Lot owned by said Member, as more particularly set forth in the Bylaws. Voting rights may be temporarily suspended under those circumstances described in Section 12.6, below.

Section 4.4. One Class of Membership. The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

Section 4.5. Powers and Authority of the Association.

(a) Powers Generally. The Association shall have the responsibility of managing and maintaining the Common Areas and shall discharge all duties and responsibilities imposed on the Association by the Governing Documents and applicable California law. In the discharge of such responsibilities and duties, the Association and its Board shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

The Association and its Board of Directors shall have the power to do any and all lawful things that may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts that may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in this Declaration and Section 5.1 of the Bylaws.

(b) Association's Limited Right of Entry. At the Board's discretion, the Association, and/or its agents/representative shall have the right, when necessary, to enter any Lot to perform the Association's obligations under this Declaration, including (i) exterior maintenance or repair obligations; (ii) obligations to enforce the architectural and land use restrictions of Article III and Article VIII hereof; (iii) any obligations with respect to construction, maintenance and repair of adjacent Common Areas, utilities and/or other services; or (iv) to make necessary repairs that an Owner has failed to perform that, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property or the Owners in common.

The Association's rights of entry under this Subsection (b) shall be immediate in case of an emergency originating in or threatening the Lot where entry is required, or any adjoining Lots or Common Area, and the Association's work may be performed under such circumstances whether or not the Owner or Owner's lessee is present. In all non-emergency situations, the Association or its agents shall furnish the Owner or Owner's lessee with at least twenty-four (24) hours written notice of the Association's intent to enter the Lot, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing within the Lot.

The Association's rights of entry under this Subsection (b) shall expressly include the right to transfer said rights of entry to others (including, but not limited to employees, contractors and/or service providers retained by the Association) by permit, license, easement, or otherwise, for the benefit of the Planned Development and the Owners of Lots therein.

(c) Association as Attorney-in-Fact for Owners. Without limiting the generality of the

foregoing, the Association is hereby irrevocably appointed as the attorney-in-fact for the Owners of each and every Lot to (i) manage, control and deal with the interest of such Owners in the Common Area so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder; (ii) deal with Development upon its destruction or obsolescence as hereinafter provided; and (iii) deal with and handle insurance and insurance proceeds, as provided in Articles IX and X hereof, and condemnation and condemnation awards, as provided in Article XI hereof. The acceptance by any person or entity of any interest in any Lot shall constitute an appointment of the Association as the Owner's attorney-in-fact as provided above.

Section 4.6. Board of Directors. The affairs of the Association shall be managed by or under the direction of the Board. The number and qualifications of the Directors shall be as established in the Bylaws.

(a) Powers of the Board. The Board shall have all of the powers and duties set forth in the Governing Documents:

(1) Exclusive Power. Except as expressly otherwise provided herein, the powers and duties of the Association that the Governing Documents do not reserve to the Members shall be exclusively exercised and performed by the Board (or such Committees or officers as the Board may establish, elect or appoint pursuant to the provisions of the Bylaws). Any power to be exercised or duty to be performed by the Association shall not be exercised or performed by any Owner individually without the written consent of the Board.

(2) General Powers of the Board. Without limiting any powers of the Board conferred elsewhere in the Governing Documents, the Board shall have the following powers:

(i) To call meetings of the Members.

(ii) To appoint and remove at pleasure all officers, committees (including the Nominating and Architectural Committees), agents and employees of the Association, prescribe their duties, fix their compensation (subject to Section 4.7(c)), and require of them such security or fidelity bonds as it may deem expedient. Nothing contained in this Declaration shall be construed to prohibit the employment by the Association of any Member, Director or officer of the Association in any capacity whatsoever.

(iii) To establish, fix, levy, assess and collect assessments against the Owners of Lots within the Development and to enforce payment of such Assessments in accordance with Article V of this Declaration. Any Assessments levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of the Governing Documents.

(iv) To authorize and cause the Association, subject to Section 4.7, to: (1) enter into management contracts and contracts for the day-to-day operation of the Association and the discharge of its responsibilities and obligations; or (2) enter into lease, license or other agreements for the use of property or facilities not a part of the Common Area. No contract for professional management shall have a term of more than three (3) years and each such contract shall be subject to all the other provisions hereof and shall be terminable by either party without cause or payment of a termination fee on sixty (60) days written notice. Any reference to the "term" of a contract as used in this subsection shall not include any option or automatic renewal or extension period so long as the term of the contract may not be renewed or extended if notice is given by the Association pursuant to provisions contained within the contract.

(v) To adopt, amend, and repeal Association Rules consistent with this Declaration relating to use of the Common Area and the residential Lots, the conduct of Owners, and their families, tenants, guests and invitees within the Development and such other matters as authorized by the Governing

Documents. The Association Rules shall be considered as part of the Governing Documents of the Association and may be enforced in the same manner as any other Governing Document. However, no Association Rule shall restrict any rights of Owners or residents established by the other Governing Documents (Articles, Bylaws and this Declaration), and in the event of any conflict between an Association Rule and any other Governing Document, the provisions of the other Governing Document shall control.

(vi) To delegate its powers to committees, officers, or employees of the Association.

(vii) To borrow funds and incur debt for the purpose of maintaining and improving the Common Area, and to encumber property and/or member assessments of the Association as security for the repayment of such debt.

(viii) To grant easements on, over, under, across, and through the Development for public utility and other purposes consistent with the provisions of this Declaration and the intended use of the Development as a Planned Development.

(ix) Except as expressly otherwise provided herein, the Board shall have the exclusive right and obligation to manage and administer the Common Area and to contract for all goods, services, and insurance, payment for which is to be made from the assessments hereinafter provided.

(x) Open bank accounts on behalf of the Association and designate the signatories to such bank accounts.

(xi) Bring and defend actions on behalf of two or more Members or the Association to protect the interests of the Members or the Association, as such, as long as the action is pertinent to the operations of the Association, and to assess the Members for the cost of such litigation. However, the Board shall have the discretion to decide whether or not it is in the Association's best interest to pursue any such enforcement action, including taking into consideration the potential benefits to the Association (and/or its members) resulting from any such enforcement action as compared with the anticipated financial costs. Where the Board, in its discretion, determines that it is not in the Association's best interest to file an enforcement action, the Board shall notify, in writing, any Member(s) who have requested enforcement by the Association. Prior to filing litigation regarding any disciplinary action against a Member, the Board shall comply with the requirements set forth in Section 12.6.

(xii) Establish and impose monetary penalties (fines) for the infraction of any provision of the Governing Documents, in accordance with a schedule of monetary penalties adopted by the Board and distributed to all Members, and suspend the voting or other membership rights and privileges of a Member, during any period in which such Member shall be in default in the payment of any assessment, fine, or other charge levied by the Association, and/or for any infraction of the Governing Documents.

(3) No Active Business. Nothing contained in this Declaration, however, shall be construed to give the Board authority to conduct an active business for profit on behalf of the Association, all of the Owners, or any of them. The Board shall have no such power or authority. However, this Subsection (iii) shall not prohibit the Association and/or its Board from acquiring, owning, leasing and/or selling any Lot within the Development.

(b) Duties of the Board. The Board shall:

(1) Association Duties. Cause all duties imposed on the Association by Governing Documents to be properly performed.

(2) Records. Cause a complete record of all its acts and corporate affairs to be kept, and prepare budgets, financial statements and other reports and disclosures for the Association as required by the Governing Documents and California law.

(3) Supervise. Supervise all officers, agents and employees of the Association and to see that their duties are properly performed.

(4) Assessments. Fix, levy and collect assessments pursuant to the provisions of this Declaration and California law.

(5) Insurance. Contract for casualty, liability and other insurance, sureties and/or bonds (including indemnity bonds) on behalf of the Association with such coverages and in such amounts as required by this Declaration and as deemed necessary by the Board.

(6) Vacancies. Fill a vacancy or vacancies on the Board except for a vacancy created by the removal of a Board Member by a Member recall.

(7) Discharge of Liens. Pay any amount necessary to Bond or discharge any claim that may be or become a lien or encumbrance levied against the Development as a whole or any part thereof that constitutes a lien against the Common Area, rather than merely against the interest therein of particular Owners; provided, however, that where one or more Owners are responsible for the existence of such lien, they shall jointly and severally be liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens shall be assessed against each such Owner and its Lot as provided in Section 5.4. No decision resulting in such liability or assessment shall be reached before providing the Owner or Owners with notice and hearing satisfying the requirements of Section 12.6 of this Declaration.

(8) Enforcement. Pursue any and all remedies available under Article XII of this Declaration (or otherwise permitted under California law) for violation of the Governing Documents. Notwithstanding anything to the contrary herein contained, neither the Board nor the Association shall have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his or her Lot, including access thereto over and across the Common Area, except when such loss or forfeiture is the result of (A) a judgment of a court, (B) a decision arising out of arbitration, (C) on account of a foreclosure (judicial or under the power of sale herein granted) for failure of the Owner to pay the assessments levied pursuant to the provisions of this Declaration.

(9) Operating Requirements. Obtain any other material, supplies, furniture, property, labor, services, maintenance, repairs, construction, reconstruction, structural alterations, insurance, taxes, or assessments that the Association is required to secure or pay by law, local requirement, or pursuant to the terms of this Declaration, or as is necessary for the operation of the Development, or for the enforcement of this Declaration; provided, however, that if any such materials, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are provided for particular Lots, the costs thereof shall, as is reasonable, be assessed to such Lots and the Owners thereof as provided in Section 6.3 or as provided in the Bylaws.

Section 4.7. Limitations on Powers of The Association. Neither the Board nor the Association shall have the power to take, and both are hereby expressly prohibited from taking, any of the following actions without the vote or written assent of a majority of the voting power of the Association's Members:

(a) Entering into a contract with a third person to furnish goods or services for the Common Area, the Lots or the Association for a term longer than one (1) year with the following exceptions:

(1) A management contract as long as such contract contains provisions that allow the Association to terminate the management services under the contract upon a notice period that does not exceed sixty (60) days.

(2) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission (and contracts with utility districts, sanitary services providers, energy providers, telephone service providers and/or cable or satellite dish or comparable service provider); provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(3) Prepaid casualty and/or liability insurance policies not to exceed three (3) years duration provided that the policy permits for short-rate cancellation by the insured.

(4) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not to exceed five (5) years' duration.

For purposes of this Subsection (a) of Section 4.7 the one (1) year maximum "term" of a contract does not include any option period(s), renewal period(s) and/or extension(s) of time to the contract term so long as the contract contains provisions allowing the Association to non-renew and/or cancel the contract upon the expiration of said term.

(b) Selling, during any fiscal year, property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(c) Paying compensation to Directors or officers of the Association for services performed, except that the Board may authorize reimbursement to a Director or officer for expenses incurred in carrying on the business of the Association.

(d) Filling a vacancy on the Board caused by the removal of a Director by the Members.

Section 4.8. Nonliability of Officials. To the fullest extent permitted by law, neither a current nor past Director, officer, Committee of the Association or Member of a Committee of the Association, nor the Board (collectively and individually referred to as the "Released Party"), shall be liable to any Member, Owner, the Association or any other party for any damage, loss, claim, liability or prejudice suffered or claimed on account of any decision, approval, disapproval, course of action, act, inaction, omission, error, negligence or the like made in good faith and that such person or entity reasonably believed to be the scope of its duties.

(a) **Claims Regarding Breach of Duty.** No Released Party shall be personally liable to any of the Association's Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and enforcement of the Governing Documents.

(b) **Other Claims Involving Tortuous Acts and Property Damage.** No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the Tortuous

act or omission of a volunteer Member of the Board or volunteer officer of the Association shall recover damages from such Board Member or officer if all of the following conditions are satisfied:

- (1) The Board Member or officer is an Owner of no more than two Lots;
- (2) The act or omission was performed within the scope of the volunteer Board member's or officer's Association duties;
- (3) The act or omission was performed in good faith;
- (4) The act or omission was not willful, wanton, or grossly negligent;
- (5) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim was made one or more policies of insurance that include coverage for general liability of the Association and individual liability of the officers and directors of the Association for negligent acts or omissions in their official capacities, with minimum coverage for both types of insurance equal to the amounts specified in Civil Code Section 5800 or comparable superseding statute.

The payment of actual expenses incurred by a Board Member or officer in the execution of that person's Association duties shall not affect that person's status as a volunteer Board Member or officer for the purposes of this section. However, any director or officer who receives direct or indirect compensation from a financial institution that acquired a Lot within the Development as the result of a judicial or nonjudicial foreclosure proceeding is not a volunteer.

The provisions of this Subsection (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations under Civil Code Section 5800 or comparable superseding statute. In the event that Civil Code section is amended or superseded by another, similar provision of the California statutes, this Subsection (b) shall be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor code provision.

(c) Indemnification of Directors, Officers, Employees and/or Agents. The indemnification rights (including the right to advancement of expenses) of Directors, Officers, employees and/or agents shall be governed by the provisions of Corporation Code Section 7237 or comparable superseding statute. As set forth in Article IX, the Association has the right to purchase and maintain insurance on behalf of its Directors, Officers, employees and/or agents against liability asserted against or incurred by any Director, Officer, employee and/or agent in its capacity or status as such.

ARTICLE V: ASSESSMENTS.

Section 5.1. Assessments Generally.

(a) Covenant to Pay Assessments. Each Owner of one (1) or more Lots, by acceptance of a deed or other conveyance of the Lot (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) Regular Assessments, (ii) Special Assessments, and (iii) Special Individual Assessments levied by the Association as hereinafter provided, together with all additional charges. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such assessments and charges and for the enforcement of the liens hereinafter provided for. Each such Assessment shall be established and collected as hereinafter provided.

(b) Extent of Owner's Personal Obligation for Assessments.

(1) Obligation Runs With the Land. The obligation to pay Assessments and charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of record of any Lot within the Development shall, in turn, become liable to pay all Assessments and charges assessed during the time he or she is record Owner of such Lot.

(2) Personal Debt of Owner. All Assessments permitted or required herein, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a separate, distinct and personal debt and a personal obligation of the Person who was the Owner of the Lot at the time the Assessment was levied. For purposes of this subsection, for Special Assessments payable in installments, the date the assessment is levied shall be the date the installment payment is due.

(3) Liability of Subsequent Owner. Any Grantee and/or Owner who acquires title to a Lot (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot so purchased that become due and payable after the date of such sale, and shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability.

(4) Liability of Prior Owner. After a record Owner transfers, of record, any Lot he or she owns, he or she shall not be liable for any Assessments levied after the transfer with respect to that Lot. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed and the previous Owner shall remain personally liable. A contract seller of any Lot shall continue to be liable for all Assessments and charges until a conveyance by deed of such Lot is recorded in the Office of the County Recorder of Contra Costa County.

(c) Authority of Board to Levy Assessments. The Board shall have the power, duty and authority to levy Regular and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law. The Board shall not levy or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied. The Board shall also have the power and authority to levy Special Individual Assessments against particular Owners and their Lot(s).

(d) Authority of Board to Record Assessment Lien. The Board shall have authority to prepare and record a lien against any Lot for which assessments are delinquent, and to foreclose upon such lien pursuant to Section 5.9 of this Declaration.

(e) No Avoidance of Assessment Obligations. No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Lot or other property owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his or her Lot or any other portion of the Development.

(f) Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any additional charges imposed as provided for by the Governing Documents. No offsets against any such Assessment shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Governing Documents.

Section 5.2. Regular Assessments.

(a) Purpose of Regular Assessments. All Regular Assessments levied by the Association shall

be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Development and, in particular, for the maintenance, operation and improvement of the Lots, Common Area, and any real or personal property in which the Association holds an interest.

(b) Annual Budget; Regular Assessments & Board Authority. In accord with the timing provisions of Civil Code Section 5300 (or comparable superseding statute), if any, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Areas), prepare and then distribute to all Association Members a budget satisfying the requirements of the Governing Documents and California law.

(c) Board or Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in Subsections (d) and (f) below, the Board of Directors may not impose a total aggregate Regular Assessment that is more than twenty percent (20%) greater than the total aggregate Regular Assessment for the Association's immediately preceding fiscal year without the approval of the Members (see Section 5.7, below). For purposes of this Subsection (c), the phrase "total aggregate Regular Assessment" means the amount of Regular Assessment assessed to and due from all Lots for that particular year.

(d) Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment shall not apply to Assessment increases necessary to address emergency situations. For purposes of this Subsection (d), an emergency situation is any of the following:

(1) An extraordinary expense required by an order of a court.

(2) An extraordinary expense necessary to repair or maintain the Common Areas or any portion of the separate interests that the Association is obligated to maintain where a threat to personal safety is discovered.

(3) An extraordinary expense necessary to repair or maintain the Common Areas or any portion of the separate interests that the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Subsection (a), above, provided that, prior to the imposition or collection of an assessment under this Subsection (d)(iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

(e) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with Subsection (b), above, shall be equally divided and then allocated among, assessed against, and charged to each Lot.

(f) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 5.3 for that year, shall be automatically assessed against each Owner and his or her Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Association.

The failure of the Board to fix Regular Assessments hereunder before the expiration of any year,

for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year. Failure to provide a copy of the budget to any Owner shall not affect the validity of assessments based thereon so long as that Owner receives reasonable notice before the Association commences any action or proceeding to enforce collection thereof.

(g) Assessment Due Date, Installment Payments & Delinquency. The Regular Assessment levied against each Owner and his or her Lot for the current fiscal year shall be divided into four (4) equal quarterly installments so long as the respective Owner is not in default (*i.e.*, is current on all assessments). Each quarterly installment is due and payable on the first day of January, April, July and October or in such other manner and/or on such other date or dates as may be established from time to time by the Association's Board of Directors.

Installments of Regular Assessments shall be delinquent if not actually received by the Association or its designated agent by the last day of the month in which the Assessment is due (if such day is on a weekend or holiday, then on the next business day). In the event of a default in the payment of any installment, the Association may pursue the remedies set forth in Section 5.9, below, as to said delinquency.

(h) Adjustment of Regular Assessment during Fiscal Year. Subject to limitation on the amount of any increase in Regular Assessments without Member approval as set forth in Section 5.2(c) of this Declaration and under California law, if at any time during the course of any fiscal year the board shall deem the amount of the Regular Assessment to be inadequate or excessive, the Board shall have the power, based on a resolution duly adopted at an open meeting of the Board, to revise the assessment for the remainder of the fiscal year, which increased assessment will be effective upon the notice to the members required by subsection (i) below.

(i) Mailing Notice of Increased Assessment. The Board of Directors shall mail to each Owner at the street address of the Owner's Lot, or at such other address as the Owner may designate in writing to the Association, a notice of any increase in the amount of the Regular Assessment no less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

Section 5.3. Special Assessments.

(a) Purpose of Special Assessments. Subject to the membership approval requirements set forth in Subsection (b), below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes:

(1) Insufficient Regular Assessment. If, at any time, the Regular Assessment for any fiscal year is insufficient due to extraordinary expenses not contemplated in the budget prepared for that fiscal year, then the Board of Directors shall levy and collect a Special Assessment for the purpose of defraying, in whole or in part, any deficit that the Association may incur in the performance of its duties and the discharge of its obligations under the Governing Documents. However, the Board's assessment authority pursuant to this subsection shall be subject to the membership approval requirement set forth in Section 5.3(b) below.

(2) Capital Improvements. The Board may also levy Special Assessments for additional capital improvements within the Common Area (*i.e.*, improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Area). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, replacement, and repair of the Common Area through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area in

accordance with Article IX of this Declaration.

(3) Reimbursement of Reserve Account(s). A Special Assessment may be levied to reimburse any Reserve Account for funds borrowed from it to meet current operating expenses or to deal with emergencies.

(4) Repair of Defects or Damage. A Special Assessment may be levied to repair damage or defects discovered in the Common Area or within those portions of a Lot or Residence that are the responsibility of the Association to maintain and repair, where the reserve funds are inadequate to pay for such repairs, or where the affected component is not a component included in the reserve funding program.

(b) Membership Approval. No Special Assessments described in Section 5.3(a) hereof that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied shall be made without the vote or written approval of the Owners pursuant to Section 5.7 below. This Owner approval requirement shall not apply to any Special Assessment levied to address "emergency situations" as defined in Section 5.2(d).

(c) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 5.2(e), above. Notice of the Special Assessment so levied shall be mailed to each Owner.

(d) Due Date for Special Assessments. Unless the time for payment is extended by the Board, payment of all Special Assessments shall be due thirty (30) days after the Board gives the Owners written notice thereof or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

(e) Installment Payments of Special Assessment. The Board may, in its discretion, prorate the amount of any permitted Special Assessment over a period of months. If prorated, the monthly prorated amount of any Special Assessment shall be due and payable at the same time as the Regular Assessment monthly installments. Installments of Special Assessments shall be delinquent if not actually received by the Association or its designated agent by the fifteenth (15th) day of the month in which the Special Assessment installment is due (if on a weekend or holiday, then on the next business day). In the event of a default in the payment of any Special Assessment installment, the Association may pursue the remedies set forth in Section 5.9, below, as to said delinquency and the Board may in its discretion declare the entire unpaid amount of the Special Assessment immediately due and payable.

Section 5.4. Special Individual Assessments.

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 5.3, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in Subsections (1) through (5), below or as otherwise provided in this Declaration or the Governing Documents, provided that no Special Individual Assessments may be imposed against an Owner pursuant to this Section 5.4 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 12.6 hereof, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(1) Damage to Common Area. In the event that any damage to, or destruction of, any

portion of the Common Area, including any portion of a Lot that the Association is obligated to repair and maintain, is caused by the willful misconduct and/or negligent act or omission of any Owner, any Member of Owner's Family, or any of Owner's tenants, lessees, guests, contract purchasers, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses, including but not limited to any costs or expenses incurred in deterring, apprehending and/or identifying those persons causing damage, incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(2) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses to accomplish (A) the payment of delinquent Assessments, (B) any repair, maintenance or replacement to any portion of the Development that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (C) to otherwise bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(3) Required Maintenance on Lots. As more particularly provided in Section 4.5(b) and 6.3(b) (and without limiting the generality of those subsections), if the Board, in its discretion, determines that any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, junk, or improper weed or vegetation control, the Association shall have the right to enter said Lot, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

(4) Diminution in Insurance Proceeds. As more particularly provided in Article IX of this Declaration, the Association shall levy a Special Individual Assessment for the amount of the loss in insurance proceeds against any Owner who, in violation of this Declaration or other Governing Documents, caused any diminution in the insurance proceeds otherwise payable to the Association due to the Owner's individual casualty insurance.

(5) Increase in Insurance Burden. The Association shall have the authority to levy a Special Individual Assessment for the amount of the increased insurance premium against any Owner who, in violation of the Governing Documents, caused any increase in the rate of insurance paid by the Association to reimburse the Association for any such increase in the rate of insurance.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed, in Section 5.4(a), notice thereof shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment. Installments of Special Individual Assessments shall be delinquent if not actually received by the Association or its designated agent by the forty-fifth (45th) day after mailing of notice of the Assessment. In the event of a default in the payment of any Special Individual Assessment, the Association may declare that Owner's Special Individual Assessment to be in default and pursue the remedies set forth in Section 5.9, below as to said delinquency, subject to subsection (c) below.

(c) Limitation on Use of Nonjudicial Foreclosure. As long as Civil Code Section 5725 (or comparable superseding statutes) places restrictions upon the Association's foreclosure powers, any lien that is based upon one or more Special Individual Assessment imposed by the Board as a disciplinary measure (*i.e.*, fines or penalties imposed under Article XII) can only be enforceable by the sale of the Lot pursuant

to judicial foreclosure. All other liens under Subsection (a) above may be enforceable by the sale of said Lot under nonjudicial foreclosure by power of sale pursuant to Civil Code Sections 2924, 2924b and/or 2924c or comparable superseding statute(s), as well as judicial foreclosure, subject to the conditions and procedural requirements of Section 5.9 below.

Section 5.5. Reasonableness of Assessments. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 5.6. Exemption of Certain Parts of the Development From Assessments. The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Development dedicated and accepted by a local public authority;
- (b) The Common Area; and
- (c) Any Lot owned by the Association.

Section 5.7. Notice and Procedure for Member Approval. In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 5.2 and/or 5.3, approval of the requisite percentage of the Members shall be solicited by written ballot conducted in accordance with Section 3.4 of the Bylaws and the Association Rules. The approval of a majority of a quorum of the Members shall be required for approval of any Regular Assessment increase or Special Assessment requiring Member approval. The quorum required for such membership action shall be the percentage required by the Bylaws.

Section 5.8. Maintenance of Assessment Funds.

(a) **Bank Accounts.** All sums received or collected by the Association from Assessments, together with any interest or other charges thereon, shall be promptly deposited in two (2) or more insured checking, savings or money market accounts in a bank, savings and loan association or other financial institution selected by the Board of Directors that has offices located within the United States of America, which accounts shall be clearly designated as either an "operating" or "reserve" account.

There shall be established and maintained a cash deposit account into which shall be deposited the operating portion of all Assessments. Disbursements from such account shall be for the general operation of the Association including, but not limited to, wages, repairs, betterments, maintenance, and other operating expenses of the Development. The Board shall maintain any other accounts it shall deem necessary to carry out its purposes, including (at minimum) a reserve account for replacement of capital improvements as set forth in this Article V.

In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees.

The Board, and such officers or agents of the Association as the Board shall designate, shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the

maintenance at all times of accurate records thereof.

To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in Subsection (b), below.

(b) Separate Accounts & Commingling of Funds. Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the amount required to accomplish the purpose for which such Assessment was levied, such surplus may, in the Board's discretion, be returned proportionately to the contributors thereof, reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded or credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom, provided that receipts and disbursements of Special Assessments made pursuant to Section 5.3 shall be accounted for together with the receipts and disbursements of Regular Assessments.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

(c) Checks. All checks (or other demands for payments of Association money) and/or notes of the Association shall be signed by the President or by such other Directors and/or Officers or such other person or persons as the Board of Directors may from time to time designate. Notwithstanding the foregoing, any withdrawal of funds from Association reserve accounts shall meet the signature requirements of Civil Code Section 5510(a) (*i.e.*, two Directors or an Officer (who is not a Director) and a Director).

Section 5.9. Collection of Assessments; Enforcement of Liens.

(a) Delinquent Assessments. If any payment of a Regular or Special Assessment (installment or lump sum) or any payment of a Special Individual Assessment assessed to any Owner is not actually received by the Association or its designated agent within fifteen (15) days after the same becomes due, such payment shall be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law beginning thirty (30) days after the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to impose late charges for any delinquent Assessments in the amount of ten dollars or ten percent (10%) of the delinquent amount, whichever is greater.

(b) Effect of Nonpayment of Assessments.

(1) Creation and Imposition of Liens for Delinquent Assessments. The amount of any

delinquent Regular, Special or Special Individual Assessment together with any late charges, interest, costs and/or reasonable attorneys' fees attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed from and after the time the Association causes to be recorded with the Contra Costa County Recorder a Notice of Delinquent Assessment in conformance with Civil Code Section 5675 or comparable superseding statute. Each default shall constitute a separate basis for a lien. Upon the Association's receipt of payment of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded in the Office of the County Recorder of the County of Contra Costa, State of California, a Notice of Satisfaction and Release of Lien.

(2) Partial Payment of Assessments. Subject to the limitations imposed by Civil Code Section 5655 or comparable superseding statute, if any, any partial payments the Association receives will be applied as specified in the Association's Delinquent Assessment Collection Policy and/or Association Rules.

(3) Remedies Available to the Association to Collect Assessments. In the event of default in payment of any assessment, the Association may commence any procedure for collection upon its own decision. In addition to any other remedies herein or by law provided, the Association may enforce each such obligation as follows: The Association may initiate a legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the Owner's Lot or accept a deed in lieu of foreclosure. Foreclosure by the Association of its lien may be by judicial foreclosure or by nonjudicial foreclosure. However, judicial or nonjudicial foreclosure shall only be available to collect delinquent assessments in excess of \$1,800 exclusive of any accelerated assessments, late charges, fees and costs of collection, attorney's fees or interest or if the assessments are more than 12 months delinquent. The Association shall, in collecting any delinquent assessment, comply with the requirements for internal dispute resolution and alternative dispute resolution set forth in the Governing Documents or California law.

(4) Nonjudicial Foreclosure. Nonjudicial foreclosure shall be commenced by the Association in compliance with California law. (See Civil Code Section 2924c, or comparable superseding statute). Each of the Owners, by mere acceptance of a deed to a Lot, gives the Association the power to appoint a trustee and attorney-in-fact by special power of attorney to enforce and to foreclose such lien by private power of sale as provided in Division Third, Part 4, Title 14, Chapter 1, Article 1, Sections 2920 et seq. of the Civil Code of the State of California and further grants to the Association the authority and power to sell the Lot of such defaulting Owner, or any part thereof to satisfy said lien, for lawful money of the United States to the highest bidder. The Association shall have the rights conferred by California Civil Code Section 2934a to assign its rights and obligations as trustee in any nonjudicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust and for purposes of said Section 2934a, the Association shall be deemed to be the sole beneficiary of the delinquent Assessment obligation. Furthermore, in lieu of an assignment of trusteeship, the Association shall be entitled to employ the services of a title insurance company or other responsible company authorized to serve as a trustee in nonjudicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any nonjudicial foreclosure hereunder.

(5) Judicial Foreclosure. In the event foreclosure is by an action in Superior Court to obtain a court order authorizing foreclosure, reasonable costs, including attorneys' fees, shall be allowed.

(6) Actions for Money Judgment. In the event of a default in payment of any Assessment, the Association, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid Assessments, costs and attorneys' fees without foreclosure or waiver of the lien securing same.

(c) Payment Plans. The Board may, but is not required to adopt rules or policies (which shall

become part of the Association Rules) permitting an owner to make installment payments on any delinquent assessments, accelerated assessments, late charges, fees and costs of collection, attorney's fees and/or interest, subject to reasonable terms and conditions, including payment of additional administrative costs for administering such a payment plan.

Section 5.10. Transfer of Lot by Sale or Foreclosure. The following shall govern the Association's rights to enforce its Assessment collection remedies following the sale or foreclosure of a Lot.

(a) Assessment Liens Recorded Prior to Transfer. Except as provided in Subsection (b), below, the sale or transfer of any Lot shall not affect any Assessment lien duly recorded with respect to that Lot before the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

(b) Foreclosure by Holder of Prior Encumbrance. The Association's assessment lien shall be extinguished as to all delinquent sums, late charges, interest, and costs of collection incurred before the sale or transfer of a Lot under a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not under a deed-in-lieu of foreclosure). A "prior encumbrance" means any First Mortgage or other mortgage or lien recorded before the Association's Notice of Delinquent Assessment is recorded.

(c) Liability of New Owner for Future Assessments. No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of that Lot (whether it be the former beneficiary of the First Mortgage or other prior encumbrance, or a third party acquiring an interest in the Lot) from liability for any assessments thereafter becoming due or from the lien thereof.

(d) Personal Liability of Prior Owner for Assessments. No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Association's right to maintain an action against the foreclosed previous Owner of the Lot personally to collect the delinquent assessments, late charges, interest, and associated costs of collection incurred by that prior Owner prior to the sale or transfer.

Section 5.11. Priorities. Except as otherwise provided by law, the Lien securing each of the Assessments provided for under this Article V shall have priority, as of the date of recording of the Notice of Delinquent Assessment, over all other liens and encumbrances applicable to the Lot, except (a) all taxes, bonds, Assessments and other levies that, by law, would be superior thereto; (b) any lien or encumbrance recorded prior to the recording of the Notice of Delinquent Assessment; or (c) the lien or charge of any First Mortgage of record made in good faith and for value, provided that such subordination shall apply only to the Assessments that have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such First Mortgage.

Section 5.12. Estoppel Certificate. A certificate executed by any two (2) members of the Board setting forth the amount of any due and unpaid assessments with respect to a Lot (or the fact that all assessments due are paid, if such is the case) shall be conclusive against the Board, the Association, and/or the Owners in favor of any and all persons who rely thereon in good faith. Any Owner shall be entitled to such a certificate within ten (10) days after demand therefore and upon payment of a reasonable fee not to exceed the greatest amount charged for a loan statement of condition by a major bank with headquarters in San Francisco, California.

Section 5.13. Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, such taxes shall be included in the Regular Assessments imposed pursuant to Section 5.2 and, if necessary, a Special Assessment

may be levied against the Lots in an amount equal to such taxes to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

Section 5.14. Assignment of Rents. Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration that are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable. Upon Owner's default, the right to collect and retain rents shall be deemed revoked, and the Association, after providing written notice to the defaulting Owner may, in its discretion, pursue one or more of the remedies provided in Civil Code §2938(c) or comparable superseding statute for enforcement of an assignment of rents provision.

Section 5.15. Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article V, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Lot.

Section 5.16. Secondary Address. Any Member may provide the Association with a secondary address. Any notice of a secondary address shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. If a secondary address is provided in accordance with this section, the Association shall send any and all correspondence and legal notices regarding assessments and foreclosures required by this Article V or by California law to both the primary and the secondary address.

ARTICLE VI: MAINTENANCE RESPONSIBILITIES.

The Development shall be maintained in an attractive, safe, and sanitary condition and in a good state of repair.

Section 6.1. Association Maintenance Responsibility.

(a) **Maintenance of Common Area.** Except as is provided in this Section 6.1, the Association shall be solely responsible for all maintenance, repair, and replacement within the Common Area, including all Improvements, utilities and landscaping thereon, and all property that may be acquired by the Association in a neat, safe, attractive, sanitary and orderly condition. Landscaping within the Common Area shall be maintained at all times in a healthful, attractive and weed-free manner.

(b) **Maintenance of Drainage Facility.** Except as is maintained by government entities, maintain all of the drainage facilities within the Common Area and provide for collection of all storm waters originating on and entering the Development and conveyance thereof to a natural watercourse or the existing storm drainage facility, and take reasonable steps to protect all of the Common Area from damage caused by surface water flows originating in or outside of the Development.

(c) **Construction and Maintenance of Fences.** Construct, establish and maintain fences wholly on Common Area. Owners are responsible to maintain all fences on or enclosing the individual Lots. As for the soundwall fences, the adjacent Lot Owner is responsible for all maintenance of the soundwall fences, including painting, maintaining all structural aspects, and providing insurance protection.

(d) Maintenance of Slope Areas. Maintain all slope areas within the Common Area (including any drainage facilities, systems and patterns and irrigation facilities or systems located thereon) in a neat, orderly, safe, and sanitary condition and in such a manner as to enhance their appearance, maintain established slope ratios, prevent erosion sliding problems and to facilitate the orderly discharge of water through established drainage systems and patterns. All natural slope areas within the Common Area shall be maintained in such a manner as to prevent noxious or dangerous weeds, sagebrush, chaparral or any other brush or weeds from becoming a nuisance.

(e) Maintenance of Lighting Systems in Common Area. Maintain all private lighting systems.

Section 6.2. Owner Maintenance Responsibilities.

(a) Common Area. Each Owner shall be liable for the costs incurred to repair or replace any portion of the Common Area that is damaged by the willful or negligent act/omission of an Owner, or Owner's Family, contract purchasers, lessees, or tenants, or their licensees, guests, or invitees. Except as specifically provided in this Section 6.2, Owners shall have no responsibility for maintenance, repair or replacement of any portion of the Common Area or any utility, drain, structure, landscaping or other improvement located with the Common Area.

(b) Lots/Residences.

(i) Except as the extent that maintenance, repair or replacement of any Lot/Residence (or portion thereof) is expressly and clearly made the responsibility of the Association in Section 6.1 above, each Owner shall be responsible for any and all maintenance, repair and replacement of the Owner's Lot and any Improvements thereon. If said maintenance includes or involves any structural repair or replacement that is visible from the Common Area and/or public streets, the structural repair or replacement shall be in conformance with the architectural design of the Development and comply with the provisions of Article VIII.

(ii) All Lots and any improvements placed thereon shall at all times be maintained in such a manner as to prevent their becoming unsightly by reason of unattractive growth on such Lots or the accumulation of rubbish or debris thereon.

(iii) Owner shall maintain all Buildings and other structures and roofs upon an individual Lot, and each portion thereof, including the replacement thereof when necessary and appropriate, in good repair and in an attractive, neat, safe, sanitary and orderly condition and shall keep exteriors properly painted, in conformance with the standards adopted by the Architectural Committee, unless otherwise provided in this Declaration. Failure to do so may subject the Owner to discipline under Article XII of this Declaration, including a court action to obtain compliance with the Governing Documents.

(iv) There shall be no change in Lot elevations from those originally established.

(c) Wood-Destroying Pests and Organisms. The Owner of each Lot shall be solely responsible for eradication of any wood-destroying pests or organisms found anywhere within the Lot (including exterior surfaces of the residences) and for repair of any damage, maintenance and replacement for all or any portion of his/her Lot and improvements thereon caused by any such wood-destroying pests or organisms.

(d) Drainage Facilities. The Owner of each Lot shall have the right to use the drainage facilities originally established for the purpose of draining the Development and improvements thereon; such right of drainage shall not include the right to discharge noxious or offensive matter. Water shall not be allowed to drain or flow onto Lots, or Common Area, except to the extent provided for by the drainage facilities,

systems and patterns originally established or permitted by the Board. All drainage and slope area plans as originally established, and as supplemented with the approval of the Architectural Committee, shall be kept on file with the Association's records. No Owner shall change or block the drainage facilities without the prior approval of the Association.

(f) Trees. All tree removal is subject to requirements of the City of Concord. The Lot owner is responsible for any damage caused by the roots or limbs of trees growing within his or her Lot.

(g) Landscaping and Landscaped Areas. All landscaping installed shall be in conformity with the standards adopted by the Board. All landscaping on a Lot shall be maintained by the Lot Owner in a healthful, attractive and weed-free condition. No Owner may plant or landscape in a manner that encroaches upon a neighbor's Lot. If there is a dispute over a planting or landscaping issue, the Board may, but is not required to, intervene and decide what, if any, change shall be made or action shall be taken.

(h) Pipes, Wires, Conduits, Etc. Each Owner is responsible to assure all pipes, wires, conduits, cables, etc., that are located within the Lot are appropriately maintained. Damages caused by water pipes on the Lot are the responsibility of the Owner.

(i) Adverse Effects of Maintenance, Repair and/or Replacement Activities. Nothing in this Section 6.2 shall entitle any Owner to impair the structural integrity of any building, Common Area and/or other Lot/Residence; increase the noise transmission between Lots or Residences; interfere with the use and enjoyment of the Common Area or of the other Lots/Residences; and/or violate any other provision of the Governing Documents.

Section 6.3. Recovery of Costs of Certain Repairs and Maintenance.

(a) Willful or Negligent Acts of Owner. In the event that the need for maintenance or repair that would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, Owner's Family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 5.4 of this Declaration and the procedural requirements of Section 12.6.

(b) Owner's Failure to Perform Required Maintenance. In the event that an Owner fails to perform maintenance functions for which Owner is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within ten (10) days after receipt thereof, or within such longer time as the Board deems appropriate. If the Owner refuses or fails to perform any necessary repair or maintenance within the allotted time, the Association may exercise its rights under Subsection 4.5(b) to enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 12.6, hereof. A Special Individual Assessment pursuant to Section 5.4 of this Declaration may be levied against the Owner to recover the costs incurred by the Association in performing such repairs or maintenance. In the event of an emergency threatening immediate injury to persons or property, the Association need not provide a notice and hearing before entering the Lot or Residence and performing the necessary maintenance or repairs; however a notice and hearing will still be required before any Special Individual Assessment for the work may be levied against the Owner.

Section 6.4. Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the maintenance obligations hereunder, individual Owners and the Association shall cooperate in the performance of maintenance work.

Section 6.5. Maintenance Matrix. Exhibit "B" to this declaration is a maintenance matrix indicating the allocation of maintenance responsibilities for many of the components within the Development. It is intended to supplement and clarify this Article VI. In the event of any conflict between Exhibit "B" and this Article, the provisions of this Article shall govern.

ARTICLE VII: EASEMENTS & RESERVATIONS.

Section 7.1. Encroachment Easements. If any portion of the Common Area encroaches on any Lot or if any portion of a Lot encroaches on the Common Area, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Lots and the Common Area are made subject to such easements. If the dimensions or location of a Lot or other Improvement differs from that shown and depicted on the approved plans, the actual dimensions and location shall prevail over that shown and depicted on the Map for any and all purposes.

If any structure within a Lot is partially or totally destroyed and then rebuilt and any encroachment on the Common Area results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Lots and the Common Area are made subject to such easements.

In no event shall a valid easement for encroachment be created in favor of an Owner or Owners, if said encroachment occurred due to the willful conduct of said Owner or Owners.

Section 7.2. Maintenance Easements. An easement is hereby granted to the Association, its officers, agents, employees, and to any management company or contractor selected by the Association to enter in or to cross over the Common Area and any Lot to perform the Association's duties of maintenance and repair of the Lots and/or Common Area, provided that any entry by the Association or its officers, agents or employees into any Lot shall only be undertaken in strict compliance with Section 4.5(b). An easement is also granted to each Owner and such Owner's agents or contractors to enter into or cross over the Common Area or any other Lot to perform any maintenance or repairs required of the Owner by the Governing Documents, provided that such Owner shall notify the Owner of any Lot to which he or she needs access as required by Section 4.5(b) and shall obtain the Association's written consent before performing any maintenance or repair work within the Common Area.

Section 7.3. Utilities. The rights and duties of the Owners of Lots within the Development with respect to sanitary sewer and water, electricity, gas and telephone lines and facilities shall be as follows:

(a) Wherever sanitary sewer house connections and/or water house connections or electricity, gas or telephone lines are installed within the Development, which connections or any portion thereof lie in or upon Lots owned by other than the Owner of a Lot served by said connections, the Owners of any Lot served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Lots or to have the utility companies enter upon the Lots within the Development in or upon which said connections, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set below.

(b) Wherever sanitary sewer house connections and/or water house connections or electricity, gas, or telephone lines are installed within the Development, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his/her Lot.

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then, upon written request of one of such

Owners addressed to the Master Association, the matter shall be submitted to its Board of Directors who shall decide the dispute, and the decision of the Board shall be final and conclusive and binding on the parties.

Section 7.4. Other Easements. Each Lot and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Development and each Lot and Common Area as shown on the Maps, including but not limited to driveways now or hereafter located upon the General Common Area for ingress, egress and utility purposes.

ARTICLE VIII: ARCHITECTURAL CONTROL.

Section 8.1. Improvements Requiring Approval by Board. No Improvement, including landscaping or excavation work that in any way alters the exterior appearance of any Lot or the Improvements located upon such Lot from its natural or improved state as it exists at the time this Declaration is recorded or would visibly change any building shall be made or done without the prior written approval of the Board in accordance with this Article. However, plantings within the fenced portion of any Lot that are not visible at ground level from any adjacent Lot, Common Area or public street or sidewalk are not subject to this Article. Also, the Architectural Rules and Policies of the Association, as authorized in Section 8.4 below, may identify minor alterations and Improvements that may be made to the exterior of any Lot or Residence without complying with this Article.

Section 8.2. Appointment of Architectural Committee. The Board may appoint an Architectural Committee to review any application for an Improvement and advise the Board as to the approval or disapproval of such application. If created, the Architectural Committee shall consist of a chairman and no less than two (2) nor more than four (4) additional members. All members of the Committee must be Members of the Association.

Section 8.3. Architectural Duties of Board. It shall be the duty of the Board to consider and act upon the proposals and plans submitted to it pursuant to this Declaration and, as required, to adopt Architectural Rules and Regulations pursuant to Section 8.4.

Section 8.4. Architectural Rules and Policies. The Board may from time to time adopt, amend and repeal rules and policies to be known as "Architectural Rules and Guidelines." Said rules shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for the review and approval of proposed Improvements and guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features that are recommended for use within the Development, provided that said rules shall not be in derogation of the minimum standards required by this Declaration. The Architectural Rules may also require, as a prerequisite to processing any application for an Improvement covered by this Article, payment of a reasonable fee for plan review and processing. In the event of any conflict between the Architectural Rules and this Declaration, the Declaration shall prevail.

Section 8.5. Preliminary Approval. Any Owner proposing to construct Improvements that require the prior approval of the Board may apply to the Board for preliminary approval by submission of preliminary drawings of the proposed improvements in accordance with the Association's Architectural Rules and Regulations. The Purpose of the preliminary approval procedure is to allow an Owner proposing to make substantial improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for the final approval. Application for preliminary approval shall be considered and disposed of as follows:

(a) Within thirty (30) days after proper application for preliminary approval, the Board shall consider and act upon such request. The Board shall grant the approval only if the proposed improvement, to the extent its nature and characteristics are shown by application, would be entitled to a final approval on the basis of a full and complete application. In granting or denying approval, the Board may give the applicant such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the applicant.

(b) Any preliminary approval granted by the Board shall be effective for a period of ninety (90) days from the date of the issuance thereof. During said period, any application for final approval that consists of proposed Improvements in accordance with the provisions of the preliminary approval, and is otherwise acceptable under the terms of these Governing Documents, shall be approved by the Board.

(c) In no event, shall any preliminary approval be deemed to be an approval authorizing construction of the subject Improvements.

Section 8.6. Submission of Plans; Action by Board. Plans, specifications and such information and documentation as the Board may require for all proposed Improvements shall be submitted to the Board by personal delivery or first class mail to the Association Manager or other person designated by the Board.

The Board shall notify the applicant of its receipt of the application within ten (10) days of receipt of the application. Approval by the Board can contain conditions or requests for modification of particular aspects of the Owner's plan and specifications.

All approvals and rejections of requests shall be in writing; provided, however, in the event the Board fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, the request shall be deemed denied. Under such circumstances, the written request may be resubmitted by certified mail or hand delivery. If the Board fails to approve or disapprove such resubmitted application within thirty (30) days of its resubmittal, the request shall be deemed approved.

Section 8.7. Basis for Approval of Improvements. When a proposed Improvement is submitted to the Board for review, it shall grant the requested approval only if, in its sole discretion, the Board finds that all of the following provisions have been satisfied:

(a) The Owner has complied with those provisions of the Architectural Rules and Regulations pertaining to the content, and procedures for submittal, of plans and specifications;

(b) The Owner's plans and specifications (i) conform to this Declaration and to the Architectural Rules and Regulations in effect at the time such plans are submitted to the Board; and (ii) will not interfere with the reasonable enjoyment of any other Owner of his or her property; and

(c) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Development, in harmony with the external structures and/or landscaping within the Development and consistent with the overall plan and scheme of development and the purposes of this Declaration.

The Board shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Lot, even if the same or a similar improvement or component has previously been approved for use at another location within the Development if factors such as drainage, topography or visibility from roads, Common Areas or other Lots or prior adverse experience with the product or components used in construction of the Improvement, design of the Improvement or its use at

other locations within the Development mitigate against erection of the Improvement or use of a particular component thereof on the Lot involved in the Owner's submittal.

It is expressly agreed that the Board shall be entitled to make subjective judgments and to consider the acsthetics of a proposal when considering an Owner's request so long as the Architectural Committee/Board acts reasonably and in good faith.

Without in any way limiting the generality of the foregoing, the Board, or any member thereof, may, but is not required to, consult with or hear the views of any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Board.

In approving a request for construction of an Improvement, the Board may condition approval upon the adoption of modifications in the plans and specifications or observance of restrictions as to location, noise abatement, color or materials modifications or similar mitigating conditions. The Board shall return one set of such plans to the applicant, with either written notice of approval or disapproval.

Section 8.8. Request for Reconsideration. Upon the written request of the applicant or any Association Member, the Board may review (and affirm or alter) any decision made pursuant to this Article, provided that any such request for reconsideration shall be presented to the Board within thirty (30) days after the Board's findings and decision has been mailed or delivered to the Owner who submitted the subject application, or, in the case of Common Area Improvements, to the managing agent of the Association. The Board, at an open meeting, shall review such request and render a decision within sixty (60) days of receipt thereof or at the time of the next regular Board meeting, whichever is later. A written notice of the Board's decision shall be sent to the person or persons who submitted the request for reconsideration within fifteen (15) days after the decision is made.

Section 8.9. Non-Waiver. The approval by the Board of any plans, drawings or specifications for any work done or proposed or for any other matter requiring the approval of the Board under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 8.10. Meetings. An application made under this Article may be considered at any open meeting of the Board or at a special meeting called solely for that purpose. The Owner making the application shall be informed by Individual Notice (as defined in Section 1.4(b) of the Bylaws) of the date, time and place of the Board meeting at which the application will be considered by the Board.

Section 8.11. Variances. The Board shall be entitled to allow reasonable variances with respect to this Article VIII or any restrictions specified in Article III in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided that the following conditions are met:

(a) Required Hearing. If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under this Declaration, the Board must conduct a hearing on the proposed variance after giving at least ten (10) days prior written notice to all Owners of Lots within one-hundred (100) feet of the property for which the variance applies. The Owners receiving notice of the proposed variance shall have thirty (30) days in which to submit to the Board written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the thirty (30) day comment period has expired.

(b) Criteria. The Board must make a good faith determination that (i) the requested variance does not constitute a material deviation from the overall plan and scheme of development within the Development or from any restriction contained herein or that the proposal allows the objectives of the violated

requirement(s) to be substantially achieved despite noncompliance; or (ii) the variance relates to a requirement hereunder that is unnecessary or burdensome under the circumstances; or (iii) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Lot, Common Area or Owner within the Development.

Section 8.12. Compliance with Governmental Requirements. The application to the Association and the review and approval of any proposal, plans or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements. The Owner bears sole responsibility for obtaining all necessary governmental permits/authorizations and/or complying with all governmental requirements including specifically applicable building codes.

Section 8.13. Commencement. Upon receipt of approval pursuant to this Article VIII, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and/or excavations pursuant to said approval. Commencement by Owner shall occur, in all cases, within ninety (90) days from the date of such approval. If the Owner fails to comply with this Section 8.13, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of said ninety (90) day period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

Section 8.14. Completion. The Owner shall complete the construction, reconstruction, refinishing or alteration of any such improvement within ninety days after commencing construction thereof, except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this Section 8.14, the Board shall proceed in accordance with the provisions of Sections 8.15 and 8.16, below, as though the failure to complete the improvements was a non-compliance with approved plans.

Section 8.15. Inspection. Inspection of work and correction of defects therein shall proceed as follows:

(a) Required Notice. Upon the completion of any construction, reconstruction, alteration or refinishing of the exterior of any Improvements or upon the completion of any other work for which approved plans are required under this Article VIII, the Owner shall give written notice thereof to the Board or Association Manager.

(b) Inspection of Completed Improvement. Within sixty (60) days thereafter, the Board, or its duly authorized representative, may inspect such Improvement to determine whether it was constructed, reconstructed, altered or refinished to substantial compliance with the approved plans. If the Board finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying the particulars of noncompliance and shall require the Owner to remedy such noncompliance.

(c) Failure to Remedy Noncompliance. If the Owner shall have failed to remedy such noncompliance upon the expiration of thirty (30) days from the date of such notification, the Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing date shall be not more than thirty (30) nor less than fifteen (15) days after the Board determines the existence of the subject noncompliance. Notice of the hearing date shall be given to the Owner and, in the discretion of the Board, to any other interested party at least ten (10) days in advance of the hearing date.

(d) Hearing and Determination by Board. At the hearing, the Owner and, in the Board's discretion, any other interested person, may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board shall make a final determination as to whether there is a noncompliance, and, if so, the nature thereof. If noncompliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the noncomplying improvement or remedy the noncompliance. All expenses incurred in connection therewith shall be assessed against the Owner as a Special Individual Assessment.

(e) Committee's Failure to Notify Owner. If, for any reason, the Board fails to notify an Owner of any noncompliance within sixty (60) days after receipt of the Owner's notice of completion, the improvement shall be deemed to be in accordance with said approved plans.

Section 8.16. Enforcement. In the event that it comes to the knowledge and attention of the Board, the Association Manager or the agents or employees of either that a work of Improvement, or any modification thereof, is proceeding without proper approval and/or in noncompliance with approved plans, the Association shall be entitled to exercise enforcement remedies specified in this Declaration, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper Board review and approval is obtained.

Section 8.17. Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall execute an estoppel certificate, executed by any two (2) of its members, certifying (with respect to any Lot owned by the applicant Owner) that as of the date thereof, either (i) all Improvements made and other work completed by said Owner with respect to the Lot comply with this Declaration; or (ii) that such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the bases of such noncompliance. Any purchaser from the Owner, or anyone deriving any interest in said Lot through the Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any persons deriving any interest through them.

Section 8.18. Liability for Unauthorized Improvements By Prior Owners. The current Owner(s) of a Lot are responsible for any Improvements or modifications to the Lot not authorized under this Article made by prior Owners of the Lot, and may be required by the Board to remove or modify any such unauthorized Improvements or modifications. However, this Section shall not apply to any current Owner who has obtained an Estoppel Certificate for his or her Lot as provided in Section 8.17 above, and such Owner shall only be responsible for unauthorized Improvements or modifications made after the issuance of the Estoppel Certificate.

Section 8.19. Liability for Actions of Board or Committee. Neither the Board, Architectural Committee (if any) nor any Member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development of any property within the Development; and/or (d) the execution and filing of an estoppel certificate pursuant to Section 8.17, whether or not the facts therein are correct; provided, however, that the Board, Architectural Committee or such member has acted in good faith on the basis of such information as may be possessed by it or him.

ARTICLE IX: INSURANCE.

Section 9.1. Types of Insurance Coverage. The Association shall purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance with the coverages described below:

(a) Fire & Casualty Insurance. A policy or policies of property insurance covering all insurable Common Area Improvements, including fixtures and building service equipment against loss or damage by fire or other casualty for one hundred percent (100%) replacement cost (without respect to depreciation) of all such insured property and improvements, exclusive of land, foundations, excavation and other items normally excluded from coverage.

The policies maintained by the Association pursuant to this Subsection 9.1(a) shall contain, if available at a reasonable cost, (1) an agreed amount endorsement or its equivalent, (2) an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or the equivalent, (3) a "Special Form" or "All Risk" endorsement, and (4) a clause to permit cash settlements for full insurable value in case of partial destruction, if available.

The Board shall have the power and authority to have an insurance appraisal and/or yearly insurance appraisal updates performed to aid the Board in determining the amounts of coverage needed by the Association.

(b) Public Liability & Property Damage Insurance. The Association shall obtain and maintain a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, the Association Manager, if any, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and any other Association owned or maintained real or personal property including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than three million dollars (\$3,000,000.00) (or such higher amounts as may be required under California law, including but not limited to Civil Code Sections 5800 and 5805).

(c) Directors & Officers Insurance. The Association shall obtain and maintain a policy of directors' and officers' errors & omissions insurance naming the Association, the Association Manager and such other persons as the Board may designate as insured parties. The limits of such insurance shall not be less than one million dollars (\$1,000,000.00) (or such higher amounts as may be required under California law, including but not limited to Civil Code Section 5800). Directors' and officers' errors & omissions insurance (*i.e.*, D&O coverage) shall insure against claims arising out of or based upon negligent acts, errors, omissions, or alleged breaches of duty of any Director or any officer, while acting in its capacity as such.

(d) Fidelity Bonds/Insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than the level required by Federal Home Loan Mortgage Corporation (Fannie Mae) and shall contain an endorsement for officers, directors, trustees and employees of the Association, the Association Manager and for all other persons handling or responsible for funds of or administered by the Association. The bonds shall name the Association as an obligee and shall contain a waiver by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.

(e) Additional Insurance and Bonds. To the extent such insurance is available at a reasonable premium cost, the Association may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality

of this Section 9.1(e), insurance on the Association's personal property, umbrella insurance, demolition insurance, earthquake insurance, flood insurance, and workers' compensation insurance. The amounts of said coverage shall be determined by the Board. The Association shall be the owner and beneficiary of any such insurance obtained.

Section 9.2. Owners Right to Policies & Notice of Significant Changes. Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Association Members at any reasonable time. Pursuant to Civil Code Section 5810 or comparable superseding statute, the Association shall notify Members if any insurance policies are not immediately renewed or replaced upon cancellation or lapse and/or if there is a significant change in the policy.

Section 9.3. First Mortgagees' Insurance Requirements & Right to Obtain Policies. An Eligible First Mortgagee for any Lot in the Development has the right to supply the Association with its minimum insurance requirements. If the Association's insurance policies do not currently meet the minimum requirements of those Eligible First Mortgagees who have provided said minimum requirements to the Association, the Eligible First Mortgagees can request that the Association increase its coverage to match those minimum insurance requirements. The requesting Eligible First Mortgagee(s) shall be responsible for the payment of any increase in the Association's insurance premiums due to said request. All First Mortgagees for any Lot in the Development have the right, upon written request, to obtain copies of current insurance policies and/or satisfactory evidence of the Association's payment of premiums.

Notwithstanding any provision to the contrary elsewhere in this Declaration, the Association shall continuously maintain in effect such fire, casualty, and liability insurance and fidelity bonds meeting the insurance and fidelity bond requirements for Planned Development projects established by the Federal National Mortgage Association (or the Federal Home Loan Mortgage Corporation) so long as said agency(ies) have notified the Association in writing that it is a Mortgagee, Owner of a Lot, an insurer of any Mortgage, or under contract to purchase a Mortgage, except to the extent that such coverage is not available or has been waived in writing by the Federal National Mortgage Association (or the Federal Home Loan Mortgage Corporation). Such insurance requirements may include, but not by way of limitation, a "Special Lot Endorsement" or an "Inflation Guard Endorsement."

Section 9.4. Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by Section 9.1 is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available that provides, as nearly as possible, the coverage described above. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

Section 9.5. Limitations on Required Insurance. The Association shall not be held responsible for insuring any Residences or other Improvements within a Lot or the personal property of the occupants of any Lot.

Section 9.6. Owners' Insurance.

(a) Property Insurance. Each Owner shall obtain and pay for a casualty and fire insurance policy insuring all of the insurable Improvements within his or her Lot for the full replacement value of such Improvements. Proceeds from any such policy shall be payable to the Lot Owner, who shall be required to repair or rebuild the covered Improvements.

(b) Liability Insurance. An Owner may carry whatever personal liability and property damage liability insurance with respect to his or her Lot and Residence that he or she desires. However, any such

policy shall include a waiver of subrogation clause acceptable to the Board and to any institutional First Mortgagee.

Section 9.7. Deductibles.

(a) Owner Responsible for Loss. An Owner responsible for causing an insurable loss to Common Area Improvements (by either the Owner's acts and/or the acts of Owner's Family members, contract purchasers, tenants, guests, or invitees or as a result of a defective condition within the Owner's Lot), shall be obligated to contribute the Owner's proportional share of the insurance deductible, if any, corresponding to the insurance covering the loss. The proportional share of each Owner responsible for causing the insurable loss under this Section 9.10(a) shall be based upon the ratio that the responsibility of each Owner responsible for causing the insurable loss bears to the total responsibility of all Owners responsible for causing the insurable loss.

(b) No Owner Responsible for Loss. If the insurable loss is not caused by the act or omission of any Owner (or the acts or omissions of the Owner's Family members, contract purchasers, tenants, guests, or invitees), the deductible shall be paid by the Association.

(c) Failure to Pay Deductible. If, within thirty (30) days of notice by the Association to an Owner regarding that Owner's proportionate share under Subsection (a) of this Section 9.10, any Owner fails or refuses to pay his or her proportionate share, the Board may levy a Special Individual Assessment against the Lot of such Owner, which may be enforced under the lien provisions contained in Article V or in any other manner provided in this Declaration.

(d) Objection to Payment of Deductible. Within fifteen (15) days of the date that the notice to the Owner of his or her share of the liability is mailed, any Owner may contest the amount of his or her proportionate liability under Subsections (a) of this Section 9.10 by submitting to the Board written objections supported by cost estimates or other information that the Owner deems to be material. Upon receipt of said written objections, the Board shall set a hearing date on the matter. The Owner(s) contesting liability may be represented by counsel at this hearing. Following such hearing, the Board shall give written notice of its decision to all affected Owners, including any recommendation that adjustments be made with respect to the liability of any Owner(s). The Board's decision shall be final and binding.

ARTICLE X: DAMAGE OR DESTRUCTION.

Section 10.1. Common Area. In the event of a partial or total destruction of Improvements within the Common Area, it shall be the duty of the Association to restore and repair such Improvements to their former condition, or in a different manner as approved by the Architectural Committee, as promptly as reasonably possible in a lawful and workmanlike manner. The proceeds of any insurance maintained by the Association shall be used for such purpose. In the event that the amount available from the proceeds of such insurance policies for such restoration or repair shall be less than the estimated cost of restoration and repair, a Special Assessment may be levied by the Association to provide the necessary funds for reconstruction and repair, over and above the amount of any insurance proceeds available for such purpose. If the proceeds available fall short by an amount that exceeds the amount that can legally be assessed without a vote of the Members as specified in Article V, the Improvements shall not be reconstructed or repaired unless approved by the written consent of the Members pursuant to Article V of this Declaration. If the Members fail to approve a Special Assessment for reconstruction or repair of the Common Area Improvements, any existing debris shall be removed and the Common Area shall be landscaped for use by all of the Owners; provided, however, that there shall exist in such Common Area adequate vehicular and pedestrian right-of-way for the Owners of Lots to insure legal access thereto. In the event any excess proceeds remain, the Board shall place such

sums in the reserve accounts or other funds of the Association, as designated by the Board.

Section 10.2. Residences and Other Lot Improvements. No Improvement upon a Lot which has been partially or totally destroyed by fire, earthquake or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction, without board approval. Improvements shall be restored so that the exterior appearance thereof substantially matches their appearance immediately before the fire or other casualty in form and color. The Architectural Committee may grant written approval for changed form or color of the repaired or reconstructed Improvements pursuant to Article VIII of this Declaration.

ARTICLE XI: CONDEMNATION.

Section 11.1. Authority of the Board. The Board or a trustee appointed by the Board to act on behalf of the Association shall represent all of the Owners in any condemnation proceeding involving the Common Area or any negotiations, settlements and/or agreements related to such condemnation action or threatened action. Each Owner by accepting a deed to a Lot in the Development hereby grants the Board or its appointed trustee an irrevocable power of attorney to act on behalf of the Association and all Owners in any condemnation or proposed/threatened condemnation involving the Common Area.

Section 11.2. Distribution of Sale Proceeds or Condemnation Award. The proceeds from the sale or taking of the Common Area shall be paid or applied in the following order of priority and any judgments of condemnation shall include the following provisions as part of its terms:

(1) To the payment of expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the Court to be paid from the amount awarded; then

(2) To Owners and to their respective Mortgagees, as their interests may appear, of Lots in the Development, with each Lot in the Development to receive an equal share of the proceeds.

ARTICLE XII: BREACH & DEFAULT.

Section 12.1. Remedy at Law Inadequate. The provisions of the Declaration, the Bylaws, the Association Rules and/or Resolutions of the Board, as the same may be adopted or amended from time to time, shall constitute enforceable servitudes which shall inure to and bind each Owner, Owner's Family, lessees, tenants, contract purchasers, guests, invitees and/or licensees. Any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest may enforce, by any proceeding at law or in equity, said provisions of the Governing Documents against any Owner, Member of Owner's Family, lessee, tenant, contract purchaser, guest, invitee, licensee, occupant or user of any Lot, or any portion of the Common Area. Further, the failure of any Owner, Member of Owner's Family, lessee, tenant, contract purchaser, guest, invitee, licensee, occupant or user of any Lot, or any portion of the Common Area to strictly comply with any provision of the Governing Documents shall be grounds for (1) an action to recover sums due for damages and/or (2) an action to enjoin by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration and the Association's other Governing Documents is inadequate,

and injunctive or declaratory relief, or other forms of equitable relief shall be available in addition to monetary damages as a remedy for such breach, default or violation.

Section 12.2. Nuisance. Without limiting the generality of Section 12.1, the result of every act or omission whereby any covenant contained in this Declaration or the Association's Governing Documents is violated, in whole or in part, is hereby declared to be a nuisance. In addition to any other remedies that may be available, such nuisance may be abated or enjoined by the Association, its Officers, the Board of Directors and/or any Owner.

Further, every remedy against nuisance, either public or private, shall be applicable against every such act or omission; provided, however, the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the discretion of the Board, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole.

Section 12.3. Violation of Law. Any violation of a federal, state, county, municipal, local or other governmental law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all enforcement procedures set forth herein.

Section 12.4. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and not exclusive. The exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration or the Governing Documents.

Section 12.5. Failure Not a Waiver. The failure of any Owner, the Board of Directors, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration and/or the Association's Governing Documents shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

Section 12.6. Rights and Remedies of the Association.

(a) Rights Generally. In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, the Owner's Family, guests, contract purchasers, employees, servants, invitees, licensees, lessees and/or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreational Common Area or suspension of the Owner's voting rights as a Member of the Association. The Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this Section 12.6. The initiation of legal action shall be subject to Section 12.7, below.

The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as may exist by virtue of California Civil Code Section 5975 or otherwise by law.

Upon a determination by the Board of Directors, after prior notice to the affected Member and an

opportunity for a hearing pursuant to Subsections 12.6(f) and (g), that said Member has violated any provision of the Governing Documents, including but not limited to a failure to pay any Assessment when due, the Board may give notice in writing to such Member that the Member is deemed to be a Member not in good standing. Such Member shall be deemed to be a Member not in good standing until such time as the Board shall determine in writing that the violation that resulted in the Board's determination that the Member was not in good standing has been cured or remedied or, on some other basis as in the judgment of the Board is just and proper, that such Member shall again be deemed to be a Member of the Association in good standing.

(b) Schedule of Fines. The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment and shall be enforceable as a Special Individual Assessment pursuant to Section 5.4.

(c) Definition of "Violation". A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) "Meet and Confer" Requirement. In the event of a dispute between the Association and a Member concerning an alleged violation of the Governing Documents, either party may request in writing to meet with the other party to discuss the dispute. The Association shall comply with any request by a Member by notifying the requesting Member of the date and time for such a meeting within thirty (30) days of receipt of the written request. If such a request is made by the Association to a Member, the Member may, but is not required to, respond in writing within ten (10) days agreeing to the requested meeting on the terms set forth in the Association's request. The meeting shall be attended by the Board or the Board's designated representative and the requesting Member. If the meeting is not attended by the entire Board, the Member may appeal any resolution resulting from the meeting to the entire Board. Any agreement between the Association and the Member as a result of such a meeting shall be reduced to writing and signed by the Association and the Member. Once signed by both parties, such agreement shall become final, binding and unappealable. The Association may comply with any "Meet and Confer" request by a Member pursuant to this Subsection by a disciplinary hearing pursuant to Subsection 12.6(f) below. However, if the meeting is to be in conjunction with a disciplinary hearing, the notice required by Subsection 12.6(g) must be given to the Member.

(e) Limitations of Disciplinary Rights.

(1) Loss of Rights: Forfeitures. The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Lot due to the failure by the Owner (or Owner's Family members, tenants, lessees, contract purchasers, guests, invitees and/or licensees) to comply with any provision of the Governing Documents, including, but not limited to any duly enacted Association Rule, except where the loss or forfeiture is the result of A) the judgment of a court of competent jurisdiction, B) a decision arising out of arbitration, C) a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or D) where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of Sections 12.6(f) and (g).

(2) Liens Against Member's Lot. Except as provided in the Association's Delinquent Assessment Collection Policy, or Association Rules, if any, an assessment imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas for which the Member and/or the member's Family, guests, lessees, tenants, contract purchasers, employees, invitees and/or licensees were responsible may become a lien against the Member's Lot enforceable by the sale of the Lot and Improvements under Civil Code Sections 2924, 2924b, and 2924c.

(f) Hearings. No penalty or temporary suspension of rights shall be imposed pursuant to this Article XII unless the Owner alleged to be in violation is given prior Personal Notice (as defined in the Bylaws) of the proposed penalty or temporary suspension, and is given an opportunity to be heard before the Board of Directors or appropriate committee established by the Board with respect to the alleged violation(s) as provided in Association Rules adopted by the Board pursuant to Section 12.6(h). However, this Subsection shall not prevent the Board from taking emergency action (such as towing of vehicles) to eliminate an immediate threat to the health or safety of residents or a nuisance causing substantial interference with the property rights of other residents. The required disciplinary hearing shall be scheduled as soon as practicable after any such emergency action has been taken, and if it is determined that such action was unnecessary or improper, the Association shall compensate the Member for any costs incurred as a result of such action. The Association Rules may specify those violations justifying emergency action pursuant to this subsection.

(g) Notices. Any notice of a disciplinary hearing pursuant to Subsection 12.6(f) above shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice, provided that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association. The Association's notice of a disciplinary hearing shall be delivered to the Member at least ten (10) days prior to any hearing. Notice of the Board's action as a result of the disciplinary hearing must be delivered to the Member within fifteen (15) days after the Board's decision.

(h) Rules Regarding Disciplinary Proceedings. The Board shall be entitled to adopt rules that set forth the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules.

Section 12.7. Court Actions; ADR. Court actions to enforce the Governing Documents may only be initiated on behalf of the Association upon approval of the Board. As long as Civil Code Sections 5925 - 5965 (or comparable superseding statutes requiring alternative dispute resolution) are in force, the Board shall attempt in good faith to resolve any dispute with a Member concerning an alleged violation of the Governing Documents through mediation or arbitration as provided in those statutes. The Board shall have discretion to determine the form of ADR (mediation or arbitration) which will be pursued. This Section 12.7 shall automatically be repealed from this Declaration should the above Civil Code Sections (or comparable superseding statutes) be repealed by the California Legislature.

Section 12.8. Joint and Several Liability of Co-Owners. If a Lot is owned jointly by two (2) or more persons, the liability of each Owner thereof in connection with the obligations of Owners imposed by this Declaration shall be joint and several.

Section 12.9. Costs and Attorneys' Fees. In the event that the Association takes any action because of any alleged breach or default of any Member or other party hereto under the Association's Governing Documents (whether or not any legal proceeding, including an arbitration, is initiated) the Association shall be entitled to recover from that Member (or other party) the costs, including attorneys' fees, the Association

incurred as a result of the alleged breach or default. The Association's remedies to recover its costs and attorneys' fees shall include, but are not limited to, the imposition of a Special Individual Assessment pursuant to Section 5.4.

In the event an action (including an arbitration) is brought by a Member (or other individual with the right to enforce the Governing Documents) because of any alleged breach or default by any party hereto under the Association's Governing Documents, the court may award to the prevailing party in any such action (as defined by Civil Code 1717 or comparable superseding statute) such attorneys' fees and other costs, including by way of example, but not limited to court costs and experts' fees, incurred in connection therewith as the court deems just and reasonable.

ARTICLE XIII: PROTECTION OF MORTGAGES.

Section 13.1. Mortgage Permitted. Any Owner may encumber the Owner's Lot with a mortgage.

Section 13.2. Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any First Mortgage that encumbers all or a portion of the Development, or any Lot, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such First Mortgage unless the holder of the first mortgage expressly subordinates his interest in writing, to such lien. All taxes, assessments and charges that may become liens prior to the First Mortgage under local law shall relate only to the individual Lot(s) there charged and not to the Development as a whole.

Section 13.3. Restrictions on Certain Changes/Amendments. Unless after receiving written notice, fifty-one percent (51%) of the Eligible First Mortgagees holding mortgages on Lots have given their prior written approval (one vote for each Lot secured by a Mortgage), neither the Association nor the Owners:

(a) shall be entitled to effect any material amendment to the Governing Documents. As used in this Section, the term "any material amendment" means amendments to those provisions that establish, provide for and/or govern any of the following subjects:

(1) The pro rata interest or obligations of any Lot/Owner for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership of each Lot in the Common Area;

(2) The fundamental purpose for which the Development was created. (*i.e.*, change from residential use to a different use); and

(3) Any provision that is specifically for the benefit of First Mortgagees, or specifically confers rights on First Mortgagees.

An addition or amendment shall not be considered material if it is for the purpose of correcting technical errors, for clarification, or to comply with changes in the legal requirements applicable to the Association and its members.

(b) shall be entitled to:

(1) Seek to abandon or terminate the Planned Development, except for abandonment provided by statute in case of substantial loss to the Lots and Common Area;

(2) Partition or Subdivide any Lot; and

(3) Use hazard insurance proceeds for losses to Lots or Common Area in the Development for other than the repair, replacement or restriction of Improvements, except as provided by statute in case of substantial loss to the Lots or Common Area of the Development.

A Mortgagee who receives a written request to approve any of the above acts, including but not limited to, additions or amendments to the Governing Documents and who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 13.4. Right to Examine Books and Records. Eligible First Mortgagees can examine the books and records of the Association or the Planned Development and can require the submission of financial data concerning the Association or the Planned Development, including annual audit or review reports, if any, and operating statements as furnished to the Owner.

Any Owner, at the expense of such Owner, or the holders of fifty-one percent (51%) or more of First Mortgagees, at the First Mortgagees' expense, may request at anytime an independent audit of the Association.

Section 13.5. Distribution of Insurance and Condemnation Proceeds. Notwithstanding any other provision of this Declaration, no Lot Owner or any other party, shall have priority over any right of First Mortgagees of Lots pursuant to their mortgages in case of a distribution of insurance proceeds or condemnation awards for losses to (or a taking of) Lots or Common Area. Any such distribution shall be made pursuant to the terms and provisions of the applicable Mortgage. Any provision to the contrary, in this Declaration or in the Bylaws or other documents relating to the Development, is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses naming the first mortgagees, as their interests may appear.

Section 13.6. Notices to Eligible First Mortgagees. The Association shall give written notice to all Eligible First Mortgagees of any lapse (or cancellation) of any insurance policy or fidelity bond maintained by the Association that is not renewed, restored or replaced within a short period of time or of any significant change to the coverage, limits and/or deductible for any of those policies or bonds issued to the Association.

The Association shall also give written notice to those Eligible First Mortgagee(s) who hold the mortgage for any affected Lot of any condemnation loss or any casualty loss to any Lot covered by a mortgage, if such loss exceeds \$50,000.00, or on any loss to the Common Area, if such loss exceeds \$500,000.00.

Section 13.7. Effect of Breach. If any Lot is encumbered by a first mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to effect or impair the lien of the first mortgage. On foreclosure of the First Mortgage, the lien for assessments or installments that has accrued up to the time of foreclosure shall be subordinate to the lien of the First Mortgage, with the foreclosure-purchaser taking title to the Lot free of the lien for assessments or installments that have accrued up to the time of the foreclosure sale.

On taking title to the Lot, the foreclosure-purchaser shall be bound to all covenants, conditions and restrictions contained in the Governing Documents, but shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Lot.

Nothing in this Section shall be construed to release any prior Owner from the Owner's obligation to

pay for any assessment levied pursuant to this Declaration.

Section 13.8. Non-Curable Breach. Any mortgagee who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

Section 13.9. Payment by Mortgagees. Mortgagees of Lots may, jointly or singularly, pay taxes or other charges that are in default and that may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area improvements or other insured property of the Association. Upon making any such payments, such Mortgagees shall be owed immediate reimbursement therefor from the Association.

This provision shall constitute an agreement by the Association for the express benefit of all Mortgagees. Upon the request of any Mortgagee, the Association shall execute and deliver to such Mortgagee a separate written agreement embodying the provisions of this Section 13.9.

Section 13.10. Loan to Facilitate. Any First Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article XV.

Section 13.11. Appearance at Meetings. Because of its financial interest in the development, any Eligible First Mortgagee may appear (but cannot vote) at meetings of the Members and the Board to draw attention to violations of the Governing Documents that have not been corrected or made the subject of remedial proceedings or assessments and/or other matters of concern to the Mortgagee.

Section 13.12. Right to Furnish Information. Any Mortgagee can furnish information to the Board concerning the status of any mortgage.

Section 13.13. Inapplicability of Right of First Refusal to Mortgagee. No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Lot shall be granted to the Association without the consent of any Eligible First Mortgagee of the Lot. Any right of first refusal or option to purchase a Lot that may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Lot, whether voluntary or involuntary, to a mortgagee that acquires title to the Lot pursuant to the remedies provided in its mortgage or deed or by reason of foreclosure of the mortgage or deed (or assignment) in lieu of foreclosure.

Further, no such right shall impair the rights of a First Mortgagee to:

- (a) Foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage, or
 - (b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor,
- or
- (c) Sell or lease a Lot acquired by the Mortgagee.

Section 13.14. Amendments to Conform with Mortgagee Requirements. It is the intent of the Association that this Declaration and the Articles and Bylaws of the Association, and the Development in general, meet all reasonable requirements necessary to purchase, guarantee, insure or subsidize any mortgage of a Lot in the development by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Veterans' Administration. The Board

and each Owner shall take any action or shall adopt any resolutions necessary to conform the Governing Documents and/or the Development to the reasonable requirements of any of said entities or agencies. Each Owner, by the acceptance of a deed to a Lot, grants to the Board an irrevocable power of attorney to act as attorney-in-fact for such purpose.

The provisions of this Declaration and the Association's other Governing Documents shall be liberally interpreted so as to comply with the reasonable requirements of institutional lenders, the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association.

ARTICLE XIV: AMENDMENT OF DECLARATION.

Section 14.1. Amendment in General. This Declaration may be amended or revoked in any respect by the vote or assent of Members representing at least fifty-one percent (51%) of all eligible Members. (See Section 3.3 of the Bylaws which defines eligible Members). Notwithstanding the foregoing, the percentage of the Members necessary to amend a specific clause or provision of this Declaration shall be at least the percentage of affirmative votes prescribed in said clause or provision.

Section 14.2. Effective Date of Amendments. Any amendment to this Declaration will be effective upon the recording in the Office of the Recorder of Alameda County a Certificate of Amendment, duly executed and certified by the president and secretary of the Association setting forth in full the amendment so approved and that the approval requirements of Section 14.1, above, have been duly met. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any first deed of trust or Mortgage recorded prior to the recording of such amendment. If the consent or approval of any governmental authority, Mortgagee or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

Section 14.3. Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

ARTICLE XV: GENERAL PROVISIONS.

Section 15.1. Effective Date. This Declaration shall become effective upon its recordation in the Official Records of the County of Alameda, State of California.

Section 15.2. Notices.

(a) Mailing as Alternative to Personal Service. Any communication or notice of any kind permitted or required pursuant to any provision of the Governing Documents shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows: to an Owner at the Owner's Lot or to such other address as the Owner by designate from time to time in writing to the Association; to the Association at the principal office of the Association Manager or to such other address as the Board may from time to time designate in writing to the Association Members; and to Eligible First Mortgagees at the most recent address of the Eligible First Mortgagee provided in writing to the Association. Any mailing by the Association based upon the information in its records at the time of the mailing shall be deemed effective for any notice required under the Governing Documents.

(b) Personal Service Upon Co-Owners & Others. Personal service of a notice or demand to one of the co-Owners of any Lot, to any general partner of a partnership that is the Owner of Record of the

Lot, or to any officer or agent for service of process of a corporation that is the Owner of Record of the Lot, shall be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

(c) Deemed Delivered. All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered seventy-two (72) hours after deposit in the United States mail. All notices and demands served by personal delivery are delivered upon service.

Section 15.3. No Public Rights in Development. Nothing contained in this Declaration shall be deemed to be a gift or a dedication of all or any portion of the Development to the general public or for any public use or purpose whatsoever.

Section 15.4. Construction of Declaration.

(a) Restrictions Construed Together. All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Development as set forth in the Recitals of this Declaration.

Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) Restrictions Severable. Notwithstanding the provisions of Subsection (a) above, the covenants, conditions, and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision which shall remain in full force and effect.

(c) Singular Includes Plural/Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

(d) Captions. All captions, titles or headings used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) Conflicts. In the event of any conflict between any of the provisions of this Article XVII and any other provisions of this Declaration, the provisions of this Article XVII shall control. In the event of any conflict between any of the provisions of this Declaration and any other provisions of the Governing Documents, the provisions of this Declaration shall control. Further, neither the Articles nor the Bylaws shall be amended so as to be inconsistent with this Declaration; and, in the event of any inconsistency, the provisions of this Declaration shall control.

(f) Exhibits. All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

Section 15.5. Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration and the Association's Governing Documents in general, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners.

Section 15.6. Term of Declaration. The provisions of this Declaration shall be effective to bind the Owners, the Association, its Board of Directors, its officers and agents and their successors in interest for a period of 60 years from the date this Declaration is recorded. After the expiration of this term, the term

of this Declaration shall be automatically extended for successive periods of 10 years each, unless within 6 months before the expiration of the initial 60-year term established by this Section, or any 10-year extension period, a recordable written instrument approved by Owners entitled to vote and holding a majority of the voting power of the Association (or such other majority of Owners as may be required by California law) terminating the effectiveness of this Declaration is recorded.

Certification

We, the undersigned hereby certify, under penalty of perjury, that this Declaration of Covenants, Conditions and Restrictions set for herein was duly adopted with the vote or written consent of the Members (the Members consisting of at least fifty-one percent (51 %) of the total voting power held by the membership of the Association).

Dated: _____

LEE FONG MASTER ASSOCIATION, INC.

By: _____
May Fong, Partner

By: _____
Michael Lee, Partner

WITNESS my hand and official seal.

Notary's Signature

STATE OF CALIFORNIA
COUNTY OF _____ ss.

On _____ before me, _____ (insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"

Property Descriptions

All that certain parcel of land situate in the County of Alameda, State of California, being known and designated as follows:

The Northwestern 150 feet of Lot 10, Block "E", as said Lot and Block are shown on the "Map 2 of the Buenaventura Tract, Brooklyn Tp.", filed January 9, 1892, Map Book 13, Page 27, Alameda County Records.

Tax ID: 042-4247-081-00, 042-4247-082-00, 042-4247-083-00, 042-4247-084-00 and 042-4247-085-00

EXHIBIT "B"

ITEM	RESPONSIBLE PARTY
Common Area Facilities and Landscaping	Association except if Owner (tenants, guests, etc.) cause damage, then Owner
Drainage Facilities in the Common Area	Association (No blockage by Owners allowed)
Drainage Systems on the Lots	Homeowners
Soundwall	Homeowners
Fences (Shared between Homeowners)	Sharing Homeowners 50/50 or Party responsible for damage
Slope Areas (Within Common Areas)	Association
Lighting Systems in Common Areas	Association (unless special district or governmental agency assumes responsibility)
LOTS	
Lot Landscaping	Homeowners (to Association standards)
Residences and Structures on Lots	Homeowners (to Association standards)
Tree Removal	Homeowner (Must get ACC/Landscape approval) and City Approval where necessary.
Wood Destroying Pests, Organisms & Dry Rot, Structures on Lots	Homeowners
Pipes, Wires, Conduit on Lots	Homeowners
Damages for Water Leaks from Pipes on Lot	Homeowners

**Ana Salvador
Tenant Evidence Submission**

Exhibit L

FINAL DELINQUENT NOTICE

SERVICE ADDRESS 1354 81ST AVE
*CUSTOMER NUMBER 065-4406080
Online WM ezPay ID 108708753001
PARCEL NUMBER 042 424708500
SERVICE PERIOD 10/01/2019 TO 12/31/2019

STATEMENT DATE 12/02/2019
DELINQUENT AMOUNT \$189.64
LATE FEES
TOTAL AMOUNT DUE \$289.07

OWNER NAME FONG GRANT W & MAY L ETAL
ADDRESS 358 CERRO CT
DALY CITY, CA 94015

The delinquent amount indicated on this notice is due immediately. If payment is not made within the next 10 days, then Waste Management may terminate service and the City of Oakland may subscribe to service on behalf of the property owner. Once the City subscribes, the property owners may be subject to (a) a City subscription charge of \$116 or 10% of the delinquent amount (whichever is greater); and (b) Alameda County Property Tax special assessment. See the back of this notice for additional information.

Payment may be made by check, credit card, or cash through one or more of the following methods:

- Mail payment with the Payment Coupon to the address provided on this statement
- Pay online, go to wm.com and use the Online WM ezPay ID number listed above, 24 hours a day/7 days a week
- Call the automated ezPay phone number at 1-866-964-2729, 24 hours a day/7 days a week
- Call the Customer Service Call Center at 510-613-8710, Monday - Friday 8:00 am to 6:00 pm
- Visit the Waste Management cashier office at 172 98th Ave. Oakland, Monday - Friday 8:00 am to 6:00 pm

To discuss this past due account before the Final Delinquent Notice is issued at the end of this month, choose any of the following:

- Call the Customer Service Call Center at (510) 613-8710, Monday - Friday 8:00 am to 6:00 pm
- Visit the Waste Management office at 172 98th Ave. Oakland, Monday - Friday 8:00 am to 6:00 pm
- Email Waste Management at csnorthbay@wm.com, 24 hours a day/7 days a week

An agent will be available at the Waste Management office at 172 98th Ave. Oakland, Monday - Friday 8:00 am to 6:00 pm for an in-person administrative appeal conference to review any disputed balance or other issue.

DETACH AND RETURN BOTTOM PORTION WITH PAYMENT IN ENCLOSED ENVELOPE



WASTE MANAGEMENT
WASTE MANAGEMENT OF ALAMEDA COUNTY
172 98th AVENUE
OAKLAND, CA 94603

(510) 613-8710
csnorthbay@wm.com

Payment Coupon

Please detach and send with checks only (no cash).
To pay this bill online and switch to paperless billing,
go to wm.com/paperless

Your Account Number	Total Due	Amount Paid
065-4406080	\$289.07	
	Due Date	Check #
	Upon Receipt	



Ricardo Dominguez
1354 81st Avenue
Oakland, CA 94621-2445

WASTE MANAGEMENT OF ALAMEDA COUNTY
PO BOX 541008
LOS ANGELES CA 90054-1008

000600



INVOICE

To view your Insert
Click the link below:
INSERT!

Customer ID:
Customer Name:
Service Period:
Invoice Date:
Invoice Number:

10-87087-5300
RICARDO DOMINGU
JUL-AUG-SEP SERV
07/01/201
2493045-2216-

How To Contact Us

Visit **wm.com**

To setup your online profile, sign up for paperless statements, manage your account, view holiday schedules, pay your invoice or schedule a pickup



Customer Service:
(510) 613-8710

Your Payment Is Due

Due Upon Receipt

Pymt due upon receipt of invoice & delinquent 45 days later. Delinquent invoices are subject to monthly late charges of a minimum of \$5.00 up to 1.5% of the invoice amount, and are subject to property assessment, and a City subscription charge. See NOTICE on last page of invoice for details.

Your Total Due

\$668.62

See Reverse for Important Messages

Previous Balance	+	Payments	+	Adjustments	+	Current Charges	=	Total Due
625.32		(156.34)		0.00		199.64		668.62

Details for Service Location:
Fong, May Unit A, 1354 81st Ave, Unit A, Oakland CA 94621-2445

Customer ID: 10-87087-53001

Description	Date	Ticket	Quantity	Amount
64 Gallon cart service - organics	07/01/19			
32 Gallon toter	07/01/19		1.00	0.00
Late payment charge for 01/01/2019 invoice 2219040	04/18/19		1.00	149.64
Late payment charge for 10/01/2018 invoice 2064186	04/19/19			5.00
Late payment charge for 07/01/2018 invoice 1940949	04/20/19			5.00
Late payment charge for 04/01/2019 invoice 2362714	05/16/19			5.00
Late payment charge for 01/01/2019 invoice 2219040	05/19/19			5.00
Late payment charge for 10/01/2018 invoice 2064186	05/20/19			5.00
Late payment charge for 07/01/2018 invoice 1940949	05/21/19			5.00
Late payment charge for 04/01/2019 invoice 2362714	06/16/19			5.00
Late payment charge for 01/01/2019 invoice 2219040	06/19/19			5.00
Late payment charge for 10/01/2018 invoice 2064186	06/20/19			5.00
Total Current Charges				199.64

✂ ----- Please detach and send the lower portion with payment --- (no cash or staples) -----

W
WASTE MANAGEMENT
WASTE MANAGEMENT OF ALAMEDA COUNTY
172 98TH AVENUE
OAKLAND CA 94603

(510) 613-8710
(510) 562-2854 FAX
caloakland@wm.com

Invoice Date	Invoice Number	Customer ID (include with your payment)
07/01/2019	2493045-2216-5	10-87087-53001
Payment Terms	Total Due	Amount
Due Upon Receipt	\$668.62	

2216000108708753001024930450000001996400000066862 5

12216R87

RICARDO DOMINGUEZ
1354 81ST AVE
OAKLAND CA 94621-2445

WASTE MANAGEMENT OF ALAMEDA COUNTY
PO BOX 541008
LOS ANGELES, CA 90054-1008

THINK GREEN®

000601

ANA S. JERONIMO-SALVADORI
1354 B1ST AVE APT
OAKLAND, CA 94621

99-7118 / 204
8211

137

date 02/04/20

MAY LEE FONG

pay to the order of TWO THOUSAND

\$ 2000.00

dollars

citibank
CITIBANK, N.A.

memo RENT.



Seq: 30

Batch: 492991

Date: 02/04/20

Seq 89930 02/04/20
BAK: 404951 CC:3183003901
Attn: LTPS, Jacksonville PT
GC Visitation Valley BC CAS-135

Credited To The Account Of
Within Named Payee
Payment Guaranteed
Citibank America, N.A.

ANA S. JERONIMO-SALVADOR
1384 81ST AVE APT
OAKLAND, CA 94621

80-718 / 90
211

135

date 12/04/19

MAY LEE FONG

pay to the order of TWO THOUSAND

\$ 2,000⁰⁰

dollars

citibank
CITIBANK, N.A.

MEMO RENT



Seq: 182
Batch: 951059
Date: 12/04/19

Seq: 09182 12/04/19
BAT: 951059 CC: 3188000546
WT: 01 LTPS: Jacksonville PT
BC: Fruitvale BC CA4-134

Credited To The Account Of
The Within Named Payee
Employment Guaranteed
Fruitvale, CA, N.A.

ANA S. JERONIMO-SALVADOR
1354-81ST AVE APT
OAKLAND, CA 94621

80-7118 / 80a
2011

131

date 09/04/19

pay to the order of May Lee Fong

\$ 2000.00

TWO THOUSAND

dollars

citibank
CITIBANK, N.A.

RENT

ASJ



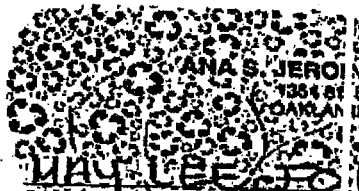
Seq: 32

Batch: 235377

Date: 09/04/19

Seq: 00032 09/04/19
BAT: 235377 CC: 3180000546
WT: 01 LTPS: Jacksonville PT
BC: Fruitvale BC CA4-134

Credited To The Account Of
The Within Named Payee
Endorsement Guaranteed
Bank of America, N.A.



ANA S JERO NIMO-SALVADOR
1334 ST SEAVE APT
OAKLAND, CA 94621

91-718 / 204
3211

129

date: 07/03/19

MAY LEE TONG

ONE THOUSAND THREE HUNDRED SEVENTY FIVE AND
ZERO CENTS \$1,375.00
dollars

citibank
CITIBANK, N.A.

RENT MONEY

[Handwritten signature]



Credited To The Account Of:
The Within Named Payee
Endorsement Guaranteed
Bank of America, N.A.

ENDORSE HERE

ANA S. JERONIMO-SALVADORI
1384 81ST AVE APT
OAKLAND, CA 94621

99-7118 / 201
3/13

127

date 05/04/2019

Pay to the order of
May Lee Tong

\$ 1375.00

One thousand three hundred
Seventy five.

dollars

citibank
CITIBANK N.A.

Name Rent



Seq: 111
Batch: 797311
Date: 05/04/19

Seq: 08111 05/04/19
BAT: 797311 CC: 3182938545
WT: 01 LTPS, Jacksonville PY
EC: Fruitable PO: CA4-134

Credited To The Account Of
The Within Named Payee
Employment Guaranteed
Bank of America, N.A.

60-DAY NOTICE TO CHANGE THE TERMS OF YOUR RENTAL AGREEMENT

To: Ricardo Dominguez, Ana Jeronimo, et al, Resident(s) and all others in
possession of Apt. No. A, located at (Street Address) 1354-81st Avenue
in the city of Oakland, California

PLEASE TAKE NOTICE that in accordance with the governing State and local laws and ordinances, that sixty (60) days
after service upon you of this notice or beginning September 1, 2019, whichever is later, the terms of
your rental agreement for the above described property are hereby changed as follows:

YOUR MONTHLY RENT shall be increased from \$1,375 per month to \$ 2,000 per month, an
increase of \$625 per month.

YOUR SECURITY DEPOSIT shall be increased from \$ _____ to \$ _____, an increase of
\$ _____.

TOTAL AMOUNT DUE and payable by the above stated time period:

New Monthly Rent:	\$ <u>2,000</u>
Security Deposit Increase:	\$ _____
Other:	\$ _____
Total Due:	\$ <u>2,000</u>

OTHER CHANGES:

Except for the above changes, all other terms of your Rental Agreement shall remain in full force and effect.

Dated: (Month/Day) June 11, 2019

May Fong, OWNER(S)

By: _____, AGENT



City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

2. The subdivider shall provide a "Joint Use and Maintenance Agreement" or a "Covenant, Codes and Restrictions" document for review and approval prior to the approval of any final map for the site. This document shall provide for the easement or other rights of all property owners using the common driveway, and/or landscaping to be maintained in good condition and repair at all times and should provide remedies should this not occur. Upon approval of said document it shall be recorded with the County Recorder with each and every deed applicable to this map.

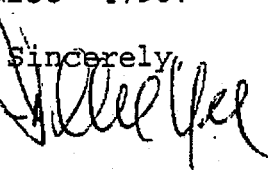
This decision becomes effective ten (10) days from the date of this letter unless appealed to the City Planning Commission. An appeal is made by completing an application and paying the required fee (\$413,00).

A Parcel Map may be certified by the City Engineer at the expiration of the ten (10)-day appeal period from the date of this approval.

A Parcel Map shall be filed with the City Engineer within two (2) years from the date of approval of the Tentative Parcel Map, or within such additional time as may be granted by the Advisory Agency. Failure to file a Parcel Map within these time limits shall nullify the previous approval or conditional approval of the Tentative Parcel Map.

If you have any questions please call case planner Jason Madani at (510) 238- 4790.

Sincerely,


WILLIE YEE
Zoning Administrator
Community & Economic Development Agency

CC: Ahmad Moghaddas, 1631 Berkeley Way, Berkeley, CA 94703
Jose Patino, 1127 Livorna Road Alamo, CA 94507
Lourdes Barrozo, Engineering Services
Philip Basada, Fire Prevention Bureau

1942

12-31-62

APPROVED

MAY 17 1963

OAKLAND BUILDING DEPT.

BY Lan

NOTE: This approval is a preliminary one and does not constitute a final approval. It is subject to the approval of the Board of Supervisors.

CITY OF OAKLAND
IN COMPLIANCE WITH ORDINANCE NO. 2745 C.M.S.

CARRY ALL ELECTRICAL WORK
UNDER BIDDING NO.
SHEET NO. 100
SHEET NO. 100

APPROVAL OF SECT. 10
THE CITY OF OAKLAND
DENIES LIABILITY FOR ANY
DAMAGE TO ANYTHING IN THE
PROJECT

3

THIS APPROVAL IS NOT VALID UNLESS IT IS FILED IN THE OFFICE OF THE CITY ENGINEER WITHIN 30 DAYS OF THE DATE OF ISSUANCE. IF NOT FILED WITHIN THE ABOVE PERIOD, THIS APPROVAL SHALL BE VOID.

000611

concrete curb

conc. SWK.

+ El. 15.86

+ El. 15.87

N 50° 15' E

El. 15.30

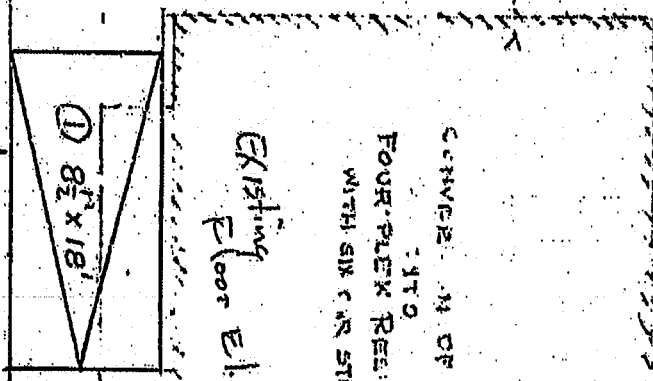
Map 442.80 to Cor
Plan 425.45

In the indicated street area
without first obtaining necessary
sidewalk, driveway or
curb permits, work as shown
on this plan, in street area,
is neither checked nor approved.

U.O.S.
512.39 FT.
15'-9"

E 19° 51' W

9'
MIN.



CONVERSION OF DUPLEX
- INTO
FOUR-PLEX RESIDENCE
WITH SIX CAR STORAGE

Existing Sewer

House Sewer

CARRY ALL STORM DRAINAGE
UNDER SIDEWALK TO
STREET GUTTER

9'-6"

150'

N 39° 45' W

150'

S 39° 45' E

BUELL VENTURA TRASS

000612

NEW - SET - OF - PLANS

CITY OF OAKLAND
BUILDING AND HOUSING DEPARTMENT
JACK E. TAYLOR, ADMINISTRATOR

BUILDING DIVISION
LAWRENCE A. LANE
BUILDING INSPECTOR

CITY HALL
OAKLAND 12, CALIFORNIA
878,9501

HOUSING DIVISION
ENRICO LA BARBERA
URBAN RENEWAL

September 19, 1963 Code No. 66-12

Address 1354-56 & 1354 A&B 81st Ave
Occ. H. F. Zone 4 Stories 2
Type V. Z. Zone B Survey C

Paul and Tealer Clark
7 Ester A. Harris
1051 - 48th Street, Apt. A
Emeryville, California

Dear Owners:

Your property at 1354-56 & 1354 A&B 81st Avenue, Oakland, California, was surveyed on September 10, 63, by personnel of this Department. Similar surveys are being conducted throughout the City for the purpose of bringing about a healthier, safer and more pleasing urban environment, by the elimination of undesirable and/or illegal housing and building conditions.

The survey revealed the existence of certain code violations. These violations are listed on the attached page(s) and are numbered 1 through 9.

The attached list of violations includes suggested methods of corrections. Other legal and appropriate means of correcting or abating the cited violations may be used. These matters and any other problems connected with the survey should be discussed with your Urban Renewal Representative, Mr. Claude Heavin who may be reached at 273 - 3381 between 8:30 and 9:30 a.m., Monday through Friday. Our office is on the 6th floor of the City Hall, Room 615, Oakland.

Your attention is called to Section 211 of the Oakland Housing Code which provides for your right to appeal to the Housing Advisory and Appeals Board. It is recommended that this matter be fully discussed with your Urban Renewal Representative who will be most happy to fully advise you on the standard operational procedure of application to this Board.

The possession of a valid permit is essential to the satisfactory correction of most building, plumbing, heating and electrical violations.

A progress check of your property will be made on October 21, 1963 or soon afterwards. At this time you will be required to present a reasonable timetable for the elimination of any violations that have not as yet been corrected.

Please do not hesitate to call upon us for further information or assistance.

cc: Bldg. Div. ✓
cc: RSB
cc: CH
cc: Date File

Sincerely,

ENRICO LA BARBERA
Housing Division Official

ELB:RSB:jd

ROBERT S. HALIAN
Supervising Urban Renewal
Representative

H-7

000613

265 of 294

No. B 1135

APPLICATION

FRAYE BUILDING

Sol. Selenka Owner

Sol. Selenka Builder

For a permit to erect a building located at

Corner S of E 10th St

Side of 135th Ave.

135th feet of 81st Ave.

Cost \$ 5000.00 Fee \$ 22.00

Date JAN - 6 1941



Permission is hereby granted to erect the building described in this application in accordance with the Building Ordinances of the City of Oakland, and to the satisfaction of the Building Inspector.

Approved E. U. ROUSSELL Chief Building Inspector.

By [Signature]

- 1-24-44
- 3-19-44
- 3-21-44
- 3-25-44
- 5-29-44

AFFIDAVIT

I hereby make affidavit that contained in this application and specifications is true and correct. I am authorized to act in this manner.

Subscribed and sworn to before

day of

FOR OFFICE USE ONLY

HOUSING DIVISION
 FIRE MARSHAL APPROVAL
 CITY MANAGER PERMIT NO.
 HOUSING PERMIT NUMBER
 FOOT OF OAKLAND APPROVAL
 PLUMBING PERMIT NO.
 HEALTH DEPT. APPROVAL
 ZONING OR PLANNING NO.
 BOARD OF PLANN. & APPEALS ITEM NO. DATE
 HOUSING ADVISORY & APPEALS ITEM NO.

BUILDING & HOUSING DEPARTMENT - CITY OF OAKLAND
 WRITE IN INK - FILE ALL COPIES

DATE FILED 4-26-62

DATE ISSUED MAY -7-1962

APPLICATION FOR PERMIT TO:
 ALTER NEW CONSTR.

JOB LOCATION 1334-56 81ST AVE.

OWNER'S NAME PAUL CLARK

OWNER'S ADDRESS 3220 BOISE ST, BERK.

OWNER'S PHONE NO. 02-5-3183

FIELD CHECK BY PETERS DATE _____

APPROVED YES ✓ NO _____

REMARKS (conditions noted) _____

PERMIT NO. C 1942

VALUE 12,500.00 FEES 8.00

ADDITIONAL COST 25.00

TOTAL VALUE 12,525.00

TOTAL FEES 29.00

ADDITIONAL COST

ADD'l Fee \$ _____

Doc. _____

Checking Fee \$ _____

ADDITIONAL COST

ADD'l Fee \$ _____

Doc. _____

Checking Fee \$ _____

ADDITIONAL COST

ADD'l Fee \$ _____

Doc. _____

Checking Fee \$ _____

ADDITIONAL COST

ADD'l Fee \$ _____

Doc. _____

Checking Fee \$ _____

1334-56 81ST AVE

Inspected

4537

PLAN FILED Yes NO _____

MAP NO. 666 TRACT NAME/NO. _____

TYPE OF BUILDING I II III IV V HT. 1 hr. N.

OCCUPANCY GROUP A B C D E F G H I J DIV. 1 2 3 4 5

ZONING DISTRICT M.A. A (B) CC C D E F G H I S 1 T U R

FIRE ZONE 1 2 3 4

PRIOR CERTIFICATE OF OCCUPANCY NO. _____ DATE _____

ADDITION ALTERATION REPAIR

Present use of building DWELLING Families 2 Units 8

Proposed use of building APT HOUSE Families 4 Units 16

Size of existing building 32'-2" x 56'-9" Number of stories high 1 TO 2

Describe briefly all proposed construction work DUPLEX WITH 6 GARAGE SPACES BELOW.

CONTRACTOR (if any) _____

Address _____

Phone No. _____

City License No. _____

City License No. _____

Planned Civil Engineer _____

Certified Architect _____

Signature of Applicant Paul Clark

FOR INSPECTIONS: TELEPHONE TE 2-3490, LOCAL 301

TO BE SIGNED ONLY WHEN ISSUED TO OWNER

I hereby certify that I am the applicant for a Building Permit, and that in the performance of the work for which such permit is issued, I will not employ any person or persons in any manner so as to become subject to the provisions of the Labor Code of the State of California relating to workmen's compensation insurance.

Signature of Owner Paul Clark

DEPARTMENT COPY
 FORM 335-3 - 6-60

including all labor and material and all permanent lighting, heating, ventilating, winter supply, plumbing, fire sprinkler, electric wiring and elevator equipment therein or thereon, \$ 12,500.00

COST OF WORK TO BE CHECKED BEFORE FINAL INSPECTION

GENERAL INSTRUCTIONS: If the work herein described is not commenced within one hundred twenty (120) days after the issuing of this permit, or if the work is suspended or discontinued for any time after the work is commenced for a period of one hundred twenty (120) days, this permit shall expire by limitation and the owner shall apply for a new permit in the Oakland Building Code.

Permission is hereby granted to do the work described in this application in accordance with the provisions of the Oakland Building Code and related ordinances.

Approved: LAWRENCE A. JANE
 Building Inspector

By Wm

NEW CONSTRUCTION:
 No. of new building _____
 Height to highest point _____
 No. of stories _____
 Specific type of occupancy _____
 Site flow main building's four (4) lot and give use of each _____

Existing Width 16" Depth in Ground 16" Width of Wall 8" Height 2' x R.W.
 Stud 2' x 4 @ 16" o.c. Floor Joist 2' x 8 @ 16" o.c. Ceiling Joist 2' x 4 @ 16" o.c.
 Rafters 2' x 8 @ 16" o.c. Roof covering THE 4 GARAGE

VALUATION OF PROPOSED WORK

81ST AVE

135ll-56

FOR OFFICE USE ONLY

HOUSING DIVISION
FIRE MARSHAL APPROVAL
CITY MANAGER PERMIT NO.
MOVING PERMIT NO.
FOUR OF OAKLAND APPROVAL
PLUMBING PERMIT NO.
HEALTH DEPT. APPROVAL
ZONING OR PLANNING NO.
E. OF E. A. ITEM NO.
H. A. & B. RES. NO.

BUILDING & HOUSING DEPARTMENT - CITY OF OAKLAND
WRITE IN INK - FILE ALL COPIES

1356 81 AVE

DATE ISSUED: **SEP 29 1965**
PERMIT NO. **C25318**

APPLICATION FOR PERMIT TO

ALTER: REPAIR ADD TO NEW CONSTR.
JOB LOCATION: 1356 81st Ave
OWNER'S NAME: Edmund
OWNER'S ADDRESS: 1356 81st Ave
OWNER'S PHONE NO: 532-4482

FIELD CHECK BY: _____ DATE: _____
Approved YES _____ NO _____
REMARKS (conditions noted): _____

NEW CONSTRUCTION

Size of new building _____
Height to highest point _____
No. of Stories _____
Specific type of Occupancy _____
State how many buildings new on lot _____
and give use of each _____

Number of Families _____
Size of Lot _____
Material of Exterior Walls _____

Footing Width _____ Depth in Grout _____ Width of Wall _____
Studs _____ @ _____ cfs. Floor Joists _____ @ _____ cfs. Ceiling Joists _____ @ _____ cfs.
Rafters _____ @ _____ cfs. Roof covering _____

VALUATION OF PROPOSED WORK

Including all labor and material and all permanent lighting, heating, ventilating, water supply, plumbing, fire sprinkler, electric wiring and elevator equipment therein or thereon, \$ _____

COST OF WORK TO BE CHECKED BEFORE FINAL INSPECTION

GENERAL INSTRUCTIONS: If the work herein described is not commenced within one hundred twenty (120) days after the issuing of this permit, or if the work is suspended or abandoned at any time after the work is commenced for a period of one hundred twenty (120) days, this permit shall expire by limitation and become null and void as provided in the Oakland Building Code.
Permittee is hereby granted to do the work described in this application in accordance with the provisions of the Oakland Building Code and related ordinances.

Approved: LAWRENCE A. LANE
Building Inspector

By: [Signature]

TO BE SIGNED ONLY WHEN ISSUED TO OWNER

I hereby certify that I am the applicant for a Building Permit and that in the performance of the work for which such permit is issued, I will not employ any person or persons in any manner so as to become subject to the provisions of the Labor Code of the State of California relating to workmen's compensation insurance.

Signature of Owner: _____

FORM 339-A (1-64)

DEPARTMENT COPY

Address Fee \$ _____
General Fee \$ 6.00
Checking Fee \$ _____
TOTAL FEES \$ _____
Additional Cost \$ _____
Add'l Fee \$ _____
Checking Fee \$ _____
TOTAL VALUE \$ _____

PLAN FILED Yes _____ No ✓ SURVEYS FILED Yes _____ No ✓
MAP NO. 666 TRACT NAME NO. _____
TYPE OF BUILDING I II III IV V HI, IN
OCCUPANCY GROUP A B C D E F G H I DIV. 1 2 3 4 5
ZONING DISTRICT AA A B CC C D E F G H I S T U R
FIRE ZONE 1 2 3

ADDITION ALTERNATION REPAIR

Present use of building DUPLEX Families 2
Proposed use of building _____ Families 2
Size of existing building _____ Number of stories 2

Describe briefly all proposed construction work:
Install 50" vertical piping system
Install 2 New Down Spouts

Contractor (if any) _____ Certified Architect
Address _____
Phone No. _____ Licensed Civil Engineer

State License No. _____ City License No. _____
I hereby agree to save, indemnify and keep harmless the City of Oakland and its officers, employees and agents against all liabilities, judgments, costs and expenses which may in any way accrue against the City in consequence of the granting of this permit or from the use or occupancy of any sidewalk, street or sub-sidewalk, or otherwise by virtue thereof, and will in all things strictly comply with the conditions under which this permit is granted.

Signature of Applicant: [Signature]

FOR INSPECTIONS TELEPHONE 273-3441

FOR OFFICE USE ONLY

BUILDING & HOUSING DEPARTMENT - CITY OF OAKLAND

WRITE IN INK - FILE ALL COPIES

HOUSING DIVISION _____
 FIRE MARSHAL APPROVAL _____
 CITY MANAGER PERMIT NO. _____
 MOVING PERMIT NO. _____
 PORT OF OAKLAND APPROVAL _____
 PLUMBING PERMIT NO. _____
 HEALTH DEPT. APPROVAL _____
 ZONING OR PLANNING NO. _____
 B OF E & A ITEM NO. _____
 4 A 6 A B RES. NO. _____

DATE FILED _____
 DATE ISSUED AUG - 2 1956
 PERMIT NO. 032110

ALTER REPAIR WRECK OTHER _____
 APPLICATION FOR PERMIT TO:
 ADD TO _____
 NEW CONSTR. _____

JOB LOCATION 1356 51 Ave
 OWNER'S NAME Edward Lumb
 OWNER'S ADDRESS 545 10 Ave - S.F.
 OWNER'S PHONE NO. EV. 6-9671

PAID CHECK BY SCITZER DATE 8-2-56
 APPROVED YES NO _____
 REMARKS (conditions noted) Reg Easy

Inspected

VALVE 1356 51 Ave
 Address Fee \$ _____
 General Fee \$ 10.00
 Copying Fee \$ _____
 TOTAL FEES \$ 10.00

ADDITIONAL COST:
 Add'l Fee \$ _____
 Copying Fee \$ _____
 TOTAL VALUE \$ _____

NEW CONSTRUCTION

Size of new building _____
 Height to highest point _____
 No. of Stories _____
 Specific type of Occupancy _____
 State how many buildings now on lot and give use of each _____

PLAN FILED Yes _____ No _____ SURVEYED Yes _____ No _____
 MAP NO. 6666 TRACT NAME/NO. _____
 TYPE OF BUILDING 1 2 3 4 1 br. 2
 OCCUPANCY GROUP A B C D E F G H I J DIV 1 2 3 4
 ZONING DISTRICT A B C C D E E C H I S I I I U R
 FIRE ZONE 1 2 3

VALUATION OF PROPOSED WORK

Including all labor and material and of permanent lighting, heating, ventilating, water supply, plumbing, fire-sprinkler, electric wiring and elevator equipment therein of thereon \$ _____
 COST OF WORK TO BE CHECKED BEFORE FINAL INSPECTION _____
 GENERAL INSTRUCTIONS: If the work herein described is not commenced within one hundred twenty (120) days after the issuing of this permit, or if the work is suspended or abandoned at any time after the work is commenced for a period of one hundred twenty (120) days, this permit shall expire by limitation and become null and void as provided in the Oakland Building Code.
 Permission is hereby granted to do the work described in this application in accordance with the provisions of the Oakland Building Code and related ordinances.

Approved: LAWRENCE A. LANE Building Inspector
 By: _____

Present use of building Apartments Families 4
 Proposed used building Same Families _____

Size of existing building _____ Number of stories high 2
 Describe briefly all proposed construction work Fence 6' on roof
Miscellaneous repairs to interior
plaster & trim

Contractor: (if any) _____ Certified Architect _____
 Address _____
 Phone No. _____ City/State No. _____
 State License No. _____
 I hereby agree to save, indemnify and keep harmless the City of Oakland and its officers, employees and agents against all liabilities, judgments, costs and expenses which may in any wise accrue to the City in consequence of the granting of this permit or from the use or occupancy of any sidewalk, street or sub-sidewalk, or otherwise, by the use thereof, and will comply with all conditions under which this permit is granted.

Signature of Owner E. Lumb
 Signature of Applicant _____
 FOR INSPECTIONS TELEPHONE 273-3441

CITY OF OAKLAND BUILDING DEPARTMENT CERTIFICATE OF OCCUPANCY

No. 7832 ED APARTMENT HOUSE TYPE V TWO STORY Building
 THIS IS TO CERTIFY that the GROUP H which is owned

at 1354 - 56-56A - 56B 81st Avenue of 3220 Boise Street, Berkeley
 by Paul Clark Dated _____

In FIRE ZONE 4 USE ZONE B OHC Variance No. _____
 Building Permit No. C-1942 Building Completion Date December 28, 1962 has been inspected

and the following occupancy thereof is hereby authorized:

Occupancies:	Number Habitable Rooms
Collar _____	_____
Basement _____	_____
1st Floor <u>2-4 room units - living room, kitchen, 2 bedrooms, bath - 5 garages</u>	<u>8</u>
2nd Floor <u>2-4 room units - living room, kitchen, 2 bedrooms, bath</u>	<u>8</u>
3rd Floor _____	_____
4th Floor _____	_____
Attic Story _____	_____
Add Floors as necessary _____	_____
Prior Cert. of Occup. <u>no</u> Date _____	Rental Units (Yes or No) <u>Yes</u>
Cert. of Occup. void on _____	License (Yes or No) <u>Yes</u>
Re-inspt. Dates _____	
	TOTAL <u>16</u>

Lawrence P. Lane
 Building Inspector

The Certificate of Occupancy shall not be construed as authority to violate, cancel, alter or set aside any of the provisions or requirements of any laws or ordinances of the City of Oakland nor shall such issuance thereafter prevent requiring corrections of errors or of violations of any applicable law or ordinance of the City of Oakland.
 Necessary licenses shall be obtained, as this Certificate does not of itself constitute a license.



Address History (Beginning \approx 1987)

No Results

For real-time, direct access to information via the Internet, 24 hours a day - <https://aca.accela.com/oakland>

000620



Address History (Beginning ≈ 1987)

1354, 81ST, AVE

APN	Unit #	Record ID	Date Opened ▼	Status	Status Date	Description
042 424708200		<u>1501950</u>	6/10/2015	Abated	7/21/2015 12:00:00 AM	Unit B. Fire damage; work being done without permit. Cut wires, trash and debris in basement.

For real-time, direct access to information via the Internet, 24 hours a day - <https://aca.accela.com/oakland>

000621



Address History (Beginning ≈ 1987)

No Results

For real-time, direct access to information via the Internet, 24 hours a day - <https://aca.accela.com/oakland>

000622

**LANDLORD BRIEF TO SUPPORT HEARING OFFICER DECISION TO
DISMISS TENANT PETITION T19-0384**

To: Rent Adjustment Program
Fr: May Fong and Michael Lee

Case No: T19-0384
Case Title: Salvador v. Fong
Property Address: 1354 81st Avenue Unit A, Oakland, CA 94621

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

When Landlords, May Fong and Michael Lee (hereinafter “Landlord”) purchased the building unit in Oakland in 2012, a prior owner had already subdivided four of those units into condominiums. (1 AR 113–133.) So, in October 31, 2016, Landlord filed a Landlord Petition for Certificate of Exemption claiming that their four condominiums were exempt from Oakland’s rent-control scheme pursuant to the Costa-Hawkins Act’s condominium exemption. (1 AR 6–12.) In 2017, Tenant filed a Tenant Petition claiming that Landlords had increased her rent above that allowed by the rent ordinance. (1 AR 49–51.) Respondent City of Oakland, Housing, Residential Rent and Relocation Board (hereinafter “OHRRRB”) then consolidated the two petitions. (1 AR 76.) **Tenant was present with her attorneys and had her day in court here and legally must raise all issues upfront at this hearing.** Despite the similar case Golden State Ventures v. City of Oakland Rent Board and then Fong vs City of Oakland Rent Board ruled on June 6, 2019 “Exhibit 1” decision against the Rent Board on the same issue as presented in this case and ordered the OHRRRB to issue the Certificate of Exemption and as well as collaterally estoppel in the case twice, the Tenant is attempting to relitigate the same issue and claim once again.

Tenant Ana Jeronimo Salvador along with 2 other tenants, filed the Oakland Rent Adjustment Program (hereinafter “RAP”) petition this action, T19-0384, against landlord, May Fong and Michael Lee, on October 9, 2019. Tenant petition contests the Certificate of Exemption “Exhibit 2” so ordered by Superior Court of California to the Landlord in case number L16-0083 on 9/20/19, arguing that the exemption was issued on the basis of fraud or mistake, and alleging unlawful rent increases as well as decreased housing services. The 2 other tenants dismissed the cases against Landlord. These condominium units of “alienable separate from the title to any other dwelling unit” ¹and of being “sold separately”

1

pursuant to California Civil Code § 1954.52(a)(3)(A) has already been litigated and proven to the Superior Court of California as per ruling Case No. RG18930130 see “*Exhibit 1*”.

Where the Tenants disputed the alienable rights of the condominiums at the Hearing, both Hearing officer and OHRRRB erroneously denied Landlord the Certificate of Exemption in 2017 and 2018 Citing an exception to the Costa Hawkins Rental Housing Act, California Civil Code Section 1954.52(3)(B)(ii), that the hearing officer and OHRRRB found that while the property had been converted to condominiums, the property was not exempt because it did not have alienable rights and “[had] not been sold separately by the subdivider to a bona fide purchaser for value.” The hearing officer determined that because the Landlord had purchased the entire building from the subdivider, the units had never been sold separately, and therefore they were not exempt from rent control even though OHRRRB lost the similar RAP case, *Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board*. Landlord had to seek relief and justice from Superior Court of California and ultimately ruled against the OHRRRB once again. OHRRRB was not the one that awarded the Landlord the Certificate of Exemption and therefore OHRRRB did not award the Exemption by fraud or mistake. It was the Superior Court of California that so ordered OHRRRB to issue Landlord the Certificate of Exemption and the issue of alienable rights had been addressed, adjudicated and collaterally estopped.

Tenant Salvador brings this petition, T19-0384 claiming the exemption was sought by fraud or mistake with completely **no merit**. The burden of proof of this claim is upon the petitioner which Tenant has failed in all aspects to meet because there was absolutely no fraud or mistake made. Superior Court of California had made it clear in case ruling RG18930130 that OHRRRB was so ordered to issue Certificate of Exemption and it was finally issued on 9/20/19 and filed on 10/8/19 and there was **no appeal** to this ruling by either OHRRRB or Tenants. Here the Tenants could have appealed this case but did not. The OHRRRB is also barred from relitigating this issue by the doctrine of collateral estoppel and res judicata by ruling cases with both *Fong vs City of Oakland, Housing, Residential Rent & Relocation Board* and *Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board* which is being violated with again attempting to relitigate the factual or legal issue that has already been decided and finally adjudicated. (*Key v Tyler* (2019) 34 Cal.App.5th 505,) Therefore, due to the fact the Landlord Certificate of Exemption on the four condominiums was ordered by the Superior Court of California and decision was final and was not awarded by decision of OHRRRB nor based on fraud or mistake and OHRRRB is barred from relitigating this case by issue and claim preclusion, this is in support of the Hearing Officer’s decision to dismiss Tenant’s petition and the order of exemption should be final and irreversible.

II. LEGAL DISCUSSION

A. The Golden State Ventures vs OHRRRB and Fong vs OHRRRB case precludes the Rent Board from arguing that Costa-Hawkins does not apply here.

Tenant falsely attempts to argue the Court's order only indicated RAP (OHRRRB) was collaterally estopped from further hearings on only the "statutory bona fide purchaser test," and did not cover the issue of condominium units are separately alienable and therefore exempt from rent control under Costa Hawkins. However, *Tenants v. Golden State Ventures* and *Fong vs OHRRRB* not only address and ruled on the issue of the "statutory bona fide purchaser test" but also the court affirmed the units in question which both **parties** agree are condominiums units and the fact that Fong and Lee purchased the units as "sold separately". Again, it was stated in ruling see "Exhibit 1", The small phrase "sold separately" can carry this weight. The word "separate" occurs elsewhere in the statute-the language of the general exemption language ("alienable separate from the title to any other dwelling unit"), which requires that the title to the individual condominium units be individually alienable. In context, "sold separately" means sold as condominiums, with separate title as evidenced in Alameda Property Assessment Information see "Exhibit 3".

Another desperate attempt to claim the issue of the exemption is not precluded on the basis of the doctrines of res judicata and collateral estoppel is Tenant attorney reference to the *Michelson v. Sherman*, L18-0081 case where RAP granted a landlord petition for exemption, but then later invalidated the exemption due to fraud or mistake. The case went to the Superior Court on a writ and the Superior Court remanded the case back to the Rent Board to decide on the issue of fraud. At the hearing on the issue of fraud, the board vacated the exemption due to fraud or mistake. However, this case does not apply here. In the *Michelson v. Sherman*, it was the RAP board that awarded the Landlord the exemption without the Tenant being heard in court. The case at Superior Court was remanded back to Rent Board to allow the tenant to be heard in court and that is where RAP ruled for the Tenant. However, this is not what happened with this case where the Tenants with their attorneys were all present and had their full opportunity to present all issues at the Exemption hearing. Again, all Tenants were present and all legal issues must be brought up at this hearing as per Res Judicata. Opposed to the *Michelson v Sherman* case where RAP awarded the Landlord the Certificate of Exemption, both hearing officer and RAP denied us the Certificate. It was Superior Court that ordered OHRRRB to issue us the Landlord Certificate of Exemption. Furthermore, the Superior Court never issued a collateral estoppel on the *Michelson v Sherman* case but they issued a collateral estoppel for the OHRRRB for our exemption based on Costa-Hawkins case.

This is the second case in which the Rent Board has ruled against a Landlord exemption claiming Costa-Hawkins does not apply. Here again, this Tenant is attempting to relitigate the same argument that the condominium unit do not meet the provision of the Costa-Hawkins exemption covers units that are “alienable separate from the title to any other dwelling unit,” which includes condominiums because (unlike apartments) they can be sold individually without affecting other units’ titles. (§ 1943.52, subd. (a)(3)(A); see also *Burien, supra*, 230 Cal.App.4th at p. 1045; § 4105 [defining a “[c]ommunity apartment project”]; § 4125, subd. (b) [defining a “condominium”].) This “ ‘exemption’ ” from local rent control “ ‘was originally created to spur construction of condominiums, seen as an affordable housing alternative, and in recognition that condominiums were built with the same purpose as apartment units.’ ” (*City of West Hollywood v. 1112 Investment Co.* (2003) 105 Cal.App.4th 1134, 1143 (*City of West Hollywood*), quoting Sen. Comm. on the Judiciary, Analysis of S.B. 985 (2001–2002 Reg. Sess), at p. 2; see also Mot. for Judicial Notice, Decl. of Paul J. Katz, Ex. A (MJN, Ex. A)). This has been argued already and ruled for Landlord Under Case No. RG18930130 MEMORANDUM OF POINTS AND AUTHORITIES in support OF motion for judgment on the WRIT OF ADMINISTRATIVE MANDAMUS and Ordered on the PETITION for Writ of Mandate on June 7, 2019 that “The tentative ruling was affirmed as follows: Petitioners May Lee Fong and Michael B. Lee petition the Court for a Writ of administrative mandate directing Respondent City of Oakland, Housing, Residential Rent and Relocation Board (“OHRRRB”) to set aside its decision denying Petitioners’ application for certificate of exemption from Oakland’s Rent Adjustment Program (“RAP”). (Oakland Mun. Code ch. 8.22.).”

As cited in order see “Exhibit 1”, The OHRRRB is also prohibited from relitigating this issue by the doctrine of collateral estoppel. The doctrine of collateral estoppel forbids a party from re-litigating a specific factual or legal issue that has already been actually decided by another court when the identical issue was actually litigated in a prior suit and was finally adjudicated against a party to the first suit or a person in privity. (*Key v. Tyler* (2019) 34 Cal.App.5th 505, -.)

Here, the OHRRRB already litigated the issue of whether the RAP applies when several condominiums in the same building are sold to the same owner. The issue was decided adverse to the OHRRRB in the case of *Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board*

The Court does not agree with the OHRRRB’s argument that the issues are distinguishable on their facts. To apply the statutory bona fide purchaser test, the Court need not determine whether the condominiums were sold in one transaction or a series of transactions, whether the condominiums were sold directly by the subdivider, and whether the building’s condominium conversion was total or partial. The OHRRRB is therefore collaterally estopped from relitigating the issue. Fong and Lee’s petition is GRANTED.” See “Exhibit 1”.

In *Tenants v. Golden State Ventures*, it was argued, In the present case, a "commonsense interpretation" of section 1954.52, subdivision (a)(3)(B)(ii) is that the "sold separately" exception applies to subdividers and not to subsequent purchasers. The subdivision on its face applies to "an *owner* of residential real property" (italics added), not a purchaser. At this point, Landlord is the "owner" of the four condominiums in the building, each of which is presently "alienable separate from the title to any other dwelling unit" and therefore not subject to local rent control laws. (§ 1954.52, subdivision (a)(3)(A).) The exception set forth in 1954.52, subdivision (a)(3)(B)(ii) also has no application to Landlord because the units have already been converted to condominiums.

Res Judicata applies here. From the *Golden State Ventures* Court of Appeal decision that stands for the principle that a party to a Rent Board proceeding must raise all issues *up front*. Failure to do so means the party forfeits those omitted arguments in future proceedings.

Numerous cases are in accord that a party must present its factual and legal claims to the administrative agency before it can obtain review of them in the courts. (See, e.g., *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1198; *City of Walnut Creek v. County of Contra Costa* (1980) 101 Cal.App.3d 1012, 1019–1020; *Weinberg v. Cedars-Sinai Medical Center* (2004) 119 Cal.App.4th 1098, 1115; *Southern Cal. Underground Contractors, Inc. v. City of San Diego* (2003) 108 Cal.App.4th 533, 549.) **We note that issue preclusion applies not only to claims or defenses presented in the administrative hearing, but also to claims or defenses which were not raised in the administrative proceeding. (*Murray v. Alaska Airlines, Inc.* (2010) 50 Cal.4th 860, 871.) “[U]nless a party to ‘a quasi-judicial administrative agency proceeding’ exhausts available judicial remedies to challenge the adverse findings made in that proceeding, those findings may be binding in later civil actions.” (Id. at p. 876.)** To remand the case to allow the Rent Board to address the issue at this stage of the proceedings would circumvent this doctrine.

B. The Landlord Certificate of exemption was an administrative mandate directed by Superior Court of California and was not issued on basis of fraud or mistake.

a. Landlord met the burden required to establish separate alienability.

Landlord filed in Certificate of Exemption for the four condominium units in 2016 in good faith and in accordance and compliance to all laws. Furthermore, the exemption was not issued on the basis of fraud or mistake but by the Petition for Writ Mandate hearing on 6/7/19 where the Tentative Ruling was published and had not been contested and was so ordered directing OHRRRB to issue the Certificate of Exemption as Landlord has proved that Costa Hawkins applies here.

Tenant incorrectly claims property was subdivided into 5 or more unit dwellings. Here the tenant misrepresents subdivision rules. There is a difference between subdivisions of 5 or more building units and 5 or more parcels. The developers in 2001 subdivided the property into only 4 condominium units in which they were approved and completed. Therefore, Notice of Subdivision Public Report was not required as found on Oakland Code of Ordinance 16.36.110 - Notice of subdivision public report or notice of start of sales program – A. That, for buildings of **five (5) or more units**, a copy of the final subdivision public report is available to each tenant upon request see “Exhibit 4”. The parcel map was the requirement for the 4 building units that was submitted, approved and recorded for the condominiums as indicated on assessor map not only show the fact that the units are a condominium single residential living unit that Landlord purchased as “sold separately” and “alienable”, but shows the corresponding condominium unit 1354A APN 42-4247-81, 1354B APN 42-4247-82, 1356A APN 42-4247-83, 1356B APN APN 42-4247-84 see “Exhibit 5.” The common area is the driveway with APN 42-4247-85, not the converted apartment units see “Exhibit 6”. According to tenant discovery of the CC&Rs recorded in 2007, each of the 4 condominium owners hold undivided interest of 25% of this common area driveway. After developers completed the condominium conversion, subsequent owners converted the parking space below 1356A into an apartment unit and the parking space below 1356B into another apartment unit to allow for housing to Oakland alleviate homelessness crisis see “Exhibit 7”. These converted units in no way affect the alienable rights of the condominiums and especially does not affect the Tenant’s condominium titles as the title of the common area is legally separated from the condominium unit but is shared by the 4 condominium owners in undivided interest. Again, separate alienability and sold separately on these condominium units have been heard, litigated and adjudicated to establish these units are covered by Costa Hawkins Act as per Ruling by the Superior Court of California see “Exhibit 1”.

Government Code section 66499.37 provides a 90-day statute of limitations for any subdivision decision. The following passage states that this short limitations period applies broadly: "On its face, the statutory language at issue, applying the 90–day statute of limitations to “[a]ny action or proceeding” challenging “the decision of an advisory agency, appeal board, or legislative body concerning a subdivision” is very broad and does not contain the temporal limitation relied upon by the trial court to find that plaintiffs' lawsuit was timely. To the contrary, the language used in section 66499.37 contains no limitation whatsoever on the type of decision that is being challenged, but instead broadly encompasses any decision of a local legislative or advisory body “concerning a subdivision.” Moreover, the 90–day limitations period of section 66499.37 is expressly made applicable to any action “to determine the reasonableness, legality, or validity” of any subdivision condition “including, but not limited to, the approval of a tentative map or final map....” (Italics added.)"

Tenant misinterprets the dwelling boundaries of the condominium units 1354A APN 42-4247-81 and 1354B APN 42-4247-82. It is abundantly clear on the Lower Floor and Site Plan from the CC&Rs recorded 2007 the condominium unit 1354A APN 42-4247-81 has and is within its own airspace and does not share parcels with 1354B APN 42-4247-82 see “Exhibit 7”. It is also explicitly clear according to the CC&Rs and Assessor’s Map that the Tenant had referred to does not indicate the exact locations of the parcels where the dwellings are sitting on the property. In fact, there is no indication on the Assessor’s map of where the property of each parcel is located on the lots as displayed with parcels 59 through 67 on Assessor’s map 42 which is drawn at the back of each property lot see “Exhibit 5”. Tenant is making false misrepresentations in attempt to find fraud or mistake where it does not exist and is continually claiming the 4 condominium units are not covered by Costa Hawkins. However, again the question of alienability, sold separately, bonafide purchasers all have been addressed, proven and ruled in Landlords’ favor by Superior Court of California on June 7, 2019 that exempts Landlords’ condominium units from Oakland rent control ordinances.

As cited on the Petition of Writ of Mandate order, the OHRRRB already litigated the issue of whether the RAP applies when several condominiums in the same building are sold to the same owner. The issue was decided adverse to the OHRRRB in the case of Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board (Alameda Cty. Super. Ct. Case No. RG16 834166, 1st Dist. Ct. App. Case No. A15142L Jan. 25, 2018) 2018 WL 549174. That is, both Superior Court of California and the Court of Appeal held that the Costa-Hawkins Act exempts such condominiums from the RAP because they were **sold separately** to a bona fide purchaser. (Civ. Code§ 1954.52(a)(3)(A), (a)(3)(B)(ii).) The judgment in Golden State Ventures is final, and the OHRRRB filed its return certifying compliance with this Court's writ and the Court of Appeal's decision on June 7, 2018.

Once again, Landlord was found to not only be bona fide purchaser but also had legitimately purchased each of the 4 condominium units as “sold separately”. As cited in the Petition for Write Mandate, the word "separate" occurs elsewhere in the statute-the language of the general exemption language ("alienable separate from the title to any other dwelling unit"), which requires that the title to the individual condominium units be individually alienable. In context, "sold separately" means sold as condominiums, with separate title. The separate tax ID numbers on the grant deed here confirm that each condominium retained its separate title see “Exhibit 8”. Therefore, “alienable” and “sold separately” had already been proven in this case for these condominiums through the Superior Court of California and the issue was addressed and adjudicated in favor of Landlord.

At a last ditch effort, Tenant attorney was grabbing at straws attempting to falsely claim there was a new case of Owens vs. OHRRB published May 29, 2019 somehow overrides my ruling. There are two reasons *Owens* doesn't unbind the tenants from the former judgment. First, in some circumstances,

an *intervening* case can undo the collateral estoppel (i.e., issue preclusion) of a former judgment. (*Bobby v. Bies* (2009) 556 U.S. 825, 836.) But the *Owens* case is not an *intervening* case---it was decided prior to the judgment and thus does not affect the preclusive effect of that judgment. Second, *Owens* deals with a separate issue than the one decided in the former judgment. *Owens* decided whether separate *rooms* in a single-family house can be exempt from rent control because the overall house was separately alienable. By contrast, our judgment on June 7, 2019 involved separate condominiums---each one of which was separately alienable.

As a general matter, the Costa–Hawkins Act prevents localities from regulating the amount of rent a condominium owner may charge. (Civ. Code, § 1954.52, subd. (a)(3)(A); *Burien, supra*, 230 Cal.App.4th at p. 1045.). Superior Court of California had so ruled in favor of Landlord by the Petition for Writ Mandate hearing on 6/7/19 and so directed OHRRRB to issue the Certificate of Exemption because Landlord had proved in Superior Court of California that the four condominium units are covered by Costa Hawkins Act and not subject to and is exempt from Oakland’s rent ordinance. This has been adjudicated and was not contested neither by the Tenant or OHRRB. Again, OHRRRB has been barred from relitigating this issue by the doctrine of collateral estoppel and res judicata.

CONCLUSION

For the foregoing reasons, this is a reaffirmation to support that the Hearing officer is legally correct in dismissing the Tenant’s petition and that the Order by Superior Court of California to OHRRRB issue of Certificate of Exemption is final and irreversible.

Date: April 30, 2021

Respectfully submitted,



May Lee Fong

Landlord Pro Per

Golden State Ventures, LLC v. City of Oakland Rent Bd., A151421 (Cal. Ct. App. Jan. 25, 2018)

Exhibit C, CC&Rs

Motion on Petition by Landlord in *Fong vs OHRRRB*

Fong v. City of Oakland, Housing, Residential Rent & Relocation Board, Superior Court of Alameda County, Case No. RG18930130, Order Granting Petition for Writ of Administrative Mandamus (June 7, 2019

Michelson v. Sherman, L18-0081; see also RAP appeals index

EXHIBIT 1

Katz Appellate Law
Attn: Katz, Paul J.
484 Lake Park Ave #603
#557
Oakland, CA 94610

City Attorney's Office
Attn: Jefferson, Jamilah A.
One Frank H. Ogawa Place, 6th Floor
Oakland, CA 94612

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Fong <p style="text-align: center;">Plaintiff/Petitioner(s)</p> VS. City of Oakland , Housing , Residential Rent & Relo <p style="text-align: center;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG18930130</u> Order Date: 06/07/2019 Time: 02:00 PM Dept: 17 Judge: Frank Roesch
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The Petition for Writ of Mandate was set for hearing on 06/07/2019 at 02:00 PM in Department 17 before the Honorable Frank Roesch. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: Petitioners May Lee Fong and Michael B. Lee petition the Court for a writ of administrative mandate directing Respondent City of Oakland, Housing, Residential Rent and Relocation Board ("OHRRRB") to set aside its decision denying Petitioners' application for certificate of exemption from Oakland's Rent Adjustment Program ("RAP"). (Oakland Mun. Code ch. 8.22.)

Fong and Lee bid for and purchased several condominiums in the same building at a foreclosure sale. The building's prior owner had operated the building as an apartment house, but the units were converted to condominiums before being sold to Fong and Lee. The same tenants remained in the condominium units (formerly apartments) and were unaware that a conversion had even occurred. Fong and Lee applied for exemption from the RAP on the grounds that the units were condominiums exempt from local rent control under the Costa-Hawkins Act (Civ. Code § 1954.50 et seq.). OHRRRB denied the application on the grounds that Fong and Lee had "stepped into the shoes" of the prior landlord.

The sole issue on this petition is a question of law and statutory interpretation of the provision of the Costa-Hawkins Act that exempts condominiums from local rent control ordinances after they are sold to a bona fide purchaser. (Civ. Code § 1954.52(a)(3) [exempting dwelling units "alienable separate from the title to any other dwelling unit" from local rent control].) After the Costa-Hawkins Act was initially passed, the Legislature became concerned that some apartment buildings were being legally converted to condominiums but never sold to new owners; buildings could escape local rent control through a trick of paperwork while maintaining the same ownership, management, and tenants. (See Decl. of P.J. Katz Ex. A (Sen. J. Comm. Analysis) ["[S]ome apartment property owners have taken advantage of the law by obtaining a permit to convert to condominiums, but never completing the process. . . ."]) The legislature amended the exemption to provide that condominiums is not available for "[a] condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value." (Stats 2001, ch. 729 (S.B. 985), § 2, codified as Civ. Code § 1954.52(a)(3)(B)(ii); see also Decl. of P.J. Katz Ex. A ["This bill would close that loophole and provide that the exemption would apply only when the unit is sold separately to a bona fide purchaser for value. Thus, apartment units that have remained

rentals would be subject to local rent control laws."].) In other words, the Legislature provided that the exemption from rent control is not available to the owner who subdivides his property into condominiums though it is available to subsequent bona fide purchasers of the individual condominium units.

The parties agree that the units in question are condominium units and that Fong and Lee were bona fide purchasers. OHRRRB argues that the units were not "sold separately" because they were sold on the same day, one owner continues to own the entire building, no units were sold to individual owners, and the same tenants continue to occupy the units. The small phrase "sold separately" can carry this weight. The word "separate" occurs elsewhere in the statute-the language of the general exemption language ("alienable separate from the title to any other dwelling unit"), which requires that the title to the individual condominium units be individually alienable. In context, "sold separately" means sold as condominiums, with separate title.

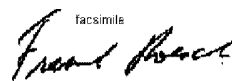
The OHRRRB is also prohibited from relitigating this issue by the doctrine of collateral estoppel. The doctrine of collateral estoppel forbids a party from re-litigating a specific factual or legal issue that has already been actually decided by another court when the identical issue was actually litigated in a prior suit and was finally adjudicated against a party to the first suit or a person in privity. (*Key v. Tyler* (2019) 34 Cal.App.5th 505, -.)

Here, the OHRRRB already litigated the issue of whether the RAP applies when several condominiums in the same building are sold to the same owner. The issue was decided adverse to the OHRRRB in the case of *Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board* (Alameda Cty. Super. Ct. Case No. RG16 834166, 1st Dist. Ct. App. Case No. A151421, Jan. 25, 2018) 2018 WL 549174. That is, both this Court and the Court of Appeal held that the Costa-Hawkins Act exempts such condominiums from the RAP because they were sold separately to a bona fide purchaser. (Civ. Code § 1954.52(a)(3)(A), (a)(3)(B)(ii).) The judgment in *Golden State Ventures* is final, and the OHRRRB filed its return certifying compliance with this Court's writ and the Court of Appeal's decision on June 7, 2018.

The Court does not agree with the OHRRRB's argument that the issues are distinguishable on their facts. To apply the statutory bona fide purchaser test, the Court need not determine whether the condominiums were sold in one transaction or a series of transactions, whether the condominiums were sold directly by the subdivider, and whether the building's condominium conversion was total or partial.

The OHRRRB is therefore collaterally estopped from relitigating the issue. Fong and Lee's petition is GRANTED.

Dated: 06/07/2019

Facsimile


Judge Frank Roesch

EXHIBIT 2



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

CERTIFICATE OF EXEMPTION
O.M.C. § 8.22.030(B)

Pursuant to the Court's Decision in Fong vs. City of Oakland, Housing, Residential Rent & Relocation Board, Case Number, RG18930130, the residential rental units described below are permanently exempt from application of the City of Oakland Rent Adjustment Ordinance, Oakland Municipal Code, Chapter 8.22, Article 1.

Situs Address: 1354 A 81st Avenue
Oakland, CA

*owner: May Lee Fong and
Grant Wai Fong, Michael B
Lee and Sandra C. Lee*

The units are subject to payment of the Rent Adjustment Program fee

Alameda County Assessor Parcel No. 42-4247-81

Date: 9/20/19


Chanee Franklin Minor
Program Manager
Rent Adjustment Program

*Mailing: 358 Cerro Ct
Daly City, CA 94015*

*Owner: May Lee Fong and Grant Wai Fong,
Michael B Lee and Sandra C. Lee*

RECORDING REQUESTED BY:

May Lee Fong



2019203025

10/08/2019 09:56 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
MELISSA WILK
RECORDING FEE: 20.00



3 PGS

WHEN RECORDED MAIL TO:

May Fong
358 Cerro Ct
Daly City, CA 94015

3
cd

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING
INFORMATION (GOVT. CODE 27361.6) (additional recording fee applies)

TITLE OF DOCUMENT

CERTIFICATE OF EXEMPTION FROM APPLICATION OF
O.M.C. Chapter 8.22, Article 1



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

CERTIFICATE OF EXEMPTION
O.M.C. § 8.22.030(B)

Pursuant to the Court's Decision in Fong vs. City of Oakland, Housing, Residential Rent & Relocation Board, Case Number, RG18930130, the residential rental units described below are permanently exempt from application of the City of Oakland Rent Adjustment Ordinance, Oakland Municipal Code, Chapter 8.22, Article 1.

Situs Address: 1354 B 81st Avenue
Oakland, CA
Owner: May Lee Fong and Grant W. Fong, Michael B. Lee and Sandra C. Lee

The units are subject to payment of the Rent Adjustment Program fee

Alameda County Assessor Parcel No. 42-4247-82

Date: 9/20/19


Chanee Franklin Minor
Program Manager
Rent Adjustment Program



2019203026

10/08/2019 09:56 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
MELISSA WILK
RECORDING FEE: 20.00



3 PGS

RECORDING REQUESTED BY:

May Lee Fong

WHEN RECORDED MAIL TO:

May Fong
358 Cerro Ct
Daly City, CA 94015

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION (GOVT. CODE 27361.6) (additional recording fee applies)

TITLE OF DOCUMENT

CERTIFICATE OF EXEMPTION FROM APPLICATION OF
O.M.C. Chapter 8.22, Article 1



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

CERTIFICATE OF EXEMPTION
O.M.C. § 8.22.030(B)

Pursuant to the Court's Decision in Fong vs. City of Oakland, Housing, Residential Rent & Relocation Board, Case Number, RG18930130, the residential rental units described below are permanently exempt from application of the City of Oakland Rent Adjustment Ordinance, Oakland Municipal Code, Chapter 8.22, Article 1.

Situs Address: 1356 A, 81st Avenue
Oakland, CA

*Owner: May Lee Fong and Grant
W. Fong, Michael B. Lee
and Sandra C. Lee*

The units are subject to payment of the Rent Adjustment Program fee

Alameda County Assessor Parcel No. 42-4247-83

Date: _____

9/20/19

Chanee Franklin Minor
Program Manager
Rent Adjustment Program

RECORDING REQUESTED BY:

May Lee Fong

WHEN RECORDED MAIL TO:

May Fong
358 Cerro St
Daly City, CA 94015



2019203023

10/08/2019 09:56 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
MELISSA WILK
RECORDING FEE: 20.00



3 PGS

3
CA

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION (GOVT. CODE 27361.6) (additional recording fee applies)

TITLE OF DOCUMENT

CERTIFICATE OF EXEMPTION FROM APPLICATION OF
O.M.C. Chapter 8.22, Article 1



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

CERTIFICATE OF EXEMPTION
O.M.C. § 8.22.030(B)

Pursuant to the Court's Decision in Fong vs. City of Oakland, Housing, Residential Rent & Relocation Board, Case Number, RG18930130, the residential rental units described below are permanently exempt from application of the City of Oakland Rent Adjustment Ordinance, Oakland Municipal Code, Chapter 8.22, Article 1.

Situs Address: 1356 B 81st Avenue
Oakland, CA

*Owner: May Lee Fong and Michael
B. Lee and Sandra C. Lee,
Grant W. Fong*

The units are subject to payment of the Rent Adjustment Program fee

Alameda County Assessor Parcel No. 42-4247-84

Date: 7/20/19


Chanee Franklin Minor
Program Manager
Rent Adjustment Program

RECORDING REQUESTED BY:

May Lee Fong

WHEN RECORDED MAIL TO:

May Fong
358 Cerro Ct
Daly City, CA 94015

3
ca



2019203024

10/08/2019 09:56 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
MELISSA WILK
RECORDING FEE: 20.00



3 PGS

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION (GOVT. CODE 27361.6) (additional recording fee applies)

TITLE OF DOCUMENT

CERTIFICATE OF EXEMPTION FROM APPLICATION OF
O.M.C. Chapter 8.22, Article 1

EXHIBIT 3

ONLINE SERVICES [Assessor's Office](#) | [Treasurer-Tax Collector](#) | [New Query](#)

PROPERTY ASSESSMENT INFORMATION **ASSESSOR'S OFFICE**

2020 - 2021 Assessment Information

Parcel Number:	42-4247-81
Assessor's Map: (Map image is not to scale)	Maps... Disclaimer
Use Code:	7300
Description	Condominium - single residential living unit
Land	\$34,454.00
Improvements	\$80,392.00
Fixtures	0
Household Personal Property	0
Business Personal Property	0
Total Taxable Value	\$114,846.00
Exemptions	
Homeowner	0
Other	0
Total Net Taxable Value	\$114,846.00

[Additional Assessment Information](#) | [Property Tax Information](#)

Adobe Acrobat Reader is required to view the maps. Click [here](#) to download.

EXHIBIT 4

16.36.110 - Notice of subdivision public report or notice of start of sales program.

Within five (5) days of receipt of the final subdivision public report described in Section 11018 of the California Business and Professions Code, the subdivider of a building with five (5) or more units shall notify, in writing, the Planning and Building Director and all tenants in the building to be converted of the date of issuance of said report. For buildings with four (4) or less units, the subdivider shall give the Planning and Building Director and all tenants in the building to be converted seventeen (17) days' prior written notice of the start of the sales program. Said notices, to be accompanied by the subdivider's final tenant assistance program as set forth in O.M.C. Section 16.36.080, shall also state the following:

- A. That, for buildings of five (5) or more units, a copy of the final subdivision public report is available to each tenant upon request;
- B. That no remodeling of the interior of tenant-occupied units shall begin until at least thirty (30) days after issuance of said report or start of the sales program;
- C. That each tenant has an exclusive right to contract for the purchase of the tenant's respective unit, or, at the tenant's option, any other available unit in the building upon the same terms and conditions that such units will be initially offered to the general public, less a discount of at least ten (10) percent, or upon terms more favorable to the tenant if so provided for in the subdivider's final tenant assistance program attached to this notice, such right to run for a period of not less than ninety (90) days from the date of issuance of said report or the start of the sales program;
- D. That each tenant has a right of occupancy of at least one hundred eighty (180) days from the date the notice to existing tenants of intention to convert, as set forth in O.M.C. Section 16.36.031, is served on the tenant: one hundred eighty (180) days from the issuance of the final subdivision public report or, if one is not issued, or from the start of subdivider's sale program; or until the expiration of tenant's lease, or as specified in the subdivider's final tenant assistance program attached to this notice, whichever is longer, prior to termination of tenancy due to conversion, and that upon termination of tenancy, each tenant shall be provided with relocation assistance as set forth in O.M.C. Section 16.36.050. This provision shall not alter or abridge the rights or obligations of the parties in performance of their covenants, including but not limited to the provision of services, payment of rent, or the obligations imposed by Sections 1941, 1941.1, and 1941.2 of the California Civil Code;
- E. That for each tenant not desiring to purchase a unit or, for tenants eligible for a lifetime

lease, not desiring to accept a lifetime lease, the subdivider will provide such tenant with up-to-date information of available apartments of comparable size, price, and location within the city and will take other steps as indicated in the subdivider's final tenant assistance program attached to this notice.

The written notices required by this Section shall be deemed satisfied if they comply with the legal requirements for service by mail pursuant to California Code of Civil Procedure Section 1013.

(Ord. No. 13585, § 2, 2-18-2020)

EXHIBIT 5

ASSESSOR'S MAP 42

Code Area No. 17-032

Map No. 2 of the Buena Ventura Tract. (Bk. 13 Pg. 27)

Map of the Briggs Tract, Brooklyn Township. (Bk. 21 Pg. 20)

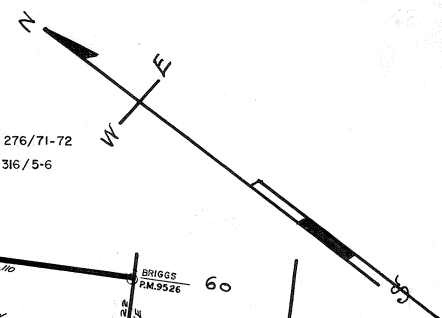
Scale 1 in = 40 ft

4247-1 7

P.M. 7739 276/71-72
P.M. 9526 316/5-6

4247

2



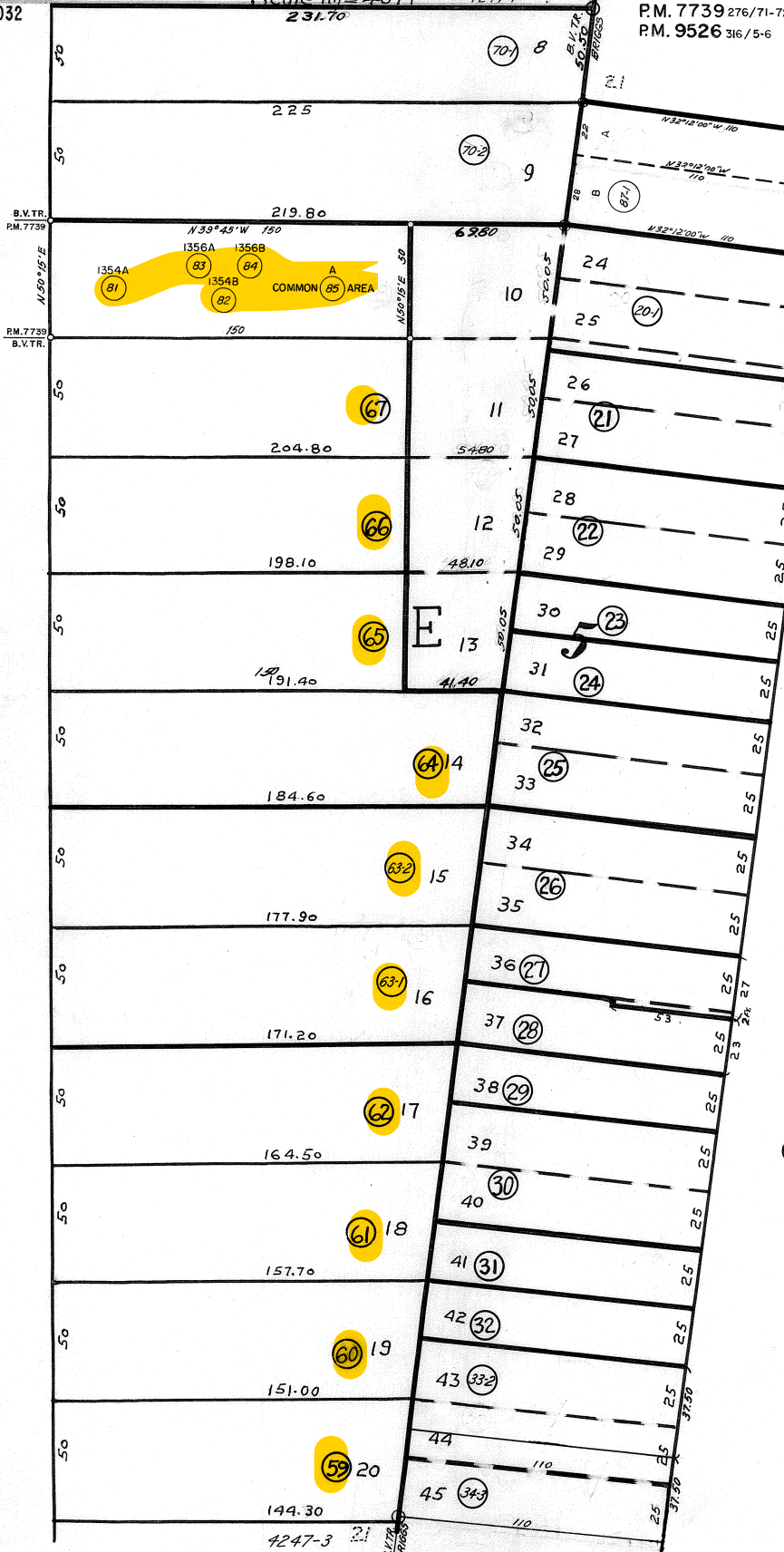
- 8-22-25 P.M.
- 3-17-05 LL
- 1364
- 1360
- 11-27-07 CC
- 10-13-10 MN
- 5-22-15 GH
- 1352
- 1350
- 1348
- 1346
- 1342
- 1340
- 1338
- 1336
- 1332
- 1330
- 1328
- 1326
- 1322
- 1312
- 1306
- 1300
- 1262
- 1258
- 1256

Avenue

(Snell)

81st

17-036
17-032



Avenue

(Moss)

82nd

1265
1263
4249
1257

A 1st St.

1247

1245

1243

1233

4250

1229

1225
1223

1217

1211

1205

1201

1199

25

000649

EXHIBIT 6

ONLINE SERVICES

[Assessor's Office](#) | [Treasurer-Tax Collector](#) | [New Query](#)

PROPERTY ASSESSMENT INFORMATION

ASSESSOR'S OFFICE

2019 - 2020 Assessment Information

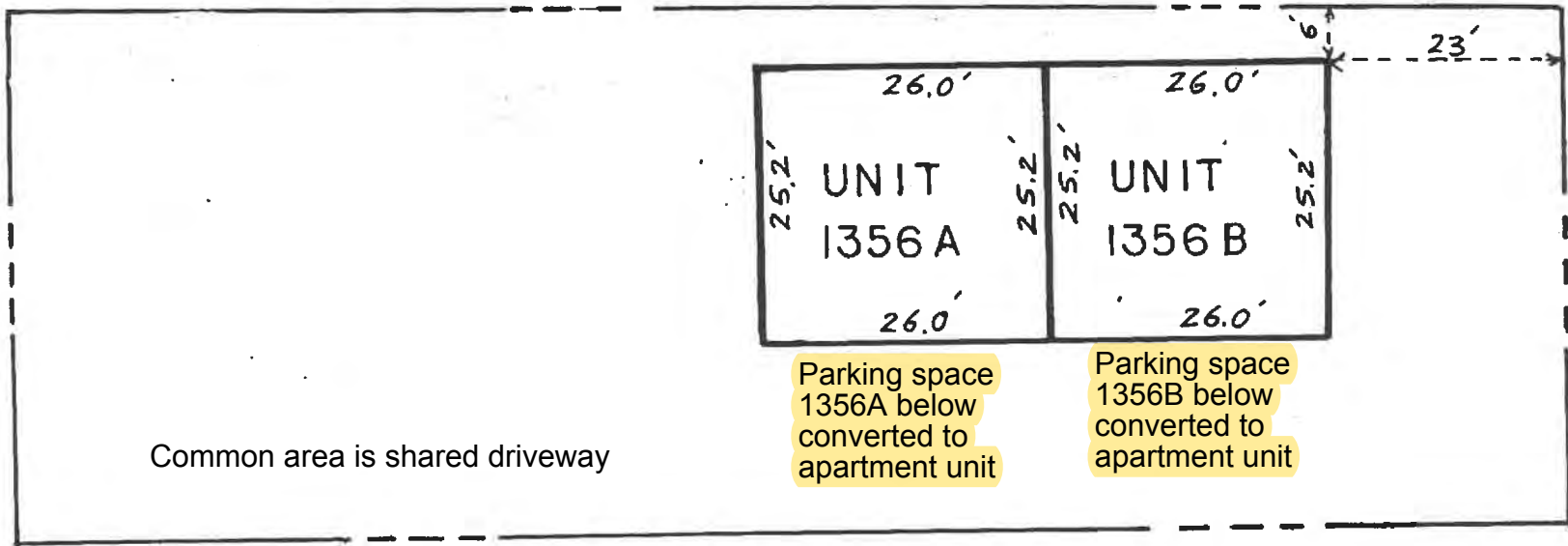
Parcel Number:	42-4247-85
Assessor's Map: (Map image is not to scale)	Maps... Disclaimer
Use Code:	7390
Description	Condominium Common Area or use
Land	0
Improvements	0
Fixtures	0
Household Personal Property	0
Business Personal Property	0
Total Taxable Value	0
Exemptions	
Homeowner	0
Other	0
Total Net Taxable Value	0

[Additional Assessment Information](#) | [Property Tax Information](#)

Adobe Acrobat Reader is required to view the maps. Click [here](#) to download.

EXHIBIT 7

UPPER FLOOR BACK HALF OF PROPERTY



Common area is shared driveway

Parking space
1356A below
converted to
apartment unit

Parking space
1356B below
converted to
apartment unit

UPPER FLOOR PLAN

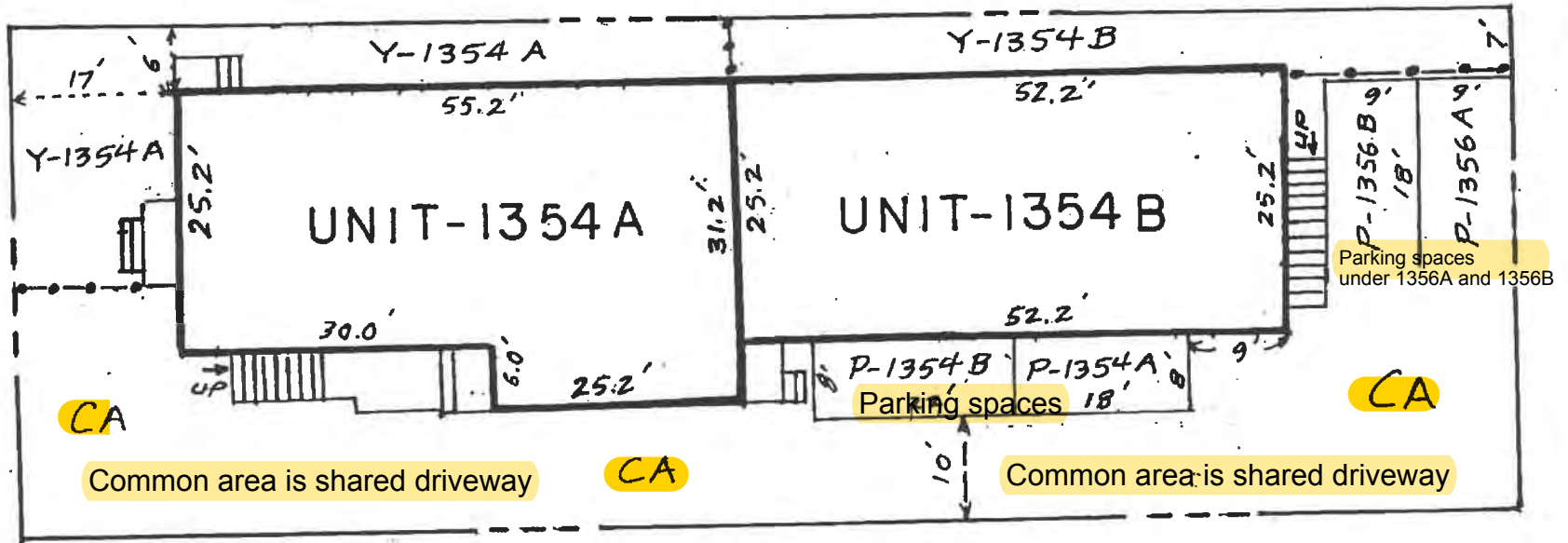
NOT TO SCALE

* Below units 1356A and 1356B are their parking spaces

30

LOWER FLOOR FRONT HALF OF PROPERTY

81ST AVENUE



LOWER FLOOR AND SITE PLAN

NOT TO SCALE

LEGEND

- PROPERTY LINE
- P-1354 A PARKING OF UNIT 1354 A
- P-1354 B " " " 1354 B
- P-1356 A " " " 1356 A
- P-1356 B " " " 1356 B
- Y-1354 A YARD OF UNIT 1354 A
- Y-1354 B " " " 1354 B
- YARD LIMIT

CA COMMON AREA APN 42-4247-85 was Common Area is driveway which owners undivided interest of 25% ownership see Exhibit

Parking space under 1356A and 1356B were converted to 2 apartment units;

EXHIBIT 8

Recording REquested By
ServiceLink

MAIL TAX STATEMENT TO:
MAY LEE FONG, GRANT WAI
FONG, MICHAEL B LEE and
SANDRA C LEE
358 CERRO COURT
DALY CITY, CA 94015

Prepared By:
ServiceLink
4000 Industrial Blvd.
Aliquippa, PA 15001

2774039

Handwritten notes: "Mw", "P3", "ITP", "HP", and a signature.



2012107555

03/29/2012 01:50 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 31.00
COUNTY TAX: 219.45
CITY TAX: 2992.50



3 PGS

For Recorder's Use Only

Grant Deed

THE UNDERSIGNED GRANTOR (S) DECLARE (S)
DOCUMENTARY TRANSFER TAX: \$ 2,992.50 CITY
\$ 219.45 county

- FOR NO CONSIDERATION
- COMPUTED ON FULL VALUE of property conveyed, or
COMPUTED ON FULL VALUE LESS VALUE OF LIENS AND ENCUMBRANCES remaining at time of sale.
- Unincorporated area of Alameda
- City of OAKLAND

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Deutsche Bank National Trust Company, as Trustee for Ameriquest Mortgage Securities Inc., Asset-Backed Pass-Through
Certificates, Series 2003-2

Hereby grants to,
GRANT WAI FONG AND MAY LEE FONG, HUSBAND AND WIFE AND MICHAEL B. LEE AND SANDRA C. LEE,
HUSBAND AND WIFE, EACH TO AN UNDIVIDED 50% INTEREST, AS TENANTS IN COMMON

The following described real property in the County of Alameda, State of CA.

LEGAL DESCRIPTION:

See Exhibit A attached hereto and made a part hereof

Tax ID Number 042-4247-081-00, 042-4247-082-00, 042-4247-083-00, 042-4247-084-00 and 042-4247-085-00

March 07, 2012

Deutsche Bank National Trust Company, as Trustee for Ameriquest Mortgage Securities Inc., Asset-Backed Pass-Through Certificates, Series 2003-2

Phyllis Washington

By: American Home Mortgage Services

Phyllis Washington

Assistant Secretary

Its: Attorney in Fact

STATE OF Texas)
)SS.
COUNTY OF Dallas)

On this 3/8/12 appeared before
me William Cuchens, a Notary Public,
Phyllis Washington

personally known or proven to me to be the person(s) whose name(s) is/are subscribed to the above instrument, who acknowledged that he/she/they executed the instrument for the purposes therein contained.

W Cuchens

Notary Public

My Commission Expires: JUN 24 2014

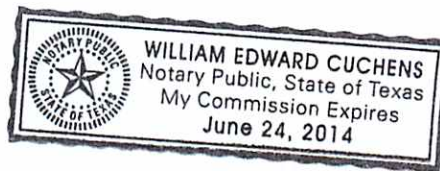


Exhibit "A"
Legal Description

All that certain parcel of land situate in the County of Alameda, State of California, being known and designated as follows:

The Northwestern 150 feet of Lot 10, Block "E", as said Lot and Block are shown on the "*Map 2 of the Buenaventura Tract, Brooklyn Tp.*", filed January 9, 1892, Map Book 13, Page 27, Alameda County Records.

Tax ID: 042-4247-081-00, 042-4247-082-00, 042-4247-083-00, 042-4247-084-00 and 042-4247-085-00

HEARING BRIEF IN SUPPORT OF TENANT PETITION T19-0384

To: Rent Adjustment Program
Fr: Xavier Johnson & Micaela Alvarez, Attorney for Ana Jeronimo Salvador

Case No: T19-0384
Case Title: Salvador v. Fong
Property Address: 1354 81st Avenue Unit A, Oakland, CA 94602

FACTS AND PROCEDURAL HISTORY

Tenant Ana Jeronimo Salvador filed the Oakland Rent Adjustment Program (hereinafter “RAP”) petition at issue in this action, T19-0384, against her landlord, May Fong (hereinafter “Landlord”), on October 9, 2019. Tenant Salvador’s petition contests the exemption that was previously awarded to the Landlord in case number L16-0083, arguing that the exemption was issued on the basis of fraud or mistake, and alleging unlawful rent increases as well as decreased housing services.

The Landlord filed the first petition involving the parties, L16-0083, on October 31, 2016, asserting that Tenant Salvador’s unit as well as three other units at the property are condominiums, and seeking an exemption from RAP under the Costa Hawkins Rental Housing Act (hereinafter “Costa Hawkins”), California Civil Code Section 1954.52(a)(3). Costa Hawkins stipulates that any dwelling or unit that is separately alienable from any other dwelling or unit is exempt from rent control, except under certain circumstances.

At the hearing on case number L16-0083, the Landlord testified that the property had been subdivided into five parcels—four condominium parcels and one parcel containing two “unconverted” apartments.¹ When asked to produce the CC&Rs for the condominium

¹ Hearing Recording for L16-0083, 0:14:05-0:14:15, 0:19:50-0:20:05

subdivision, the Landlord first responded that she did not have them.² Later, her co-owner, Michael Lee indicated that the CC&Rs were “verbal.”³

On April 14, 2017, a hearing decision was issued in L16-0083 denying the exemption. Citing an exception to the Costa Hawkins Rental Housing Act, California Civil Code Section 1954.52(3)(B)(ii), the hearing officer found that while the property had been converted to condominiums, the property was not exempt because it “[had] not been sold separately by the subdivider to a bona fide purchaser for value.”⁴ The hearing officer determined that because the Landlord had purchased the entire building from the subdivider, the units had never been sold separately, and therefore they were not exempt from rent control.⁵

The Landlord appealed the hearing decision, but the Oakland Housing, Residential Rent and Relocation Board (hereinafter “RAP Board”) affirmed the holding in June 2018.⁶ The Landlord went on to petition the Alameda County Superior Court for a Writ of Administrative Mandate to direct the RAP Board to set aside its decision denying the Landlord an exemption. The focus of the Landlord’s arguments and the Court’s analysis was narrow: the question was whether the units at issue could be considered “sold separately” under the exemption to Costa Hawkins, given that the Landlord owned all the units in the building and had acquired them on one day through one transaction.⁷ Citing a prior RAP case that addressed a similar issue, *Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board*, the

² Hearing Recording for L16-0083, 0:24:35-0:25:31.

³ Hearing Recording for L16-0083, 0:26:52-0:27:20.

⁴ RAP Hearing Decision, L16-0083, p. 4

⁵ *Id.*

⁶ OHRRRB Appeal Decision, L16-0083, p.2

⁷ See *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130 (order dated 06/07/2019).

Court found that the units at the property had been sold separately and granted the Landlord's petition for an Administrative Mandate in June 2019.⁸

In response to the Court's order, the hearing officer for petition L16-0083 issued a Certificate of Exemption. The hearing officer stated that "on June 13, 2019, the Superior Court of Alameda County ruled in case RG18930130 that the subject units are exempt from rent control under the Costa Hawkins Rental Housing Act."⁹ A careful review of the writ shows that the Court made no such determination. Instead, the Court simply ruled that the units at the subject property were indeed sold separately, and therefore did not fall into the narrow exception to Costa Hawkins outlined in California Civil Code Section 1954.52(3)(B)(ii).

Though the Court determined that the units were sold separately, and that the Landlord was therefore a bona fide purchaser for value, the Court made no finding with regard to whether the property meet other requirements for an exemption from RAP under Costa Hawkins. The Court's interpretation of "sold separately" applies only to California Civil Code § 1954.52(a)(3)(B)(ii). However, in order to qualify for a Costa Hawkins exemption from rent control, the Landlord must also show that the units are "alienable separate from the title to any other dwelling unit" pursuant to California Civil Code § 1954.52(a)(3)(A).

Tenant Salvador brings this petition, T19-0384, because the Landlord not only failed to meet their burden of showing separate alienability, but the evidence and testimony submitted in support of L16-0083 make clear that the units at the subject property are in fact *not* separately alienable. Moreover, the Tenant recently uncovered evidence that demonstrates that the Landlord made several critical misrepresentations in the hearing about the nature of the property and the

⁸ *Id.*

⁹ Certificate of Exemption, L16-0083.

process used to convert the units to condominiums. Accordingly, the exemption was based on fraud or mistake, and the decision to award the exemption should be reversed.

ARGUMENT

1. The petition is not barred by the doctrine of res judicata or collateral estoppel.

In responding to Tenant Salvador's petition, the Landlord asserts in a Motion to Dismiss, that RAP should not relitigate the issue of the exemption on the basis of the doctrines of res judicata and collateral estoppel. In fact, neither doctrine applies in this case.

The Rent Adjustment Program has considered cases in which RAP granted a landlord petition for exemption, but then later invalidated the exemption due to fraud or mistake.¹⁰ The case went to the Superior Court on a writ and the Superior Court remanded the case back to the Rent Board to decide on the issue of fraud.¹¹ At the hearing on the issue of fraud, the board vacated the exemption due to fraud or mistake.¹²

In the landlord petition for exemption relevant to this subject property of the current case, RAP cited exclusively to findings made by the Court in case number RG18930130. As outlined above, the issue before the Court was whether the subject units could be considered "sold separately" under an exception to Costa Hawkins which stipulates that an exemption from rent control is unavailable to condominiums that had not been "sold separately to a bona fide purchaser for value."

The Court held that even though the Landlord purchased all the units at the subject property from the subdivider in one transaction, the units were indeed "sold separately to a bona fide purchaser for value" for purposes of the Costa Hawkins exception that was at issue, namely

¹⁰ *Michelson v. Sherman*, L18-0081; see also RAP appeals index

¹¹ *Id.*; see also RAP appeals index

¹² *Id.*; see also RAP appeals index

California Civil Code Section 1954.52(3)(B)(ii). The Court ordered the RAP to vacate its denial of the Landlord's exemption petition and forbade the RAP from further litigating the question of whether the units were sold separately. But critically, the Court made no finding with regard to the broader question of the Landlord's right to an exemption from rent control.

Specifically, the Court's order indicated that the RAP was collaterally estopped from further hearings on the "statutory bona fide purchaser test," but the Court did not forbid the RAP from further hearings on the broader question of whether the units are separately alienable and therefore exempt from rent control under Costa Hawkins. In fact, the Court stopped well short of this question.

Costa Hawkins exempts properties that are "alienable separate from the title to any other dwelling unit" from local rent control ordinances.¹³ Because the original denial of the exemption petition was decided on other grounds (namely, the narrow exception found in California Civil Code Section 1954.52(3)(B)(ii)), the RAP has not yet made any findings around the alienability of the units. In short, the Court reversed the RAP's denial of the exemption, but did not find that the Landlord was indeed entitled to one.

As is laid out in detail below, based in part on evidence submitted by the Landlord herself, Tenant Salvador has demonstrated through evidence submissions that the units at the property are not separately alienable and therefore do not qualify for an exemption under Costa Hawkins. Unfortunately, after the Court issued the Administrative Mandate, the RAP granted the exemption without holding a hearing or making any findings on the broader issue of separate alienability. The Tenant filed a timely appeal of the RAP's decision to grant the exemption, but

¹³ CA Civ. Code § 1954.52(a)(3)(A)

was told that the exemption decision was not appealable. Thus, the Tenant brings this action alleging that the exemption was awarded on the basis of fraud or mistake.

2. The exemption was issued on the basis of fraud or mistake.

a. Under California and Oakland law, the Landlord did not meet the burden required to establish separate alienability.

To qualify for an exemption from rent control under Costa Hawkins, a unit must be “alienable separate from the title to any other dwelling unit.”¹⁴ In the original February 2017 hearing on the exemption petition, the Landlord did not submit sufficient evidence to establish that the units are separately alienable. Moreover, the little evidence she did submit establishes that the units at the subject property are in fact *not* separately alienable. In support of her exemption petition, the Landlord submitted preliminary title reports and records from the Alameda County Assessor. She also testified that the property had been subdivided into five parcels—four condominium parcels and one parcel containing two apartments.¹⁵

California law requires that an owner must first obtain a Notice of Subdivision Public Report from the California Department of Real Estate in order to legally sell individual units in a subdivision of five or more parcels.¹⁶ In applying this law, the California Court of Appeal has held that without a Notice of Subdivision Public Report, subdivided units cannot be considered separately alienable.¹⁷ In *City of West Hollywood v. 1112 Inv. Co.*, the City brought an action against a property owner for violation of the local rent control ordinance, arguing that the units at issue were no longer capable of being sold as condominiums—and therefore no longer entitled to an exemption under Costa Hawkins—because the property owner had allowed to lapse the

¹⁴ CA Civ. Code § 1954.52(a)(3)(A)

¹⁵ Hearing Recording 0:14:05-0:14:15, 0:19:50-0:20:05

¹⁶ CA Business and Profession Code § 11018.2

¹⁷ *City of W. Hollywood v. 1112 Inv. Co.*, 105 Cal. App. 4th 1134 (2003).

property's Notice of Subdivision Public Report. The Court sided with the City of West Hollywood, highlighting the breadth of the state statutory scheme and the policy goals it embodies, and ultimately holding that the units "are not alienable within the meaning of the rent control exemption in Civil Code Section 1954.52."¹⁸

Here, the Landlord did not submit this required report with her exemption petition, and public records requests submitted by the Tenants confirm that no such report exists for the subject property.¹⁹ Thus, in accordance with prior findings by the California Court of Appeal, the units are not separately alienable and do not qualify for an exemption from rent control under Costa Hawkins.

In addition to the state's regulations governing the sale of condominiums, the City of Oakland imposes similar reporting and disclosure requirements under Oakland Municipal Code Section 16.36.120. Again, the Landlord submitted no evidence of her compliance with these provisions and public records requests confirm that the required reports and disclosures do not exist.²⁰ Because the landlord did not comply with state or Oakland law regulating condominium conversions, the RAP should find that the process employed to convert the units was fraudulent and incomplete. Consequently, the units in question are not separately alienable and therefore should not be considered exempt from rent control.

b. The documentary evidence the Landlord submitted contradicts her description of the property and makes clear that the units are not separately alienable.

As noted previously, the Landlord testified in the hearing that the subject property consisted of six units in five parcels—four condominium parcels and a fifth parcel, APN 42-

¹⁸ *Id.* at 1152.

¹⁹ *See* Exhibit A, Public Records Request No. 19-4131

²⁰ *See id.*

4247-85, containing the title for two "unconverted" apartments.²¹ In fact, the Assessor's Map submitted by the Landlord indicates that the parcel in question is assessed as a condominium common area.²² Under the laws governing condominium conversions, this renders the two "unconverted" units inalienable from all dwelling units on the lot.

California and Oakland law regulating condominiums dictate that the easements established by the CC&R in a subdivision's common area are necessary for condominium units to exist as legal dwelling units. If the two dwelling units contained in the APN 42-4247-85 were sold separately to another party, the four condominium units at the subject property would lose their interest in the common area and a number of easements and characteristics necessary to be viable dwelling units.²³ Additionally, the units would lose the utility easements necessary to furnish utilities, rendering the units untenable.²⁴ Because the dwelling units exist in the common area, and because the title to the common area cannot be legally separated from the condominiums, the condominium titles are not separately alienable from other dwelling units, or each other. Unfortunately, because the hearing officer for L16-0083 decided the case on other narrower grounds, findings by RAP related to the Landlord's misstatements or the legal implications of the Assessor's map do not appear in the original hearing decision for L16-0083.

c. The Landlord failed to submit the CC&Rs for the condominium subdivision; the CC&Rs provide further evidence that Tenant Salvador's unit is not separately alienable.

State Law provides an exemption for dwelling units which are separately alienable in title to any other dwelling units.²⁵ However, the First District Court of Appeal for California has

²¹ Hearing Recording 0:14:05-0:14:15, 0:19:50-0:20:05.

²² Exhibit B, Alameda County Assessor's Map and property info.

²³ See OMC § 16.32.000, OMC § 15.12.010, CA Fire Code Chapter 10, OMC § 17.17.050.

²⁴ CA Civ Code § 1941.

²⁵ Cal. Civ. Code Section 1954.53

upheld that a single-family home used as a multi-unit building can be regulated under rent control in *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*.²⁶ The key definition of a dwelling unit is that it is “any area understood to be committed [] to the habitation of a given tenant or tenants to the exclusion of others.”²⁷ The Court, quoting the underlying hearing decision, found that where “the owner has chosen to rent rooms out separately to a number of people,” the single-family is transformed into a multi-unit dwelling.²⁸

At the hearing, when asked why she did not submit the CC&Rs for the condominium subdivision, the Landlord first responded that she did not have them and later indicated that the CC&Rs were verbal.²⁹ Tenant Salvador recently discovered that this is in fact not true. A search at the County Recorder’s office revealed that CC&Rs for the property were recorded on November 8, 2007.³⁰ This information was squarely within the property owner’s burden to provide at the time of the hearing, but the owner failed to provide it. Importantly, the CC&Rs provide evidence to support a finding that Tenant Salvador’s unit is not separately alienable.

Tenant Salvador’s unit is addressed as 1354 81st Avenue, Apt A. According to the CC&Rs and County Assessor’s map associated with the property, her unit is located within the subdivided airspace corresponding to APN 42-4247-81. However, the parcel drawn on the map in the CC&Rs is much larger than Ms. Salvador’s unit.³¹ This is because the parcel where she lives contains another dwelling unit. This unit, which has been referred to as 1354 81st Avenue

²⁶ *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, 49 Cal.App.5th 739, decided 5/29/2020, page 1

²⁷ *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, 49 Cal.App.5th 739, decided 5/29/2020, page 1

²⁸ *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, 49 Cal.App.5th 739, decided 5/29/2020, page 2

²⁹ Hearing Recording for L16-0083, 0:24:35-0:25:31; 0:26:52-0:27:20.

³⁰ Exhibit C, CC&Rs.

³¹ See Exhibit D, demonstratives and photos of the property

Apt B, and 1356 81st Avenue Apt. A, in prior hearings was formerly occupied by Tenant Alondra Apodaca, who attended the initial hearing between the parties for case number L16-0083. This subdivision places two dwelling units within the airspace corresponding to one parcel, APN 42-4247-81. Because these two units are not separately alienable from one another, they cannot be granted an exemption from rent control pursuant to Costa Hawkins.

Even if one were to find that the initial Landlord Petition involved no fraud or mistake, one must recognize that at least as of the creation of the secondary tenancies, the units must fall within the jurisdiction of the Rent Adjustment Program according to the law in the *Owens* case.

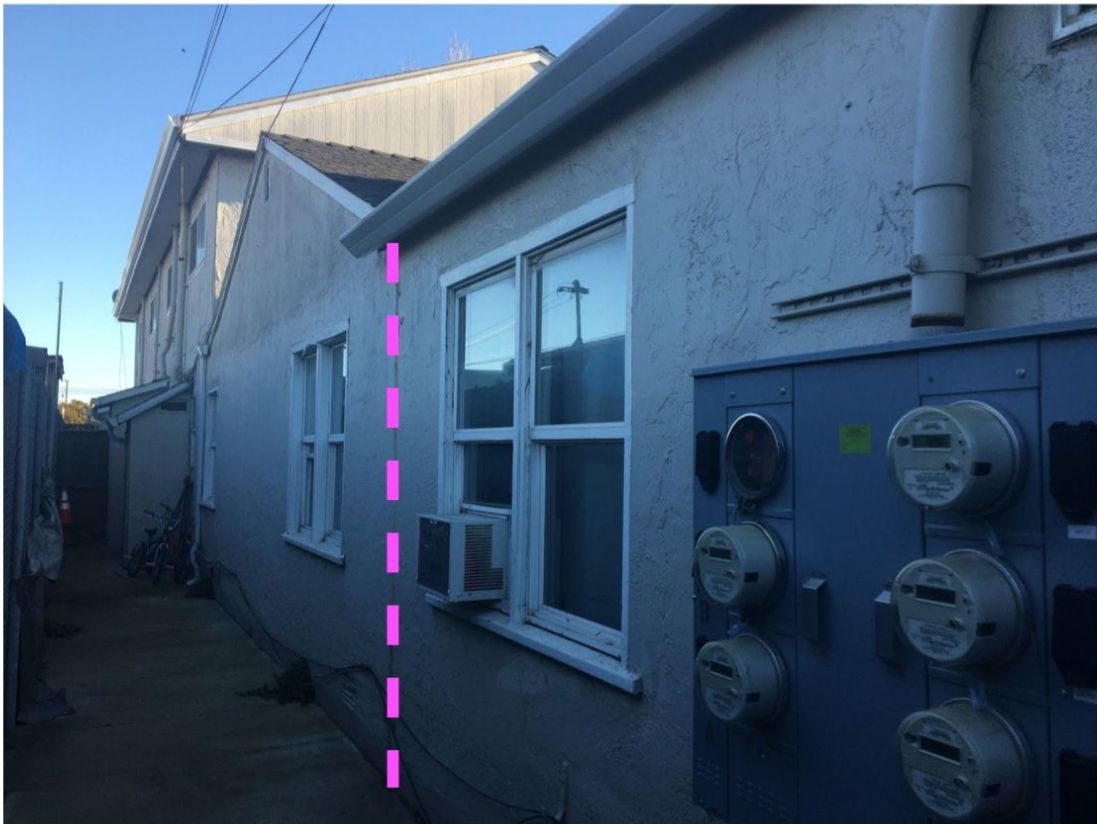
CONCLUSION

In light of the aforementioned, Tenant Salvador respectfully requests that the hearing officer reverse the prior grant of an exemption to the subject property and find that the exemption was awarded on the basis of fraud or mistake. Finally, should the hearing officer find that the best venue to hear the issues of this case is the Superior Court, we request that the Hearing Decision reflect that the analysis of the tenant is supported, however the petition is rejected solely out of deference to a court of higher authority, and not based on any fundamental disagreement with the arguments as presented by the tenant.

Date: April 30, 2021

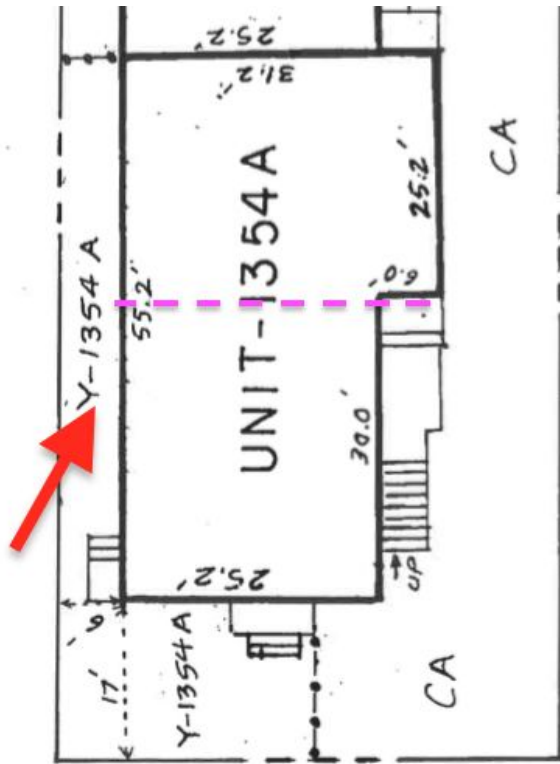
Respectfully submitted,

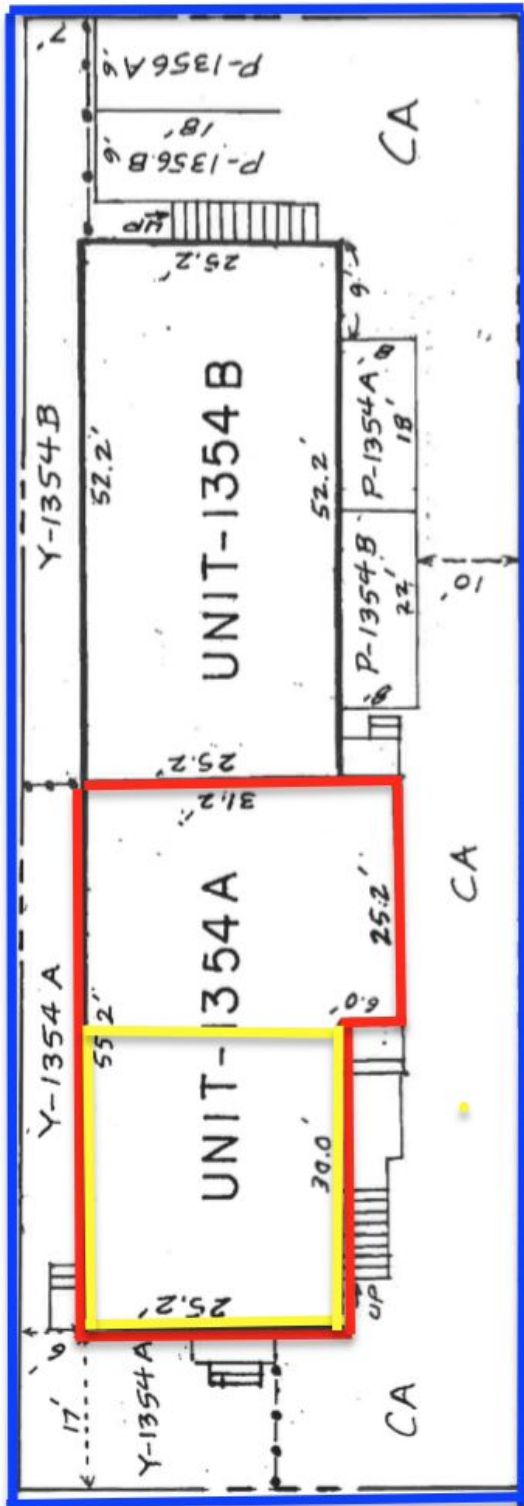
Xavier Johnson
Attorney for Tenant Ana Salvador



— = Approximate line of bifurcation of the two dwelling units within APN 42-4247-81

Red Arrow below marks position and angle of photo above





LOWER FLOOR AND SITE PLAN
NOT TO SCALE

LEGEND

---	PROPERTY LINE
---	P-1354 A PARKING OF UNIT 1354 A
---	P-1354 B " " " 1354 B
---	P-1356 A " " " 1356 A
---	P-1356 B " " " 1356 B
---	Y-1354 A YARD OF UNIT 1354 A
---	Y-1354 B " " " 1354 B
---	YARD LIMIT
CA	COMMON AREA

- Key:**
- █ =Boundaries of lot
 - █ =Boundaries of APN 42-4247-81 aka "Unit-1354 A"
 - █ =Boundaries of dwelling unit of Tenant Petitioner Ana Salvador

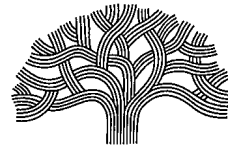


Key:

Blue line =Boundaries of lot

Red line =Boundaries of APN 42-4247-81 aka "Unit-1354 A"

Yellow line =Boundaries of dwelling unit of Tenant Petitioner Ana Salvador

**ADMINISTRATIVE DECISION**

CASE NUMBER: T19-0384

CASE NAME: Salvador v. Fong

PROPERTY ADDRESS: 1354 81st Avenue
Oakland, CA

DATE OF DECISION: August 31, 2021

SUMMARY OF DECISION

The Tenant's petition is denied.

INTRODUCTION

Reason for Administrative decision: An Administrative Decision is a decision issued without a hearing. The purpose of a hearing is to allow the parties to present testimony and other evidence to allow resolution of disputes of material fact. However, in this case, sufficient uncontested facts have been presented to issue a decision without a hearing, and there are no material facts in dispute. Therefore, an administrative decision, without a hearing, is being issued.

BACKGROUND

The Tenant filed the petition, T19-0384, on October 9, 2019. The Tenant's petition contests the previously granted exemption to the Landlord in L16-0083, arguing that the exemption was issued based on fraud or mistake. The petition also alleges unlawful rent increases and decreased housing services.

//

The Landlord filed the first petition involving the parties, L16-0083, on October 31, 2016, asserting that the subject unit, as well as other units at the property, are condominiums, and requested an exemption from RAP under the Costa Hawkins Rental Housing Act (hereinafter “Costa Hawkins”).¹

On April 14, 2017, a hearing decision was issued in L16-0083, denying the exemption. The L16-0083 Hearing Officer found that while the property had been converted to condominiums, the property was not exempt because it “[had] not been sold separately by the subdivider to a bona fide purchaser for value.”² The Hearing Officer also determined that because the Landlord had purchased the entire building from the subdivider, the units had never been sold separately, and therefore were not exempt from rent control.³

The Landlord filed a timely Writ of Administrative Mandate with the Alameda County Superior Court to direct the Board to set aside its decision denying the Landlord’s exemption. The Landlord filed a timely appeal, and the Oakland Housing, Residential Rent, and Relocation Board (hereinafter “Board”) affirmed the holding on June 2018.⁴ The Court found that the units at the subject property had been sold separately and granted the Landlord’s petition for an Administrative Mandate in June 2019.⁵ Thereafter, the Hearing Officer assigned to L16-0083 issued a Certificate of Exemption, as directed by the Superior Court of Alameda County, pursuant to the ruling issued in case RG18930130 that the subject units are exempt from rent control under the Costa Hawkins Rental Housing Act.”⁶

The Tenant now argues that the focus of the Landlord’s arguments and the Court’s analysis was narrow and alleges that the only question before the Court was whether the units at issue could be considered “sold separately” under the exemption to Costa Hawkins, given that the Landlord owned all the units in the building and had acquired them on one day through one transaction.⁷ Tenant alleges that because the Court cited a prior Board decision that addressed a similar issue, *Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board*, the Court’s finding was limited in scope that the units at the

¹ Civil Code Section 1954.52(a)(3)

² RAP Hearing Decision, L16-0083, p. 4

³ *Id.*

⁴ *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130

⁵ *Id.*

⁶ Certificate of Exemption, L16-0083.

⁷ See *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130 (order dated 06/07/2019).

property had been sold separately and that on this limited basis, granted the Landlord's petition for an Administrative Mandate in June 2019.⁸

The Court's Order also prohibits the Board from relitigating this issue by the doctrine of collateral estoppel.⁹ Notwithstanding the Court's order, the Tenant seeks to relitigate the exemption alleging that said prohibition relates only to further hearings on the "statutory bona fide purchaser test." The Landlord disagrees.

The Tenant claims that the Court made no finding with regard to whether the property meets other requirements for an exemption from RAP under Costa Hawkins; specifically, the Tenant alleges that to qualify for a Costa Hawkins exemption from rent control, the Landlord must also show that the units are "alienable separate from the title to any other dwelling unit" under California Civil Code § 1954.52(a)(3)(A). The Court's Order notes that the parties agree that the units in question, including the unit herein, are condominium units; and that "sold separately" means sold as condominiums, with separate titles.

The Tenant herein brought this petition, T19-0384, alleging that the exemption was based on fraud or mistake, and the decision to award the exemption should be reversed because the units are not separately alienable. The Tenant, and her attorney of record, do not deny that the Tenant was a party and represented when the Landlord filed the petition in L16-0083.

On March 31, 2021, the undersigned continued the matter, sua sponte, to allow the parties the opportunity to brief the issue of whether the June 7, 2019 Order prohibited the petition herein.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

It is undisputed that the Tenant herein was a party to the prior case, L16-0083. Therefore, it is found that additional litigation between the parties is prohibited by the Superior Court Order dated June 7, 2019.¹⁰

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⁸ *Id.*

⁹ *Id.*


¹⁰ *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130 (order dated 06/07/2019).

ORDER

1. Petition T19-0384 is denied.
2. The matter will not be set for further hearing.

Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within fifteen (15) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: August 31, 2021



Élan Consuella Lambert
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T19-0384

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Documents Included

Administrative Decision

Owner

May Lee Fong
358 Cerro Court
Daly City, CA 94015

Tenant

Ana Jeronimo Salvador
1354 81st Avenue Unit A
Oakland, CA 94621

Tenant Representative

Jackie Zaneri, Centro Legal de la Raza
3022 International Blvd. Suite 410
Oakland, CA 94601

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.


I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **August 31, 2021** in Oakland, CA.

Brittni Lothlen

Brittni Lothlen

Oakland Rent Adjustment Program

000677

 CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp.
	<u>APPEAL</u>

Appellant's Name Ana Jeronimo Salvador		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 1354 81st Avenue, Unit A, Oakland, CA 94602			
Appellant's Mailing Address (For receipt of notices) 1354 81st Avenue, Unit A, Oakland, CA 94602		Case Number T19-0384	
		Date of Decision appealed August 31, 2021	
Name of Representative (if any) Xavier Johnson Gregory Ching		Representative's Mailing Address (For notices) 3400 E 12th Street, Oakland, CA 94601	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated.** *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):**
- a) **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
 - b) **The decision is inconsistent with decisions issued by other Hearing Officers.** *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
 - c) **The decision raises a new policy issue that has not been decided by the Board.** *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
 - d) **The decision violates federal, state or local law.** *(In your explanation, you must provide a detailed statement as to what law is violated.)*
 - e) **The decision is not supported by substantial evidence.** *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

For more information phone (510) 238-3721.

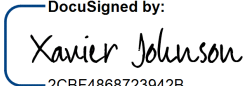
- f) **I was denied a sufficient opportunity to present my claim or respond to the petitioner’s claim.** (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g) **The decision denies the Owner a fair return on my investment.** (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h) **Other.** (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Submissions to the Board must not exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: _____.

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •

I declare under penalty of perjury under the laws of the State of California that on September 20, 2021, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	May Lee Fong
<u>Address</u>	358 Cerro Court
<u>City, State Zip</u>	Daly City, CA 94015
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

DocuSigned by:  2CBF4868723942B...	9/20/2021
---	-----------

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

For more information phone (510) 238-3721.

IMPORTANT INFORMATION:

This appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.

- Appeals filed late without good cause will be dismissed.
- You must provide all the information required, or your appeal cannot be processed and may be dismissed.
- Any response to the appeal by the other party must be received by the Rent Adjustment Program with a proof of service on opposing party within 35 days of filing the appeal.
- The Board will not consider new claims. All claims, except jurisdiction issues, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.

We seek permission to use more than 25 pages in documentation due to the complex nature of the case, and due to the fact that we are also required to cite to the original landlord exemption petition and a separate writ of mandamus, and due to the fact that we have not been able to have a hearing on the record to admit documents into evidence.

For more information phone (510) 238-3721.

APPEAL BRIEF IN SUPPORT OF TENANT PETITION T19-0384

To: Rent Adjustment Program Appeals Board
From: Xavier Johnson and Gregory Ching, Attorneys for Ana Jeronimo Salvador

Case No: T19-0384
Case Title: Salvador v. Fong
Property Address: 1354 81st Avenue Unit A, Oakland, CA 94602

FACTS AND PROCEDURAL HISTORY

The Landlord May Fong (“Landlord”) filed the first petition involving the parties, L16-0083, on October 31, 2016. The petition asserted that Tenant Ana Jeronimo Salvador’s (“Salvador”) unit and three other units at the property are condominiums and sought an exemption from the Oakland Rent Adjustment Program (“RAP”) under the Costa Hawkins Rental Housing Act (“Costa Hawkins”), California Civil Code Section 1954.52(a)(3). The property that is the subject property of this case is 1354 81st Avenue Unit A, Oakland, CA 94602 (“Subject Property”).

At the hearing on October 31, 2016, Landlord testified that Tenant Salvador’s unit qualified for an exemption under Costa Hawkins because the property had been subdivided into five parcels – four condominium parcels and one parcel containing two “unconverted” apartments.¹ A proper condominium conversion divides apartments into unique parcels capable of having separate owners. When asked to produce the Conditions, Covenants and Restrictions (“CC&Rs”) that are required for the condominium subdivision², the Landlord responded that she did not have them.³ In contrast, co-owner Michael Lee indicated that the CC&Rs were “verbal.”⁴

¹ Hearing Recording for L16-0083, 0:14:05-0:14:15, 0:19:50-0:20:05

² The CC&Rs are the documents which govern how property is supposed to be used by separate property owners when the property is subdivided.

³ Hearing Recording for L16-0083, 0:24:35-0:25:31.

⁴ Hearing Recording for L16-0083, 0:26:52-0:27:20.

On April 14, 2017, a hearing decision was issued in L16-0083 denying the exemption relying solely on one theory: that the properties were not “sold separately.”⁵ The decision made no analysis as to whether the property was separately alienable from other property.

The hearing officer found that while the property had been converted to condominiums, the property was not exempt from Costa Hawkins because it “[had] not been sold separately by the subdivider to a bona fide purchaser for value.”⁶ The hearing officer determined that because the Landlord had purchased the entire building from the subdivider, the units had never been sold separately, and, therefore they were not exempt from rent control.⁷ At the time this was a common ruling by the Rent Adjustment Program and the theory had been used to decide many prior cases.

The Landlord appealed the hearing decision, but the Oakland Housing, Residential Rent and Relocation Board (“RAP Board”) affirmed the holding in June 2018.⁸ On November 28, 2018, Landlord petitioned the Alameda County Superior Court for a Writ of Administrative Mandate to direct the RAP Board to set aside its decision denying the Landlord an exemption. The focus of the Landlord’s arguments and the Court’s analysis was narrow: whether the units at issue were “sold separately” under the exemption to Costa Hawkins because the Landlord owned all the units in the building and acquired them on one day through one transaction.⁹ The only remedy sought by the landlord was a vacation of the appeal decision made in case L16-0083 and T17-0015.¹⁰ The briefing of the property owner in their appeal argument to RAP as well as in

⁵ RAP Hearing Decision, L16-0083

⁶ RAP Hearing Decision, L16-0083, p. 4

⁷ *Id.*

⁸ OHRRRB Appeal Decision, L16-0083, p.2

⁹ See *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130 (order dated 06/07/2019).

¹⁰ *Fong v. City of Oakland, Housing, Residential Rent and Relocation Board*, RG18930130 (petition for writ of administrative mandamus)

their appeal argument to the superior court was all narrowly focused on the “sold separately” theory.

Citing a prior RAP case from 2018 that addressed whether multiple condominiums purchased in one transaction constituted properties that were “sold separately,” the Court found that the subject property’s units had been sold separately and granted the Landlord’s petition for an Administrative Mandate in June 2019.¹¹

In response to the Court’s June 2019 order, the hearing officer for petition L16-0083 issued a Certificate of Exemption without providing further analysis on the issue of separate alienability. The Hearing Officer stated, “on June 13, 2019, the Superior Court of Alameda County ruled in case RG18930130 that the subject units are exempt from rent control under the Costa Hawkins Rental Housing Act.”¹² A careful review of the writ shows that the Court made no such determination. Instead, the Court ruled that the subject property’s units were sold separately, and, therefore, did not fall into the narrow exception to Costa Hawkins outlined in California Civil Code Section 1954.52(3)(B)(ii). Although the Court determined that the units were sold separately, and that the Landlord was, therefore, a bona fide purchaser for value, the Court made no finding with regard to whether the property met other requirements for an exemption from RAP under Costa Hawkins.

The Tenant filed a timely appeal of the RAP’s decision to grant the exemption, but was told that the exemption decision was not appealable. Thus, the Tenant brings this action alleging that the exemption was awarded based on fraud or mistake.

On October 9, 2019, Tenant Salvador brought tenant petition, T19-0384, because the Landlord not only failed to meet their burden of showing separate alienability, but the evidence

¹¹ *Id.*; See Also *Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board*

¹² Certificate of Exemption, L16-0083.

and testimony submitted in support of L16-0083 make clear that the units at the subject property are in fact *not* separately alienable. Moreover, the Tenant uncovered evidence on July 8, 2019 that the Landlord made several critical misrepresentations about the nature of the property and the process used to convert the units to condominiums. Accordingly, the exemption was based on fraud or mistake, and the decision to award the exemption should have been reversed.

On August 31, 2021, Hearing Officer Elan Lambert denied the tenant's petition in an administrative decision. For the reasons stated below, the Tenant requests that a hearing be granted which allows the Hearing Officer to evaluate whether there was fraud or a mistake in granting an exemption for the subject property. First, the hearing officer erroneously found that the Superior Court's narrow holding, which was limited to the theory of "sold separately," was sufficient to bar the tenant's petition. It is the tenant's position that there was more analysis that needed to be completed prior to granting the original exemption petition, namely that RAP needed to make a finding of whether the property was separately alienable prior to granting an exemption. Second, it is the tenant's position that the owner made fraudulent representations at the original exemption hearing. Finally, even if the exemption was legitimately granted, the Landlord has used the subject property as a duplex; thus, the subject property is subject to rent control.

ARGUMENT

1. The petition is not barred by the doctrine of res judicata or collateral estoppel.

In responding to Tenant Salvador's petition, the Landlord asserts in a Motion to Dismiss, that RAP should not relitigate the issue of the exemption on the basis of the doctrines of res judicata and collateral estoppel. In fact, neither doctrine applies in this case.

"[R]es judicata describes the preclusive effect of a final judgment on the merits. Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them."¹³ Res judicata bars a subsequent claim when "(1) the decision in the prior proceeding is final and on the merits; (2) the present proceeding is on the same cause of action as the prior proceeding; and (3) the parties in the present proceeding or parties in privity with them were parties to the prior proceeding."¹⁴

The Rent Adjustment Program has considered cases in which RAP granted a landlord petition for exemption, but then later invalidated the exemption due to fraud or mistake.¹⁵ *Michelson v. Sherman* went to the Superior Court on a writ and the Superior Court remanded the case back to the Rent Board to decide on the issue of fraud.¹⁶ At the hearing on the issue of fraud, the board vacated the exemption due to fraud or mistake.¹⁷

In the instant case, the Court held that even though the Landlord purchased all the units at the subject property from the subdivider in one transaction, the units were indeed "sold separately to a bona fide purchaser for value" for purposes of the Costa Hawkins exception that was at issue, namely California Civil Code Section 1954.52(3)(B)(ii).¹⁸ The Court ordered RAP to vacate its denial of the Landlord's exemption petition and forbade the RAP from further litigating the question of whether the units were sold separately. Because the original denial of the exemption petition was decided on other grounds (namely, the narrow exception found in California Civil Code Section 1954.52(3)(B)(ii)), the RAP has not yet made any findings around

¹³ *Colombo v. Kinkle, Rodiger & Spriggs*, 35 Cal. App. 5th 407, 416

¹⁴ *Id.*

¹⁵ *Michelson v. Sherman*, L18-0081; see also RAP appeals index

¹⁶ *Id.*; see also RAP appeals index

¹⁷ *Id.*; see also RAP appeals index

¹⁸ See *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130 (order dated 06/07/2019).

the alienability of the units. In short, the Court reversed the RAP's denial of the exemption, but did not find that the Landlord was indeed entitled to an exemption. Critically, the Court made *no* finding regarding the broader question of the Landlord's right to an exemption from rent control.

Specifically, the Court's order indicated that the RAP was collaterally estopped from further hearings on the "statutory bona fide purchaser test," but the Court did not forbid the RAP from further hearings on the broader question of whether the units are separately alienable and therefore exempt from rent control under *Costa Hawkins*.¹⁹ In fact, the Court stopped well short of this question. This is additionally true because all of the filings by the landlord in the writ pertained to the sold separately theory.²⁰ There was no mention of separate alienability either in the decision by the Rent Adjustment Program or in the documents filed by the landlord demonstrating that these questions have not been actually litigated or decided on.²¹

As is laid out in detail below, based in part on evidence submitted by the Landlord herself, Tenant Salvador has demonstrated through evidence submissions that the units at the property are not separately alienable and therefore do not qualify for an exemption under *Costa Hawkins*. Unfortunately, after the Court issued the Administrative Mandate, the RAP granted the exemption without holding a hearing or making any findings on the broader issue of separate alienability.

The issues present in this petition, namely the fraud or mistake, are not barred by collateral estoppel or *res judicata* because the issues have not been litigated before. The ruling in the writ of mandamus pertaining to this case was narrowly limited to the theory of sold

¹⁹ See *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130 (order dated 06/07/2019).

²⁰ See *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130 (order dated 06/07/2019), complaint

²¹ See *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130 (order dated 06/07/2019), complaint

separately, and has no bearing on whether there was fraud or a mistake in the underlying exemption petition.

2. The exemption was issued based on fraud or mistake.

a. Under California and Oakland law, the Landlord did not meet the burden required to establish separate alienability.

Costa Hawkins stipulates that any dwelling or unit that is separately alienable from any other dwelling or unit is exempt from rent control, except under certain circumstances.²² The Court’s interpretation of “sold separately” applies only to California Civil Code § 1954.52(a)(3)(B)(ii). However, in order to qualify for a Costa Hawkins exemption from rent control, the Landlord must also show that the units are “alienable separate from the title to any other dwelling unit” pursuant to California Civil Code § 1954.52(a)(3)(A).

California law requires that an owner must first obtain a Notice of Subdivision Public Report from the California Department of Real Estate in order to legally sell individual units in a subdivision of five or more parcels.²³ In applying this law, the California Court of Appeal has held that without a Notice of Subdivision Public Report, subdivided units cannot be considered separately alienable.²⁴ In *City of West Hollywood v. 1112 Inv. Co.*, the City brought an action against a property owner for violation of the local rent control ordinance, arguing that the units at issue were no longer capable of being sold as condominiums—and therefore no longer entitled to an exemption under Costa Hawkins—because the property owner had allowed to lapse the property’s Notice of Subdivision Public Report.²⁵ The Court sided with the City of West Hollywood, highlighting the breadth of the state statutory scheme and the policy goals it

²² CA Civ. Code § 1954.52(a)(3)(A)

²³ CA Business and Profession Code § 11018.2

²⁴ *City of W. Hollywood v. 1112 Inv. Co.*, 105 Cal. App. 4th 1134 (2003).

²⁵ *Id.* at 1152.

embodies, and ultimately holding that the units “are not alienable within the meaning of the rent control exemption in Civil Code Section 1954.52.”²⁶

Here, the Landlord did not submit this required report with her exemption petition, and public records requests submitted by the Tenants confirm that no such report exists for the subject property.²⁷ In the original February 2017 hearing on the exemption petition, the Landlord did not submit sufficient evidence to establish that the units are separately alienable. Moreover, the little evidence she did submit establishes that the units at the subject property are in fact *not* separately alienable. In support of her exemption petition, the Landlord submitted preliminary title reports and records from the Alameda County Assessor. She also testified that the property had been subdivided into five parcels—four condominium parcels and one parcel containing two apartments.²⁸ Thus, in accordance with prior findings by the California Court of Appeal, the units are not separately alienable and do not qualify for an exemption from rent control under Costa Hawkins.

In addition to the state’s regulations governing the sale of condominiums, the City of Oakland imposes similar reporting and disclosure requirements under Oakland Municipal Code Section 16.36.120. Again, the Landlord submitted no evidence of her compliance with these provisions and public records requests confirm that the required reports and disclosures do not exist.²⁹ Because the landlord did not comply with state or Oakland law regulating condominium conversions, the RAP should find that the process employed to convert the units was fraudulent and incomplete. Consequently, the units in question are not separately alienable and therefore should not be considered exempt from rent control.

²⁶ *Id.* at 1152.

²⁷ *See* Public Records Request No. 19-4131

²⁸ Hearing Recording 0:14:05-0:14:15, 0:19:50-0:20:05

²⁹ *See id.*

b. The documentary evidence the Landlord submitted contradicts her description of the property and makes clear that the units are not separately alienable.

California and Oakland law regulating condominiums dictate that the easements established by the CC&R in a subdivision's common area are necessary for condominium units to exist as legal dwelling units. If the two dwelling units contained in the APN 42-4247-85 were sold separately to another party, the four condominium units at the subject property would lose their interest in the common area and a number of easements and characteristics necessary to be viable dwelling units.³⁰ Additionally, the units would lose the utility easements necessary to furnish utilities, rendering the units untenable.³¹ Because the dwelling units exist in the common area, and because the title to the common area cannot be legally separated from the condominiums, the condominium titles are not separately alienable from other dwelling units, or each other.

As noted previously, the Landlord testified in the hearing that the subject property consisted of six units in five parcels—four condominium parcels and a fifth parcel, APN 42-4247-85, containing the title for two "unconverted" apartments.³² In fact, the Assessor's Map submitted by the Landlord indicates that the parcel in question is assessed as a condominium common area.³³ Under the laws governing condominium conversions, this renders the two "unconverted" units inalienable from all dwelling units on the lot.

Unfortunately, because the hearing officer for L16-0083 decided the case on other narrower grounds, findings by RAP related to the Landlord's misstatements or the legal implications of the Assessor's map do not appear in the original hearing decision for L16-0083.

³⁰ See OMC § 16.32.000, OMC § 15.12.010, CA Fire Code Chapter 10, OMC § 17.17.050.

³¹ CA Civ Code § 1941.

³² Hearing Recording 0:14:05-0:14:15, 0:19:50-0:20:05.

³³ Alameda County Assessor's Map and property info.

The fact that there was never any affirmative analysis provided by RAP on the issue of separate alienability is a clear mistake on the part of the Rent Adjustment Program and it is inconsistent with the evidence provided by the Landlord at the time of the hearing.

c. The Landlord failed to submit the CC&Rs for the condominium subdivision; the CC&Rs provide further evidence that Tenant Salvador's unit is not separately alienable.

State Law provides an exemption for dwelling units which are separately alienable in title to any other dwelling units.³⁴ However, the First District Court of Appeal for California has held that a single-family home used as if it were a multi-unit building can be regulated under rent control in *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*.³⁵ The key definition of a dwelling unit is that it is “any area understood to be committed to the habitation of a given tenant or tenants to the exclusion of others.”³⁶ The Court, quoting the underlying hearing decision, found that where “the owner has chosen to rent rooms out separately to a number of people,” the single-family home is transformed into a multi-unit dwelling.³⁷

At the hearing for L16-0083, the Landlord, when asked why she did not submit the CC&Rs for the condominium subdivision, responded that she did not have them and later a co-owner indicated that the CC&Rs were verbal.³⁸ Tenant Salvador recently discovered that this is in fact not true. A search at the County Recorder's office revealed that CC&Rs for the property were recorded on November 8, 2007.³⁹ This information was squarely within the property owner's burden to provide at the time of the hearing, but the owner failed to provide it.

³⁴ Cal. Civ. Code Section 1954.53

³⁵ *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, 49 Cal.App.5th 739, decided 5/29/2020, page 1

³⁶ *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, 49 Cal.App.5th 739, decided 5/29/2020, page 1

³⁷ *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, 49 Cal.App.5th 739, decided 5/29/2020, page 2

³⁸ Hearing Recording for L16-0083, 0:24:35-0:25:31; 0:26:52-0:27:20.

³⁹ CC&Rs.

Importantly, the CC&Rs provide evidence to support a finding that Tenant Salvador's unit is not separately alienable.

The fact that the units are not separately alienable is best illustrated by the pictures attached to this brief. Tenant Salvador's unit is addressed as 1354 81st Avenue, Apt A. According to the CC&Rs and County Assessor's map associated with the property, her unit is located within the subdivided airspace corresponding to APN 42-4247-81. However, the parcel drawn on the map in the CC&Rs is much larger than Ms. Salvador's unit.⁴⁰ This is because the parcel where she lives contains another dwelling unit. This unit, which has been referred to as 1354 81st Avenue Apt B, and 1356 81st Avenue Apt. A, in prior hearings was formerly occupied by Tenant Alondra Apodaca, who attended the initial hearing between the parties for case number L16-0083. This subdivision places two dwelling units within the space corresponding to one parcel, APN 42-4247-81. Because these two units are not separately alienable from one another, they cannot be granted an exemption from rent control pursuant to Costa Hawkins.

Even if one were to find that the initial Landlord Petition involved no fraud or mistake, one must recognize that at least as of the creation of the secondary tenancies, the units must fall within the jurisdiction of the Rent Adjustment Program according to the law in *Owens*.

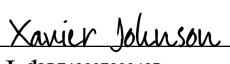
CONCLUSION

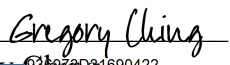
In light of the aforementioned, Tenant Salvador respectfully requests that the appeals board order a hearing on the merits to permit the hearing officer to evaluate whether exemption in the case of L16-0083 was granted as a result of fraud or a mistake, and also to hear tenant petition T19-0384.

⁴⁰ See demonstratives and photos of the property

Date: September 20, 2021

Respectfully submitted,

DocuSigned by:

Xavier Johnson
Attorney for Tenant Ana Salvador

DocuSigned by:

Gregory Chung
Attorney for Tenant Ana Salvador

City of Oakland Rent Adjustment Program

Case Number: T19-0384

Tenant Evidence Submission

Exhibit T1



Key:

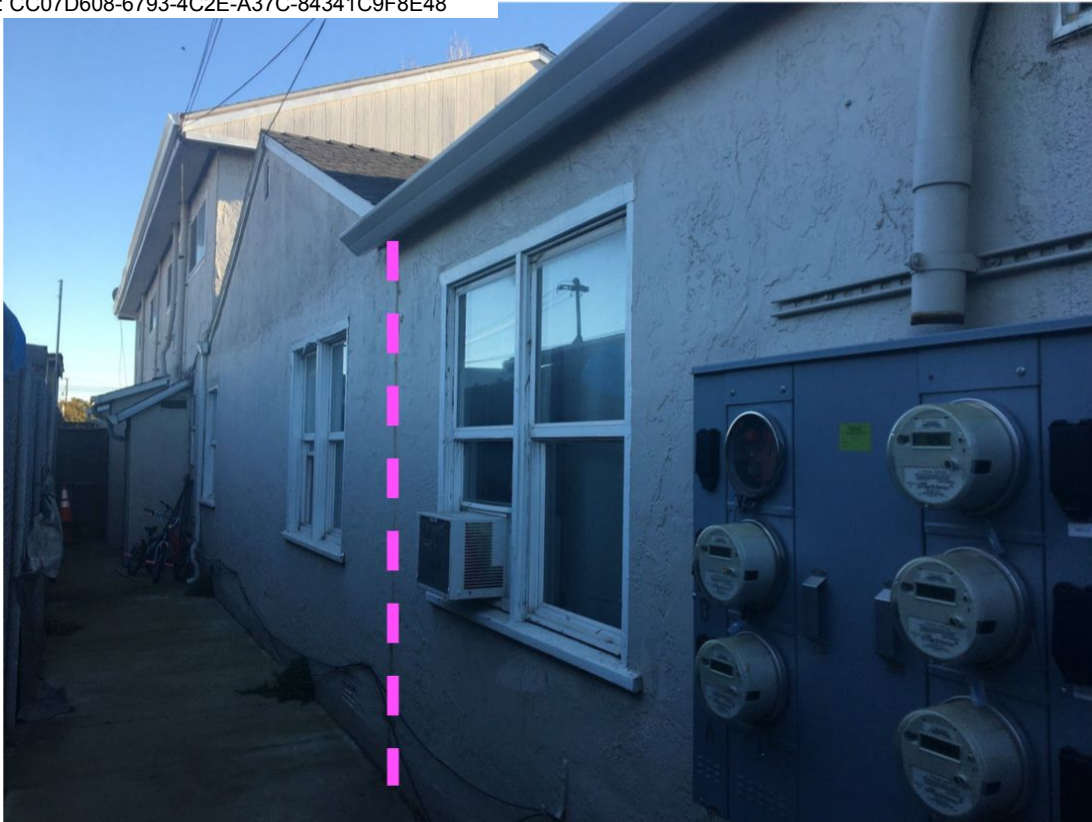
- =Boundaries of lot
- =Boundaries of APN 42-4247-81 aka "Unit-1354 A"
- =Boundaries of dwelling unit of Tenant Petitioner Ana Salvador

City of Oakland Rent Adjustment Program

Case Number: T19-0384

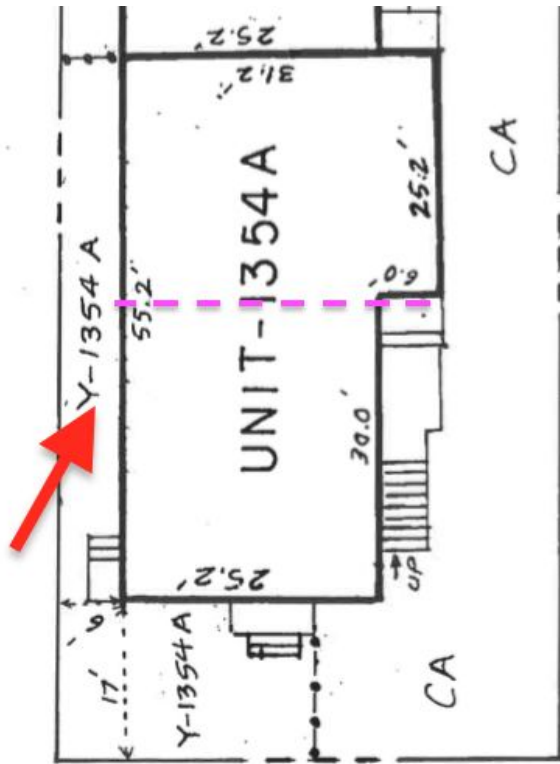
Tenant Evidence Submission

Exhibit T2



— = Approximate line of bifurcation of the two dwelling units within APN 42-4247-81

Red Arrow below marks position and angle of photo above



City of Oakland Rent Adjustment Program

Case Number: T19-0384

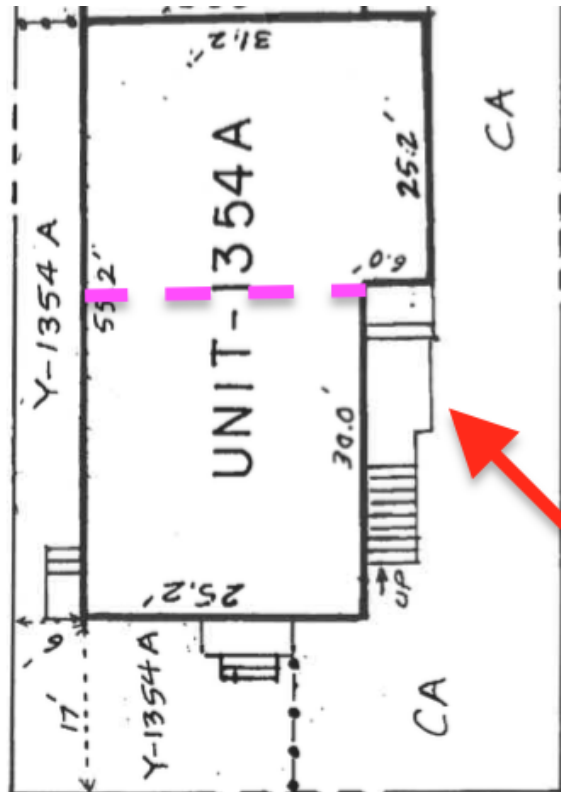
Tenant Evidence Submission

Exhibit T3



— = Approximate line of bifurcation of the two dwelling units within APN 42-4247-81

Red Arrow belows marks position and angle of photo above

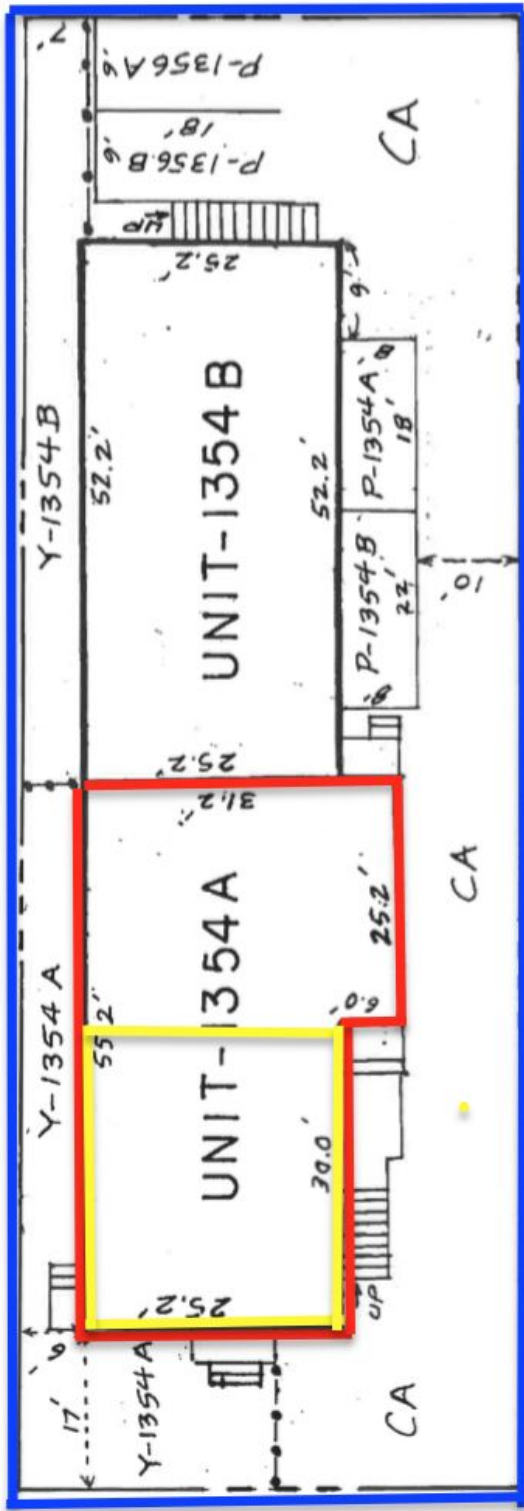


City of Oakland Rent Adjustment Program

Case Number: T19-0384

Tenant Evidence Submission

Exhibit T4



LOWER FLOOR AND SITE PLAN

NOT TO SCALE

LEGEND

- PROPERTY LINE
- - - P-1354 A
- - - P-1354 B
- - - P-1356 A
- - - P-1356 B
- - - Y-1354 A
- - - Y-1354 B
- - - YARD LIMIT
- CA COMMON AREA

Key:

- =Boundaries of lot
- =Boundaries of APN 42-4247-81 aka "Unit-1354 A"
- =Boundaries of dwelling unit of Tenant Petitioner Ana Salvador

City of Oakland Rent Adjustment Program

Case Number: T19-0384

Tenant Evidence Submission

Exhibit T5



21097587

1 PAUL J. KATZ (CA Bar No. 243932)
2 **KATZ APPELLATE LAW**
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FILED
ALAMEDA COUNTY

NOV 28 2018

Attorney for Petitioners May Lee Fong and Michael B. Lee

CLERK OF THE SUPERIOR COURT
By Asher Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA
9 UNLIMITED JURISDICTION

10 MAY LEE FONG and MICHAEL B. LEE,

CASE NO. Rt 18930130

11 Petitioners,

**PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS**

12 v.

13 CITY OF OAKLAND, HOUSING,
14 RESIDENTIAL RENT AND RELOCATION
BOARD,

15 Respondent,

16 RICHARD DOMINGUEZ, ANA JERONIMO
17 SALVADOR, CARLA FLURRY, ANA
18 ROSAS, ROSA GAONA, IGNACIO GAONA,
LEO PENA, LORENA ARECHIGA, MARIA
ARECHIGA, and RAFAEL ARECHIGA,

19 Real Parties in Interest.

21
22 Petitioners May Lee Fong and Michael B. Lee bring this petition seeking a peremptory writ of
23 administrative mandamus (Code Civ. Proc., § 1094.5) to compel Respondent City of Oakland, Housing,
24 Residential Rent and Relocation Board ("Rent Board") to set aside its October 2, 2018 decision that four
25 of petitioners' condominiums are not exempt from Oakland's Rent Ordinance.

26 **INTRODUCTION**

27 Notwithstanding local rent control laws, the Costa-Hawkins Act guarantees that a condominium
28 buyer can charge market-rate rent. And that is what petitioners tried to do here. But the Rent Board

1 frustrated petitioners' right under Costa-Hawkins by ruling that four condominiums were not covered
2 by that act and thus are subject to Oakland's Rent Ordinance. The Rent Board ruled that the
3 condominiums were not "sold separately," a requirement under Costa-Hawkins, since petitioners bought
4 an entire building containing four condominiums.

5 The condominiums were "sold separately," however, since petitioners bought each one under
6 separate title. The fact that petitioners bought several condominiums within a single physical structure is
7 irrelevant. Thus, this court should issue a peremptory writ of administrative mandamus directing the
8 Rent Board to set aside its erroneous appeal decision.

9 PARTIES

10 1. Petitioner May Lee Fong resides in Daly City, California and petitioner Michael B. Lee resides
11 in Richmond, California. They jointly own four condominiums located in Oakland, California: 1854
12 81st Avenue, Unit A; 1854 81st Avenue, Unit B; 1856 81st Avenue, Unit A (otherwise known as 1854
13 81st Avenue, Unit D); and 1856 81st Avenue, Unit B (otherwise known as 1854 81st Avenue, Unit E).
14 Petitioners have a beneficial interest in this petition because they were injured by respondent's appeal
15 decision, as explained immediately below.

16 2. Respondent Rent Board is part of the City of Oakland's Rent Adjustment Program, which in turn
17 is a public agency established by the City Council to administer Oakland's Rent Ordinance. The Rent
18 Board hears appeals from decisions regarding landlord or tenant petitions. On October 2, 2018, the Rent
19 Board mailed its appeal decision ruling that petitioners' four Oakland condominiums are not exempt
20 from Oakland's Rent Ordinance. This petition challenges that appeal decision.

21 3. Real Parties in Interest Richard Dominguez and Ana Jeronimo Salvador (1854 81st Avenue,
22 Unit A); Carla Flurry (1854 81st Avenue, Unit B); Ana Rosas, Rosa Gaona, and Ignacio Gaona
23 (1856 81st Avenue, Unit A); Leo Pena, Lorena Arechiga, Maria Arechiga, and Rafael Arechiga
24 (1856 81st Avenue, Unit B) are tenants residing in the four above-referenced condominiums.

25 JURISDICTION AND VENUE

26 4. This court has jurisdiction to issue writs of mandamus, including writs of administrative
27 mandamus, pursuant to Code of Civil Procedure section 1085, subdivision (a).

1 5. Venue is proper in this court because the Rent Board’s appeal decision injured petitioners in
2 Alameda County, where the four condominiums at issue are located. (Code Civ. Proc., § 393, subd. (b).)

3 6. Petitioners have a clear, present, and beneficial right to the Rent Board correcting its challenged
4 appeal decision so that petitioners can charge market-rate rent for their four condominiums, in
5 conformance with the Costa–Hawkins Act.

6 7. Petitioners have no plain, speedy, and adequate remedy at law. This petition for writ of
7 administrative mandamus is the only way to contest the Rent Board’s final administrative decision.
8 (Code Civ. Proc., § 1094.5, subd. (a).)

9 8. Petitioners have exhausted all available administrative remedies, as alleged in paragraph 13
10 below.

11 **CHRONOLOGY OF PERTINENT EVENTS**

12 9. On March 29, 2012, petitioners purchased each of the four subject condominiums from Deutsche
13 Bank National Trust Company, as trustee for Ameriquest Mortgage Securities Inc., Asset-Backed Pass-
14 Through Certificates, Series 2003-2. At the time of purchase, each condominium had a unique assessor
15 parcel number (APN).

16 10. On October 31, 2016, petitioners filed a Landlord Petition for Certificate of Exemption with
17 Oakland’s Rent Adjustment Program. Petitioners sought to exempt the four subject condominiums from
18 Oakland’s Rent Ordinance pursuant to the Costa-Hawkins Act because each of the condominiums was
19 separately alienable.

20 11. On January 10, 2017, real party in interest Rosa Gaona filed a Tenant Petition alleging, among
21 other things, that petitioners had attempted to increase her rent in excess of that allowed under
22 Oakland’s Rent Ordinance.

1 12. On April 18, 2017, an Oakland Rent Adjustment Program hearing officer served a single ruling
2 for both the Landlord Petition and the Tenant Petition. (Ex. A.) The hearing officer ruled, among other
3 things, that the Costa-Hawkins Act did not exempt the four condominiums from Oakland's Rent
4 Ordinance. (*Id.* at p. 4.) Although that act generally exempts units that are separately alienable such as
5 condominiums, the act does not exempt condominiums that have not been "sold separately by the
6 subdivider to a bona fide purchaser for value." (*Ibid.*) The officer ruled the four condominiums had not
7 been sold separately to petitioners because they had bought "the entire building, which consists of four
8 units." (*Ibid.*) The officer also noted that the Rent Board in another decision (*Tenants v. Golden State*
9 *Ventures*, Rent Board Case Nos. T15-0229, T15-0230, T15-0336, and T15-0337) had ruled that Costa-
10 Hawkins did not apply to four condominiums in a single building purchased by a single buyer "because
11 the units were not purchased by individual purchasers." (*Id.* at p. 4 & fn. 4.)

12 13. On May 3, 2017, petitioners filed an appeal to the hearing officer's ruling. The appeal explained
13 that the "sold separately" language in Costa-Hawkins relied upon by the hearing officer requires only
14 that the original subdivider to have sold the condominium to a bona fide purchaser for value and that
15 the condominium maintained its separate title. The appeal also explained that Alameda Superior Court
16 had granted a writ of administrative mandamus reversing the Rent Board's decision in *Golden State*
17 *Ventures*.

18 14. Because an appeal in *Golden State Ventures* was pending before the First District Court of
19 Appeal, the Rent Board continued petitioners' appeal hearing in this case. Then the Court of Appeal in
20 *Golden State Ventures* issued an unpublished opinion affirming the superior court's grant of the writ of
21 administrative mandamus. The Court of Appeal ruled that Costa-Hawkins' "sold separately" language
22 excluded only original subdividers, not subsequent purchasers, from the act's coverage—regardless of
23 how many condominiums are sold to a single purchaser. Petitioners sent a copy of the *Golden State*
24 *Ventures* opinion to the Rent Board and to real parties in interest.

25 15. Yet the Rent Board affirmed the hearing officer's ruling in this case that Costa-Hawkins does not
26 exempt the four condominiums at issue here. (Ex. B, at p. 2.) The Rent Board mailed that ruling to the
27 parties on October 2, 2018. (*Id.* at p. 4.)
28

1 **CAUSE OF ACTION FOR**
2 **WRIT OF ADMINISTRATIVE MANDAMUS**
3 **AGAINST RESPONDENT**

4 16. Petitioners re-allege and incorporate here by this reference the allegations of all preceding
5 paragraphs.

6 17. Notwithstanding Oakland's Rent Ordinance, the Costa-Hawkins Act generally permits a
7 condominium owner to set "the initial and all subsequent rental rates" for the unit. (Civ. Code,
8 § 1954.52, subd. (a)(3)(A).) That act does not apply, though, when the condominium "has not been sold
9 separately by the subdivider to a bona fide purchaser for value." (Civ. Code, § 1954.52,
10 subd. (a)(3)(B)(ii).)

11 18. When petitioners bought the four condominiums in 2012, the units had already been subdivided
12 by a previous owner.

13 19. The Rent Board, in affirming the hearing officer's decision, incorrectly ruled that the four
14 condominiums had not been "sold separately" because a single purchaser had bought the entire building
15 (i.e., the physical structure containing all four condominiums). (Ex. A, at p. 4 & Ex. B, at p. 2.) The Rent
16 Board concluded, then, that the Costa-Hawkins Act did not apply and the condominiums were not
17 exempt from the Rent Ordinance. (Ex. A, at p. 4 & Ex. B, at p. 2.)

18 20. By misconstruing the meaning of the Costa-Hawkins Act, the Rent Board committed a
19 prejudicial abuse of discretion by not proceeding in the manner required by law. The term "sold
20 separately" within the act merely means that the condominium's title remained separate from any other
21 property's title through the sales transaction.

22 21. The four condominiums at issue here were sold separately because petitioners acquired title to
23 each unit apart from the title of other real property.

24 22. The Rent Board's erroneous appeal decision has injured (and will continue to injure) petitioners
25 by preventing them from charging market-rate rent for the four condominiums at issue.

PRAYER

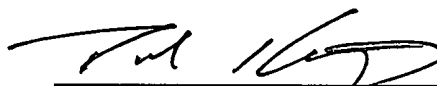
Petitioners pray that this court:

1. Issue a peremptory writ of administrative mandamus directing respondent to set aside its decision.
2. Alternatively, issue an alternative writ of administrative mandamus directing respondent to set aside its decision, or to show cause why it should not be ordered to do so, and upon return to the alternative writ issue a peremptory writ as set forth in paragraph 1 of this prayer or such other extraordinary relief as warranted.
3. Award petitioners their costs of suit herein, including out-of-pocket expenses and reasonable attorneys' fees.
4. Grant petitioners further relief as this court may deem just and proper.

DATED: November 28, 2018

Respectfully submitted,

KATZ APPELLATE LAW



PAUL J. KATZ
Attorney for Petitioners

City of Oakland Rent Adjustment Program

Case Number: T19-0384

Tenant Evidence Submission

Exhibit T6

CITY OF OAKLAND



P.O. BOX 70243, OAKLAND, CA 94612-2043

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

HEARING DECISION

CASE NUMBER: L16-0083, Fong v. Tenants
T17-0015, Gaona v. Fong

PROPERTY ADDRESS: 1356 81st Ave., No. A,B
1354 81st Ave., No. A(aka D), B
Oakland, CA

DATE OF HEARING: February 23, 2017

DATE OF DECISION: April 14, 2017

APPEARANCES:	Maria Pelayo	Tenant
	Rosa Gaona	Tenant
	Alondra Juliana	Tenant
	Gary Cloutier, Esq.	Tenant Representative for Tenant Apodaca Salazar
	Ana Jeronimo	Tenant
	Marica Zarate	Tenant
	Virginia Dominguez	Tenant
	Mabel Nielsen	Interpreter
	May Fong	Owner
	Michael Lee	Owner

SUMMARY OF DECISION

The owner petition is denied. Tenant Gaona's petition is granted in part.

INTRODUCTION

On October 31, 2016, May Fong and Michael Lee, the owners, filed a Landlord Petition for Certificate of Exemption regarding the above referenced property, on the grounds that the units are condominiums.

Tenants Alondra Yuliana filed a timely tenant response on November 23, 2016, to the Landlord Petition. The following tenants filed untimely tenant responses to the Landlord Petition:

<u>Tenant</u>	<u>Date Filed</u>
• Maria Pelayo	January 6, 2017
• Ricardo Dominguez	December 28, 2016
• Rosa Gaona	January 10, 2017

Tenant Gaona also filed a petition on January 10, 2017, which contests the following rent increases in 2012, 2014, 2015, November 30, 2016, and December 19, 2016:

- 3/2012 \$850.00 to \$900.00
- 11/1/14 \$900.00 TO \$930.00
- 10/31/15 \$930.00 to \$1,000.00
- 11/30/16 \$1,000.00 to \$1,200.00
- 12/19/16 \$1,200.00 to \$1,210.00

Tenant Gaona challenged the rent increases on the following grounds:

- The increase exceeds the CPI adjustment and is justified or is greater than 10%;
- No concurrent RAP notice was given with the notice of the rent increase;
- She did not receive the RAP notice 6 months prior to the challenged rent increases.

The two petitions were consolidated for Hearing on February 15, 2017, which was held on February 23, 2017.

THE ISSUES

1. Are the units exempt from the Rent Ordinance?
2. Has tenant Gaona received the form notice of the existence of the Rent Adjustment Program?
3. Are the rent increases valid regarding tenant Gaona?

EVIDENCE

Exemption

The owners testified that the subject units are condominiums and are exempt from the Rent Adjustment Program. They purchased the entire building, which consists of four units, from Deutsche Bank National Trust Company, Trustee for Ameriquest Mortgage Securities Inc., asset-Backed Pass-Through Certificates, Series 2003-2. They provided a copy of the Grant Deed was dated March 29, 2012.¹

¹ Ex. Nos. 1-2

The owner provided documentation that each unit has a separate assessor parcel number as follows;

<u>Unit No.</u>	<u>Assessor's Parcel No.</u>
1354A-81 st Avenue	042-4247-081-00
1354B 81 st Avenue	042-4247-082-00
<u>Unit No.</u>	<u>Assessor's Parcel No.</u>
1356 A 81 st Avenue	042-4247-083-00
1356B 81 st Avenue	042-4247-084-00 ²

T17-0015, Gaona v. Fong

Rent History and Notice of Rent Adjustment Program

The owners' petition states that tenant Gaona received the Notice of the existence of the Rent Adjustment Program (RAP) on November 1, 2014. Tenant Gaona testified that moved into her unit in 2007 at an initial monthly rent of \$850.00. She first received the Notice of the Rent Adjustment Program in 2014. She is currently paying \$1,000.00 monthly.

Code Violation

The tenant representative for Ms. Salazar provided a copy of a Notice of Violation from the Planning and Building Department, June 23, 2015, regarding the following:

- Smoke detectors missing or not working properly throughout the apartment. Provide a working smoke detector in each bedroom and at the outside of the immediate vicinity of each bedroom such as the hallway. Carbon monoxide detectors are required on the outside for immediate vicinity of bedrooms;
- Unapproved drain trap under the kitchen sink. Replace in an approved manner. Obtain required permits, inspections, and approvals;
- Unpermitted installation of stove exhaust vent in the kitchen. Base board heater detached from the wall in the living room. Exposed electrical wires in the crawlspace at the front of the house. Obtain required permits, inspections and approvals;
- Smoke stains in ceiling and top wall throughout the house. Remove stains and re-paint areas if needed.

This document was not submitted at least seven days prior to the Hearing. The tenant representative testified that he had just been advised of the Hearing one hour prior to the Hearing. The Hearing Officer found good cause for the delay in submission of the documents and received them into evidence.

² Ex. Nos. 3-5

The owner representative testified that the owner received the Notice of Violation from the City and corrected the violations as of July 21, 2015. This testimony was undisputed.

Decreased Housing Services

The tenant's petition, Checked the box Yes for the question "Are you being charged for services originally paid by the owner? Attached in evidence." She did not list any specific complaints for this item in her petition.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exemption

The Rent Ordinance exempts single family dwellings and condominiums which are separately alienable from any other dwelling or unit pursuant to the Costa-Hawkins Act, California Civil Code §1954.52, except under certain circumstances.

However, Costa-Hawkins **does not exempt dwelling units that have not been sold separately** by the subdivider to a bona fide purchaser for value.

Section 1954.52 of the California Civil Code, known as the Costa-Hawkins Bill, states that an owner of residential real property may establish the initial and all subsequent rental rates for a dwelling or unit except §1954.52(3)(B)(ii) which states that this paragraph does not apply to a condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value

The units were not sold separately. The owner purchased the entire building, which consists of four units. Therefore, the owner's units are not exempt from the Rent Ordinance.³

The Board has also held that an owner who purchased a four building from the subdivider was not entitled to an exemption from the Rent Ordinance because the units were not purchased by individual purchasers.⁴

RAP Notice-Tenant Gaona

Notice and Filing Requirements: The Rent Adjustment Ordinance requires an owner to serve notice of the existence and scope of the Rent Adjustment Program (RAP Notice) at the start of a tenancy⁵ and together with any notice of rent increase.⁶

Tenant Gaona received the notice of the Rent Adjustment Program in 2014.

³ California Civil Code, Section 1954.3(A)

⁴ T15-0229, 0230,0336,0337, Tenants v. Golden State Ventures

⁵ O.M.C. Section 8.22.060(A)

⁶ O.M.C. Section 8.22.070(H)(1)(A)

A tenant petition must be filed within 90 days of the date of service of a rent increase notice or the date the tenant first receives the RAP Notice, whichever is later.² The rent increases for 2012, 2014, and 2015 are not timely filed and are dismissed. The challenges were not filed within the 90 day time period.

The challenge to the rent increase effective November 30, 2016, is valid. The owners' claim for exemption from the Rent Ordinance is denied and they have not provided any justification for the two hundred dollar rent increase. The challenge to the rent increase effective December 19, 2016, from \$1,200.00 to \$1,210.00 is a second rent increase within a twelve month period and is invalid. The tenant's monthly rent remains \$1,000.00.

Code Violation

The tenants provided documentation in support of a building code violation. However, the violations were corrected in July 2015 and the owner may increase the tenant's rent in accordance with the Rent Ordinance and Section 827 of the California Civil Code.

Decreased Housing Services

Under the Oakland Rent Ordinance, a decrease in housing services is considered to be an increase in rent and may be corrected by a rent adjustment.⁷ However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that is required to be provided in a contract between the parties. The tenant has the burden of proving decreased housing services by a preponderance of the evidence. The tenant also has the burden of proving notice to the owner about a complaint and the owner must be afforded a reasonable opportunity to respond to the complaint.

The tenant did not list any complaints in her petition regarding decreased housing services. Therefore, the owners were unaware of any such complaints and had no opportunity to respond. Therefore, this claim is denied.

ORDER

1. The subject units are not exempt from the Rent Ordinance.
2. Tenant Gaona's petition is granted in part. The challenge to the rent increases in 2012, 2014, and 2015, are untimely and are dismissed.
3. The rent increase from \$1,000.00 to \$1,200.00 effectively November 13, 2016, and the rent increase from \$1,200.00 to \$1,210.00, are invalid.
4. Tenant Gaona's monthly base rent is \$1,000.00.

⁷ O.M.C. Section 8.22.060(C)

5. The claim for decreased housing services is denied.

6. The owners are otherwise entitled to increase the tenants' rents upon proper notice in accordance with the Rent Ordinance and Section 827 of the California Civil Code.

Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: April 14, 2017



BARBARA KONG-BROWN, ESQ.
Senior Hearing Officer
Rent Adjustment Program

City of Oakland Rent Adjustment Program

Case Number: T19-0384

Tenant Evidence Submission

Exhibit T7

Katz Appellate Law
 Attn: Katz, Paul J.
 484 Lake Park Ave #603
 #557
 Oakland, CA 94610_____

City Attorney's Office
 Attn: Jefferson, Jamilah A.
 One Frank H. Ogawa Place, 6th Floor
 Oakland, CA 94612

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

<p>Fong</p> <p style="text-align: right;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> <p>City of Oakland , Housing , Residential Rent & Relo</p> <hr/> <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	<p>No. <u>RG18930130</u></p> <p>Order</p> <p>Date: 06/07/2019 Time: 02:00 PM Dept: 17 Judge: Frank Roesch</p>
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The Petition for Writ of Mandate was set for hearing on 06/07/2019 at 02:00 PM in Department 17 before the Honorable Frank Roesch. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: Petitioners May Lee Fong and Michael B. Lee petition the Court for a writ of administrative mandate directing Respondent City of Oakland, Housing, Residential Rent and Relocation Board ("OHRRRB") to set aside its decision denying Petitioners' application for certificate of exemption from Oakland's Rent Adjustment Program ("RAP"). (Oakland Mun. Code ch. 8.22.)

Fong and Lee bid for and purchased several condominiums in the same building at a foreclosure sale. The building's prior owner had operated the building as an apartment house, but the units were converted to condominiums before being sold to Fong and Lee. The same tenants remained in the condominium units (formerly apartments) and were unaware that a conversion had even occurred. Fong and Lee applied for exemption from the RAP on the grounds that the units were condominiums exempt from local rent control under the Costa-Hawkins Act (Civ. Code § 1954.50 et seq.). OHRRRB denied the application on the grounds that Fong and Lee had "stepped into the shoes" of the prior landlord.

The sole issue on this petition is a question of law and statutory interpretation of the provision of the Costa-Hawkins Act that exempts condominiums from local rent control ordinances after they are sold to a bona fide purchaser. (Civ. Code § 1954.52(a)(3) [exempting dwelling units "alienable separate from the title to any other dwelling unit" from local rent control].) After the Costa-Hawkins Act was initially passed, the Legislature became concerned that some apartment buildings were being legally converted to condominiums but never sold to new owners; buildings could escape local rent control through a trick of paperwork while maintaining the same ownership, management, and tenants. (See Decl. of P.J. Katz Ex. A (Sen. J. Comm. Analysis) ["[S]ome apartment property owners have taken advantage of the law by obtaining a permit to convert to condominiums, but never completing the process. . . ."]) The legislature amended the exemption to provide that condominiums is not available for "[a] condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value." (Stats 2001, ch. 729 (S.B. 985), § 2, codified as Civ. Code § 1954.52(a)(3)(B)(ii); see also Decl. of P.J. Katz Ex. A ["This bill would close that loophole and provide that the exemption would apply only when the unit is sold separately to a bona fide purchaser for value. Thus, apartment units that have remained

rentals would be subject to local rent control laws."].) In other words, the Legislature provided that the exemption from rent control is not available to the owner who subdivides his property into condominiums though it is available to subsequent bona fide purchasers of the individual condominium units.

The parties agree that the units in question are condominium units and that Fong and Lee were bona fide purchasers. OHRRRB argues that the units were not "sold separately" because they were sold on the same day, one owner continues to own the entire building, no units were sold to individual owners, and the same tenants continue to occupy the units. The small phrase "sold separately" can carry this weight. The word "separate" occurs elsewhere in the statute-the language of the general exemption language ("alienable separate from the title to any other dwelling unit"), which requires that the title to the individual condominium units be individually alienable. In context, "sold separately" means sold as condominiums, with separate title.

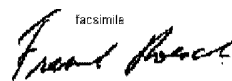
The OHRRRB is also prohibited from relitigating this issue by the doctrine of collateral estoppel. The doctrine of collateral estoppel forbids a party from re-litigating a specific factual or legal issue that has already been actually decided by another court when the identical issue was actually litigated in a prior suit and was finally adjudicated against a party to the first suit or a person in privity. (*Key v. Tyler* (2019) 34 Cal.App.5th 505, -.)

Here, the OHRRRB already litigated the issue of whether the RAP applies when several condominiums in the same building are sold to the same owner. The issue was decided adverse to the OHRRRB in the case of *Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board* (Alameda Cty. Super. Ct. Case No. RG16 834166, 1st Dist. Ct. App. Case No. A151421, Jan. 25, 2018) 2018 WL 549174. That is, both this Court and the Court of Appeal held that the Costa-Hawkins Act exempts such condominiums from the RAP because they were sold separately to a bona fide purchaser. (Civ. Code § 1954.52(a)(3)(A), (a)(3)(B)(ii).) The judgment in *Golden State Ventures* is final, and the OHRRRB filed its return certifying compliance with this Court's writ and the Court of Appeal's decision on June 7, 2018.

The Court does not agree with the OHRRRB's argument that the issues are distinguishable on their facts. To apply the statutory bona fide purchaser test, the Court need not determine whether the condominiums were sold in one transaction or a series of transactions, whether the condominiums were sold directly by the subdivider, and whether the building's condominium conversion was total or partial.

The OHRRRB is therefore collaterally estopped from relitigating the issue. Fong and Lee's petition is GRANTED.

Dated: 06/07/2019

Facsimile


Judge Frank Roesch

LANDORD RESPONSE TO TENANT APPEAL CASE NOS. T19-0384

Rent Board Appeal Legal Discussion

Case Nos. T19-0384

The hearing officer correctly ruled there was more than sufficient uncontested facts presented to issue a decision without a hearing, and there are no material facts in dispute that the Tenant was a party to the prior case, L16-0083 and additional litigation between the parties is prohibited by Superior Court.

Synopsis of Relevant Facts

When Landlords, May Fong and Michael Lee (hereinafter “Landlord”) purchased the building unit in Oakland in 2012, a prior owner had already subdivided four of those units into condominiums. (1 AR 113–133.) So, in October 31, 2016, Landlord filed a Landlord Petition for Certificate of Exemption claiming that their four condominiums were exempt from Oakland’s rent-control scheme pursuant to the Costa-Hawkins Act’s condominium exemption. (1 AR 6–12.) In 2017, Tenant filed a Tenant Petition claiming that Landlords had increased her rent above that allowed by the rent ordinance. (1 AR 49–51.) Respondent City of Oakland, Housing, Residential Rent and Relocation Board (hereinafter “OHRRRB”) then consolidated the two petitions. (1 AR 76.) **Original Tenant was present with her attorneys and had her day in court here and legally must raise all issues upfront at this hearing.** Despite the similar case *Golden State Ventures v. City of Oakland Rent Board* and then *Fong vs City of Oakland Rent Board* ruled on June 6, 2019 “Exhibit 1” decision against the Rent Board on the same issue as presented in this case and ordered the OHRRRB to issue the Certificate of Exemption and as well as collaterally estoppel in the case twice, the Tenant is attempting to relitigate the same issue and claim once again.

Tenant Ana Jeronimo Salvador along with 2 other tenants, filed the Oakland Rent Adjustment Program (hereinafter “RAP”) petition this action, T19-0384, against landlord, May Fong and Michael Lee, on October 9, 2019. Tenant petition contests the Certificate of Exemption “Exhibit 2” so ordered by Superior Court of California to the Landlord in case number L16-0083 on 9/20/19, arguing that the exemption was issued on the basis of fraud or mistake, and alleging unlawful rent increases as well as decreased housing services. The 2 other tenants dismissed the cases against Landlord. These condominium units of “alienable separate from the title to any other dwelling unit”¹ and of being “sold separately” pursuant to California Civil Code § 1954.52(a)(3)(A) has already been litigated and proven to the Superior Court of California as per ruling Case No. RG18930130 see “Exhibit 1”.

1

Where the Tenants disputed the alienable rights of the condominiums at the Hearing, both Hearing officer and OHRRRB erroneously denied Landlord the Certificate of Exemption in 2017 and 2018 Citing an exception to the Costa Hawkins Rental Housing Act, California Civil Code Section 1954.52(3)(B)(ii), that the hearing officer and OHRRRB found that while the property had been converted to condominiums, the property was not exempt because it did not have alienable rights and “[had] not been sold separately by the subdivider to a bona fide purchaser for value.” The hearing officer determined that because the Landlord had purchased the entire building from the subdivider, the units had never been sold separately, and therefore they were not exempt from rent control even though OHRRRB lost the similar RAP case, *Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board*. Landlord had to seek relief and justice from Superior Court of California and ultimately ruled against the OHRRRB once again. OHRRRB was not the one that awarded the Landlord the Certificate of Exemption and therefore OHRRRB did not award the Exemption by fraud or mistake. It was the Superior Court of California that so ordered OHRRRB to issue Landlord the Certificate of Exemption and the issue of alienable rights had been addressed, adjudicated and collaterally estopped.

Tenant Salvador brings this petition, T19-0384 claiming the exemption was sought by fraud or mistake with utterly **no merit**. The burden of proof of this claim is upon the petitioner which Tenant has failed in all aspects to meet because there was absolutely no fraud or mistake made. Superior Court of California had made it clear in case ruling RG18930130 that OHRRRB was so ordered to issue Certificate of Exemption and it was finally issued on 9/20/19 and filed on 10/8/19 and there was **no appeal** to this ruling by either OHRRRB or Tenants. Here the Tenants could have appealed this case but did not. The OHRRRB is also barred from relitigating this issue by the doctrine of collateral estoppel and res judicata by ruling cases with both *Fong vs City of Oakland, Housing, Residential Rent & Relocation Board* and *Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board* which is being violated with again attempting to relitigate the factual or legal issue that has already been decided and finally adjudicated. (*Key v Tyler* (2019) 34 Cal.App.5th 505,) Therefore, due to the fact the Landlord Certificate of Exemption on the four condominiums was ordered by the Superior Court of California and decision was final and was not awarded by decision of OHRRRB nor based on fraud or mistake and OHRRRB is barred from relitigating this case by issue and claim preclusion, this is in support of the Hearing Officer’s decision to dismiss Tenant’s petition and the order of exemption should be final and irreversible.

A. The Golden State Ventures vs OHRRRB and Fong vs OHRRRB case precludes the Rent Board from arguing that Costa-Hawkins does not apply here.

Tenant falsely attempts to argue the Court's order only indicated RAP (OHRRRB) was collaterally estopped from further hearings on only the "statutory bona fide purchaser test," and did not cover the issue of condominium units are separately alienable and therefore exempt from rent control under Costa Hawkins. However, *Tenants v. Golden State Ventures* and *Fong vs OHRRRB* not only address and ruled on the issue of the "statutory bona fide purchaser test" but also the court affirmed the units in question which both **parties** agree are condominiums units and the fact that Fong and Lee purchased the units as "sold separately". Again, it was stated in ruling see "Exhibit 1", The small phrase "sold separately" can carry this weight. The word "separate" occurs elsewhere in the statute-the language of the general exemption language ("alienable separate from the title to any other dwelling unit"), which requires that the title to the individual condominium units be individually alienable. In context, "sold separately" means sold as condominiums, with separate title as evidenced in Alameda Property Assessment Information see "*Exhibit 3*".

Another desperate attempt to claim the issue of the exemption is not precluded on the basis of the doctrines of res judicata and collateral estoppel is Tenant attorney reference to the *Michelson v. Sherman*, L18-0081 case where RAP granted a landlord petition for exemption, but then later invalidated the exemption due to fraud or mistake. The case went to the Superior Court on a writ and the Superior Court remanded the case back to the Rent Board to decide on the issue of fraud. At the hearing on the issue of fraud, the board vacated the exemption due to fraud or mistake. However, this case does not apply here. In the *Michelson v. Sherman*, it was the RAP board that awarded the Landlord the exemption without the Tenant being heard in court. The case at Superior Court was remanded back to Rent Board to allow the original tenant to be heard in court and that is where RAP ruled for the Tenant. However, this is not what happened with this case where the Tenants with their attorneys were all present and had their full opportunity to present all issues at the Exemption hearing. Again, all Tenants were present and all legal issues must be brought up at this hearing as per Res Judicata. Opposed to the *Michelson v Sherman* case where RAP awarded the Landlord the Certificate of Exemption, both hearing officer and RAP denied us the Certificate. It was Superior Court that ordered OHRRRB to issue us the Landlord Certificate of Exemption. Furthermore, the Superior Court never issued a collateral estoppel on the *Michelson v Sherman* case but they issued a collateral estoppel for the OHRRRB for our exemption based on Costa-Hawkins case.

This is the second case in which the Rent Board has ruled against a Landlord exemption claiming Costa-Hawkins does not apply. Here again, this Tenant is futually attempting to relitigate the same argument that the condominium unit do not meet the provision of the Costa-Hawkins exemption covers units that are “alienable separate from the title to any other dwelling unit,” which includes condominiums because (unlike apartments) they can be sold individually without affecting other units’ titles. (§ 1943.52, subd. (a)(3)(A); see also *Burien, supra*, 230 Cal.App.4th at p. 1045; § 4105 [defining a “[c]ommunity apartment project”]; § 4125, subd. (b) [defining a “condominium”].) This “ ‘exemption’ ” from local rent control “ ‘was originally created to spur construction of condominiums, seen as an affordable housing alternative, and in recognition that condominiums were built with the same purpose as apartment units.’ ” (*City of West Hollywood v. 1112 Investment Co.* (2003) 105 Cal.App.4th 1134, 1143 (*City of West Hollywood*), quoting Sen. Comm. on the Judiciary, Analysis of S.B. 985 (2001–2002 Reg. Sess), at p. 2; see also Mot. for Judicial Notice, Decl. of Paul J. Katz, Ex. A (MJN, Ex. A).). This has been argued already and ruled for Landlord Under Case No. RG18930130 MEMORANDUM OF POINTS AND AUTHORITIES in support OF motion for judgment on the WRIT OF ADMINISTRATIVE MANDAMUS and Ordered on the PETITION for Writ of Mandate on June 7, 2019 that “The tentative ruling was affirmed as follows: Petitioners May Lee Fong and Michael B. Lee petition the Court for a Writ of administrative mandate directing Respondent City of Oakland, Housing, Residential Rent and Relocation Board ("OHRRRB") to set aside its decision denying Petitioners' application for certificate of exemption from Oakland's Rent Adjustment Program ("RAP"). (Oakland Mun. Code ch. 8.22.).”

As cited in order see “Exhibit 1”, The OHRRRB is also strictly prohibited from relitigating this issue by the doctrine of collateral estoppel. The doctrine of collateral estoppel forbids a party from relitigating a specific factual or legal issue that has already been actually decided by another court when the identical issue was actually litigated in a prior suit and was finally adjudicated against a party to the first suit or a person in privity. (*Key v. Tyler* (2019) 34 Cal.App.5th 505, -.)

Here, the OHRRRB already litigated the issue of whether the RAP applies when several condominiums in the same building are sold to the same owner. The issue was decided adverse to the OHRRRB in the case of *Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board*

The Court does not agree with the OHRRRB's argument that the issues are distinguishable on their facts. To apply the statutory bona fide purchaser test, the Court need not determine whether the condominiums were sold in one transaction or a series of transactions, whether the condominiums were sold directly by the subdivider, and whether the building's condominium conversion was total or partial. The OHRRRB is therefore collaterally estopped from relitigating the issue. Fong and Lee's petition is GRANTED.” See “Exhibit 1”.

In *Tenants v. Golden State Ventures*, it was argued, In the present case, a "commonsense interpretation" of section 1954.52, subdivision (a)(3)(B)(ii) is that the "sold separately" exception applies to subdividers and not to subsequent purchasers. The subdivision on its face applies to "an *owner* of residential real property" (italics added), not a purchaser. At this point, Landlord is the "owner" of the four condominiums in the building, each of which is presently "alienable separate from the title to any other dwelling unit" and therefore not subject to local rent control laws. (§ 1954.52, subdivision (a)(3)(A).) The exception set forth in 1954.52, subdivision (a)(3)(B)(ii) also has no application to Landlord because the units have already been converted to condominiums.

Res Judicata applies here. From the *Golden State Ventures* Court of Appeal decision that stands for the principle that a party to a Rent Board proceeding must raise all issues *up front*. Failure to do so means the party forfeits those omitted arguments in future proceedings.

Numerous cases are in accord that a party must present its factual and legal claims to the administrative agency before it can obtain review of them in the courts. (See, e.g., *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1198; *City of Walnut Creek v. County of Contra Costa* (1980) 101 Cal.App.3d 1012, 1019–1020; *Weinberg v. Cedars-Sinai Medical Center* (2004) 119 Cal.App.4th 1098, 1115; *Southern Cal. Underground Contractors, Inc. v. City of San Diego* (2003) 108 Cal.App.4th 533, 549.) **We note that issue preclusion applies not only to claims or defenses presented in the administrative hearing, but also to claims or defenses which were not raised in the administrative proceeding. (*Murray v. Alaska Airlines, Inc.* (2010) 50 Cal.4th 860, 871.) “[U]nless a party to ‘a quasi-judicial administrative agency proceeding’ exhausts available judicial remedies to challenge the adverse findings made in that proceeding, those findings may be binding in later civil actions.” (Id. at p. 876.)** To remand the case to allow the Rent Board to address the issue at this stage of the proceedings would circumvent this doctrine.

B. The Landlord Certificate of exemption was an administrative mandate directed by Superior Court of California and was not issued on basis of fraud or mistake.

a. Landlord met the burden required to establish separate alienability.

Landlord filed in Certificate of Exemption for the four condominium units in 2016 in complete good faith and in accordance and compliance to all laws. Furthermore, the exemption was not issued on the basis of fraud or mistake but by the Petition for Writ Mandate hearing on 6/7/19 where the Tentative Ruling was published and had not been contested and was so ordered directing OHRRRB to issue the Certificate of Exemption as Landlord has proved that Costa Hawkins applies here.

Tenant falsely claims property was subdivided into 5 or more unit dwellings. Here the tenant misrepresents subdivision rules. There is a difference between subdivisions of 5 or more building units and 5 or more parcels. The developers in 2001 subdivided the property into only 4 condominium units in which they were approved and completed. Therefore, Notice of Subdivision Public Report was not required as found on Oakland Code of Ordinance 16.36.110 - Notice of subdivision public report or sales program – A. That, for buildings of **five (5) or more units**, a copy of the final subdivision public report is available to each tenant upon request see “Exhibit 4”. The parcel map was the requirement for the 4 building units that was submitted, approved and recorded for the condominiums as indicated on assessor map not only show the fact that the units are a condominium single residential living unit that Landlord purchased as “sold separately” and “alienable”, but shows the corresponding condominium unit 1354A APN 42-4247-81, 1354B APN 42-4247-82, 1356A APN 42-4247-83, 1356B APN APN 42-4247-84 see “Exhibit 5.” The common area is the driveway with APN 42-4247-85, not the converted apartment units see “Exhibit 6”. According to tenant discovery of the CC&Rs recorded in 2007, each of the 4 condominium owners hold undivided interest of 25% of this common area driveway. After developers completed the condominium conversion, subsequent owners converted the parking space below 1356A into an apartment unit and the parking space below 1356B into another apartment unit to allow for housing to Oakland alleviate homelessness crisis see “Exhibit 7”. These converted units in no way affect the alienable rights of the condominiums and especially does not affect the Tenant’s condominium titles as the title of the common area is legally separated from the condominium unit but is shared by the 4 condominium owners in undivided interest. Again, separate alienability and sold separately on these condominium units have been heard, litigated and adjudicated to establish these units are covered by Costa Hawkins Act as per Ruling by the Superior Court of California see “Exhibit 1”.

Government Code section 66499.37 provides a 90-day statute of limitations for any subdivision decision. The following passage states that this short limitations period applies broadly: "On its face, the statutory language at issue, applying the 90–day statute of limitations to “[a]ny action or proceeding” challenging “the decision of an advisory agency, appeal board, or legislative body concerning a subdivision” is very broad and does not contain the temporal limitation relied upon by the trial court to find that plaintiffs' lawsuit was timely. To the contrary, the language used in section 66499.37 contains no limitation whatsoever on the type of decision that is being challenged, but instead broadly encompasses any decision of a local legislative or advisory body “concerning a subdivision.” Moreover, the 90–day limitations period of section 66499.37 is expressly made applicable to any action “to determine the reasonableness, legality, or validity” of any subdivision condition “including, but not limited to, the approval of a tentative map or final map....” (Italics added.)"

Tenant misinterprets the dwelling boundaries of the condominium units 1354A APN 42-4247-81 and 1354B APN 42-4247-82. It is abundantly clear on the Lower Floor and Site Plan from the CC&Rs recorded 2007 the condominium unit 1354A APN 42-4247-81 has and is within its own airspace and does not share parcels with 1354B APN 42-4247-82 see “Exhibit 7”. It is also explicitly clear according to the CC&Rs and Assessor’s Map that the Tenant had referred to does not indicate the exact locations of the parcels where the dwellings are sitting on the property. In fact, there is no indication on the Assessor’s map of where the property of each parcel is located on the lots as displayed with parcels 59 through 67 on Assessors map 42 which is drawn at the back of each property lot see “Exhibit 5”. Tenant is grossly making false misrepresentations in attempt to find fraud or mistake where it clearly does not exist and is continually claiming the 4 condominium units are not covered by Costa Hawkins. However, again the question of alienability, sold separately, bonafide purchasers all have been addressed, proven and ruled in Landlords’ favor by Superior Court of California on June 7, 2019 that exempts Landlords’ condominium units from Oakland rent control ordinances.

As cited on the Petition of Writ of Mandate order, the OHRRRB already litigated the issue of whether the RAP applies when several condominiums in the same building are sold to the same owner. The issue was decided adverse to the OHRRRB in the case of Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board (Alameda Cty. Super. Ct. Case No. RG16 834166, 1st Dist. Ct. App. Case No. A15142L Jan. 25, 2018) 2018 WL 549174. That is, both Superior Court of California and the Court of Appeal held that the Costa-Hawkins Act exempts such condominiums from the RAP because they were **sold separately** to a bona fide purchaser. (Civ. Code§ 1954.52(a)(3)(A), (a)(3)(B)(ii).) The judgment in Golden State Ventures is final, and the OHRRRB filed its return certifying compliance with this Court's writ and the Court of Appeal's decision on June 7, 2018.

Once again, Landlord was found to not only be bona fide purchaser but also had legitimately purchased each of the 4 condominium units as “sold separately”. As cited in the Petition for Write Mandate, the word "separate" occurs elsewhere in the statute-the language of the general exemption language ("alienable separate from the title to any other dwelling unit"), which requires that the title to the individual condominium units be individually alienable. In context, "sold separately" means sold as condominiums, with separate title. The separate tax ID numbers on the grant deed here confirm that each condominium retained its separate title see “Exhibit 8”. Therefore, “alienable” and “sold separately” had already been proven in this case for these condominiums through the Superior Court of California and the issue was addressed and adjudicated in favor of Landlord.

As a general matter, the Costa–Hawkins Act prevents localities from regulating the amount of rent a condominium owner may charge. (Civ. Code, § 1954.52, subd. (a)(3)(A); *Burien, supra*, 230 Cal.App.4th at p. 1045.). Superior Court of California had so ruled in favor of Landlord by the Petition for Writ Mandate hearing on 6/7/19 and so directed OHRRRB to issue the Certificate of Exemption because Landlord had proved in Superior Court of California that the four condominium units are covered by Costa Hawkins Act and not subject to and is exempt from Oakland’s rent ordinance. This has been adjudicated and was not contested neither by the Tenant or OHRRB. Again, OHRRRB has been barred from relitigating this issue by the doctrine of collateral estoppel and res judicata.

CONCLUSION

For the foregoing reasons, Landlord respectfully requests the appeals board affirms the Hearing officer's administrative decision that is legally correct in dismissing the Tenant’s petition based on the undisputed fact that the Tenant herein was the original party to the prior case who had her hearing and day in court in case L16-0083. Therefore, the additional litigation between the parties is strictly prohibited as per Order by Superior Court of California dated June 7, 2019 to OHRRRB.

Date: September 27, 2021

Respectfully submitted,



May Lee Fong
Landlord Pro Per

Golden State Ventures, LLC v. City of Oakland Rent Bd., A151421 (Cal. Ct. App. Jan. 25, 2018)
Exhibit C, CC&Rs
Motion on Petition by Landlord in *Fong vs OHRRRB*
Fong v. City of Oakland, Housing, Residential Rent & Relocation Board, Superior Court of Alameda County, Case No. RG18930130, Order Granting Petition for Writ of Administrative Mandamus (June 7, 2019
Michelson v. Sherman, L18-0081; see also RAP appeals index

EXHIBIT 1

Katz Appellate Law
Attn: Katz, Paul J.
484 Lake Park Ave #603
#557
Oakland, CA 94610_____

City Attorney's Office
Attn: Jefferson, Jamilah A.
One Frank H. Ogawa Place, 6th Floor
Oakland, CA 94612

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Fong <p style="text-align: center;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> <p>City of Oakland , Housing , Residential Rent & Relo</p> <hr/> <p style="text-align: center;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG18930130</u> Order Date: 06/07/2019 Time: 02:00 PM Dept: 17 Judge: Frank Roesch
---	---

The Petition for Writ of Mandate was set for hearing on 06/07/2019 at 02:00 PM in Department 17 before the Honorable Frank Roesch. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: Petitioners May Lee Fong and Michael B. Lee petition the Court for a writ of administrative mandate directing Respondent City of Oakland, Housing, Residential Rent and Relocation Board ("OHRRRB") to set aside its decision denying Petitioners' application for certificate of exemption from Oakland's Rent Adjustment Program ("RAP"). (Oakland Mun. Code ch. 8.22.)

Fong and Lee bid for and purchased several condominiums in the same building at a foreclosure sale. The building's prior owner had operated the building as an apartment house, but the units were converted to condominiums before being sold to Fong and Lee. The same tenants remained in the condominium units (formerly apartments) and were unaware that a conversion had even occurred. Fong and Lee applied for exemption from the RAP on the grounds that the units were condominiums exempt from local rent control under the Costa-Hawkins Act (Civ. Code § 1954.50 et seq.). OHRRRB denied the application on the grounds that Fong and Lee had "stepped into the shoes" of the prior landlord.

The sole issue on this petition is a question of law and statutory interpretation of the provision of the Costa-Hawkins Act that exempts condominiums from local rent control ordinances after they are sold to a bona fide purchaser. (Civ. Code § 1954.52(a)(3) [exempting dwelling units "alienable separate from the title to any other dwelling unit" from local rent control].) After the Costa-Hawkins Act was initially passed, the Legislature became concerned that some apartment buildings were being legally converted to condominiums but never sold to new owners; buildings could escape local rent control through a trick of paperwork while maintaining the same ownership, management, and tenants. (See Decl. of P.J. Katz Ex. A (Sen. J. Comm. Analysis) ["[S]ome apartment property owners have taken advantage of the law by obtaining a permit to convert to condominiums, but never completing the process. . . ."]) The legislature amended the exemption to provide that condominiums is not available for "[a] condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value." (Stats 2001, ch. 729 (S.B. 985), § 2, codified as Civ. Code § 1954.52(a)(3)(B)(ii); see also Decl. of P.J. Katz Ex. A ["This bill would close that loophole and provide that the exemption would apply only when the unit is sold separately to a bona fide purchaser for value. Thus, apartment units that have remained

rentals would be subject to local rent control laws."].) In other words, the Legislature provided that the exemption from rent control is not available to the owner who subdivides his property into condominiums though it is available to subsequent bona fide purchasers of the individual condominium units.

The parties agree that the units in question are condominium units and that Fong and Lee were bona fide purchasers. OHRRRB argues that the units were not "sold separately" because they were sold on the same day, one owner continues to own the entire building, no units were sold to individual owners, and the same tenants continue to occupy the units. The small phrase "sold separately" can carry this weight. The word "separate" occurs elsewhere in the statute-the language of the general exemption language ("alienable separate from the title to any other dwelling unit"), which requires that the title to the individual condominium units be individually alienable. In context, "sold separately" means sold as condominiums, with separate title.

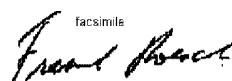
The OHRRRB is also prohibited from relitigating this issue by the doctrine of collateral estoppel. The doctrine of collateral estoppel forbids a party from re-litigating a specific factual or legal issue that has already been actually decided by another court when the identical issue was actually litigated in a prior suit and was finally adjudicated against a party to the first suit or a person in privity. (*Key v. Tyler* (2019) 34 Cal.App.5th 505, -.)

Here, the OHRRRB already litigated the issue of whether the RAP applies when several condominiums in the same building are sold to the same owner. The issue was decided adverse to the OHRRRB in the case of *Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board* (Alameda Cty. Super. Ct. Case No. RG16 834166, 1st Dist. Ct. App. Case No. A151421, Jan. 25, 2018) 2018 WL 549174. That is, both this Court and the Court of Appeal held that the Costa-Hawkins Act exempts such condominiums from the RAP because they were sold separately to a bona fide purchaser. (Civ. Code § 1954.52(a)(3)(A), (a)(3)(B)(ii).) The judgment in *Golden State Ventures* is final, and the OHRRRB filed its return certifying compliance with this Court's writ and the Court of Appeal's decision on June 7, 2018.

The Court does not agree with the OHRRRB's argument that the issues are distinguishable on their facts. To apply the statutory bona fide purchaser test, the Court need not determine whether the condominiums were sold in one transaction or a series of transactions, whether the condominiums were sold directly by the subdivider, and whether the building's condominium conversion was total or partial.

The OHRRRB is therefore collaterally estopped from relitigating the issue. Fong and Lee's petition is GRANTED.

Dated: 06/07/2019

Facsimile


Judge Frank Roesch

EXHIBIT 2



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

CERTIFICATE OF EXEMPTION
O.M.C. § 8.22.030(B)

Pursuant to the Court's Decision in Fong vs. City of Oakland, Housing, Residential Rent & Relocation Board, Case Number, RG18930130, the residential rental units described below are permanently exempt from application of the City of Oakland Rent Adjustment Ordinance, Oakland Municipal Code, Chapter 8.22, Article 1.

Situs Address: 1354 A 81st Avenue
Oakland, CA

*owner: May Lee Fong and
Grant Wai Fong, Michael B
Lee and Sandra C. Lee*

The units are subject to payment of the Rent Adjustment Program fee

Alameda County Assessor Parcel No. 42-4247-81

Date: 9/20/19


Chanee Franklin Minor
Program Manager
Rent Adjustment Program

*Mailing: 358 Cerro Ct
Daly City, CA 94015*

*Owner: May Lee Fong and Grant Wai Fong,
Michael B Lee and Sandra C. Lee*

RECORDING REQUESTED BY:

May Lee Fong



2019203025

10/08/2019 09:56 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
MELISSA WILK
RECORDING FEE: 20.00



3 PGS

WHEN RECORDED MAIL TO:

May Fong
358 Cerro Ct
Daly City, CA 94015

3
cd

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING
INFORMATION (GOVT. CODE 27361.6) (additional recording fee applies)

TITLE OF DOCUMENT

CERTIFICATE OF EXEMPTION FROM APPLICATION OF
O.M.C. Chapter 8.22, Article 1

EXHIBIT 3

ONLINE SERVICES [Assessor's Office](#) | [Treasurer-Tax Collector](#) | [New Query](#)

PROPERTY ASSESSMENT INFORMATION **ASSESSOR'S OFFICE**

2020 - 2021 Assessment Information

Parcel Number:	42-4247-81
Assessor's Map: (Map image is not to scale)	Maps... Disclaimer
Use Code:	7300
Description	Condominium - single residential living unit
Land	\$34,454.00
Improvements	\$80,392.00
Fixtures	0
Household Personal Property	0
Business Personal Property	0
Total Taxable Value	\$114,846.00
Exemptions	
Homeowner	0
Other	0
Total Net Taxable Value	\$114,846.00

[Additional Assessment Information](#) | [Property Tax Information](#)

Adobe Acrobat Reader is required to view the maps. Click [here](#) to download.

EXHIBIT 4

16.36.110 - Notice of subdivision public report or notice of start of sales program.

Within five (5) days of receipt of the final subdivision public report described in Section 11018 of the California Business and Professions Code, the subdivider of a building with five (5) or more units shall notify, in writing, the Planning and Building Director and all tenants in the building to be converted of the date of issuance of said report. For buildings with four (4) or less units, the subdivider shall give the Planning and Building Director and all tenants in the building to be converted seventeen (17) days' prior written notice of the start of the sales program. Said notices, to be accompanied by the subdivider's final tenant assistance program as set forth in O.M.C. Section 16.36.080, shall also state the following:

- A. That, for buildings of five (5) or more units, a copy of the final subdivision public report is available to each tenant upon request;
- B. That no remodeling of the interior of tenant-occupied units shall begin until at least thirty (30) days after issuance of said report or start of the sales program;
- C. That each tenant has an exclusive right to contract for the purchase of the tenant's respective unit, or, at the tenant's option, any other available unit in the building upon the same terms and conditions that such units will be initially offered to the general public, less a discount of at least ten (10) percent, or upon terms more favorable to the tenant if so provided for in the subdivider's final tenant assistance program attached to this notice, such right to run for a period of not less than ninety (90) days from the date of issuance of said report or the start of the sales program;
- D. That each tenant has a right of occupancy of at least one hundred eighty (180) days from the date the notice to existing tenants of intention to convert, as set forth in O.M.C. Section 16.36.031, is served on the tenant: one hundred eighty (180) days from the issuance of the final subdivision public report or, if one is not issued, or from the start of subdivider's sale program; or until the expiration of tenant's lease, or as specified in the subdivider's final tenant assistance program attached to this notice, whichever is longer, prior to termination of tenancy due to conversion, and that upon termination of tenancy, each tenant shall be provided with relocation assistance as set forth in O.M.C. Section 16.36.050. This provision shall not alter or abridge the rights or obligations of the parties in performance of their covenants, including but not limited to the provision of services, payment of rent, or the obligations imposed by Sections 1941, 1941.1, and 1941.2 of the California Civil Code;
- E. That for each tenant not desiring to purchase a unit or, for tenants eligible for a lifetime

lease, not desiring to accept a lifetime lease, the subdivider will provide such tenant with up-to-date information of available apartments of comparable size, price, and location within the city and will take other steps as indicated in the subdivider's final tenant assistance program attached to this notice.

The written notices required by this Section shall be deemed satisfied if they comply with the legal requirements for service by mail pursuant to California Code of Civil Procedure Section 1013.

(Ord. No. 13585, § 2, 2-18-2020)

EXHIBIT 5

ASSESSOR'S MAP 42

Code Area No. 17-032

4247
2

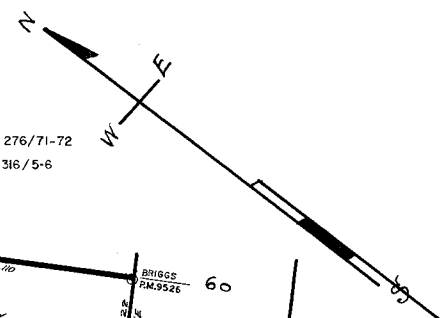
Map No. 2 of the Buena Ventura Tract. (Bk. 13 Pg. 27)

Map of the Briggs Tract, Brooklyn Township. (Bk. 21 Pg. 20)

Scale 1 in = 40 ft

4247-1 7

P.M. 7739 276/71-72
P.M. 9526 316/5-6



- 1366
- 1364
- 1360
- 1352
- 1350
- 1348
- 1346
- 1342
- 1340
- 1338
- 1336
- 1332
- 1330
- 1328
- 1326
- 1322
- 1312
- 1306
- 1300
- 1262
- 1258
- 1256

Avenue.

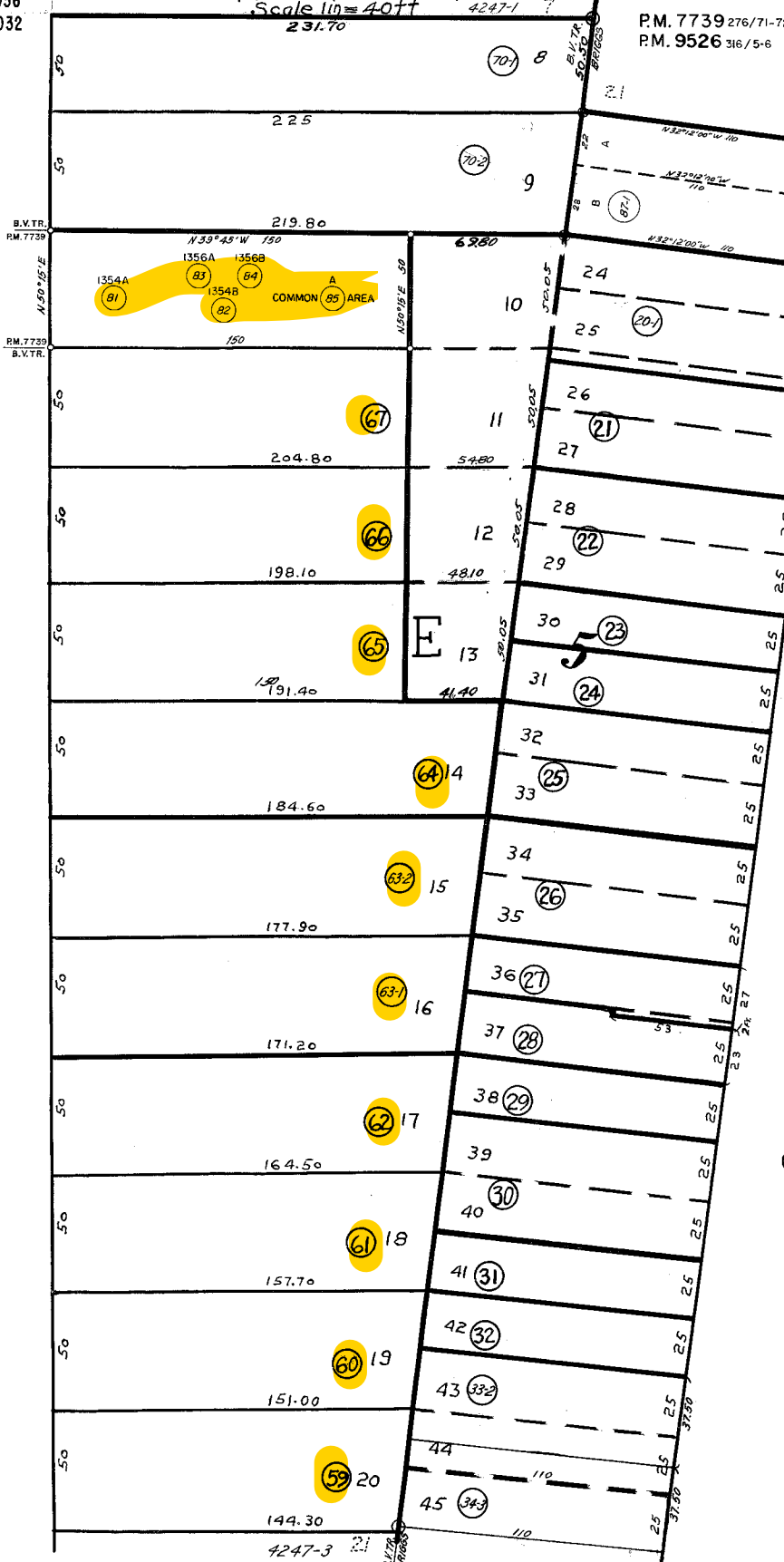
(Snell)

81st

82nd

83rd

84th



Avenue.

(Moss)

82nd

83rd

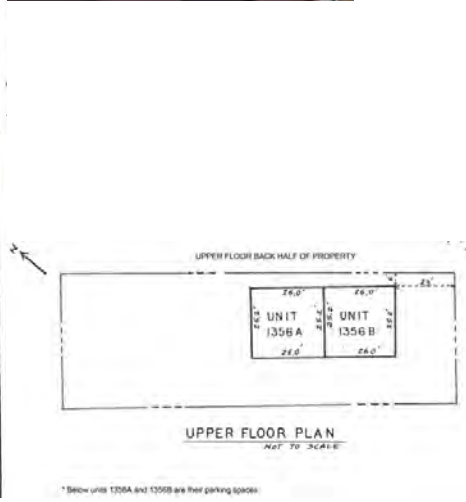
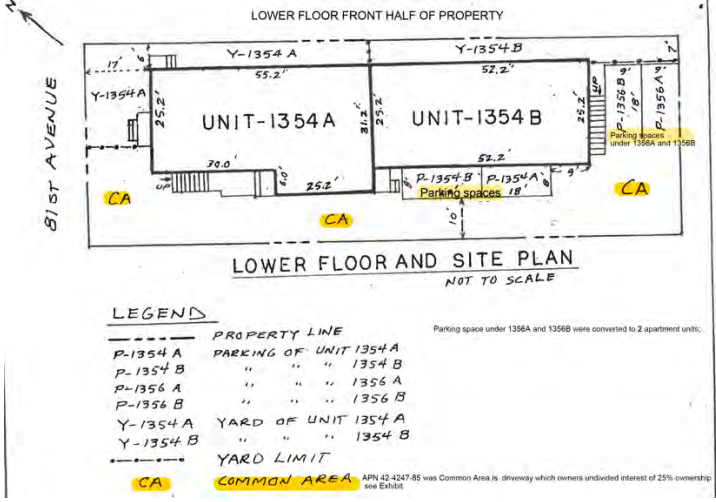
84th

85th

- 1265
- 1263
- 4249
- 1257
- 1251
- 1247
- 1245
- 1243
- 1233
- 4250
- 1229
- 1225
- 1223
- 1217
- 1211
- 1205
- 1201
- 1199

000738

EXHIBIT 6



COMMON AREA APN 42-4247-85 is driveway each 4 condominium unit owner holds undivided interest of 25% see CCR and Exhibit

ONLINE SERVICES

[Assessor's Office](#) | [Treasurer-Tax Collector](#) | [New Query](#)

PROPERTY ASSESSMENT INFORMATION

ASSESSOR'S OFFICE

2019 - 2020 Assessment Information

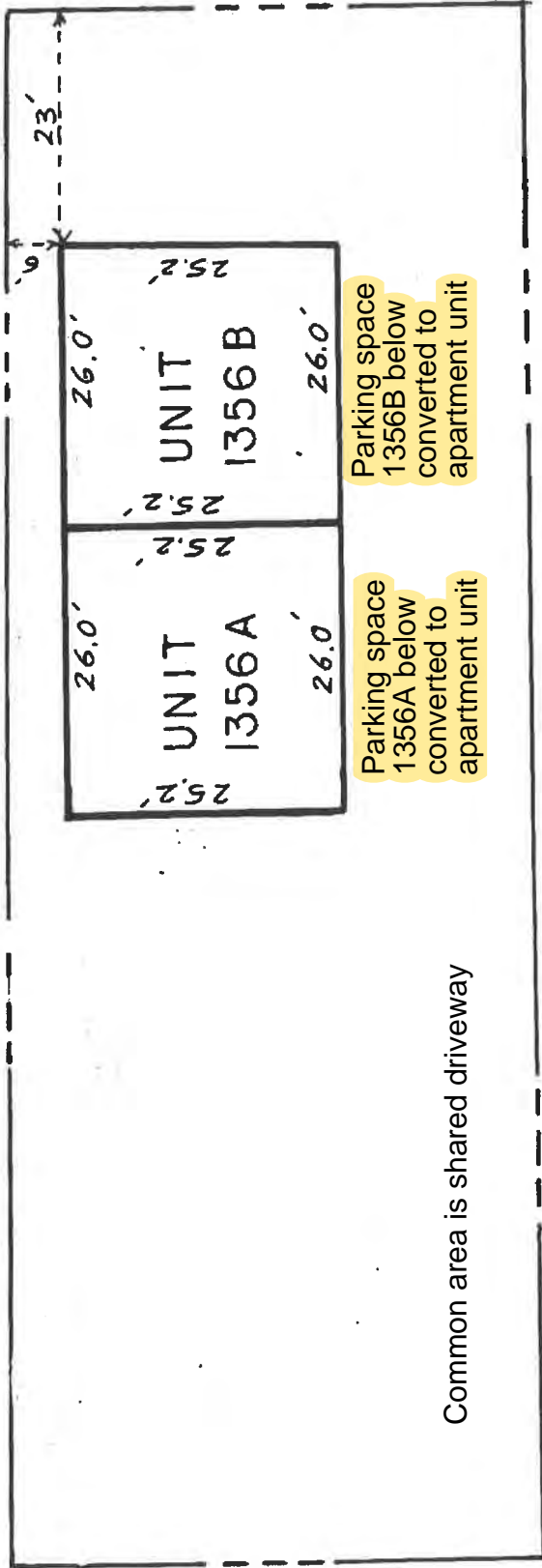
Parcel Number:	42-4247-85
Assessor's Map: (Map image is not to scale)	Maps... Disclaimer
Use Code:	7390
Description	Condominium Common Area or use
Land	0
Improvements	0
Fixtures	0
Household Personal Property	0
Business Personal Property	0
Total Taxable Value	0
Exemptions	
Homeowner	0
Other	0
Total Net Taxable Value	0

[Additional Assessment Information](#) | [Property Tax Information](#)

Adobe Acrobat Reader is required to view the maps. Click [here](#) to download.

EXHIBIT 7

UPPER FLOOR BACK HALF OF PROPERTY



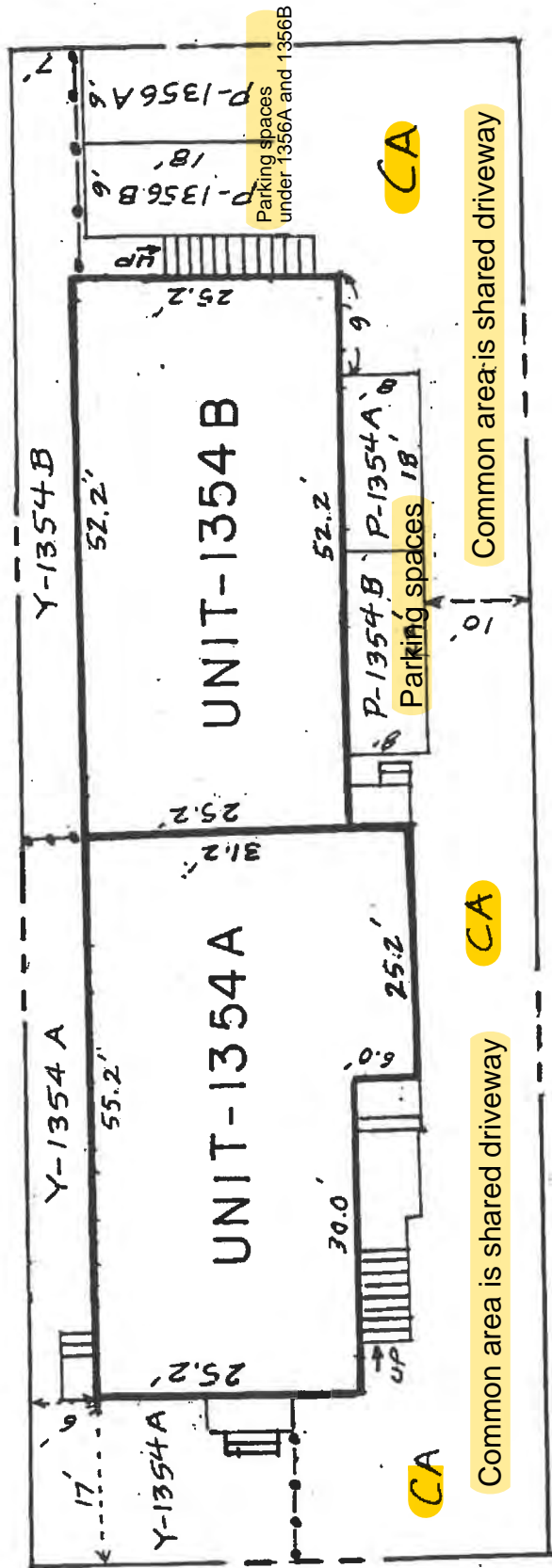
Common area is shared driveway

UPPER FLOOR PLAN

NOT TO SCALE

* Below units 1356A and 1356B are their parking spaces

LOWER FLOOR FRONT HALF OF PROPERTY



LOWER FLOOR AND SITE PLAN

NOT TO SCALE

LEGEND

- PROPERTY LINE
- P-1354 A PARKING OF UNIT 1354 A
- P-1354 B " " " 1354 B
- P-1356 A " " " 1356 A
- P-1356 B " " " 1356 B
- Y-1354 A YARD OF UNIT 1354 A
- Y-1354 B " " " 1354 B
- YARD LIMIT

CA

COMMON AREA

APN 42-4247-85 was Common Area is driveway which owners undivided interest of 25% ownership see Exhibit

Parking space under 1356A and 1356B were converted to 2 apartment units;

Common area is shared driveway

Common area is shared driveway

Parking spaces under 1356A and 1356B

EXHIBIT 8

Recording REquested By
ServiceLink

MAIL TAX STATEMENT TO:
MAY LEE FONG, GRANT WAI
FONG, MICHAEL B LEE and
SANDRA C LEE
358 CERRO COURT
DALY CITY, CA 94015

Prepared By:
ServiceLink
4000 Industrial Blvd.
Aliquippa, PA 15001

2774039

Handwritten notes: HW, AB, TP, JP, B



2012107555

03/29/2012 01:50 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 31.00
COUNTY TAX: 219.45
CITY TAX: 2992.50



3 PGS

For Recorder's Use Only

Grant Deed

THE UNDERSIGNED GRANTOR (S) DECLARE (S)
DOCUMENTARY TRANSFER TAX: \$ 2,992.50 CITY
\$ 219.45 county

- FOR NO CONSIDERATION
- COMPUTED ON FULL VALUE of property conveyed, or
- COMPUTED ON FULL VALUE LESS VALUE OF LIENS AND ENCUMBRANCES remaining at time of sale.
- Unincorporated area of Alameda City of OAKLAND

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Deutsche Bank National Trust Company, as Trustee for Ameriquest Mortgage Securities Inc., Asset-Backed Pass-Through Certificates, Series 2003-2

Hereby grants to,
GRANT WAI FONG AND MAY LEE FONG, HUSBAND AND WIFE AND MICHAEL B. LEE AND SANDRA C. LEE, HUSBAND AND WIFE, EACH TO AN UNDIVIDED 50% INTEREST, AS TENANTS IN COMMON

The following described real property in the County of Alameda, State of CA.

LEGAL DESCRIPTION:

See Exhibit A attached hereto and made a part hereof

Tax ID Number 042-4247-081-00, 042-4247-082-00, 042-4247-083-00, 042-4247-084-00 and 042-4247-085-00

March 07, 2012

Deutsche Bank National Trust Company, as Trustee for Ameriquest Mortgage Securities Inc., Asset-Backed Pass-Through Certificates, Series 2003-2

Phyllis Washington

By: American Home Mortgage Services

Phyllis Washington

Assistant Secretary

Its: Attorney in Fact

STATE OF Texas)
)SS.
COUNTY OF Dallas)

On this 3/8/12 appeared before
me William Cuchens, a Notary Public,
Phyllis Washington

personally known or proven to me to be the person(s) whose name(s) is/are subscribed to the above instrument, who acknowledged that he/she/they executed the instrument for the purposes therein contained.

William Cuchens
Notary Public

My Commission Expires: JUN 24 2014

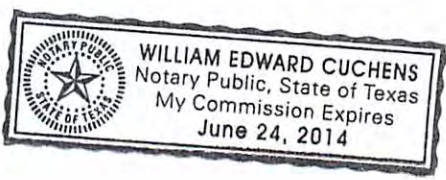


Exhibit "A"
Legal Description

All that certain parcel of land situate in the County of Alameda, State of California, being known and designated as follows:

The Northwestern 150 feet of Lot 10, Block "E", as said Lot and Block are shown on the "*Map 2 of the Buenaventura Tract, Brooklyn Tp.*", filed January 9, 1892, Map Book 13, Page 27, Alameda County Records.

Tax ID: 042-4247-081-00, 042-4247-082-00, 042-4247-083-00, 042-4247-084-00 and 042-4247-085-00



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.

I served a copy of: Ana Jeronimo aka Ana Salvador
(insert name of document served)
 And Additional Documents

and (write number of attached pages) 23 attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

Name	Ana Jeronimo aka Ana Salvador
Address	1354-81ST AVENUE, UNIT A,
City, State, Zip	OAKLAND, CA 94621

X

Name	The Rent Adjustment Program
Address	250 Frank H. Ogawa Plaza, Suite 5313
City, State, Zip	Oakland, CA 94612

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 9/28/2021 (insert date served).

May Fong

PRINT YOUR NAME

SIGNATURE

DATE

9/28/21

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

Housing Residential Rent and Relocation Board (HRRRB)

APPEAL DECISION

CASE NUMBER: T19-0384, Salvador v. Fong
APPEAL HEARING: December 9, 2021
PROPERTY ADDRESS: 1354 81st Avenue Unit A, Oakland, CA
APPEARANCES:
Xavier Johnson Tenant Representative
May Fong Owner
Michael Lee Owner Representative

PROCEDURAL BACKGROUND

The tenant filed a petition contesting a certificate of exemption previously granted to the owner in L16-0083. The tenant argues that the exemption was issued on the basis of fraud and mistake. The petition also alleges unlawful rent increases and decreased housing services.

RULING ON THE CASE

The Hearing Officer denied the petition in an administrative decision. The decision ruled that because the tenant was a party to the previous exemption case, L16-0083, the tenant may not relitigate the exemption issue in the instant petition.

GROUND FOR APPEAL

The tenants appealed on the ground that:

1. The tenant is entitled to a new hearing on the merits on fraud and mistake claim;
2. The unit is not separately alienable because the condo conversion process was not completed;
3. The unit is not separately alienable because another unit is on the same parcel.

ISSUES

1. Should the tenant be allowed to challenge an exemption that was previously granted in a petition where the tenant was a party to the case?

000752

BOARD DECISION

After parties' arguments, questions to the parties, and Board discussion, Chair D. Ingram moved to remand the case back to the Hearing Officer for a limited scope hearing based on the claim of fraud. C. Oshinuga seconded the motion.

The Board voted as follows:

Aye: D. Ingram, T. Williams, N. Hudson, R. Nickens, Jr., C. Oshinuga

Nay: None

The motion was approved.

Chanée Franklin Minor

CHANÉE FRANKLIN MINOR
BOARD DESIGNEE
CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND
RELOCATION BOARD

April 1, 2022

DATE

PROOF OF SERVICE
Case Number T19-0384

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Documents Included

Appeal Decision

Owner

May Lee Fong
358 Cerro Court
Daly City, CA 94015

Tenant

Ana Jeronimo Salvador
1354 81st Avenue, Unit A
Oakland, CA 94621

Tenant Representative

Gregory Ching
Centro Legal de la Raza
3400 E 12th Street, Suite 410
Oakland, CA 94601

Tenant Representative

Xavier Johnson
Centro Legal De La Raza
3400 E 12th Street
Oakland, CA 94601

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **April 01, 2022** in Oakland, CA.

000754

A handwritten signature in blue ink, appearing to read 'Briana Lawrence-McGowan', written over a horizontal line.

Briana Lawrence-McGowan

Oakland Rent Adjustment Program

REMAND BRIEF IN SUPPORT OF TENANT PETITION T19-0384

To: Rent Adjustment Program Hearing Officer
From: Xavier Johnson and Gregory Ching, representatives for Tenant-Petitioner Ana Salvador

Case No: T19-0384
Case Title: Salvador v. Fong
Property Address: 1354 81st Avenue Unit A, Oakland, CA 94602

Tenant-Petitioner Ana Jeronimo Salvador hereby submits this brief in support of her Tenant Petition for Case No. T19-0384.

I. FACTS AND PROCEDURAL HISTORY

Property Owners May Lee Fong and Michael B. Lee (“Property Owners”) filed the first petition involving the Parties, L16-0083, on October 31, 2016 (“2016 Petition”). The 2016 Petition asserted that Tenant Ana Jeronimo Salvador’s unit and three other units at the property were condominiums and sought an exemption from the Oakland Rent Adjustment Program (“RAP”) under the Costa Hawkins Rental Housing Act, California Civil Code § 1954.52(a)(3) (“Costa Hawkins”). The property that is the subject property of this case is 1354 81st Avenue Unit A, Oakland, CA 94602 (“Subject Property”).

At the hearing on October 31, 2016, Property Owner Fong testified that Salvador’s unit qualified for an exemption under Costa Hawkins because the property had been subdivided into five parcels – four condominium parcels and one parcel containing two “unconverted” apartments. L16-0083 Hearing Recording, 0:14:05-0:14:15, 0:19:50-0:20:05. A proper condominium conversion divides apartments into unique parcels capable of having separate owners. When asked to produce the Conditions, Covenants and Restrictions (“CC&Rs”), which are required for condominium subdivision, Fong responded that there were no CC&Rs. L16-

0083 Hearing Recording, 0:24:35-0:25:31. Property Owner Lee, on the other hand, indicated that the CC&Rs were “verbal.” L16-0083 Hearing Recording, 0:26:52-0:27:20.

A hearing decision was issued on April 14, 2017. The Hearing Officer held that, while the property had been converted to condominiums, the property was not exempt from Costa Hawkins because it “[had] not been sold separately by the subdivider to a bona fide purchaser for value.” L16-0083 Hearing Decision. The Hearing Officer determined that because the Property Owners had purchased the entire building from the subdivider, the units had never been sold separately; therefore, the units were not exempt from rent control. *Id.* At the time this was a common ruling by RAP, and the same theory had been advanced to decide many prior cases.

The Property Owners appealed the decision, but the Oakland Housing, Residential Rent and Relocation Board (“HRRRB”) affirmed the holding in June 2018. HRRRB Appeal Decision, L16-0083, p. 2. On November 28, 2018, Property Owners petitioned the Alameda Superior Court for a Writ of Administrative Mandate to direct the HRRRB to set aside its decision denying the exemption. The Property Owners’ arguments and the Court’s analysis were limited to whether the units at issue were “sold separately” under the exemption to Costa Hawkins because the Property Owners owned all of the units in the building and acquired them on a single day through a single transaction. *Fong v. City of Oakland Housing, Residential Rent and Relocation Board*, Case No. RG18930130 (Cal. Super. Ct., Alameda Cnty., 2019). The sole remedy sought by the Property Owners was the vacation of the Appeal Decision made in cases L16-0083 and T17-0015. *Fong*, RG18930130 (Petition for Writ of Administrative Mandamus).

The sole focus of the Property Owners’ appeal argument to RAP and to the Superior Court was whether or not the units were “sold separately.” *Fong*, Case No. RG18930130. Neither the Property Owners nor the Court ruled on whether or not the units were separately

alienable. *Id.* In June 2019, the Court found that the property's units had been sold separately and granted Property Owners' Petition for Writ of Administrative Mandate. *Id.*

In response to the Court's order, the Hearing Officer for Petition L16-0083 issued a Certificate of Exemption. The Hearing Officer issued the Certificate without providing further analysis on the issue of separate alienability. L16-0083, Certificate of Exemption. The Hearing Officer determined, "On June 13, 2019, the Superior Court of Alameda County ruled in case RG18930130 that the subject units are exempt from rent control under the Costa Hawkins Rental Housing Act." L16-0083, Certificate of Exemption.

A review of the Writ of Administrative Mandate clearly shows that the Court made no such determination. Instead, the Court held only that the units were sold separately and, therefore, did not fall into the narrow exception to Costa Hawkins found at CAL. CIV. CODE § 1954.52(3)(B)(ii). The exception has two requirements. First, the exception requires that the purchaser be a bona fide purchaser for value. *Id.* Second, the exception *also* requires that the units be separately alienable. *Id.*

Although the Court determined that the units were sold separately, and that Property Owners were, therefore, bona fide purchasers for value, the Court made no finding with regard to whether the property met the other requirements for the exemption under Costa Hawkins. *Fong*, Case No. RG18930130. As such, the Rent Adjustment Program erred in granting the Certificate of Exemption without first holding a hearing to determine whether or not the units at issue were separately alienable. Tenant Salvador filed a timely appeal of RAP's decision to grant the exemption, but was told that the exemption decision was not appealable.

On July 8, 2019, Salvador uncovered evidence that the Property Owners made numerous critical misrepresentations about the nature of the property and the process used to convert the

units into condominiums. The exemption was awarded to the Property Owners despite the Property Owners' intentional, reckless, or negligent misrepresentation of the CC&Rs, and the Property Owners' intentional, reckless, or negligent misrepresentations about the actual use of the property.

Salvador thus brought this action, arguing that the exemption was awarded based on fraud or mistake, and that the decision to award the exemption should be reversed. Not only did the Property Owners fail to meet their burden of proving that the units were separately alienable, but the Property Owners did not disclose and did not admit into evidence the CC&Rs. The CC&Rs clearly show that the units at the property are, in fact, *not* separately alienable, and proper disclosure would have had a direct and material effect on the outcome of the 2016 Petition.

On August 31, 2021, the Hearing Officer denied Salvador's Petition in an administrative decision. Salvador appealed the decision, requesting that a hearing be granted that would allow the Hearing Officer to evaluate whether there was fraud or a mistake in granting the exemption to the Subject Property. Salvador appealed the decision on three grounds.

First, the Hearing Officer erroneously found that the Superior Court's narrow holding, which had been limited solely to the issue of whether or not the units were "sold separately," was sufficient to bar the tenant's petition without a determination as to whether or not the property was separately alienable, an additional requirement for the exemption. A hearing as to whether or not the Subject Property is separately alienable still must be held in order to determine whether or not the Subject Property is subject to the requested exemption.

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Second, the Property Owners made numerous fraudulent misrepresentations at the original exemption hearing, and the exemption was granted because of the Property Owners' fraudulent misrepresentations.

Finally, even if the exemption was properly granted, the Property Owners have used the single unit as two separate units—a duplex—throughout the time period contemplated by the petitions. Accordingly, the Subject Property is subject to rent control. *See Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, 49 Cal. App. 5th 739 (2020).

On April 1, 2022, the HRRRB ordered that the present action be remanded back to the Hearing Officer for a limited scope hearing on the claim of fraud. Despite the Property Owners' continued insistence at the appeal hearing that this case be barred by the doctrines of collateral estoppel and res judicata, the HRRRB ruled against the Property Owners. T19-0384 Appeal Decision. The HRRRB determined that the issue to be considered—whether or not the Property Owners committed fraud—had not been litigated. *Id.* The HRRRB specifically ordered the case be remanded to the Hearing Officer for a hearing on the issue of fraud. *Id.* As such, the Property Owners' repeated arguments about preclusion are irrelevant to this hearing and should not be considered.

II. LEGAL ARGUMENT

Fraud may be found where the defendant has either intentionally, recklessly, or negligently made a fraudulent assertion, half-truth, or concealment. Intentional fraud, also known as fraudulent misrepresentation, and negligent fraud, also known as negligent misrepresentation, have differing requisite elements and are discussed separately, *infra*.

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A. Fraud on the Court

The United States Supreme Court and California state courts have recognized that courts have inherent authority to correct judgments obtained through fraud. *See, e.g., Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238, 244 (1944); *People v. Malveaux*, 50 Cal. App. 4th 1425, 1441 (1996); *ERA-Trotter Girouard Assoc. v. Superior Court*, 50 Cal. App. 4th 1851, 1856-57 (1996). It makes no difference that the fraud does not become apparent until the fraudulent activities are revealed at the appellate court level. *Hazel-Atlas*, 322 U.S. 238. Belatedly-discovered fraud on the trial court mandates that relief from judgment be granted. *Id.*

It matters not that a plaintiff did not or was unable to discover the fraud during at or before trial. The level of diligence, or lack thereof, on the part of the plaintiff in protecting her interests does not defeat a claim of fraud on the court. *Id.* at 246. Even if the disadvantaged litigant does not exercise the highest degree of diligence, fraud on the court by the opposing litigant cannot be condoned for that reason alone. *Id.* (“Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demand that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.”).

The Rent Adjustment Program has previously considered cases in which RAP had previously granted a property owner petition for exemption, but then later invalidated the exemption due to fraud or mistake. *Michelson v. Sherman*, L18-0081; *see also* Rent Adjustment Program Appeals Index. *Michelson* went to the Superior Court by Writ of Mandamus, and the Superior Court remanded the case back to the Rent Board for a decision on the issue of fraud. *See id.* The Board held a hearing on the issue of fraud, and vacated the exemption due to fraud or mistake. *Id.*

If the Rent Adjustment Program finds that the Property Owners in this action did obtain the exemption through fraud, the Rent Adjustment Program is compelled to correct any and all judgments derived from that fraud. As discussed, *infra*, the Property Owners in the present case have committed fraud on the court by intentionally, recklessly, or negligently misrepresenting facts to the Rent Adjustment Program. As such, the Rent Adjustment Program should find that the Property Owners have committed fraud, and judgments subsequent to said fraud should be reversed. Specifically, the claim exemption should be rescinded, and the Tenant should be allowed a hearing on the merits. The Tenant requests that such hearing be expedited to address the harm that the Tenant has suffered, and continues to suffer.

B. Intentional Fraud

The elements to establish a claim of fraud are: (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (“scienter”); (c) intent to defraud (i.e. the intent to induce reliance); (d) justifiable reliance; and (e) resulting damage. *Lazar v. Superior Court*, 12 Cal. 4th 631, 638 (1996).

Knowledge of the falsity of the representation means that the property owner must have made the representation either intentionally, or recklessly and without regard for its truth. *Chapman v. Skype, Inc.*, 220 Cal. App. 4th 217 (2013); *Graham v. Bank of America, N.A.*, 226 Cal. App. 4th 594 (2014). Actual knowledge of the falsity of the representation is not necessary; a representation made recklessly, without knowledge of its falsity, is sufficient to establish scienter for fraud. *Textron Fin. Corp. v. Nat’l Union Fire Ins. Co. of Pittsburgh*, 118 Cal. App. 4th 1061 (2004). Reckless statements are the equivalent of misrepresentations knowingly and intentionally uttered. *Engalla v. Permanente Med. Group, Inc.*, 15 Cal. 4th 951 (1997).

In the present case, Property Owners have made several key misrepresentations as to the nature and use of the property that were either intentional or reckless. First, the Property Owners asserted that there were no CC&Rs for the property during public testimony over whether they were entitled to an exemption. L16-0083 Hearing Recording, 0:24:35-0:25:31. Additionally, the Property Owners asserted that each individual unit of the property was given its own separate title and subdivision as part of the condo conversion process. L16-0083 Hearing Recording, 0:14:05-0:14:15, 0:19:50-0:20:05. Both of these assertions were blatant misrepresentations. In fact, there were CC&Rs for the property, and the CC&Rs directly contradicted the Property Owners' assertion that each unit was separately alienable from all of the other units at the property. Exhibit C, p. 39-120.

Tenant Salvador's unit is addressed as 1354 81st Avenue, Apt. A. According to the CC&Rs and County Assessor's map associated with the property, Salvador's unit is located within the subdivided airspace corresponding to APN 42-4247-81 (also known as "Unit-1354A" on the Lower Floor and Site Plan). *See* Tenant Supplemental Evidence Packet, Exhibit O. However, Salvador does not reside in the entire parcel marked as APN 42-4247-81. This is because the parcel located at APN 42-4247-81 has been subdivided. *Id.* The single parcel actually contains two separate and distinct dwelling units. *Id.* Salvador resides in only one of the two dwelling units located within the boundaries of APN 42-4247-81.

The second unit contained within APN 42-4247-81, which has alternately been referred to as "1354 81st Avenue Apt. B" and "1356 81st Avenue Apt. A" in prior hearings, was formerly occupied by tenant Alondra Apodaca. Apodaca attended the initial hearing between the parties in the 2016 Petition. The single parcel, APN 42-4247-81, had been subdivided, and contains two

separate dwelling units. These two dwelling units are not separate condominiums; both exist within the airspace of the single condominium, APN 42-4247-81.

Since there are two dwelling units within APN 42-4247-81, and the dwelling units are not separately alienable from one another, APN 42-4247-81 cannot be granted an exemption from rent control pursuant to Costa Hawkins. *See Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, 49 Cal. App. 5th 739 (2020), discussed in Section II(E), *infra*.

The CC&Rs were publicly available documents that the Property Owners could have and should have used as proof as to how the property was subdivided. Instead, the Property Owners chose to present a completely different representation of the nature and character of the property. This misrepresentation of the property does not match with the property as laid out in the CC&Rs. The Property Owners stated that the CC&Rs were verbal, knowing that the Tenant would have no way to understand where the property boundary lines were drawn. The Property Owners benefitted from the fact that the Tenant would have no way to understand where the property boundary lines were drawn, and thus be unable to argue that Tenant's unit was not separately alienable from any other unit of property.

In actuality, the CC&Rs show that the dwelling unit the Tenant resides in is part of the same parcel of land as another dwelling unit, making the property ineligible for the condominium exemption from rent control. The Property Owners made these false representations, concealed accurate facts, and failed to disclose these facts, in order to succeed on their claims for an exemption under Costa Hawkins. The Property Owners clearly intended to induce reliance on these facts, for they would not be able to succeed in demonstrating that the actual use of the Subject Property comports with the purported use. The actual use of the parcel –

as multiple units – falls clearly within the scope of use protected by rent control and not exempted by Costa Hawkins.

The Rent Adjustment Program relied on the Property Owners’ false representations, concealments, and nondisclosures in reaching its decision. Additionally, the Superior Court, in holding in favor of the Property Owners, also relied on the Property Owners’ false representations, concealments, and nondisclosures. Without such fraud, neither the Rent Adjustment Program nor the Superior Court could have determined that the property is exempt from rent control under Costa Hawkins.

Tenant Salvador suffered actual, calculable damages as a consequence of the Property Owners’ fraud. The proper rent ceiling for Salvador from January 2015 through the present date has been \$1,150 per month. From January 2015 through December 2015, Salvador made rental payments in the amount of \$1,170 per month; from January 2016 through January 2016, Salvador made rental payments in the amount of \$1,200 per month; from February 2017 through July 2018, Salvador made rental payments in the amount of \$1,350 per month; from August 2018 through August 2019, Salvador made rental payments in the amount of \$1,375 per month; from September 2019 through June 2021, Salvador made rental payments in the amount of \$2,000 per month; and from July 2021 through the present date, Salvador made rental payments in the amount of \$2,100 per month. As of the date of this filing, Salvador has made rental overpayments in the sum total of \$38,465. If the Rent Adjustment Program finds in favor of the Property Owners despite the Property Owners having committed fraud against the Rent Adjustment Program, Salvador will be forced to make continual rental payments in excess of that which is legally allowed under Oakland rent control.

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1. Fraudulent Concealment (Negative Fraud)

Another form of intentional fraud is fraudulent concealment, also known as negative fraud. The required elements for fraudulent concealment are: (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact to the plaintiff; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would not have acted as she did had she known of the concealed or suppressed fact; and (5) plaintiff sustained damage as a result of the concealment or suppression of the fact. *Graham v. Bank of America, N.A.*, 226 Cal. App. 4th 594, 606 (2014).

Here, the Property Owners fraudulently concealed facts from the Rent Adjustment Program in order to succeed in their claim for an exemption from rent control. The Property Owners have asserted that there were no CC&Rs for the property during public testimony over whether they were entitled to an exemption. L16-0083 Hearing Recording, 0:24:35-0:25:31. Additionally, the Property Owners asserted that each individual unit of the property was given its own separate title and subdivision as part of the condo conversion process. L16-0083 Hearing Recording, 0:14:05-0:14:15, 0:19:50-0:20:05. In fact, there were CC&Rs for the property and the CC&Rs directly contradicted the Property Owners' assertion that each unit was separately alienable from all of the other units at the property. Exhibit C, p. 39-120.

The Property Owners made these concealments while appearing before RAP. The Property Owners were sworn in by the Hearing Officer at the outset of the proceeding. L16-0083 Hearing Recording, 0:00:47. In so being sworn in, the Property Owners took the oath to be honest and forthright with the tribunal. The Property Owners thus owed a duty to disclose the information to RAP. The Property Owners intended to defraud RAP with this disclosure. RAP relies on party disclosures, and is justified in doing so especially when parties make disclosures

or nondisclosures under oath. RAP was unaware of the concealed facts put forth by the Property Owners, and the decision of the Hearing Officer would have been different if the Property Owners had not improperly concealed the true facts pertinent to the case. The Property Owners, in fraudulently concealing this information, caused material harm to the Tenant, as Tenant Salvador has been paying an increased rental amounts as set forth in Section B, *supra*, for a sum total of \$38,465 in excess of that which is allowable under rent control.

C. Negligent Misrepresentation

Fraud can also be found where the property owner made a misrepresentation negligently. *Borman v. Brown*, 59 Cal. App. 5th 1048 (2021) (“The tort of negligent misrepresentation is a species of the tort of deceit”); *Friedman v. Merck & Co.*, 107 Cal. App. 4th 454 (2003).

The elements of a negligent misrepresentation claim are: (1) the misrepresentation of a past or existing material fact; (2) without reasonable ground for believing it to be true; (3) with intent to induce another’s reliance on the fact misrepresented; (4) justifiable reliance on the misrepresentation; and (5) resulting damage. *Borman v. Brown*, 59 Cal. App. 5th 1048 (2021).

Notably, negligent misrepresentation does *not* require knowledge of falsity. *Id.*; *see also Apollo Capital Fund, LLC v. Roth Capital Partners, LLC*, 158 Cal. App. 4th 226 (2007). In lieu of knowledge of actual falsity, California statutes allow such knowledge to be replaced by the making of a false statement without a reasonable belief in its truth as constituting fraud. CAL. CIV. CODE §§ 1572(2), 1710(2). The elements of negligent misrepresentation are similar to intentional fraud except for the requirement of scienter; the tenant need not allege that the property owner made an intentionally false statement, but simply that the property owner made a statement as to which he or she lacked any reasonable ground for believing it to be true. *Charnay v. Cobert*, 145 Cal. App. 4th 170 (2006).

Some courts have held that there is no requirement of intent to induce reliance with respect to the tort of negligent misrepresentation, whereas others have held that negligent misrepresentation does not require proof of an intent to defraud. *Cadlo v. Owens-Illinois, Inc.*, 125 Cal. App. 4th 513 (2004); *Borman v. Brown*, 59 Cal. App. 5th 1048 (2021); *Intrieri v. Superior Court*, 117 Cal. App. 4th 72 (2004) (“Negligent misrepresentation lacks the element of intent to deceive; where the defendant makes false statements, honestly believing that they are true, but without reasonable ground for such belief, he or she may be liable for negligent misrepresentation, a form of deceit.”).

A positive assertion is required to support a negligent misrepresentation claim; however, when the defendant purports to convey the whole truth about a subject, misleading half-truths about the subject may constitute positive assertions for the purpose of negligent misrepresentation. *OCM Principal Opportunities Fund v. CIBC World Markets Corp.*, 157 Cal. App. 4th 835 (2007).

A single material misrepresentation may establish the tort of negligent misrepresentation. *OCM Principal Opportunities Fund v. CIBC World Markets Corp.*, 157 Cal. App. 4th 835 (2007).

Here, the Property Owners made misrepresentations without any reasonable ground for believing them to be true. A petition alleging that the properties were separately alienable in title requires the Property Owners to make a reasonable investigation into the nature of the subdivision of the property. Specifically, if a property owner claims that properties are separately alienable, it is the property owner’s affirmative obligation to investigate and provide sufficient proof that the properties were separately alienable.

The CC&Rs had been filed with the Clerk Recorder's office and were readily available to the Property Owners. In fact, the Property Owners, as purchasers and as petitioners, had a duty of diligence to ascertain the legal rights and restrictions owed to the property and the tenants thereof. The fact that the documents were publicly recorded imputes knowledge upon the Property Owners of the subdivision under California Civil Code Section 1213. The CC&Rs were the only source of evidence that shows how the property was legally subdivided and converted into condominiums. Had the CC&Rs been presented in the underlying hearing, it would have been readily apparent that the Tenant's unit was not separately alienable from the unit that formerly belonged to Alondra Apodaca. Even if the Property Owners did not have actual knowledge of the existence of and restrictions contained within the CC&Rs, the CC&R's had been publicly recorded and were available to the Property Owners.

Additionally, a simple visit to the property would have clearly demonstrated that the single parcel, APN 42-4247-81, was being used as two separate and distinct residences, each with its own entrance and with an interior wall keeping the two residences separate. The Property Owners, in petitioning for such an exemption, had a duty of diligence to disclose the use to which the property was being made. The Property Owners had no reasonable basis for believing that what they asserted to be true.

There is sufficient evidence to demonstrate intent to induce reliance. Either the Property Owners knew there in fact were CC&Rs for the property and intentionally represented otherwise, or their failure to exercise due care and diligence in understanding the nature of the property they owned was done in an attempt to deceitfully gain an exemption to rent control for the property. The Property Owners misrepresented the existence and nature of the CC&Rs, as well as the use to which the property was being put. Specifically, the Property Owners misrepresented the fact

that the CC&Rs show a single condominium located at APN 42-4247-81; in actuality, however, that condominium has been subdivided into two separate and distinct dwelling units, each occupied by independent tenants, Tenant Salvador and former tenant Apodaca. By negligently making these misrepresentations, the Property Owners were allowed to obtain an exemption from rent control. The Property Owners should not be allowed to profit off of their failure to exercise due care.

The Rent Adjustment Program is premised on the operation of a duty of candor to the tribunal. As with California courts, RAP expects parties testifying under oath to behave truthfully, and to have diligently researched and gathered data and supporting documentation to support their assertions. RAP does not conduct factual investigations as to the veracity of claims; RAP compares the validity of competing arguments based on the evidence presented. In this case, the Property Owners gravely breached the trust of the tribunal by failing to present material evidence that undermines their claim for an exemption, and RAP was reasonable in its reliance on the Property Owners' assertions because it was not equipped with the tools or the means to evaluate and correct the error.

As detailed in Section II(B), *supra*, the resulting damages from the Property Owners' misrepresentations are substantial. The Tenant was denied the protections of rent control and received illegal rent increases in the amount of \$38,465, and has been unable to litigate her reduction in services claims before the Rent Adjustment Program. The Tenant is owed restitution of at least \$38,465.

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D. The Property Owners Have Not Addressed or Are Misrepresenting the Legal Issue of Fraud at Issue in This Hearing

The Property Owners' sole arguments on the issue of fraud are encapsulated in just four sentences in the Property Owners' brief, each of which either misstates, misunderstands, or misrepresents the legal issue of fraud at issue in this hearing.

First, the Property Owners state simply that there was no fraud. *See* Landlord Brief to Dismiss Tenant Petition T19-0384 ("Property Owner Remand Brief") at p. 2 ("The burden of proof of this claim is upon the petition which Tenant has failed in all aspects to meet because there was absolutely no fraud or mistake made."). The Property Owners do not further address or provide further support as to how or why they did not fraudulently misrepresent the existence and nature of the CC&Rs or the nature and use of the property. Furthermore, the Property Owners claim that the Tenant has failed to meet her burden of proof. As a practical matter, such an assertion cannot be true, as the hearing on the issue of fraud has yet to take place. The issue of fraud is to be litigated at the remand hearing scheduled for August 3, 2022 – it is at this time that Tenant will provide testimony and evidence demonstrating that the Property Owners committed fraud. The Tenant cannot have failed to meet her burden of proof regarding fraud because the hearing at which Tenant will present on the issue of fraud has not yet occurred.

The Property Owners next assert there to be no fraud because "the Landlord Certificate of Exemption on the four condominiums was ordered by the Superior Court of California and decision was final and was not awarded by decision of OHRRRB nor based on fraud or mistake." Property Owner Remand Brief, p. 2. The Property Owners' argument that no fraud existed because the Superior Court's ruling was not based on fraud is not only irrelevant, but wholly misunderstands or misrepresents the basis of this hearing. This hearing does not exist to

determine whether or not the Superior Court's decision was based on fraud or mistake. This hearing exists to address the Property Owners' fraudulent misrepresentations. As the Tenant will demonstrate, the Property Owners committed fraud in their assertions before the Rent Adjustment Program that there were no CC&Rs and that the single parcel, APN 42-4247-81, is used as two separate dwelling units. The Superior Court's decision was not based on fraud because the Superior Court did not touch the issue of fraud. The issue of fraud did not arise until after the Superior Court issued its decision. It was only after the Superior Court's decision that the Property Owners' fraudulent statements were discovered. As stated in Section III(A), *supra*, the fact that fraud was not apparent until after a decision was issued is not conclusive. Even where fraud on the court is belatedly-discovered, the existence of such fraud mandates that relief from the fraudulently-obtained judgment be granted. *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 338 (1944).

The Property Owners continue a curious line of reasoning, stating that "The exemption was not issued on the basis of fraud or mistake but by Petition for Writ Mandate." Property Owner Remand Brief at p. 4. It is unclear as to what the Property Owners are attempting to argue here, as there is no procedural basis for obtaining an exemption to rent control on the basis of fraud. Rather, procedurally, a property owner must petition the Rent Adjustment Program for such an exemption. Such an exemption should, in fact, not be granted where the exemption relies on a property owner's fraudulent misrepresentations.

The Property Owners next attempt to argue that Tenant is making "false misrepresentations in [an] attempt to find fraud or mistake where it does not exist and is continually claiming the 4 condominium units are not covered by Costa Hawkins." Property Owner Remand Brief at p. 7. The Property Owners make a serious accusation – that Tenant is

committing fraud – while providing no evidentiary proof nor further arguments to support their assertion. The only argument that Property Owners make in support of their allegation is that Tenant is committing a misrepresentation by “continually claiming the 4 condominium units are not covered by Costa Hawkins.” *Id.* And yet, the Tenant is not making a misrepresentation. The Tenant has presented legal arguments, in appropriate legal venues and as part of the legal process, as to why the Subject Property is not subject to the Costa Hawkins exemption. Such legal arguments are supported by documentary evidence and witness testimony. The Tenant’s representations do not rise to the level of fraud solely because the Property Owners disagree with the Tenant’s arguments.

E. California Precedent Set Forth in *Owens v. City of Oakland Housing, Residential Rent and Relocation Board Demands That Use of Property Be a Defining Factor in Exemption Determinations*

The Property Owners cite *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, 49 Cal. App. 5th 739 (2020). Property Owner Remand Brief at p. 7-8. Aside from yet again improperly attempting to raise the issue of preclusion, the Property Owners make two arguments that either intentionally, recklessly, or negligently misstate the law as determined in *Owens*, and the ruling itself.

First, the Property Owners argue that *Owens* “is not an *intervening* case” because it was decided “prior to the judgment and thus does not affect the preclusive effect of that judgment.” Property Owner Remand Brief at p. 8. It is unclear as to what judgment Property Owners are referring, as the Tenant had cited *Owens* in her Appeal Brief to this action, an action which is as yet ongoing. Furthermore, under the doctrine of stare decisis, “all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction.” *Auto*

Equity Sales, Inc. v. Superior Court of Santa Clara Cnty., 57 Cal.2d 450, 455 (1962); *see also Schmier v. Supreme Court of California*, 78 Cal. App. 4th 703, 710 (2000) (stare decisis “obligates inferior courts to follow the decisions of courts exercising superior jurisdiction”). *Owens* was decided by the California Court of Appeal, First Circuit, Division 3, an appellate court exercising superior jurisdiction to the Rent Adjustment Program. As such, *Owens* provides binding precedent to this present action.

Next, the Property Owners argue that *Owens* is inapplicable because *Owens* involved separate rooms within a single-family house, whereas the property in this case involves separate condominiums. Property Owner Remand Brief, p. 8. Again, the Property Owners have either intentionally, recklessly, or negligently misrepresented the nature of the Subject Property and how it pertains to *Owens*.

In *Owens*, the property owner, Owens, sought an exemption from rent control under Costa Hawkins. *Owens v. City of Oakland Housing, Residential Rent and Relocation Board*, 49 Cal. App. 5th 739, 742 (2020). Owens owned a single-family home, but rented out individual bedrooms within the home to different, unrelated tenants. *Id.* Owens argued that because the home in question was a single-family residence, and because the home was alienable from any other structure since it had its own title and could be sold separately, the entire home should be exempt from rent control, even though the home contained separate bedrooms rented out to separate individuals. *Id.* at 745. The Court of Appeal affirmed the trial court’s decision against Owens, which stated that, “For purposes of landlord-tenant law, ‘a dwelling or a unit’ or a ‘dwelling unit’ is *not* the entire property to which an owner holds title; rather, it is any area understood to be committed to the habitation of a given tenant or tenants to the exclusion of others.” *Owens v. City of Oakland’s Dep’t of Hous. and Cmty. Dev. Rent Adjustment Program*,

2019 WL 2062579 (aff'd *Owens*, 49 Cal. App. 5th 739 (2020)). The fact that the house was a single-family home, separately alienable and able to be sold separately was not determinative. *Owens*, 49 Cal. App. 5th at 745. Instead, what was determinative was the fact that the dwelling unit at issue – a portion of the entire home – was not separately titled nor could it be separately alienated from the rest of the house. *Id.* The Court in *Owens* thus defines “dwellings” by their use and *not* by legal partition. *Id.* When a property owner rents out a single residence separately to a number of different people, that property owner has “transform[ed] a single-unit dwelling into a multi-unit dwelling” that is “not exempt from the Rent Adjustment Ordinance.” *Id.* at 743 (quoting *Barghout v. Owens*, Oakland Rent Adjustment Program Case No. T16-0259).

In the present case, Tenant Salvador resides within the Subject Property. The legal boundaries of the condominium APN 42-4247-81, however, do not encapsulate solely Tenant’s living space. *See* Tenant Supplemental Evidence Packet, Exhibit O. Instead, the APN 42-4247-81 actually contains two separate units, only one of which is occupied by Tenant. *Id.* The other unit has been occupied by Tenant’s neighbor. The separation between the units in this present case is even more substantial than that in *Owens*. Here, the units are not different bedrooms within the same single-family home. Instead, the units are walled off from each other and feature separate entrances. The units are used as separate, independent residences.

Even if the condominium in question is separately alienable (an issue that has not been determined), the condominium is being used as two separate units, and has been used as such throughout the entirety of the time period at issue. Given the Court of Appeals’ decision in *Owens*, the Rent Adjustment Program must rescind the Certificate of Exemption.

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III. CONCLUSION

For the reasons set forth herein, the Oakland Rent Adjustment Program should find that the Property Owners have either intentionally, recklessly, or negligently made misrepresentations to the Rent Adjustment Program. Accordingly, the Tenant prays for judgment against the Property Owners as follows:

- A. For rescission of the exemption granted in Case No. L16-0083;
- B. For a full evidentiary hearing on the merits for this petition, Case No. T19-0384;
- C. For a full evidentiary hearing on the merits of the petition for Case No. T18-0392;
- D. For such other and further relief as the Rent Adjustment Program may deem just and proper.

Dated: July 29, 2022

CENTRO LEGAL DE LA RAZA

By 

Gregory T. Ching
Representative for Petitioner Ana Salvador

By 

Xavier Johnson
Representative for Petitioner Ana Salvador

November 8, 2022

Analyst Brittni Lothlen
City of Oakland
Rent Adjustment Program
Department of Housing and Community Development
250 Frank H. Ogawa Plaza
Oakland, CA 94612
BLothlen@oaklandca.gov
hearingsunit@oaklandca.gov

Via Electronic Transmission

RE: Request for Judicial Notice of Case No. L16-0083

To Analyst Brittni Lothlen,

We are writing to request in advance that judicial notice be taken for the Hearing Recording for Rent Adjustment Program Case No. L16-0083, *Fong et al. v. Tenants*. We also request that the L16-0083 Hearing Recording be available for the Hearing Officer and all Parties for reference during the Hearing for Case No. T19-0384.

Thank you for your time and consideration in this matter. Please contact me if you have any questions or concerns at gching@centrolegal.org or (510) 437-1554.

Sincerely,

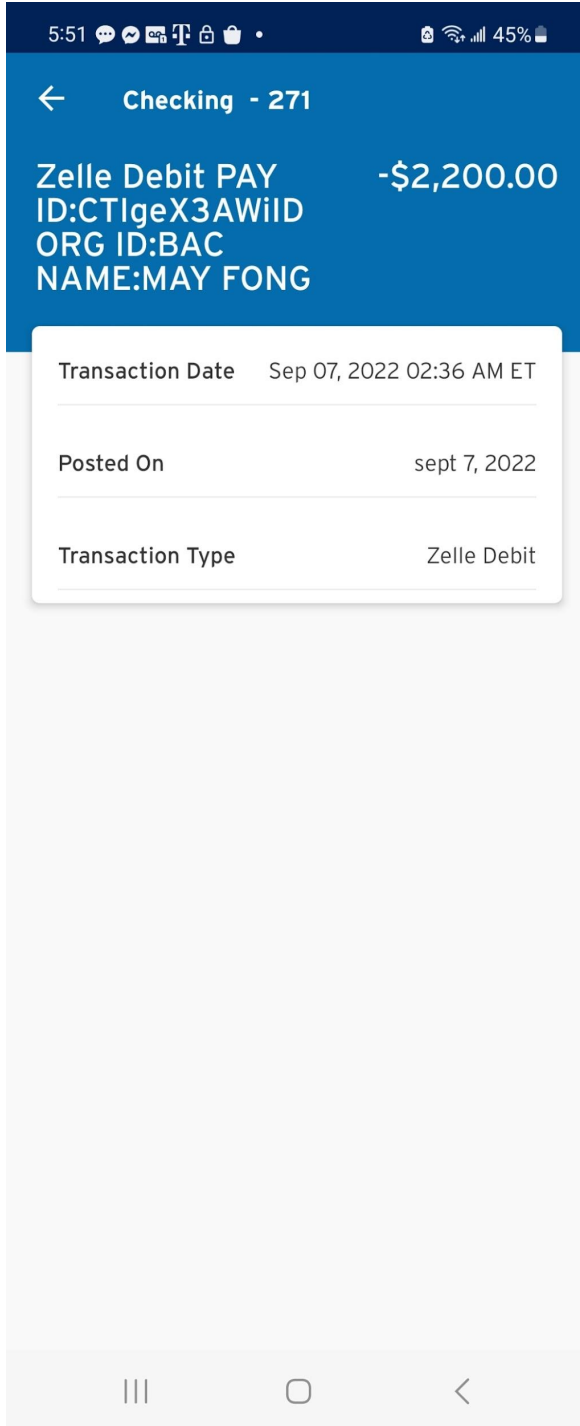
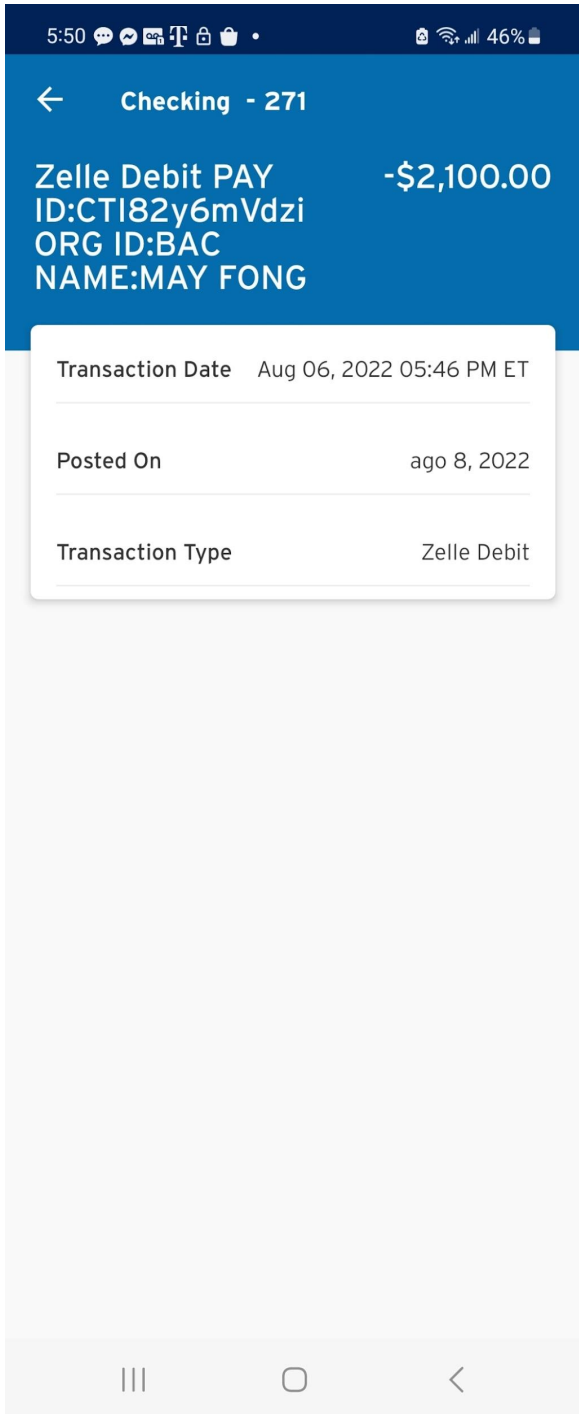
Gregory Ching
Senior Staff Attorney
Tenants' Rights Program

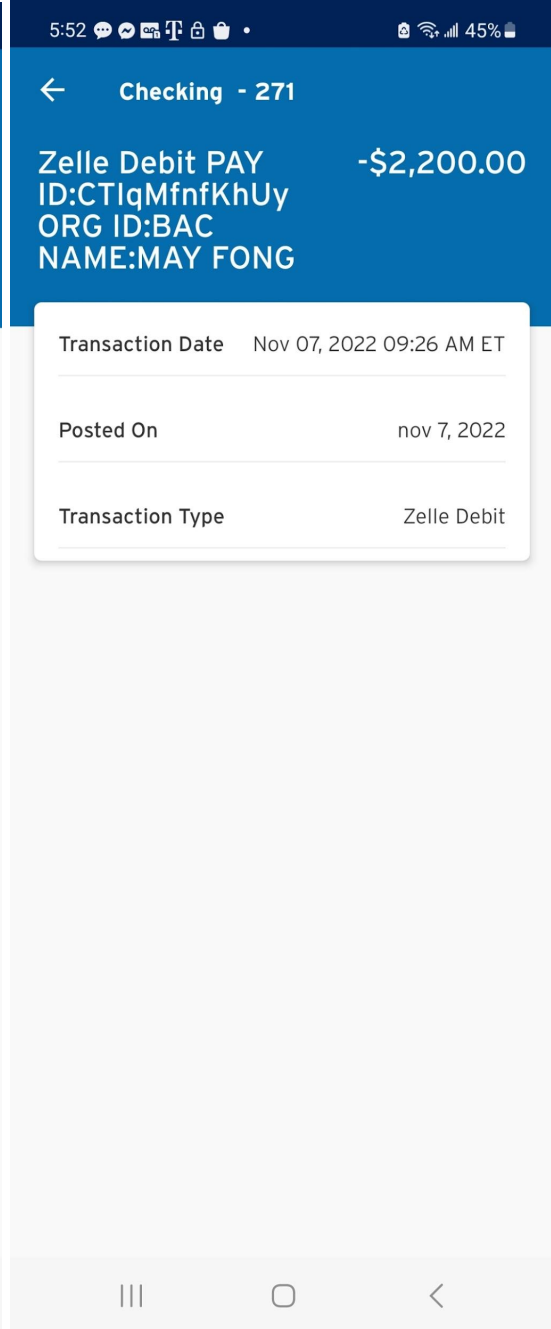
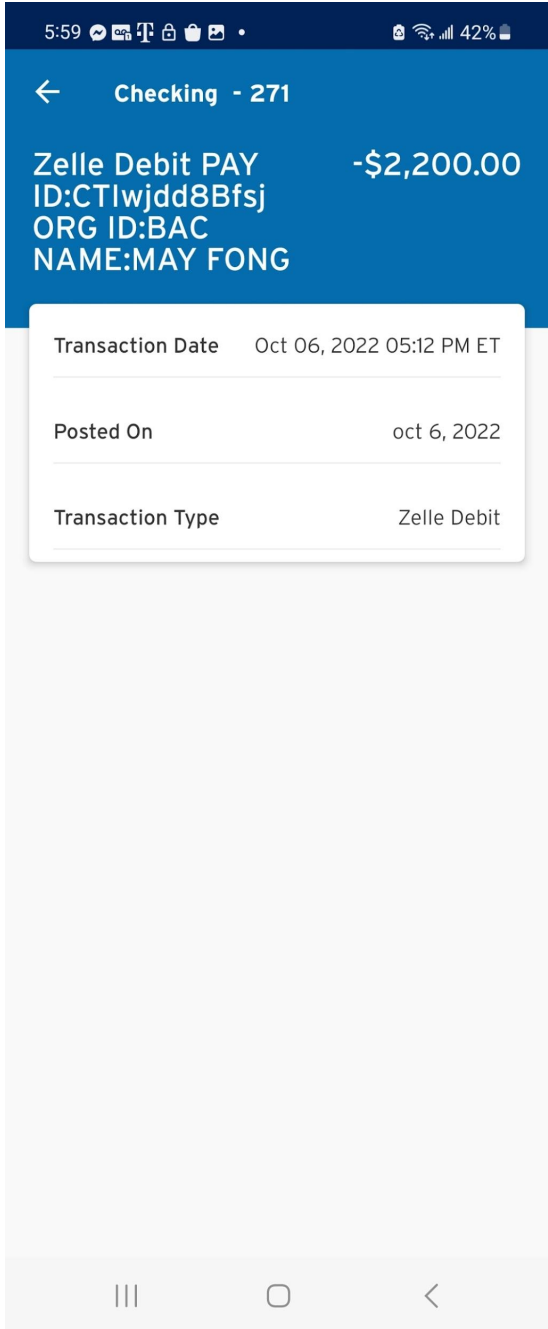
Tenant Supplemental Submission, April 2023

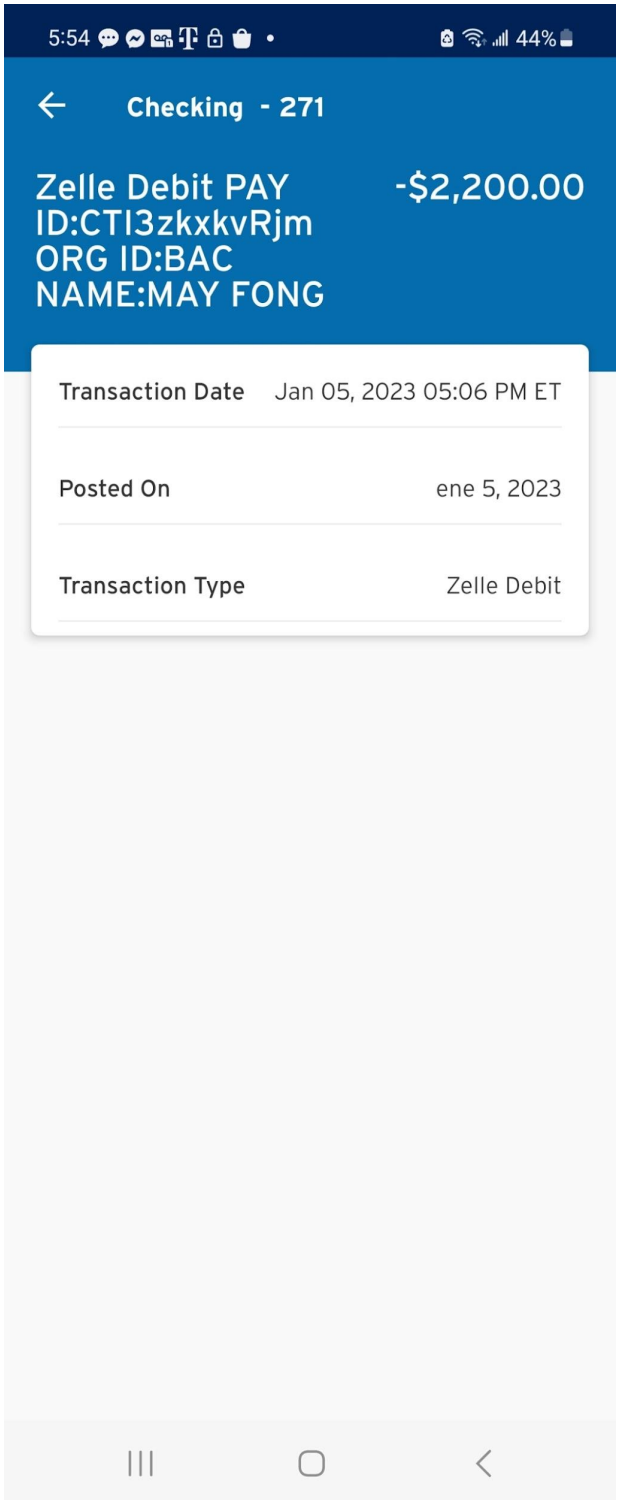
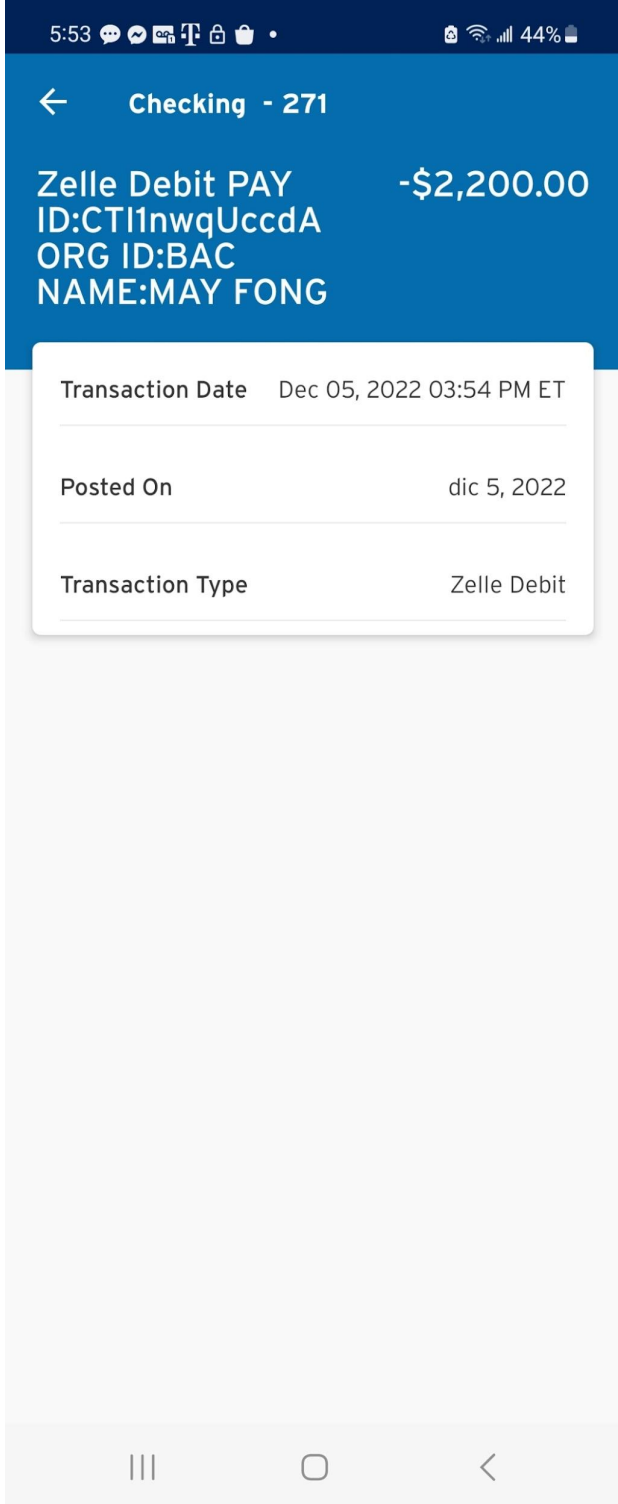
<u>Exhibit</u>	<u>Document Description</u>	<u>Page Numbers</u>
T1	Rent Payment Receipts	2-7
T2	Utility Payment Receipts	8-9

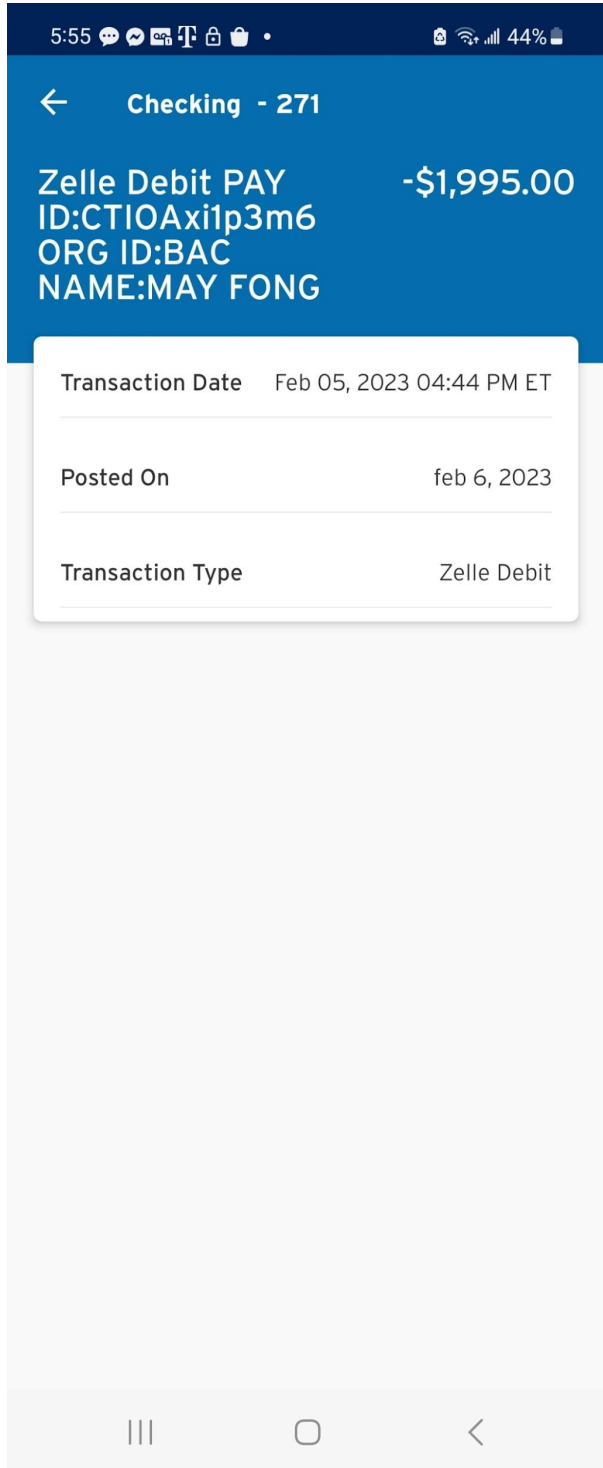
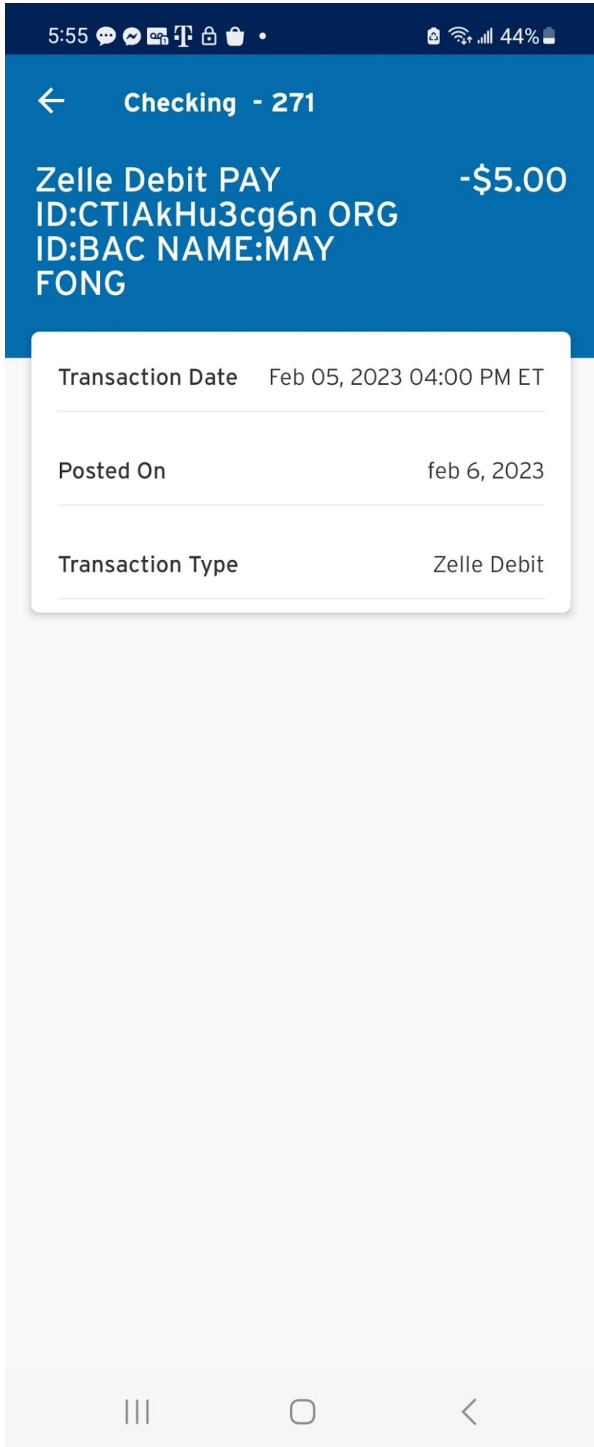
Tenant Supplemental Submission, April 2023

Exhibit T1









← Checking - 271

Zelle Debit PAY -\$2,200.00
ID:CTInEvrbvmmc
ORG ID:BAC
NAME:MAY FONG

Transaction Date Mar 05, 2023 03:46 PM ET

Posted On mar 6, 2023

Transaction Type Zelle Debit

Tenant Supplemental Submission, April 2023

Exhibit T2

WASTE MGMT

-\$359.02

Pending

Transaction Date Mar 21, 2023 05:24 PM ET

Purchase Method Online

Transaction Type Debit Card Purchase

Merchant Details



United States

Appears on your statement as

*AUTORIZACION DE TARJETA DEBITO Mar21 05:24p
6146 AT 17:24 WASTE MGMT WM EZPA HOUSTON



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.

I served a copy of: Tenant Supplemental Submission, April 2023
(insert name of document served)
 And Additional Documents

and (write number of attached pages) 9 attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

Name	May Lee Fong and Michael B. Lee
Address	358 Cerro Court
City, State, Zip	Daly City, CA 94015

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
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City, State, Zip	

Name	
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Address	
City, State, Zip	

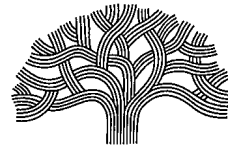
To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 4/7/2023 (insert date served).

Gregory Ching
PRINT YOUR NAME


SIGNATURE

April 7, 2023
DATE



Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

HEARING DECISION

CASE NUMBER: T19-0384

CASE NAME: Salvador v. Fong

PROPERTY ADDRESS: 1354 81st Avenue #A,
Oakland, California

DATE(S) OF HEARING: January 24, 2023, March 8, 2023

DATE OF DECISION: May 12, 2023

APPEARANCES: January 24, 2023
Ana Geronimo Salvador, Petitioner/Tenant
Gregory Ching, Xavier Johnson, Petitioner's

Counsel

May Fong & Michael Lee, Respondents/Owners
Noel Munger, Witness for the Plaintiff
Samantha Beckett, Observer
Interpreter by phone

March 8, 2023
Ana Geronimo Salvador, Petitioner/Tenant
Gregory Ching, Xavier Johnson, Petitioner's

Counsel

Interpreter, Marci Valdivieso

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SUMMARY OF DECISION

The Tenant's petition is granted. The legal rent for the unit is set forth in the Order below.

INTRODUCTION

The Landlord filed the first petition involving the parties, L16-0083, on October 31, 2016, asserting that the subject unit, as well as other units at the property, are condominiums and requested an exemption from RAP under the Costa Hawkins Rental Housing Act (hereinafter "Costa Hawkins").¹

On April 14, 2017, a hearing decision was issued in L16-0083, denying the exemption. The L16-0083 Hearing Officer found that while the property had been converted to condominiums, it was not exempt because it "[had] not been sold separately by the subdivider to a bona fide purchaser for value."² The Hearing Officer also determined that because the Landlord had purchased the entire building from the subdivider, the units had never been sold separately and therefore were not exempt from rent control.³

The Landlord filed a timely Writ of Administrative Mandate with the Alameda County Superior Court to direct the Board to set aside its decision denying the Landlord's exemption. The Landlord filed a timely appeal, and the Oakland Housing, Residential Rent, and Relocation Board (hereinafter "Board") affirmed the holding on June 2018.⁴ The Court found that the units at the subject property had been sold separately and granted the Landlord's petition for an Administrative Mandate in June 2019.⁵ Thereafter, the Hearing Officer assigned to L16-0083 issued a Certificate of Exemption, as directed by the Superior Court of Alameda County, pursuant to the ruling in case RG18930130 that the subject units are exempt from rent control under the Costa Hawkins."⁶

The Tenant filed the petition, T19-0384, on October 9, 2019. The Tenant's petition contests the previously granted exemption to the Landlord in L16-0083, arguing that the exemption was issued based on fraud or mistake. The petition also alleges

¹ Civil Code Section 1954.52(a)(3)

² RAP Hearing Decision, L16-0083, p. 4

³ *Id.*

⁴ *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130

⁵ *Id.*

⁶ Certificate of Exemption, L16-0083.

unlawful rent increases and decreased housing services.⁷ An Administrative Decision issued by the undersigned on August 3, 2021, found that additional litigation between the parties is prohibited by the Superior Court Order dated June 7, 2019.⁸

The Petitioner's appeal of the Administrative Decision was heard on December 9, 2021. The Appeal Decision, issued on April 1, 2022, remanded this matter to the undersigned for a limited-scope hearing of the fraud claim.

On November 8, 2022, the Petitioner requested that judicial notice be taken of L16-0083, Fong et al. v. Tenants, including the recording.⁹

The matter proceeded to a hearing on January 24, 2023. On January 26, 2023, a Notice of Remote Remand Hearing and Settlement Conference was mailed to the Tenant and the listed Owner with proof of service, setting the hearing date for March 8, 2023. The hearing came on regularly on March 8, 2023, at 10:00 a.m., as scheduled. The Respondent failed to appear. It was confirmed that proper notice was duly mailed via US mail to the respondents by the counsel for the Petitioner, and the respondents received the link to the virtual hearing.

There was proper notice of the hearing to the Owner, which proceeded in their absence on March 8, 2023, without their participation.

ISSUE(S) PRESENTED

- 1. Was the subject unit exempted from the Rent Adjustment Ordinance based on fraud or mistake?**
- 2. If the prior exemption was granted because of fraud, how does the agency correct the *Certificate of Exemption*?**
- 3. What is the base rent if the prior exemption was granted because of fraud?**

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⁷ The petitions states that the additional rent increases and decreases in housing services and bad conditions are those listed in the prior petition, challenged in T18-0392.

⁸ *Fong v. City of Oakland HRRRB*, Cal. Super. Ct., Alameda County, Case No. RG18930130 (order dated 06/07/2019).

⁹ Pursuant to Evidence Code Section 452, judicial notice of L16-0083, including the recording, is taken.

EVIDENCE

Noel Munger

After being duly sworn, Noel Munger provided the following testimony:

He is a Senior Paralegal at Central Legal and has been there for four years. His primary job functions are to support tenants with RAP petitions and collate evidence. He has also inspected properties as part of his work.

He has completed thirty to fifty RAP inspections of various properties. The inspections include taking photos, notes, and videos about property habitability.

His work, in this case, has spanned four years. He did not work on the underlying petition, L16-0083, and was absent at the hearing for L16-0083. He did, however, review the audio recording for the L16-0083 hearing.

Maps & Discrepancies

He obtained a copy of the Conditions, Covenants, and Restrictions (CC&Rs) for the subject property from the Alameda County Clerk Recorder's office in 2019.¹⁰ Initially, he obtained a copy, then later obtained certified copies. He shared the CC&Rs with his supervisors after discovering their existence in 2019. He could not determine why the CC&Rs were not admitted into evidence during the hearings in 2017. Those hearings pre-dated his involvement in the case.

In September 2019, he assisted the Tenant with filing the petition for this case.

The CC&Rs map describes the property layout differently than how the owners described the property during the exemption hearing.

The maps describe four condominium parcels and six separate units. The owners represented during the initial hearing that only four units had been converted to condominiums, with an additional two units that were never assigned parcel numbers.

Two identified ground floor parcels are each split into two separate dwellings, analogous to a duplex. A total of four separate units, contained within two

¹⁰ Exhibit C was admitted over objection upon receipt of Certified Copies.

condominium parcels, are located on the ground floor, and two separate condominium parcels are located on the second floor. There are a total of six separate dwelling units on the property. The CC&Rs map shows no two additional units outside the condominium parcels.

The owners needed to assign all tenants to their corresponding condominium units correctly. Two-unit condominium parcel 1354 B is not treated as an actual condominium parcel. Therefore, owners should have given petition notices to the tenants living in the two-unit condominium parcel 1354 B.

The CC&Rs map describes the property differently than the Owner's description at the exemption hearing. There are six units and four condo parcels. The Owner claimed that only four units were condos and that two units still needed parcel numbers; however, this must be corrected. There are two parcels with two units each. The Owner assigned the units to the parcel numbers incorrectly. The unit the Owner described, 1354b, was in parcel 1354A. 1354B contains two units because they were treated as separate. Two parcels have two units, like a duplex.

Property Inspection

He visited the property five to seven times from early 2019 through February 2020. During visits, he did an inspection and took pictures, videos, and notes, including where the Petitioner, Ms. Salvador, lives on the ground floor. He entered three of the six dwelling units.

He prepared a unit map using photos of the exterior property, google images from an aerial view, proof of service, and annotated portions of the CC&Rs site plan, including the annotations and color coding on the documents and photos.¹¹ The solid-line blue box outlines the boundaries of the entire property. The solid-line red box is within the solid-line blue box and outlines the boundaries of condominium parcel unit 1354 A. The solid-line yellow box is within the red box and outlines Ms. Salvador's unit within condominium parcel unit 1354 A.

Condominium Parcel 1354 A – Front Unit

Ms. Salvador's front unit is referred to as 1354 A. The front door to her unit is closest to the street.

¹¹ Exhibit O was admitted over objection.

The two units in condominium parcel unit 1354 A are separated by a wall with no connecting access. Both units are entirely separate from each other.

Condominium Parcel Unit 1354 B

The rear unit contained within condominium parcel unit 1354 A has been labeled as 1354 B by the owners during past RAP exemption hearings. Unit 1354 B should be labeled unit 1354 A/rear-unit to align with the recorded CC&Rs.

Ana Geronimo Salvador

After being duly sworn, Ana Geronimo Salvador provided the following testimony:

She resides at the property in question, at 1350 81st Street, Unit A, Oakland, California. She has lived there for eleven years. She pays \$2,200.00 monthly in rent and is current on rent payments. The last rent increase occurred in January 2023. She keeps the documentation when paying her rent, including Bank of America deposit slips and checks she issued for rent payments to the Landlord, Ms. Fong.

Karla currently lives in unit B next to hers. The past tenant was Alondra Juliana Apodaca.

CC&R's

She confirmed there are six units on the property, including her unit.

Upon her initial move to the property, she was not informed that the home was a condominium. She was informed by the Owner, Ms. Fong, that the home was a condominium in 2019 when her rent was raised from \$1,375.00 to \$2,000.00.

She confirmed that the aerial property layout was the same as in the year 2016 and that the blue box is around the outer perimeter of the property, that the red line box outlines unit A (her unit) and unit B, and that the yellow box is around the unit Ms. Salvador lives.

Her unit is contained within the red box, as pictured with one other unit.¹² She does not have access to the other unit. A wall separates the two units. She has never lived in any other unit on the property.

She also confirmed that the broken pink lines represent the line of demarcation between the two units. She described the window closest to the camera, on the other side of the broken pink line, as belonging to unit A with an air conditioning machine in the window. The window without an air conditioning machine on the other side of the broken pink line belongs to unit B.¹³

In unit A, a bedroom is located behind the broken pink lines. A wall separates this bedroom in unit A from the other unit.

She confirmed the main entrance to unit B.¹⁴ She needs help accessing her residence in Unit A from the Unit B main entrance. Ms. Karla lives in unit B. Prior to Ms. Karla, Ms. Alondra Juliana Apodaca lived in unit B.

She also confirmed the blueprint drawing of the property and layout with color-coded graphics showing a solid-line blue box around the outer perimeter of the property, a solid-line red box outlining unit A (her unit) and unit B, and a solid-line yellow box only around Ms. Salvador's unit.¹⁵ She re-confirmed that she lives in unit A and cannot access unit B.

Garbage Services

She paid for garbage services with her bank card and at the cashier's desk.¹⁶ The name Ricardo Dominguez appears on some of the documents. She confirmed that Mr. Dominguez is her husband.

She began paying for garbage once her rent was increased by more than \$600.00 monthly and continues to pay for garbage.¹⁷

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¹² Exhibit O, page 47.

¹³ Exhibit O, page 49.

¹⁴ Exhibit O, page 50.

¹⁵ Exhibit O, page 48.

¹⁶ Exhibit N. This Exhibit, and all other Exhibits to which reference is made in this Decision, were admitted into evidence without objection unless otherwise noted.

¹⁷ Exhibits A – O inclusive were admitted on March 8, 2023.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The elements of fraud are “(a) a misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or ‘Scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.” *Lazar v. Superior Court* (1996) 12. Cal. 4th 631, 638.

Official Notice is taken of L16-0083, inclusive of the hearing recording. At the hearing, both Owners were present and questioned about the existence of the CC&Rs. Under penalty of perjury, Owner Fong indicated that there were CC&RS but that she could not find them from the prior Owner, then indicated that there were no CC&Rs.¹⁸ Property Owner Lee can also be heard indicating that no CC&Rs exist. He then contradicted Fong and indicated that the CC&Rs were verbal.¹⁹ During the hearing, the Tenant asked about the difference between an apartment and a condominium; both Owners, Fong and Lee, can be heard at different times explaining their interpretation of the Ordinance and that the unit is exempt from it.

The undisputed evidence herein establishes that the CC&Rs for the subject property exist in written form and were recorded on November 1, 2007. At the prior hearing on February 23, 2017, the Owners testified that they purchased the entire building and provided a copy of the Grant Deed dated March 29, 2012. From a review of the Hearing in L16-0083, Owners Fong and Lee provided conflicting testimony indicating that the CC&Rs simultaneously did not exist and were only verbal. We now know this testimony to be false.

The Owners repeatedly indicated that they were unaware of the duly recorded CC&Rs, though properly filed. The nature of the Owner’s false testimony demonstrates their knowledge of the falsity. Since the CC&Rs cannot simultaneously fail to exist and be verbal only, there was no way that both statements could be factual. Therefore, they had to know that part, or all of the testimony, was false. It is also clear from a review of the prior hearing that the Owners’ testimony was focused on obtaining the exemption.

There are no reasons to reach the other elements of the fraud claim. The Owner’s testimony at the exemption hearing was an intent to defraud, without which the Certificate of Exemption would not have been granted. Moreover, the Hearing

¹⁸ L16-0083 Hearing Recording, 0:24:35-0:25:31.

¹⁹ L16-0083 Hearing Recording, 0:26:52-0:27:20.

Officer in the exemption case relied on their testimony, and a Certificate of Exemption was issued, resulting in damage to the Petitioner. Based on the foregoing, sufficient evidence shows that the exemption was improperly granted. Accordingly, the prior exemption cannot stand.

If the prior exemption was granted because of fraud, how does the agency correct the *Certificate of Exemption*?

The Rent Adjustment Regulations state:

“In the event that a previously issued Certificate of Exemption is found to have been issued based on fraud or mistake and thereby rescinded, the Staff shall record a rescission of the Certificate of Exemption against the affected real property with the County Recorder.”²⁰

The owners received the Certificate of Exemption based on their false testimony in the exemption Hearing. Therefore, the Certificate of Exemption must be rescinded. After the appeal period in this matter, the Staff shall record a rescission with the County Recorder to effectuate the rescission.

What is the base rent if the prior exemption was granted because of fraud?

Since the prior exemption as to Petitioner’s unit was based on fraud, the unit is covered, and the rent increase is invalid. The rent for the subject unit remains \$1,375.00.

ORDER

1. Petition T19-0384 is granted.
2. The Certificate of Exemption was granted based on fraud.
3. The unit is a covered unit under the Ordinance.
4. The base rent for the subject unit is \$1,375.00.
5. A rescission of the Certificate of Exemption shall be recorded after the appeal period.

²⁰ Regulations 8.22.030(C)(2).

Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within seventeen (17) calendar days of electronic service or twenty (20) days if served by first-class mail. If the last day to file is a weekend or holiday, the appeal may be filed on the next business day. The date and service method are shown on the attached Proof of Service.



Dated: May 12, 2023

Élan Consuella Lambert
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number: T19-0384
Case Name: Salvador v. Fong

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Oakland, California, addressed to:

Documents Included

Hearing Decision

Owner

May Lee Fong
358 Cerro Court
Daly City, CA 94015

Tenant

Ana Jeronimo Salvador
1354 81st Avenue Unit A
Oakland, CA 94621

Tenant Representative

Gregory Ching, Centro Legal de la Raza
3400 E 12th Street Suite 410
Oakland, CA 94601

Tenant Representative

Xavier Johnson, Centro Legal De La Raza
3400 E 12th Street
Oakland, CA 94601

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **May 16, 2023** in Oakland, California.

Brittini Lothlen

Brittini Lothlen
Oakland Rent Adjustment Program

000800



CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

APPEAL

Appellant's Name May Fong and Michael Lee	<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant
Property Address (Include Unit Number) 1354-81ST AVENUE, UNIT A, OAKLAND, CA 94621	
Appellant's Mailing Address (For receipt of notices) 358 Cerro Court, Daly City, Ca 94015	Case Number T19-0384
	Date of Decision appealed May 12, 2023
Name of Representative (if any)	Representative's Mailing Address (For notices)

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
 - a) The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations, or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, Regulation or prior Board decision(s) and describe how the description is inconsistent.)*
 - b) The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
 - c) The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
 - d) The decision violates federal, state, or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
 - e) The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g) The decision denies the Owner a fair return on the Owner's investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h) Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Supporting documents (in addition to this form) must not exceed 25 pages, and must be received by the Rent Adjustment Program, along with a proof of service on the opposing party, within 15 days of the filing of this document. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(4). Please number attached pages consecutively. Number of pages attached: 18.

- **You must serve a copy of your appeal on the opposing parties, or your appeal may be dismissed.** • I declare under penalty of perjury under the laws of the State of California that on June 3, 2023, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first-class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	Ana Jeronimo Salvador
<u>Address</u>	1354 81st Avenue Unit A
<u>City, State Zip</u>	Oakland, CA 94621
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	6/3/23
---	--------

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.

I served a copy of: May Fong
(insert name of document served)
 And Additional Documents

and (write number of attached pages) 18 attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

Name	Ana Jeronimo Salvador
Address	1354 81st Avenue Unit A
City, State, Zip	Oakland, CA 9462

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 6/3/23 (insert date served).

May Fong

PRINT YOUR NAME


SIGNATURE

6/3/23

DATE

EXPLANATION OF APPEAL

d) The decision violates federal, state, or local law as Alameda Superior Court strictly prohibited OHRRRB from relitigating this case per Order by Superior Court of California dated June 7, 2019. OHRRRB has no jurisdiction here, as both Tenant and OHRRRB failed to appeal this ruling during the statute of limitations.

e) The decision is not supported by substantial evidence. There was no evidence of fraud, and OHRRRB lacks jurisdiction over the Superior Court decision made on June 7, 2019. The recording the hearing officer based her decision does not indicate fraud. On the contrary, the Landlords provided truthful testimony supported by factual documents, public records and professional and legal advice.

f) The hearing officer made inaccurate assessment of the case. She error lied on her claim that the Certificate Exemption would not have been issued by OHRRRB if Landlords made fraudulent claims about the CC&R's. However, she failed to consider Landlords genuinely had no knowledge of these existing documents. The Landlords' claim is in deed factual, and no fraud was committed. It was in fact the Alameda Superior Court that overruled OHRRRB, denying the exemption and ordered OHRRRB to grant the Landlords the exemption.

**Rent Board Appeal Legal
Discussion Case Nos. T19-
0384**

This appeal to request to set aside order on May 12, 2023 is made on the ground that the Oakland rent board hearing officer erred in ruling for the Tenant’s petition to overturn the Superior Court of California order case number L16-0083 on 9/20/19, arguing that the exemption was issued on the basis of fraud or mistake. OHRRRB was barred from relitigating this issue by the doctrine of **collateral estoppel** issued by the Supreme Court order and **Res judicata** applies here. This appeal is based on this notice, the attached memorandum or points and authorities in support.

**MEMORANDUM OF POINTS AND
AUTHORITIES**

1. FACTUAL AND PROCEDURAL BACKGROUND

When Landlords, May Fong and Michael Lee (hereinafter “Landlord”) purchased the building unit in Oakland in 2012 in a real estate auction, a prior owner had already subdivided four of those units into condominiums (1 AR 113–133). So, in October 31, 2016, Landlord filed a Landlord Petition for Certificate of Exemption claiming that their four condominiums were exempt from Oakland’s rent-control scheme pursuant to the Costa-Hawkins Act’s condominium exemption. (1 AR 6–12.) In 2017, Tenant filed a Tenant Petition claiming that Landlords had increased her rent above that allowed by the rent ordinance. (1 AR 49–51.) Respondent City of Oakland, Housing, Residential Rent and Relocation Board (hereinafter “OHRRRB”) then consolidated the two petitions. (1 AR 76.) **Original Tenant was present with her attorneys and had her day in court here and legally must raise all issues upfront at this hearing.** Golden State Ventures v. City of Oakland Rent Board and then Fong vs City of Oakland Rent Board ruled on June 6, 2019 “Exhibit 1” decision against the Rent Board on the same issue as presented in this case and ordered the OHRRRB to issue the Certificate of Exemption and as well as collaterally estoppel in the case twice, the **Tenant was given the chance to claim fraud or mistake during this appeal time frame but failed to do so.**

Tenant Ana Jeronimo Salvador, filed the Oakland Rent Adjustment Program (hereinafter “RAP”) petition this action, T19-0384, against landlord, May Fong and Michael Lee, on October 9, 2019. Tenant petition contests the Certificate of Exemption “Exhibit 2” so ordered by Superior Court of California to the Landlord in case number L16-0083 on 9/20/19, arguing that the exemption was issued on the basis of fraud or mistake, and alleging unlawful rent increases as well as decreased housing services. These condominium units of “alienable separate from the title to any other dwelling unit” and of being “sold separately” pursuant to California Civil Code § 1954.52(a)(3)(A) has already been litigated and proven to the Superior Court of California as per ruling Case No. RG18930130 see “Exhibit 1”.

Where the Tenants disputed the alienable rights of the condominiums at the Hearing, both Hearing officer and OHRRRB erroneously denied Landlord the Certificate of Exemption in 2017 and 2018 Citing an exception to the Costa Hawkins Rental Housing Act, California Civil Code Section 1954.52(3)(B)(ii), that the hearing officer and OHRRRB found that while the property had been converted to condominiums, the property was not exempt because it did not have alienable rights and “[had] not been sold separately by the subdivider to a bona fide purchaser for value.” Landlord had to seek relief and justice from Superior Court of California and ultimately ruled against the OHRRRB once again. OHRRRB was not the one that awarded the Landlord the Certificate of Exemption and therefore OHRRRB did not award the Exemption by fraud or mistake. It was the Superior Court of California that so ordered OHRRRB to issue Landlord the Certificate of Exemption and the issue of alienable rights had been addressed, adjudicated and collaterally estopped.

Tenant Salvador filed petition, T19-0384 claiming the exemption was sought by fraud or mistake. Superior Court of California had made it clear in case ruling RG18930130 that OHRRRB was so ordered to issue Certificate of Exemption and it was finally issued on 9/20/19 and filed on 10/8/19 and there was **NO APPEAL OR CLAIM OF FRAUD** to this ruling by either OHRRRB or Tenants. Here the Tenants **could have appealed** this case but did not. The OHRRRB is also barred from relitigating this issue by the doctrine of collateral estoppel and res judicata by ruling cases with both *Fong vs City of Oakland, Housing, Residential Rent & Relocation Board* and *Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board* which is being violated with again

attempting to relitigate the factual or legal issue that has already been decided and finally adjudicated. (Key v Tyler (2019) 34 Caal.App.5th 505,) Therefore, due to the fact the Landlord Certificate of Exemption on the four condominiums was ordered by the Superior Court of California and decision was final and was not awarded by decision of OHRRRB nor based on fraud or mistake and OHRRRB is barred from relitigating this case by issue and claim preclusion in support to set aside the Hearing officer's order made on May 12, 2023.

On August 31, 2021, the hearing officer made the correct administrative decision to deny the Tenant's petition based on the fact the Tenant was a party to the prior case, L16-0083; therefore, additional litigation between parties is prohibited by the Superior Court Order dated, June 7, 2019. However, OHRRRB did not adhere to the Supreme Court order and remanded the case back to the hearing officer. And on May 12, 2023, the hearing officer granted Tenant's petition based on fraud was erroneous.

A. *The Golden State Ventures vs OHRRRB and Fong vs OHRRRB case precludes the Rent Board any further litigation based on Res Judicata and Collateral estoppel.*

Tenant claim the issue of the exemption is not precluded on the basis of the doctrines of res judicata and collateral estoppel is Tenant attorney reference to the *Michelson v. Sherman*, L18-0081 case where RAP granted a landlord petition for exemption, but then later invalidated the exemption due to fraud or mistake. The case went to the Superior Court on a writ and the Superior Court remanded the case back to the Rent Board to decide on the issue of fraud. At the hearing on the issue of fraud, the board vacated the exemption due to fraud or mistake. However, this case does not apply here. In the *Michelson v. Sherman*, it was the RAP board that awarded the Landlord the exemption without the Tenant being heard in court. The case at Superior Court was remanded back to Rent Board to allow the original tenant to be heard in court and that is where RAP ruled for the Tenant. However, this is not what happened with this case where the Tenants with their attorneys were all present and had their full opportunity to present all issues at the Exemption hearing. Again, all Tenants were present and all legal issues must be brought up at this hearing as per Res Judicata. Opposed to the *Michelson v Sherman* case where RAP awarded the Landlord the Certificate of Exemption, both hearing officer and RAP denied us the Certificate. It was Superior Court that ordered OHRRRB to issue us the Landlord

Certificate of Exemption. Furthermore, the Superior Court never issued a collateral estoppel on the Michelson v Sherman case but they issued a collateral estoppel for the OHRRRB for our exemption based on Costa-Hawkins case.

As cited in order see “Exhibit 1”, The OHRRRB is also strictly prohibited from relitigating this issue by the doctrine of collateral estoppel. The doctrine of collateral estoppel forbids a party from re-litigating a specific factual or legal issue that has already been actually decided by another court when the identical issue was actually litigated in a prior suit and was finally adjudicated against a party to the first suit or a person in privity. (Key v. Tyler (2019) 34 Cal.App.5th 505, -.)

Res Judicata applies here. From the *Golden State Ventures* Court of Appeal decision that stands for the principle that a party to a Rent Board proceeding must raise all issues *up front*. Failure to do so means the party forfeits those omitted arguments in future proceedings.

The doctrine of res judicata has two distinct aspects. (Sutphin v. Speik, [15 Cal. 2d 195](#), 201-202 [99 P.2d 652, 656]; 2 Freeman on Judgments, p. 1425, § 676 (5th ed.)) [1] Primarily, it operates as a bar to the maintenance of a second suit between the same parties on the same cause of action. (Taylor v. Hawkinson, [47 Cal. 2d 893](#), 895 [306 P.2d 797]; Clark v. Leshner, [46 Cal. 2d 874](#), 880 [299 P.2d 865]; Panos v. Great Western Packing Co., [21 Cal. 2d 636](#), 638 [134 P.2d 242].) [2] In its secondary aspect, the doctrine has a limited application to a subsequent suit between the same parties based on a different cause of action. "The prior judgment is not a complete bar, but it 'operates as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action.' (Citation.) This aspect of the doctrine of res judicata, now commonly referred to as the doctrine of collateral estoppel, is confined to issues actually litigated." (Clark v. Leshner, supra; Taylor v. Hawkinson, supra; Todhunter v. Smith, 219 Cal. 690, 695 [28 P.2d 916].)

B. The Landlord Certificate in good faith and there was no fraud.

a. Landlords factual and truthful testimony

Landlord filed in Certificate of Exemption for the four condominium units in 2016 in complete good faith and in accordance and compliance to all laws. Furthermore, the exemption was not issued on the basis of fraud but by the Petition for Writ Mandate hearing

on 6/7/19 where the Tentative Ruling was published and had not been contested and was so ordered directing OHRRRB to issue the Certificate of Exemption as Landlord is final.

The hearing officer erroneously concluded Landlords committed fraud. There was absolutely **no intent or elements of fraud** which were "(a) a misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'Scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." *Lazar v. Superior Court* (1996) 12. Cal. 4th 631,638.

During Official Notice taken of L16-0083, both Landlords Lee and May testified there were no CC&R's and were fully unaware of any preexisting CC & R'S because they did not receive these documents from either the selling and buying Real Estate Agent, [Galina Plizga of New Light Realty Inc](#) nor from the Auction attorney, Robert J. Jackson & Associates, as evidenced by thread of email in "EXHIBIT 3". Landlords Lee and Fong were told by the Real Estate Agent and Robert J. Jackson & Associates, Inc. the following "[It looks like originally it was SFR, then it has been divided into two units and then the building at the back was built later on with 4 units.](#)" "EXHIBIT 3". As purchasers, we relied on the professionals to give us accurate details to the property and we based our testimony on these facts. Thus, Landlords Lee and Fong testimony were accurate that they did not have CC & R's. Furthermore, Landlord Fong sought and obtained recorded documents for the property in 2016 from records department at the City of Oakland, but did not see nor were given any CC & R'S by Oakland records department. Since Landlords had not viewed or received any CC & R'S, Landlords Lee and Fong concluded there were non existing and did discuss the CC & R's during a meeting; Therefore, it was truthful and accurate Landlord Lee's testimony discussed the CC & R'S verbally at that hearing.

The hearing officer erroneously concluded the Owner's testimony at the exemption hearing was an intent to defraud, without which the Certificate of Exemption would not have been granted. As pointed out, the hearing officer for the case L16-0083 denied the landlord petition for exemption. As evidenced on Exhibit 3, the Landlords were truthful in their testimony and there was absolutely no fraud. It is inaccurate that the Hearing Officer in the exemption case relied on testimony, and that the claim a Certificate of Exemption was issued based on that. On the contrary, the Certificate of Exemption was ordered by the Supreme Court of California see Exhibit 1 and OHRRRB is barred from relitigating this case.

CONCLUSION

For the foregoing reasons, Landlord respectfully requests the appeals board set aside the Hearing officer's erroneous decision and dismiss the Tenant's petition because there was absolutely no fraud by the Landlords as they gave only factual testimony and presented all documents received by professionals and tax records at the time of the hearing and since that the Tenant herein was the original party to the prior case who had her hearing and day in court in case L16-0083 as well as appeals. Therefore, the additional litigation between the parties is strictly prohibited as per Order by Superior Court of California dated June 7, 2019 to OHRRRB and by Res Judicata and Collateral estoppel.

Date: June 3, 2023

Respectfully submitted,



May Fong

Landlord Pro Per

Golden State Ventures, LLC v. City of Oakland Rent Bd., A151421 (Cal. Ct. App. Jan. 25, 2018)

Motion on Petition by Landlord in Fong vs OHRRRB

Fong v. City of Oakland, Housing, Residential Rent & Relocation Board, Superior Court of Alameda County, Case No. RG18930130, Order Granting Petition for Writ of Administrative Mandamus (June 7, 2019)

Michelson v. Sherman, L18-0081; see also RAP appeals index

EXHIBIT 1

Katz Appellate Law
Attn: Katz, Paul J.
484 Lake Park Ave #603
#557
Oakland, CA 94610 _____

City Attorney's Office
Attn: Jefferson, Jamilah A.
One Frank H. Ogawa Place, 6th Floor
Oakland, CA 94612

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Fong <p style="text-align: right;">Plaintiff/Petitioner(s)</p> VS. City of Oakland , Housing , Residential Rent & Relo <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG18930130</u> Order Date: 06/07/2019 Time: 02:00 PM Dept: 17 Judge: Frank Roesch
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The Petition for Writ of Mandate was set for hearing on 06/07/2019 at 02:00 PM in Department 17 before the Honorable Frank Roesch. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: Petitioners May Lee Fong and Michael B. Lee petition the Court for a writ of administrative mandate directing Respondent City of Oakland, Housing, Residential Rent and Relocation Board ("OHRRRB") to set aside its decision denying Petitioners' application for certificate of exemption from Oakland's Rent Adjustment Program ("RAP"). (Oakland Mun. Code ch. 8.22.)

Fong and Lee bid for and purchased several condominiums in the same building at a foreclosure sale. The building's prior owner had operated the building as an apartment house, but the units were converted to condominiums before being sold to Fong and Lee. The same tenants remained in the condominium units (formerly apartments) and were unaware that a conversion had even occurred. Fong and Lee applied for exemption from the RAP on the grounds that the units were condominiums exempt from local rent control under the Costa-Hawkins Act (Civ. Code § 1954.50 et seq.). OHRRRB denied the application on the grounds that Fong and Lee had "stepped into the shoes" of the prior landlord.

The sole issue on this petition is a question of law and statutory interpretation of the provision of the Costa-Hawkins Act that exempts condominiums from local rent control ordinances after they are sold to a bona fide purchaser. (Civ. Code § 1954.52(a)(3) [exempting dwelling units "alienable separate from the title to any other dwelling unit" from local rent control].) After the Costa-Hawkins Act was initially passed, the Legislature became concerned that some apartment buildings were being legally converted to condominiums but never sold to new owners; buildings could escape local rent control through a trick of paperwork while maintaining the same ownership, management, and tenants. (See Decl. of P.J. Katz Ex. A (Sen. J. Comm. Analysis) ["[S]ome apartment property owners have taken advantage of the law by obtaining a permit to convert to condominiums, but never completing the process. . . ."]) The legislature amended the exemption to provide that condominiums is not available for "[a] condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value." (Stats 2001, ch. 729 (S.B. 985), § 2, codified as Civ. Code § 1954.52(a)(3)(B)(ii); see also Decl. of P.J. Katz Ex. A ["This bill would close that loophole and provide that the exemption would apply only when the unit is sold separately to a bona fide purchaser for value. Thus, apartment units that have remained

rentals would be subject to local rent control laws."].) In other words, the Legislature provided that the exemption from rent control is not available to the owner who subdivides his property into condominiums though it is available to subsequent bona fide purchasers of the individual condominium units.

The parties agree that the units in question are condominium units and that Fong and Lee were bona fide purchasers. OHRRRB argues that the units were not "sold separately" because they were sold on the same day, one owner continues to own the entire building, no units were sold to individual owners, and the same tenants continue to occupy the units. The small phrase "sold separately" can carry this weight. The word "separate" occurs elsewhere in the statute-the language of the general exemption language ("alienable separate from the title to any other dwelling unit"), which requires that the title to the individual condominium units be individually alienable. In context, "sold separately" means sold as condominiums, with separate title.

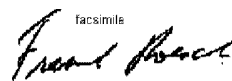
The OHRRRB is also prohibited from relitigating this issue by the doctrine of collateral estoppel. The doctrine of collateral estoppel forbids a party from re-litigating a specific factual or legal issue that has already been actually decided by another court when the identical issue was actually litigated in a prior suit and was finally adjudicated against a party to the first suit or a person in privity. (*Key v. Tyler* (2019) 34 Cal.App.5th 505, -.)

Here, the OHRRRB already litigated the issue of whether the RAP applies when several condominiums in the same building are sold to the same owner. The issue was decided adverse to the OHRRRB in the case of *Golden State Ventures, LLC v. City of Oakland Housing, Residential Rent and Relocation Board* (Alameda Cty. Super. Ct. Case No. RG16 834166, 1st Dist. Ct. App. Case No. A151421, Jan. 25, 2018) 2018 WL 549174. That is, both this Court and the Court of Appeal held that the Costa-Hawkins Act exempts such condominiums from the RAP because they were sold separately to a bona fide purchaser. (Civ. Code § 1954.52(a)(3)(A), (a)(3)(B)(ii).) The judgment in *Golden State Ventures* is final, and the OHRRRB filed its return certifying compliance with this Court's writ and the Court of Appeal's decision on June 7, 2018.

The Court does not agree with the OHRRRB's argument that the issues are distinguishable on their facts. To apply the statutory bona fide purchaser test, the Court need not determine whether the condominiums were sold in one transaction or a series of transactions, whether the condominiums were sold directly by the subdivider, and whether the building's condominium conversion was total or partial.

The OHRRRB is therefore collaterally estopped from relitigating the issue. Fong and Lee's petition is GRANTED.

Dated: 06/07/2019

Facsimile


Judge Frank Roesch

EXHIBIT 2



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

CERTIFICATE OF EXEMPTION
O.M.C. § 8.22.030(B)

Pursuant to the Court's Decision in Fong vs. City of Oakland, Housing, Residential Rent & Relocation Board, Case Number, RG18930130, the residential rental units described below are permanently exempt from application of the City of Oakland Rent Adjustment Ordinance, Oakland Municipal Code, Chapter 8.22, Article 1.

Situs Address: 1354 A 81st Avenue
Oakland, CA

*owner: May Lee Fong and
Grant Wai Fong, Michael B
Lee and Sandra C. Lee*

The units are subject to payment of the Rent Adjustment Program fee

Alameda County Assessor Parcel No. 42-4247-81

Date: 9/20/19


Chanee Franklin Minor
Program Manager
Rent Adjustment Program

*Mailing: 358 Cerro Ct
Daly City, CA 94015*

*Owner: May Lee Fong and Grant Wai Fong,
Michael B Lee and Sandra C. Lee*

RECORDING REQUESTED BY:

May Lee Fong



2019203025

10/08/2019 09:56 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
MELISSA WILK
RECORDING FEE: 20.00



3 PGS

WHEN RECORDED MAIL TO:

May Fong
358 Cerro Ct
Daly City, CA 94015

3
cd

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION (GOVT. CODE 27361.6) (additional recording fee applies)

TITLE OF DOCUMENT

CERTIFICATE OF EXEMPTION FROM APPLICATION OF
O.M.C. Chapter 8.22, Article 1

EXHIBIT 3

FW: AHCA10741A / 4000165201 / OSVALDINA SILVA LIMA / 1354 81ST AVENUE, UNIT A, OAKLAND, CA 94621

From: Galina Plizga (galina@newlightrealty.com)

To: mayfong@pacbell.net

Date: Thursday, June 1, 2023, 06:24 PM PDT

May,

That is what we got from the title records, all units have different parcel numbers, please see attached.

Since that property has been purchased on auction, there was a very limited amount of legal documents, CCNRs were not included in final package, since the previous owner was in foreclosure and he simply abandoned the dwelling with no legal documents left behind.

Galina Plizga
New Light Realty Inc

From: Galina Plizga (galina@newlightrealty.com)

Sent: Wednesday, August 3, 2011 9:44 AM

To: 'Jeanie Do' <jdo@jandalegal.com>

Subject: RE: AHCA10741A / 4000165201 / OSVALDINA SILVA LIMA / 1354 81ST AVENUE, UNIT A, OAKLAND, CA 94621

That is very odd record I agree.

That is all we have.

Galina Plizga
New Light Realty Inc
875 Mahler Road # 278
Burlingame, CA 94010
650-331-8708 office
650-331-3658 fax
650-619-6305 cell
www.newlightrealty.com
license # 01372469



From: Jeanie Do [<mailto:jdo@jandalegal.com>]

Sent: Wednesday, August 03, 2011 9:40 AM

To: Galina Plizga (galina@newlightrealty.com)

Subject: RE: AHCA10741A / 4000165201 / OSVALDINA SILVA LIMA / 1354 81ST AVENUE, UNIT A, OAKLAND, CA 94621

000820

Do you how the city zoned this property? Per Zillow, they have it as a condo. Have you ever came across an MFR with multiple APN#s? It is the first I have seen.

From: Galina Plizga (galina@newlightrealty.com) [<mailto:galina@newlightrealty.com>]
Sent: Wednesday, August 03, 2011 9:38 AM
To: Jeanie Do
Subject: RE: AHCA10741A / 4000165201 / OSVALDINA SILVA LIMA / 1354 81ST AVENUE, UNIT A, OAKLAND, CA 94621

That property is multi-unit dwelling, apartment building.

6 units total.

It looks like originally it was SFR, then it has been divided into two units and then the building at the back was built later on with 4 units.

Galina Plizga
New Light Realty Inc
875 Mahler Road # 278
Burlingame, CA 94010
650-331-8708 office
650-331-3658 fax
650-619-6305 cell
www.newlightrealty.com
license # 01372469



From: Jeanie Do [<mailto:jdo@jandalegal.com>]
Sent: Wednesday, August 03, 2011 9:36 AM
To: Galina Plizga (galina@newlightrealty.com)
Subject: AHCA10741A / 4000165201 / OSVALDINA SILVA LIMA / 1354 81ST AVENUE, UNIT A, OAKLAND, CA 94621

Hi Galina:

Can you please confirm if this property is a MFR or a Condo? We have been getting conflicting information because the TDUS has five different APN #s.

Thank you.

Jeanie Do*

Robert J. Jackson & Associates, Inc.
4199 Campus Drive, Suite 700
Irvine, CA 92612
Direct Phone (949) 854-2244 x277
Direct Fax (949) 892-1325
<http://www.jandalegal.com>

000821

*not licensed to practice law

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Tax common area.pdf

105.9kB



Tax 1354 81ST AVE APT B.pdf

257.4kB



Tax apt A.pdf

257kB



Tax bill common area.pdf

33.4kB



Tax bill unit A .pdf

34.3kB



Tax bill unit B.pdf

34.4kB

EXHIBIT 4

Property Taxes

[Treasurer-Tax Collector](#) | [Business License](#)

Account Lookup

- [Pay Online](#)
- [Pay By Phone](#)
- [Pay By Mobile App](#)
- [Pay By Mail](#)
- [Pay in Person](#)
- [Tax History Lookup](#)
- [Convenience Fee](#)
- [Returned Checks](#)
- [E-mail Reminder](#)
- [Wire Transfer](#)
- [Application Forms](#)

Search Secured, Supplemental and Prior Year Delinquent Property Taxes
 Secured tax bills are payable online from 10/5/2016 to 6/30/2017.
 Most supplemental tax bills are payable online to 6/30/2017.
 Prior Year Delinquent tax payments are payable online to 6/30/2017.

Property Summary		New Search
APN:	42-4247-83	
Property Address:	1356A 81ST AVE, OAKLAND 94621	

[Property Assessment Information](#)

Current Year Tax Information				
Tax Type	Bill Year	Tracer	Total Amount	Options
Installment	Due Date		Installment Amount	Status/Status Date
Secured	2016-2017	09066600	\$1,791.78	View Bill Pay Bill
1st Installment	12/10/2016		\$895.89	Paid Dec 10, 2016
2nd Installment	04/10/2017		\$895.89	

REPLY BRIEF IN SUPPORT OF TENANT PETITION T19-0384

To: Rent Adjustment Program Hearing Officer
From: Gregory Ching, representative for Tenant-Petitioner Ana Jeronimo Salvador

Case No: T19-0384
Case Title: Salvador v. Fong
Property Address: 1354 81st Avenue Unit A, Oakland, CA 94602

Tenant-Petitioner Ana Jeronimo Salvador hereby submits this brief in support of her Tenant Petition for Case No. T19-0384.

I. FACTS AND PROCEDURAL HISTORY

In 2016, Property Owners May Lee Fong and Michael B. Lee (collectively, “Property Owners”) filed Petition L16-0083 (“2016 Petition”). The Property Owners sought an exemption from the Oakland Rent Adjustment Program (“RAP”) under the Costa Hawkins Rental Housing Act, California Civil Code § 1954.52(a)(3).

At the hearing for L16-0083, which took place on February 23, 2017 (“2017 Exemption Hearing”), Property Owner Fong testified that Tenant Ana Salvador’s living unit qualified for an exemption under Costa Hawkins because the property had been subdivided into five parcels—four condominium parcels, and one parcel containing two “unconverted” apartments. *See* L16-0083 Hearing Recording, 0:14:05 – 0:14:15, 0:19:50 – 0:20:05. The requested exemption contains two requirements: (1) The purchaser be a bona fide purchaser for value, and (2) The property units be separately alienable. *See* Cal. Civ. Code § 1954.52(3)(B)(ii). A proper condominium conversion divides property into unique parcels capable of having separate owners, and requires production of Conditions, Covenants, and Restrictions (“CC&Rs”). Property Owners were asked at the 2017 Exemption Hearing by the Hearing Officer to produce the CC&Rs. Owner Fong responded that there were no CC&Rs. L16-0083 Hearing Recording,

0:24:35 – 0:25:31. Owner Lee, on the other hand, stated that the CC&Rs were “verbal.” *Id.* at 0:26:52 – 0:27:20.

On April 14, 2017, the Hearing Officer issued a decision in the matter denying an exemption. Property Owners appealed, and the Oakland Housing, Residential Rent and Relocation Board (“HRRRB”) affirmed the decision in June 2018. L16-0083 HRRRB Appeal Decision, p. 2.

On November 28, 2018, Property Owners petitioned the Alameda County Superior Court to direct the HRRRB to set aside its decision denying the exemption. The sole focus of Property Owners’ arguments was whether or not the subject units were “sold separately” under the exemption to Costa Hawkins because the Property Owners owned all of the units in the building and acquired them in a single day through a single transaction. *Fong v. City of Oakland Housing, Residential Rent and Relocation Bd.*, Case No. RG18930130 (Cal. Super. Ct., Alameda Cnty., 2019). In June 2019, the Court found that the property units had been sold separately and granted Property Owners’ Petition for Writ of Administrative Mandate. *Id.*

In response to the Court’s order, the Hearing Officer for L16-0083 issued a Certificate of Exemption. This Certificate was issued without analysis by either the Court nor RAP on the issue of separate alienability as required by state law. *See id; see also* Cal. Civ. Code § 1954.52(3)(B)(ii). Although the Court determined that the property units were sold separately (therefore qualifying the Property Owners as bona fide purchasers for value, satisfying the first of the exemption’s two requirements), the Court made no finding with regard to whether or not the property units were sold separately. *Id.* RAP erred in granting the Certificate of Exemption without first holding a hearing to determine the requirement of separate alienability. Tenant timely appealed the decision, but was informed that the decision was not appealable.

On July 8, 2019, Tenant uncovered evidence that Property Owners made numerous and critical misrepresentations about the nature of the property and the process used to convert the apartment units into condominiums. Not only did Property Owners fail to meet their burden of proving that the units were separately alienable, but the Property Owners did not disclose and did not admit into evidence the CC&Rs. Not only did written CC&Rs governing the use of the subject property exist, but the CC&Rs demonstrate that the property units are not separately alienable. Proper disclosure would have had a direct and material effect on the outcome of the 2016 Petition. Property Owners had been awarded an exemption from RAP despite the Owners' misrepresentations of the CC&Rs and the Owners' misrepresentations about the actual use to which the property was being put. Accordingly, Tenant brought this action, arguing that the exemption was awarded based on fraud or mistake, and that the decision to award the exemption should be reversed.

On August 31, 2021, the Hearing Officer denied Tenant's Petition by administrative decision. Tenant appealed, requesting that an evidentiary hearing be ordered. Tenant appealed on three grounds: First, that the Hearing Officer erroneously found that the Superior Court's narrow holding, which had been limited solely to the issue of whether or not the units were "sold separately," was sufficient to bar the Tenant's Petition without a determination as to whether or not the units were separately alienable under California Civil Code § 1954.52(a)(3)(A); second, that Property Owners made numerous fraudulent misrepresentations at the original exemption hearing, and the exemption was granted because of Property Owners' fraudulent misrepresentations; and third, that the Property Owners have used the single unit as two separate units—a duplex—throughout the time period contemplated by the petitions, and as such the unit

should be subject to rent control. T19-0384 Appeal; *see also Owners v. City of Oakland Housing, Residential Rent and Relocation Bd.*, 49 Cal. App. 5th 739 (2020).

On April 1, 2022, the HRRRB ordered that the present action be remanded back to the Hearing Officer for a hearing to determine whether or not the Property Owners committed fraud. *See* T19-0384 Appeal Decision (April 2022). Despite Property Owners' arguments at the appeal hearing that this case be barred by the doctrines of collateral estoppel and res judicata, the HRRRB ruled against the Property Owners. *Id.* The HRRRB determined that the issue to be considered—whether or not Property Owners had committed fraud—had not been previously litigated and so was not barred by either preclusion doctrines. *Id.* The HRRRB specifically ordered the case be remanded to the Hearing Officer for a hearing on the issue of fraud. *Id.*

Remand hearings took place on January 24, 2023 and March 8, 2023. At these hearings, Tenant produced substantial evidence to the Hearing Officer. Tenant entered into evidence certified copies of the CC&Rs, provided both by Tenant's attorneys as well as sent directly to RAP from the Alameda County Clerk Recorder's Office. These CC&Rs provided a map governing the use of the parcels on the property. Tenant also presented sworn testimony by witness Noel Munger. Munger testified that he had obtained a copy of the CC&Rs from the Alameda County Clerk Recorder's office in 2019. Munger also provided testimony that he visited the subject property, where he discovered that Tenant's unit, 1354 A, does not align with the condominium parcel labeled 1354 A; instead, the condominium parcel labeled 1354 A was being utilized as two separate units, including Tenant's unit and a neighboring unit. This actual use does not conform with the use as delineated in the CC&Rs, and differs significantly from Property Owners' prior testimony as to the use of the parcel. Tenant provided sworn testimony stating that Property Owners had not previously provided Tenant with a copy of the CC&Rs.

Tenant also confirmed that the condominium parcel labeled 1354 A is not being used as a single unit, but has instead been at all relevant times physically subdivided and used as two separate units, contrary to Property Owners' prior assertions and the CC&Rs. Additionally, judicial notice was taken of L16-0083, including the hearing recording with Property Owners' prior testimony.

The Hearing Officer determined that "undisputed evidence" existed to establish the existence of the CC&Rs in written form and recorded on November 1, 2007. *See* T19-0384 Remand Decision, p. 8. The Hearing Officer noted that "Owners Fong and Lee provided conflicting testimony indicating that the CC&Rs simultaneously did not exist and were only verbal. We now know this testimony to be false." *Id.* The Hearing Officer continued, stating that "The Owners repeatedly indicated that they were unaware of the duly recorded CC&Rs, though properly filed. The nature of the Owner's false testimony demonstrates their knowledge of the falsity. Since the CC&Rs cannot simultaneously fail to exist and be verbal only, there was no way that both statements could be factual." *Id.* The Hearing Officer noted that, as such, Property Owners "had to know that part, or all of the testimony, was false." *Id.* Accordingly, the Hearing Officer granted Tenant's Petition, T19-0384.

Property Owners have initiated this appeal on the grounds that: (1) The Alameda Superior Court "strictly prohibited" relitigation of this case; (2) The decision is not supported by substantial evidence; and (3) Property Owners had no knowledge of the existence of the CC&Rs.

II. LEGAL ARGUMENT

Property Owners' arguments on appeal lack merit. First, the Superior Court did not strictly prohibit relitigation of the present action, as the issue raised in this action had not been previously litigated. Second, the decision is supported by more than substantial evidence, in the forms of recorded CC&Rs, Tenant and Witness Munger's testimonies, and Property Owners'

own prior testimony. Third, the Property Owners' lack of knowledge does not absolve them of their having provided false and contradictory testimony, under oath, in order to obtain an exemption from RAP.

A. Preclusion

Preclusion, which encompasses both *res judicata* (aka claim preclusion) and collateral estoppel (aka issue preclusion) occurs where an entire claim or a single issue has already been decided by a final judgment on the merits, and relitigation of that identical issue or claim must be avoided in the interests of justice. *See Nicholson v. Fazeli*, 113 Cal. App. 4th 1091 (App. 6 Dist. 2003); *Diruzza v. Cnty. of Tehama*, 323 F.3d 1147 (Cal. 2003). In this case, preclusion does not apply to estop or otherwise nullify the remand decision. This Board has already heard arguments by Property Owners and Tenant as to whether or not this action should be precluded by the Superior Court's decision. T19-0384 Appeal Hearing (December 2021). This Board specifically determined that preclusion does not apply, and a remand hearing on the issue of whether or not the Property Owners committed fraud was ordered. T19-0384 Appeal Decision (April 2022). Moreover, because a determination as to whether or not preclusion applies has already been decided by this Board, Property Owners are precluded from relitigating this issue.

1. Preclusion Does Not Apply to Tenant Petition T19-0384

On December 9, 2021, the HRRRB heard arguments by both Tenant and Property Owners regarding whether or not preclusion applies to estop Tenant from litigation on this matter. Property Owners raised a number of arguments on the basis that RAP was precluded from further litigation of this case due to the ruling made by the Alameda Superior Court. T19-0384 Appeal Hearing. Property Owners reassert this argument in the present appeal, stating that the "Alameda Superior Court strictly prohibited HRRRB from relitigating this case per Order by

Superior Court of California.” T19-0384 Property Owner Appeal (July 2023). Property Owners further state, “HRRRB was barred from relitigating this issue by the doctrine of collateral estoppel issued by the Supreme [sic] Court order and [r]es judicata applies here.” *Id.*

Property Owners’ arguments on this matter are flawed. First, the issue of fraud was not decided upon by the Superior Court. *Fong v. City of Oakland Housing, Residential Rent and Relocation Bd.*, Case No. RG18930130. In fact, the issue of fraud was not raised at the time of the Court’s decision, as the fraud was not discovered until after that decision had been issued. T19-0384 Petition. As the issue of fraud had not been previously decided upon by the Superior Court, it cannot as a matter of law have been precluded by the Court’s decision.

Second, Property Owners erroneously argue that the Court “issued a collateral estoppel for the OHRRRB for [Property Owners’] exemption.” T19-0384 Property Owner Appeal (July 2023). Although the Court stated that “The OHRRRB is . . . prohibited from relitigating this issue by the doctrine of collateral estoppel,” the issue specifically precluded is unrelated to the matter of fraud. *Fong*, Case No. RG18930130. The Court specifically provides that “the OHRRRB already litigated the issue of whether the RAP applies when several condominiums in the same building are sold to the same owner.” *Id.* Thus, the only issue that is prohibited by the Court from relitigation is whether or not the Costa-Hawkins Act exempts condominiums from the RAP where such condominiums are sold separately to a bona fide purchaser. *Id.* Nothing in the Court’s Order precludes Tenant from litigating the novel issue that had not been previously raised nor discovered at the time of the prior hearing: whether or not the Property Owners committed fraud in obtaining an exemption from rent control.

Despite Property Owners' insistence that this case should be barred by the doctrines of preclusion, this Board, in a hearing on the basis of preclusion, specifically decided that the issues at present are not barred.

2. Preclusion Does Apply to Prohibit Appellant Fong From Relitigating the Issue of Preclusion

Preclusion forbids a party from re-litigating a specific factual or legal issue that has already been decided by another court when the identical issue was actually litigated in a prior suit and was finally adjudicated against a party to the first suit or a person in privity. *See, e.g., Diruzza*, 323 F.3d 1147; *Cotchett, Pitre & McCarthy v. Siller*, 520 B.R. 796 (E.D. Cal. 2014), *aff'd* 870 F.3d 1106. In the present instance, preclusion applies to prohibit Property Owners from relitigating the very issue of whether or not preclusion prohibits Tenant from this litigation.

In December 2021, the HRRRB heard arguments by Property Owners and Tenant. As provided, *supra*, Property Owners argued that this case should not proceed due to the case already having been determined by the Superior Court. Tenant argued that preclusion does not apply, as the issue raised had not been decided by the Court. The issue of fraud had not been previously litigated, and so could not be barred from *relitigation*. Upon hearing these arguments, the HRRRB determined that the issue of fraud had not been previously litigated, and so was not prohibited by preclusion doctrines. The HRRRB then ordered a limited scope hearing on the claim of fraud. T19-0384 Appeal Decision (April 2022). The limitation in scope served to underline the fact that some issues may be precluded, but fraud, specifically, was not. The remand hearing then took place in two parts, on January 24, 2023, and on March 8, 2023.

This Board determined that Tenant was not barred by the doctrine of preclusion from litigating the issue of fraud. This Board heard arguments on the issue of whether or not

preclusion applied and issued a binding decision on that matter. Property Owners did not appeal the ruling. As such, the ruling became final. Property Owners are thus precluded from relitigating the issue of whether or not preclusion applies to the issue of fraud.

B. The Hearing Officer Properly Determined the Factual Issue That Fraud Occurred

Property Owners argue that the Hearing Officer “erroneously concluded Landlords committed fraud.” Property Owner Appeal, p. 5. Property Owners support this argument by stating that “there was no evidence of fraud,” and that “[t]here was absolutely no intent or elements of fraud.” *Id.* The Hearing Officer in this action did, however, have significant evidence upon which to base her decision, and properly determined the issue of whether or not fraud occurred.

1. Substantial Evidence of Fraud Exists

Substantial evidence on the issue of fraud was presented to the Hearing Officer during the remand hearings. The Hearing Officer took judicial notice of the Hearing Recording for L16-0083. In that hearing, Owner Fong and Owner Lee were specifically asked whether or not the CC&Rs governing the use of the property existed, as required for condominium subdivision. Owner Fong responded that there were no CC&Rs. L16-0083 Hearing Recording, 0:24:35 – 0:25:31. Owner Lee, contrastingly, responded that the CC&Rs were “verbal.” *Id.* at 0:26:52 – 0:27:20. These statements were made without any basis of factual support.

As provided for in evidence submitted to the Hearing Officer for the Remand Hearing, and supported by sworn testimony from Tenant and witness Noel Munger, CC&Rs for the property did, in fact, exist. T19-0384 Evidence Packet; T19-0384 Remand Hearing Recording (January 2023); T19-0384 Remand Hearing Recording (March 2023); T19-0384 Remand

Hearing Decision (May 2023). CC&Rs for the subject property existed and had been recorded with the Alameda County Recorder's Office on November 1, 2007, well ahead of Property Owners' purchase of the property. *Id.* Not only did the CC&Rs exist in written form and properly recorded with the Alameda County Clerk Recorder's Office, but the CC&Rs govern the use of the property in a way that does not correlate with how the Property Owners have been using the property. Property Owners did not disclose the existence of the CC&Rs, and such misrepresentation should be rewarded with what would amount to an illegal exemption.

Furthermore, the Property Owners' statements were themselves directly contradictory. Owner Fong claimed that the CC&Rs did not exist at all, whereas Owner Lee claimed that the CC&Rs did exist, but were verbal. The statements could not have both been true. *See* T19-0384 Remand Hearing Decision, p. 8. As such, the Hearing Officer properly determined that the Property Owners had committed fraud. *Id.* ("Since the CC&Rs cannot simultaneously fail to exist and be verbal only, there was no way that both statements could be factual. Therefore, [Property Owners] had to know that part, or all of the testimony, was false.").

2. Sufficiency of Evidence Is a Factual Matter to be Determined by the Hearing Officer

Second, the sufficiency of evidence is a factual matter to be determined by the hearing officer, and should only be overturned if not supported by substantial evidence. *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019); *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938). The "threshold for such evidentiary sufficiency is not high." *Id.* Rather, substantial evidence is "more than a mere scintilla." *Id.*; *see, e.g., Consolidated Edison Co. v. NLRB*, 305 U.S. at 229; *Richardson v. Perales*, 402 U.S. 389, 401 (1971). The substantial evidence standard does not require an appellate board to reach the same conclusion as the hearing officer. In fact,

the appellate board may disagree with the ruling. The inquiry is not whether the appellate board agrees with the hearing officer, but only whether or not substantial evidence existed to support the hearing officer's decision.

The Hearing Officer in the Remand Hearing determined that the evidence—including Property Owners Fong's and Lee's own sworn testimony at the hearing for L16-0083 and preserved by RAP audio recording—was sufficient to find that Property Owners had committed fraud. T19-0384 Remand Hearing Decision, p. 8. Tenant provided her own sworn testimony, Property Owners' sworn testimony before RAP in the 2017 Exemption Hearing, sworn testimony by witness Noel Munger, and certified copies of the CC&Rs delivered both by Tenant as well as directly from the Alameda County Clerk Recorder's Office. The Tenant has provided evidence well in excess of the substantial evidence standard. The Hearing Officer was convinced that such substantial evidence existed to merit a determination that the Property Owners had committed fraud. Unless this Board determines that the Property Owners' inconsistent and contradictory statements, made under penalty of perjury; the Tenant's and witness's sworn testimony; and the authenticated CC&Rs recorded by and delivered directly from the Alameda County Clerk Recorder's Office do not equate to substantial evidence, this Board must affirm the Hearing Officer's decision.

C. Knowledge of the Existence of the CC&Rs Is Not Required for a Determination of Fraud

Property Owners argue that they were “fully unaware of any preexisting CC&Rs.” Property Owner Appeal (July 2023), p. 5. Property Owners claim that because they were not provided with the CC&Rs by their hired agents (from whom they may be able to seek redress),

their testimony “[was] accurate.” *Id.* Property Owners then claim that because they had “discuss[ed] the CC&Rs during a meeting,” their statements were “truthful and accurate.” *Id.*

Property Owners confuse the issues with regard to the answers that they gave under oath at the hearing for L16-0083. At the 2017 Exemption Hearing, Property Owners were not asked whether or not they had copies of the CC&Rs. Property Owners were not asked whether they had discussed the CC&Rs during a meeting. Instead, Property Owners were asked bluntly whether or not CC&Rs existed. T16-0083 Hearing Recording, 0:24:35 (“Do you have condominium CC&Rs?”). Property Owners answered this straightforward question, with Owner Fong stating that the CC&Rs do not exist, and Owner Lee stating that they were verbal. *Id.* at 0:24:35 – 0:25:31; 0:26:52 – 0:27:20.

Furthermore, the evidence need not show that Property Owners had actual knowledge of the existence of the CC&Rs, only that the Property Owners knew that what they were stating was false or could not be true. Here, it is clear that Property Owners made contradictory claims as to the existence of the CC&Rs. Owner Fong claimed that they did not exist, whereas Owner Lee claimed that they existed but were verbal. Neither of Property Owners’ statements are true, but, while this can be sufficient in and of itself, it bears noting that the Property Owners statements *cannot* both be true. The fact that the Property Owners’ statements are contradictory and inconsistent, and cannot both be accurate, is sufficient for a finding that the Property Owners were making knowingly false claims amounting to committing fraud. The Hearing Officer recognized as such, and issued a decision accordingly. T19-0384 Remand Hearing Decision (May 2023).

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D. Property Owners' Appeal Includes Allegations, Arguments, and Evidence That Lie Beyond the Scope of the Underlying Remand and This Appeal

Matters on appeal are limited in scope. The Rent Adjustment Program Regulations contains an enumerated list of grounds for appeal. *See, e.g.*, Oakland Rent Adjustment Program Regulations; Oakland Municipal Code § 8.22.120. As a general rule, appeals should not conduct evidentiary hearings nor consider the introduction of new evidence. *See id.*

Here, Property Owners include additional arguments regarding reliance on agents' statements, Tenant not initially raising the issue of fraud (that had not yet been discovered) during the Superior Court hearing, and that the Superior Court awarded the exemption. Property Owners also include new evidence that had previously existed but was not made a part of this matter. Not only are these arguments insufficient to negate the fact that Owners committed fraud, but these issues were not part of the limited scope remand hearing. As such, they should not be considered in this appeal.

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III. CONCLUSION

For the reasons set forth herein, the HRRRB should find that the Property Owners have either intentionally, recklessly, or negligently made misrepresentations to the Rent Adjustment Program. Accordingly, the Tenant prays for judgment against the Property Owners as follows:

- A. For this Board to affirm the Hearing Officer's decision in T19-0384;
- B. For a rescission of the Certificate of Exemption for the unit to be recorded; and;
- C. For such other and further relief as the Rent Adjustment Program may deem just and proper.

Dated: July 31, 2023

CENTRO LEGAL DE LA RAZA

By 

Gregory T. Ching
Representative for Petitioner Ana Salvador



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.

I served a copy of: Reply Brief In Support of Tenant Petition
(insert name of document served)
 And Additional Documents

and (write number of attached pages) 14 attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

Name	May Lee Fong and Michael B. Lee
Address	358 Cerro Court
City, State, Zip	Daly City, CA 94015

Name	Rent Adjustment Program
Address	hearingsunit@oaklandca.gov
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

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City, State, Zip	

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Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 7/31/2023(insert date served).

Gregory Ching
PRINT YOUR NAME



SIGNATURE

July 31, 2023
DATE



MEMORANDUM

Date: August 3, 2023

To: Members of the Housing, Rent Residential & Relocation Board (HRRRB)

From: Braz Shabrell and Kent Qian, Deputy City Attorneys

Re: Appeal Recommendation in T23-0019, Barragan et al. v. Mead Holding LLC

Appeal Hearing Date: August 10, 2023

Property Address: 2031 69th Avenue, Unit C, Oakland, CA 94621

Appellant/Owner: Ahmed Said, Mead Holding LLC

Respondent/Tenants: Maria Barragan, Reyes Ornelas

BACKGROUND

On January 23, 2023, tenants Maria Barragan and Reyes Ornelas filed a Tenant Petition contesting the following two rent increases:

- \$1,000 to \$1,300, effective December 2019
- \$1,300 to \$1,500, effective December 2022

The Petition indicated that the tenants had never received a copy of the RAP Notice, either at the beginning of their tenancy or with either increase. The tenants submitted 22 pages of documentation in support of their Petition, including copies of the rent increase notices and proof of rent payment.

On February 1, 2023, owner Ahmed Said of Mead Holding LLC filed a response to the Tenant Petition but did not allege any defenses in the response form. The owner attached a copy of a business license (expired), but did not include any evidence that the owner had paid the RAP service fee. The response also indicated that the owner had never provided the tenants with a copy of the RAP Notice.

On February 28, 2023, RAP staff mailed the owner a Notice of Incomplete Owner Response, indicating that the owner was missing a proof of service, proof of payment of the business license tax, and proof of payment of the RAP fee. The Notice indicated that the owner had 30 days to submit a completed response. No response to the deficiency notice appears in the case file.

RULING ON THE CASE

On April 5, 2023, hearing officer Élan Consuella Lambert issued an Administrative Decision, granting the Tenant Petition without a hearing. The rent increases were found to be invalid because the tenants never received the required RAP Notice, and because the second increase in 2022 was above CPI and did not include the notice language required by the Oakland rent increase moratorium.

GROUND S FOR APPEAL

On April 18, 2023, the owner filed an appeal of the Administrative Decision on the grounds that the owner was denied a sufficient opportunity to respond to the tenants' claim. Among other things, the owner alleged that the increase from \$1,000 to \$1,300 was not an increase, but rather the tenants' initial rent was \$1,300 and was discounted to \$1,000 in exchange for the tenants taking out the garbage and cleaning around the property. The owner also alleged increased housing service costs and other claims irrelevant to the case.

ISSUES

1. Was it proper to issue an administrative decision granting the Tenant Petition?

APPLICABLE LAW AND PAST BOARD DECISIONS

I. Administrative Decisions

An administrative decision may be issued when petition or response forms have not been properly completed, were untimely, or filing prerequisites have not been met; where the petition and response forms raise no genuine dispute as to any material facts and the petition may be decided as a matter of law; or where the property was previously issued a certificate of exemption and is not challenged by the tenant. OMC 8.22.110F.

II. Owner Filing Requirements

In order to file a response to a tenant petition or file a petition seeking a rent increase, an owner must submit the following: evidence of possession of a current business license, evidence of payment of the RAP fee, evidence of service of the RAP

notice on covered units, a completed response form, documentation supporting the owner's claim of exemption or justification for the rent increase, and proof of service of the response on the tenant. OMC 8.22.090B.

III. Service of RAP Notice

Owners are required to serve tenants with a copy of the RAP Notice at the beginning of the tenancy and together with any rent increase. Failure to do so renders a rent increase invalid. O.M.C. 8.22.060, 8.22.070H, 8.22.090A(1)(c)-(d).

IV. Rent Increase Moratorium

Oakland's rent increase moratorium, which was in effect as of December 2022, limits rent increases to CPI and requires certain language to be included in rent increase notices.

RECOMMENDED OUTCOME

The office of the City Attorney recommends that the Hearing Officer's decision finding the rent increases invalid be upheld. The owner's response was incomplete and remained incomplete after the owner was provided with notice and 30 days to submit the required documentation. Both the Tenant Petition and the owner response indicate that the tenants were not provided with a RAP Notice. Therefore, failure to provide a RAP Notice is undisputed. Additionally, the December 2022 increase from \$1,300 to \$1,500 exceeds the allowable CPI and does not comply with Oakland's rent increase moratorium.

The owner's claims of capital improvements and increased housing service costs are misguided. Owners are required to file petitions seeking approval from RAP in order to impose increases based on capital improvements and/or increased service costs. The other claims raised on appeal are irrelevant to the issue of whether the challenged rent increases were valid, and the appeal does not provide any explanation or justification (i.e. good cause) as to why the owner's response was incomplete.



MEMORANDUM

Date: August 3, 2023
To: Members of the Housing, Rent Residential & Relocation Board (HRRRB)
From: Braz Shabrell and Kent Qian, Deputy City Attorneys
Re: Appeal Recommendation in T19-0384
Appeal Hearing Date: August 10, 2023

Property Address: 1354 81st Avenue, Unit A, Oakland CA
Appellant/Owner: May Fong and Michael Lee
Respondent/Tenant: Ana Jeronimo Salvador

BACKGROUND

The tenant filed a petition contesting a certificate of exemption previously granted to the owner in L16-0083. The tenant argues that the exemption was issued on the basis of fraud and/or mistake. The petition also alleges unlawful rent increases and decreased housing services.

RULING ON THE CASE

The Hearing Officer denied the petition in an administrative decision. The decision ruled that because the tenant was a party to the previous exemption case, L16-0083, the tenant may not relitigate the exemption issue in the instant petition.

The tenant filed an appeal, and the case came before the Board in December 2021. The Board voted to remand the case back to the Hearing Officer for a hearing on the claim of fraud. A hearing took place in January and March of 2023.

The Hearing Officer found that the exemption was based on fraud and/or mistake, and the unit is not exempt, because the condominium parcel where the tenant resides is separated into two different units. The property owner's description and representation of the property is different from the description and map recorded with

the County clerk (referred to as “CC&Rs”- Conditions, Covenants, and Restrictions). At the exemption hearing in 2016, the owners testified that the CC&Rs did not exist or were only verbal, which is false. The CC&Rs are not an accurate reflection of the number and location of the actual units at the property. The owner’s testimony that the CC&Rs did not exist reflected an intent to defraud, without which the exemption would not have been granted.

GROUND FOR APPEAL

The owner filed a timely appeal. The owner claims that the Superior Court order from June 7, 2019 prohibits relitigation of the case, and there is no evidence of fraud.

ISSUES

1. Is the finding that the certificate of exemption was issued based on fraud supported by substantial evidence?

APPLICABLE LAW AND PAST BOARD DECISIONS

Exemption based on Costa-Hawkins

OMC 8.22.030A7 exempts from the Rent Adjustment Program “[d]welling units exempt pursuant to Costa-Hawkins (California Civil Code § 1954.52).” Civil Code § 1954.52 exempts dwellings or units that are “alienable separate from the title to any other dwelling unit.” Generally speaking, this applies to condominiums and single-family homes.

Certificate of Exemption

OMC 8.22.030B allows owners to petition RAP for a certificate of exemption. “A certificate of exemption is a determination by the Rent Adjustment Program that a dwelling unit or units qualify for an exemption and, therefore, are not covered units. For units exempt as new construction, or by state law, an owner may obtain a certificate of exemption by claiming and proving an exemption in response to a tenant petition or by petitioning the Rent Adjustment Program for such exemption. ... A certificate of exemption may be granted only for dwelling units that are permanently exempt from the Rent Adjustment Ordinance as new construction, substantial rehabilitation, or by state law (Costa Hawkins).”

Contesting a Previously Granted Exemption

“A certificate of exemption is a final determination of exemption absent fraud or mistake.” OMC 8.22.030B1b. “Timely submission of a certificate of exemption previously granted in response to a petition shall result in dismissal of the petition absent proof of fraud or mistake regarding the granting of the certificate.” OMC

8.22.030B1c. OMC 8.22.090A1k allows tenants to file petitions contesting exemptions based on fraud or mistake.

RECOMMENDED OUTCOME

The office of the City Attorney recommends that the Hearing Officer's decision be upheld and the appeal denied.

First, the Court Order from June 7, 2019 (issued in the prior exemption case) does not prohibit the tenant from now contesting the certificate of exemption based on fraud or mistake. The Court Order in the prior case addressed interpretation of "sold separately" for the purposes of the Costa-Hawkins condo exemption. The Court rejected the argument that condominiums must be sold at separate times to separate owners in order to satisfy the "sold separately" requirement of the Costa-Hawkins exemption. The issue of "sold separately" has nothing to do with the present case, which concerns allegations of fraud. The Court's Order did not make a finding that the property is exempt; rather, it ruled on a legal question interpreting the Costa-Hawkins statute (Civil Code § 1954.52). The legal question addressed by the Court in the prior case is not relevant to the issue of fraud and fraudulent misrepresentation. Furthermore, the owner's contention that RAP lacks jurisdiction was already addressed and rejected by the Board at the prior appeal hearing in December 2021.

The finding of fraudulent misrepresentation is supported by the tenants' documentary evidence and testimony. The Hearing Officer reviewed the prior hearing recording, which contained misrepresentations about the layout of the property, in conflict with property documents recorded with the County clerk. According to the findings, the tenant's unit is not its own condo, but rather is one of two separate units contained within a single condominium.

The Hearing Officer's finding of fraud is supported by evidence, and the owner's claim regarding lack of jurisdiction/claim preclusion is misguided. Therefore, it is recommended that the appeal be denied.