

SET-ASIDE LETTER
[§11018.5(a)(2)]

RE 629 (Rev. 1/97)

TO — “ESCROW HOLDER”

NAME OF ESCROW-HOLDER

ADDRESS, CITY, STATE, ZIP CODE

ON BEHALF OF — “ASSOCIATION”

NAME OF OWNERS ASSOCIATION

ADDRESS, CITY, STATE, ZIP CODE

SUBDIVISION — “SUBDIVISION”

NAME OF SUBDIVISION

COUNTY

TYPE OF SUBDIVISION

BRE FILE NUMBER

BORROWERS — “SUBDIVIDER”

NAME OF SUBDIVIDER

ADDRESS, CITY, STATE, ZIP CODE

For value received, we hereby agree that the amount of _____ Dollars (\$ _____) (“Funds”) is irrevocably committed and set aside by us in a separate account (No. _____), under our control, to secure the timely completion of certain common area improvements listed on the Planned Construction Statement attached to this set-aside letter as Exhibit “A” (“Improvements”) free of all liens and claims. We acknowledge that the Subdivider has granted the Association a security interest in the Funds to secure the Subdivider’s obligations to the Association to complete the Improvements, as is more specifically set forth in Part One of the “Common Area Completion Security Agreement and Instructions to Escrow Depository” attached hereto as Exhibit “B.” Issuer further acknowledges and agrees that the Funds cannot be used or offset to satisfy the Subdivider’s obligations to the Issuer, if any. This set aside letter is issued for the purpose of compliance by the Subdivider with the provisions of Business and Professions Code §11018.5(a)(2).

We assume no obligation and give no assurance with respect to: (i) proper completion of the Improvements, including without limitation, workmanship and timeliness; or (ii) the amount set aside as being sufficient to complete the Improvements.

The Funds shall be disbursed to the Subdivider, or to the order of the Subdivider, in progress payments when the improvement work has reached stages of completion specified in the Construction Disbursement Schedule attached hereto and marked Exhibit “C”. However, no progress payment shall be so disbursed to the Subdivider or to the order of the Subdivider until the Subdivider has provided us with:

- (i) executed lien releases substantially in the form set forth in Civil Code §3262(d)(2) covering all previous progress payments for labor and materials performed or used in the construction of the Improvements, or title insurance, in an amount not less than the cost of the completed Improvements, insuring us and the Association that the Improvements are free of all liens and claims to the date of the requested disbursement; and
- (ii) a certificate executed by the Subdivider stating that the executed lien releases accompanying the certificate cover all previous progress payments for labor or materials actually performed or used in the construction of the Improvements.

Ten percent (10%) or more of each progress payment or ten percent (10%) or more of the Funds (“retention”) shall be retained by us. No portion of the retention shall be disbursed to the Subdivider or to the order of the Subdivider unless and until this set-aside letter is released and exonerated or we receive a certificate executed by the Subdivider stating that all of the Improvements have been completed, free of all liens and claims, and (i) the statutory period for recording mechanics lien claims for the Improvements has expired, or (ii) the Association has been provided with a policy of title insurance, in an amount not less than the cost of the completed Improvements, insuring that the Improvements as completed are free of

liens and claims.

This set-aside letter, shall be delivered to the Escrow Holder for the benefit of the Association.

This set-aside letter shall not be released or exonerated unless and until the first of the following has occurred: (i) the Association has issued a certified copy of a resolution by the governing body of the Association stating that this set-aside letter is released and exonerated; (ii) the Limitation Period, as defined below, has expired without any suit or action having been filed; (iii) a judgment of liability on this set-aside letter that exhausts the amount of the Funds is satisfied; or (iv) entry of a final judgment or order by a court of competent jurisdiction determining that this set-aside letter is released and exonerated.

We shall pay to Escrow Holder an amount up to but not in excess of the funds then available for disbursement pursuant to this letter, if Escrow Holder makes a request for such funds accompanied by a statement, purportedly signed by one of the officers of the Escrow Holder, as follows:

“I certify that I am an officer of the Escrow Holder and that remittance to the Escrow Holder in the amount of \$ _____ is hereby requested on the Set Aside Letter issued _____, _____ by _____ (Issuer). This request is made in compliance with escrow instructions to Escrow Holder heretofore duly executed and delivered to Escrow Holder Escrow, pursuant to the provisions of Business and Professions Code Section 11018.5(a)(2) by Subdivider _____ and Association _____.”

In case of a judgment or an arbitration award issued in an action or proceeding conducted between Subdivider and the Association, which directs that the Association shall be paid all or some of the Funds, then, upon receipt by us of a certified copy of the judgment or award, that portion of the Funds specified in the judgment or the award, to the extent the funds have not previously been disbursed pursuant to this set-aside letter, shall be paid to the Association or to its order for the purpose of satisfying the judgment or award.

We shall be fully protected in making payments: (a) in reliance upon certificates of work completion from the Subdivider or from contractors engaged by Subdivider, (b) in reliance upon requests therefor from the Escrow Holder, or (c) in reliance upon a judgment or an arbitration award, and we are not responsible for the proper use of the Funds so disbursed.

In no case will the Escrow Holder or the Association be obligated to repay to us Funds disbursed to the Escrow Holder or the Association pursuant to the provisions of this set-aside letter.

This set-aside letter and the rights and duties of the parties shall be binding upon and shall inure to the benefit of the successors in interest, assigns, and personal representatives of the respective parties.

A suit or action on this set-aside letter must be filed within two (2) years after the latest completion date specified in the Planned Construction Statement, or an extension thereof given in writing by the Association to the Subdivider and assented to in writing by us (“Limitation Period”).

Our obligations under this set-aside letter are unconditional and shall not be abrogated or otherwise affected by the bankruptcy of the Subdivider, by any stop notice (except a bonded stop notice), tax assessment or levy, attachment, execution or other legal process against Subdivider nor by the breach by Subdivider of any obligations to us.

Dated: _____

Issuer's Name

By

Name of Person Signing

Title of Person Signing

Address

City, State, & Zip Code