DISCLOSURES REGARDING "SUBJECT TO" AND "AITD" TRANSACTIONS

This is a form created by the San Diego Association of REALTORS® and as such is not covered by the C.A.R. User Protection Agreement. This form is intended for use primarily in the San Diego County area.

Property Address: ____

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Buyer: ____

Seller: ____

A "Subject To" transaction is one in which the buyer purchases the property and the existing mortgage is not paid off at the time of closing. The lender does not consent to the transaction, the buyer does not assume the existing loan(s) and the seller remains as the borrower on the existing loan(s). The property, however, remains encumbered by the lender's trust deed and hence, the buyer is said to be taking title to the property "subject to" the existing trust deed. The buyer must make the payments, either directly or indirectly, on the existing loan(s) or risk foreclosure of the property. Buyers sometimes take title "subject to" more than one existing trust deed.

An "AITD" (All Inclusive Trust Deed) transaction is a "Subject To" transaction in which the seller also carries back from the buyer a promissory note as part of the purchase price secured by a junior trust deed on the property. The amount of the buyer's promissory note is equal to the amount that remains due on any senior trust deeds and any portion of the purchase price that is financed by the seller. The seller's trust deed, therefore, "includes all" the senior trust deeds within it; it is said to "wrap around" any senior trust deed(s). Generally, the buyer makes payments to the seller (or collection account) in an amount sufficient to pay any senior loan(s) and the seller. The seller (or the collection account) is then required to make payments on any senior loan(s) with the balance going to the seller on the junior loan.

BUYER AND SELLER ACKNOWLEDGE THAT THEY ARE ENTERING INTO A "SUBJECT TO" OR "AITD" TRANSACTION THAT PRESENTS A SUBSTANTIAL RISK TO BOTH BUYER AND SELLER. BUYER AND SELLER SHOULD EACH CONSULT WITH AN ATTORNEY OF THEIR CHOOSING BEFORE PROCEEDING WITH THIS TRANSACTION. THE RISKS INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

(1) THE SENIOR LOAN(S) LIKELY CONTAINS A "DUE-ON-SALE" CLAUSE which would allow the lender to call the entire senior loan(s) due and payable upon an unapproved sale of the property. Buyer then risks having to pay off the entire senior loan(s) or face foreclosure with a possible loss of the down payment and any equity Buyer may have obtained through payments on the underlying loans. Buyer and Seller are cautioned to determine through their lawyers what liability, if any, in addition to acceleration of the loan(s), either may have to the lender for failing to disclose a transfer of the property.

(2) IF THE SENIOR LENDER(S) HAS NOT BEEN ASKED FOR A BENEFICIARY'S STATEMENT setting forth actual amounts owing, there is a risk to Buyer that more money may be owed to the lender(s) than may be apparent from existing documentation.

(continued)

THIS DOCUMENT IS FOR USE IN SIMPLE TRANSACTIONS AND NO REPRESENTATION OR WARRANTY IS MADE TO THE VALIDITY OR ADEQUACY OF ANY OF ITS PROVISIONS IN ANY TRANSACTION.

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Reviewed by Broker or Designee: ______________
Date: ______________

Property Address: ____

(3) SELLER'S AND BUYER'S CREDIT RATING MAY BE AFFECTED by the late payment or default of Buyer or subsequent Buyers because any senior loan(s) remains in the name of Seller and the information the lender provides to the credit reporting agencies will be under Seller's name.

(4) SELLER MAY BE REQUIRED TO PAY THE SENIOR LOAN(S) in the event of either a default by Buyer or the exercise of a due-on-sale right by the lender, in order to protect Seller's interest in a trust deed or "AITD" on the property. A foreclosure by the senior trust deed holder would eliminate Seller's trust deed and leave Seller with no recourse against either Buyer or the property. Seller's risks of monetary loss are increased on a low-down-payment or no-down-payment sale.

(5) SELLER MAY BE EXPOSED TO PERSONAL LIABILITY if an underlying lender exercises its due-on-sale clause, and Buyer is unable to pay off the lender. Seller's security in the property could be extinguished, leaving Seller with an unsecured loan(s) which may be prohibited by law or difficult to collect. If an underlying loan(s) was not made to purchase the property or if the property is not owner-occupied one-to-four residential units, the lender may elect a judicial foreclosure rather than a trustee's sale. Under such a judicial foreclosure, if the property does not net enough money to pay off the lender(s), the lender(s) may be able to sue Seller for any deficiency between the loan(s) balance, plus costs and the "fair value" of the property. Also, government-insured purchase money loans such as VA and FHA may be subject to a deficiency judgment.

(6) SELLER WILL NOT HAVE THE RIGHT TO EARLY NOTICE OF DEFAULT under Civil Code Section 2924(e) from the lender if Seller fails to request such notice from the lender in accordance with that code section.

(7) THE SENIOR LENDER WILL DISCOVER THE TRANSFER by a review of the public records, notification from insurance companies, changes in the method of payment, and other such facts. A "Subject To" or "AITD" transaction does not prevent a lender from discovering a transfer.

BUYER AND SELLER ACKNOWLEDGE THAT THEY HAVE:

(i) READ AND UNDERSTAND THE ABOVE.
(ii) BEEN ADVISED AND HAD THE OPPORTUNITY TO SEEK LEGAL COUNSEL.
(iii) BEEN ADVISED THEIR REAL ESTATE AGENTS RECOMMEND AGAINST THIS MANNER OF FINANCING.
(iv) FREELY CHOSEN THIS MANNER OF FINANCING.
(v) RECEIVED SELLER'S FINANCING DISCLOSURE FORM IF APPLICABLE, WITH SUPPORTING DOCUMENTATION.

FOR SERVICES RENDERED AND FURTHER SERVICES TO BE RENDERED BY THE AGENTS, BUYER AND SELLER RELEASE THE AGENTS FROM ANY LIABILITY RESULTING FROM OR RELATED TO THIS FORM OF FINANCING, WHETHER OR NOT DESCRIBED ABOVE.

Buyer	Date	Seller	Date
Buyer	Date	Seller	Date

OFFICE USE ONLY

Reviewed by Broker or Designee: ____________________

Date: ____________________