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950 LOMBARD LLC

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**CGC-24-616350**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN FRANCISCO**

11 950 LOMBARD LLC, a California limited  
liability company,  
12  
13 Plaintiff,  
14  
15 v.  
16 EIGHT FORTY ONE, LLC, a California  
limited liability company; IMPACT  
BUILDERS, LLC, a California limited  
17 liability company; A.C.C.P., INC. dba  
AQUASCAPE, a California corporation;  
TROON PACIFIC, INC., a California  
18 corporation; GREGORY R. MALIN, an  
individual; THOMPSON SUSKIND, LLC, a  
California limited liability company; and  
19 DOES 1-50,  
20  
21 Defendants.

Case No.  
**950 LOMBARD LLC'S COMPLAINT  
FOR:**  
**(1) BREACH OF CONTRACT**  
**(2) BREACH OF IMPLIED COVENANT  
OF GOOD FAITH AND FAIR DEALING**  
**(3) BREACH OF IMPLIED WARRANTY**  
**(4) BREACH OF IMPLIED COVENANT  
TO PERFORM WORK IN A  
GOOD/COMPETENT MANNER**  
**(5) NEGLIGENCE**  
**(6) FRAUDULENT INDUCEMENT**  
**(7) NEGLIGENT MISREPRESENTATION**  
**(8) UNFAIR COMPETITION**

25 Plaintiff 950 LOMBARD LLC (hereinafter "OWNER") alleges, claims and demands  
26 against Defendants EIGHT FORTY ONE, LLC; IMPACT BUILDERS, LLC; A.C.C.P., INC.  
27 dba AQUASCAPE; TROON PACIFIC, INC.; GREGORY R. MALIN; THOMPSON  
28 SUSKIND, LLC; as follows:

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**I. GENERAL ALLEGATIONS**

1. Starting in or about March 2020 and through to the present, OWNER was, and now is, a limited liability company organized and existing by virtue of the laws of the State of California authorized to do business in the County of San Francisco, State of California.

2. OWNER is informed and believes that Eight Forty One LLC ("EIGHT FORTY ONE") was a limited liability company organized under the laws of the State of California and doing business in the County of San Francisco. OWNER is informed and believes that the Manager and/or Member of EIGHT FORTY ONE is Defendant of Troon Pacific, Inc., and the Chief Executive Officer of EIGHT FORTY ONE is Defendant Gregory R. Malin. OWNER is further informed and believes that EIGHT FORTY ONE was dissolved by vote of the members of the LLC on or about October 6, 2022 but continues its legal existence for purposes of winding up and is a proper defendant to the present lawsuit.

3. OWNER is informed and believes and thereon alleges that Troon Pacific, Inc. ("TROON") is a corporation under the laws of the State of California with a principal place of business of 2443 Fillmore St., Suite 538, San Francisco, CA 94115. OWNER is informed and believes and thereon alleges that Defendant Gregory R. Malin is CEO, CFO, and Secretary of TROON. As set forth in paragraph 10-15 below, OWNER is further informed and believes and thereon alleges that TROON was an alter ego of EIGHT FORTY ONE.

4. OWNER is informed and believes and thereon alleges that Gregory R. Malin ("MALIN") is a resident of the State of California. As set forth in paragraphs 10-15 below, OWNER is further informed and believes and thereon alleges that MALIN was an alter ego of EIGHT FORTY ONE.

5. OWNER is informed and believes and thereon alleges that Impact Builders, LLC ("IMPACT BUILDERS") is a limited liability company under the laws of the State of California with a principal place of business of One Post Street, Suite 2210, San Francisco, CA 94104. At all relevant times asserted herein, IMPACT BUILDERS was jointly owned by Troon Residential, another MALIN controlled entity, and Thompson Suskind, LP.

1 Plaintiff is informed and believes that IMPACT BUILDERS was formed to provide  
2 construction services for TROON.

3 6. OWNER is informed and believes and thereon alleges that Thompson  
4 Suskind, LLC ("THOMPSON SUSKIND") is a limited liability company under the laws of  
5 the State of Delaware with a principal place of business at 2034 Union St., San Francisco,  
6 CA 94123.

7 7. OWNER is informed and believes and thereon alleges that A.C.C.P. Inc. dba  
8 Aquascape ("AQUASCAPE") organized under the laws of the State of California with its  
9 principal address at 710 Riesling Ct., Petaluma, CA 94954 and doing business in the  
10 County of San Francisco.

11 8. The true names and capacities, whether individual, corporate, associate, or  
12 otherwise, and liability of defendants named DOES 1 through 50, are unknown to OWNER,  
13 which therefore sues these defendants by their fictitious names. OWNER will seek leave  
14 to amend this complaint to show their true names and capacities when they have been  
15 ascertained. OWNER, is informed and believes, and thereon alleges, that at all times  
16 mentioned herein, DOES 1 through 50, and each of them, are in some way legally  
17 responsible to OWNER for each of the acts alleged in this complaint and proximately  
18 caused OWNER's damages, or claim some right, title, or interest in the herein after  
19 described project and/or property.

20 9. OWNER is informed and believes that at all times relevant herein, all  
21 Defendants and certain DOES 1-50, were, and are, the agents, employees, and partners  
22 of each other, and were, in performing the acts complained of herein, acting within the  
23 scope of such agency, employment, or partnership activity, and ratified each other's  
24 conduct.

25 **II. ALTER EGO ALLEGATIONS**

26 10. At all times relevant hereto, Defendants MALIN and TROON, as the owners  
27 and/or operators of EIGHT FORTY ONE, were the alter egos of EIGHT FORTY ONE,  
28 and there exists, and at all times herein mentioned has existed, a unity of interest and

1 ownership between, on the one hand, EIGHT FORTY ONE and, on the other hand,  
2 Defendants TROON and MALIN. Collectively, the three are referred to as  
3 "DEVELOPER."

4 11. OWNER alleges that, as alter egos of EIGHT FORTY ONE, Defendants  
5 MALIN and TROON, are directly liable to Plaintiff, despite the corporate status of EIGHT  
6 FORTY ONE. On information and belief, the circumstances by which such alter ego  
7 liability should be imposed include, but are not limited to, the following: (1) the absence of  
8 adequate assets and/or undercapitalization of EIGHT FORTY ONE, which was  
9 apparently decapitalized sometime in July 2021 and was dissolved in or around October  
10 6, 2022;<sup>1</sup> (2) the disregard of legal formalities and a failure to maintain arm's length  
11 relationships between EIGHT FORTY ONE and MALIN and TROON, including but not  
12 limited to the fact that MALIN was the sole shareholder of TROON which was the sole  
13 owner/manager of EIGHT FORTY ONE; (3) the diversion of assets from EIGHT FORTY  
14 ONE by MALIN and/or TROON to the detriment of Plaintiff and other third party creditors;  
15 (4) the commingling of funds and assets of EIGHT FORTY ONE and/or the manipulation  
16 of assets and liabilities of EIGHT FORTY ONE for the benefit of an individual officer or  
17 director of EIGHT FORTY ONE to the detriment of OWNER and other third party  
18 creditors, including but not limited to MALIN's management of the assets of EIGHT  
19 FORTY ONE and TROON as if they were his personal assets, MALIN's concern only with  
20 the overall value of TROON and not any of its subsidiary companies like EIGHT FORTY  
21 ONE, and MALIN's transfer of funds out of EIGHT FORTY ONE whenever MALIN

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23 \_\_\_\_\_  
24 <sup>1</sup> Another plaintiff-creditor already successfully moved (in a motion filed March 28, 2023)  
25 to establish alter ego liability for these same entities, TROON, MALIN, and EIGHT  
26 FORTY ONE. See *Donnette Clarens v. Eight Forty One, LLC* (San Francisco County  
27 Superior Court Case No. CPF-21-517566). The successful motion arose out of an action  
28 relating to a promissory note executed in EIGHT FORTY ONE's favor, which EIGHT  
FORTY ONE failed to repay. The plaintiff-creditor won at arbitration and moved to  
confirm the award, and later to amend the judgment to name TROON and MALIN as alter  
egos. In a tentative ruling, the Court affirmed alter ego liability but the case appears to  
have been settled prior to issuance of a minute order.

1 desired and in accordance with TROON and/or MALIN's interests; (5) the use of EIGHT  
2 FORTY ONE as a mere shell for MALIN and TROON's other business interests to the  
3 detriment of OWNER and other third party creditors; and (6) reaching an agreement with  
4 OWNER with the intent that the company could later serve as a shield against personal  
5 liability to avoid paying OWNER monies owed, all to the benefit of TROON and/or  
6 MALIN.

7         12. OWNER alleges that maintaining the separate existence of, on the one  
8 hand, Defendants MALIN and TROON, and, on the other hand, EIGHT FORTY ONE,  
9 would sanction a fraud and/or promote an injustice under the circumstances described in  
10 this Complaint. This is particularly true given EIGHT FORTY ONE has been dissolved as  
11 a company and likely has no assets with which to pay a judgment in this matter. To avoid  
12 an inequitable result, OWNER alleges that Defendants MALIN and TROON must be held  
13 responsible for the acts of EIGHT FORTY ONE and vice versa.

14         13. At all times relevant hereto, Defendants EIGHT FORTY ONE, MALIN and  
15 TROON, and each of them, were acting as the agents, employees, and/or  
16 representatives of each other, and were acting within the course and scope of their  
17 agency and employment with the full knowledge, consent, permission, authorization, and  
18 ratification, either express or implied, of each of the other Defendants in performing the  
19 acts alleged in this Complaint.

20         14. As members of the conspiracies alleged more fully below, each of the  
21 Defendants participated and acted with or in furtherance of said conspiracy, or aided or  
22 assisted in carrying out the purposes of the conspiracy, and have performed acts and  
23 made statements in furtherance of the conspiracy and other violations of California law.

24         15. Each Defendant acted both individually and in alignment with the other  
25 Defendants with full knowledge of their respective wrongful conduct. As such, Defendants  
26 conspired together, building upon each other's wrongdoing, in order to accomplish the  
27 acts outlined in this Complaint.

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1 **III. VENUE**

2 16. The actions, damages and losses that give rise to this Complaint were  
3 committed or occurred in San Francisco, California, in the County of San Francisco.  
4 Venue is therefore proper in this Court.

5 **IV. FACTUAL BACKGROUND**

6 17. This dispute arises out of the development of a luxury residential property  
7 located at 950 Lombard Street, San Francisco, CA 94133 (the "Property"), one of five  
8 luxury residential properties sought to be developed by TROON and MALIN in San  
9 Francisco from approximately 2012 to 2020. DEVELOPER employed THOMPSON  
10 SUSKIND and later IMPACT BUILDERS as the general contractor in the development of  
11 the Property (the "Project"). The Project entailed a significant renovation of a historical  
12 residence and cottage originally built around 1908 and designed by renowned architect  
13 Willis Polk of D.H. Burnham & Co. Included in the renovation was the installation of a  
14 cantilevered infinity pool. AQUASCAPE was retained by THOMPSON SUSKIND as a  
15 subcontractor to design and construct the cantilevered infinity pool on the Property.

16 18. TROON and MALIN's development scheme, which appears to have been  
17 successful in completing construction of only three of the five properties, has already  
18 been the subject of extensive litigation and recently resulted in a \$50,000,000 arbitration  
19 award against TROON and MALIN for fraudulent behavior occurring during the course of  
20 construction of TROON's projects. See *Nigel Chanter, et al. v. Gregory Malin et al.*,  
21 JAMS ARBITRATION NO. 5100000170 (the "Award").<sup>2</sup> The successful claimants alleged  
22 that TROON and its affiliated companies, with MALIN at the helm, embezzled and/or  
23 otherwise misappropriated \$30 million in investor money through exorbitant and self-  
24 serving management fees. One consequence of this illicit practice was it financially

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26 <sup>2</sup> The Award is available as part of the public record, attached to the claimants' Petition to  
27 Confirm Arbitration Award, filed May 1, 2024 in *Nigel Chanter, et al. v. Gregory Malin, et*  
28 *al.*, San Francisco Superior Court Case No. CPF-24-518544. The Award was confirmed  
by the Court on July 5, 2024 over MALIN's objection.

1 starved the projects under development by TROON, resulting in cost-saving decisions  
2 and substandard work.

3         19. The Award in the fraud action is replete with examples of DEVELOPER's  
4 abject indifference toward and/or incompetence with respect to the construction of  
5 DEVELOPER's properties. Examples include that: prior to 2013, TROON had never  
6 developed a single project as extensive as the Property (Award, pg. 31); TROON lacked  
7 an operating budget despite running two separate funds with over \$35M in capital  
8 (Award, pg. 30); TROON's construction budget was stretched thin across 5 or more  
9 projects, and TROON did not have the resources to develop five projects simultaneously  
10 (Award, pgs. 30-31); and DEVELOPER's failure to oversee IMPACT BUILDERS in  
11 contravention of its oversight responsibilities as a developer (Award, pg. 36). As to the  
12 950 Lombard Project in particular, the construction project suffered from significant  
13 underfunding and/or other crises affecting the progress or quality of the work. The Award  
14 cited a report from Allison Janes, former Director of Design and Sustainability at TROON,  
15 that "Lombard was continuing to have emergencies" as of March 2018 as the Project was  
16 coming to a close. (Award, pg. 32 [summarizing report through the quoted text].) There  
17 were also intra-company loans from MALIN/TROON-controlled entities to EIGHT FORTY  
18 ONE, between November 2016 and January 2020, presumably to cover unanticipated  
19 emergencies on the Property.

20         20. OWNER is further informed and believes and thereon alleges that  
21 DEVELOPER skimmed on competent or qualified construction managers, designers, and  
22 contractors for the development of the Property. For example, DEVELOPER hired a first-  
23 time construction manager, Jason Sayner, to run all of the construction projects for  
24 roughly three years despite his consistent poor performance. OWNER anticipates that  
25 discovery in this litigation will uncover similar incompetence by others employed by  
26 DEVELOPER to oversee subcontractors as well as among subcontractors themselves.  
27 Furthermore, on information and belief, DEVELOPER failed to timely pay subcontractors  
28 who retaliated against the Property through a campaign of sabotage, which included

1 filling drainage and sewer pipes with contractor bags and debris. It appears  
2 DEVELOPER saw the looming threat of investor lawsuits on the horizon and rushed the  
3 projects to market to cover its mounting losses.

4         21. In or about March of 2020, OWNER—without any prior knowledge of the  
5 rancor, poor supervision, shoddy workmanship, corner-cutting, and financial  
6 embezzlement that had characterized the development and construction of the  
7 Property—entered into negotiations to purchase what it believed to be a beautiful, luxury  
8 home in San Francisco. When first put on the market, it was reported to be the most  
9 expensive home listing in San Francisco history, and it seemed obvious why. The  
10 Property boasted stunning views of the downtown and myriad luxury features, including  
11 floor to ceiling glass doors in the family room opening onto a patio; an interior elevator; a  
12 private garden that one newspaper called the Property's own "park-in-the-city,"<sup>3</sup> featuring  
13 100-year-old olive trees; a 12,500 gallon rain and site-water cistern system to clean and  
14 reuse water for landscape irrigation; and a historic cottage.

15         22. A crowning achievement of the home was an infinity-edge pool,  
16 cantilevered over the hillside, with sweeping views from downtown San Francisco to  
17 Alcatraz. One-hundred-eighty degree views of this pool, which in a promotional video  
18 MALIN offered as one of his favorite features of the home,<sup>4</sup> are featured below:

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26 <sup>3</sup> Felicia Feaster, "Take a Tour of a Glamorous, High-End San Francisco Estate,"  
27 <https://www.hgtv.com/design/decorating/design-101/luxury-meets-sustainability-in-this-san-francisco-dream-home-pictures> (September 11, 2019).

28 <sup>4</sup> <https://www.youtube.com/watch?v=hGkVxlyKnEA>., at 3:10.



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22           23.     According to its marketing and promotional materials, TROON's entire  
23 brand was founded on mastering the details, on ensuring that even for the elements of  
24 the work that the homeowner could not see—in fact, *especially* what the homeowner  
25 could not see—exceeded expectations. As MALIN articulated at a sales event at the  
26 Property in October 2019, just months before OWNER purchased the home: "Probably  
27 25% of our investment goes into things *that people never see[] or knows exist[]*.... Kind  
28 of what we are about is always doing the best job possible and doing it in a way that is

1 responsible for the planet, that's responsible for people that live in our homes...."<sup>5</sup>

2 24. In his marketing of the Property, MALIN made every effort to convey that  
3 the Property was of the highest quality. MALIN gave an interview for a May 24, 2019  
4 article, "Designing Bay Area's most ambitious properties,"<sup>6</sup> by Jordan Guinn:

5 Q [INTERVIEWER]: What's something you're committed to as a developer?

6 A [MALIN]: One thing we don't do is create false history for a home. We won't add  
7 finishes or details simply for the sake of adding them. I'm committed to quality,  
8 efficiency, beauty and going that extra mile. For example, we'll wrap plumbing  
9 pipes with clay for acoustic reasons. No one can see it because it's hidden behind  
10 the walls and you'd never know it was there, but it's little touches like that which  
11 separate us from other developers. When I first started, developers had a poor  
12 name because they cut every corner. I thought, "What if we did the opposite?  
13 What if a developer knew where to invest?"

11 And when later asked by the interviewer what projects or accomplishments he was most  
12 proud of, MALIN responded by specifically highlighting the Lombard Property.

13 25. In another article from March 2019, MALIN is quoted as follows, extolling  
14 the quality and luxury of the Property:

15 A home like Residence 950 is an impossible find in San Francisco, a virtual oasis  
16 in the heart of the city," said Troon Pacific CEO Gregory Malin, a luxury home  
17 creator for nearly 20 years. "**We designed 950 Lombard as though it were our  
18 own dream home.** It was essential for us to provide a home that is truly unique,  
19 has the most sought-after amenities and materials, and remains understated from  
20 the street and then reveals a rare level of amenity and openness. **To maintain  
21 Troon's signature level of quality, we truly applied our mission and core  
22 values to this project of design, responsibility and creativity.** Responsibility  
23 includes both environmental sustainability for the planet, as well as thoughtful  
24 wellness amenities for the human soul. Our mission of creativity allows for flexible,  
25 future-proof layout so that new owners could make it their dream home and adapt  
26 it to their preferences and lifestyle.<sup>7</sup>

23 <sup>5</sup> <https://www.youtube.com/watch?v=be5T39ei770> at 12:23, posted on October 16, 2019.

24 <sup>6</sup> [https://www.sfgate.com/news/article/Designing-Bay-Area-s-most-ambitious-properties-  
25 13894424.php](https://www.sfgate.com/news/article/Designing-Bay-Area-s-most-ambitious-properties-13894424.php).

26 <sup>7</sup> "The Most Expensive Home in San Francisco," The Extravagant,  
27 [https://www.theextravagant.com/lifestyle/real-estate/expensive-home-  
28 francisco/#:~:text=%E2%80%9CA%20home%20like%20Residence%20950,were%20our  
%20own%20dream%20home](https://www.theextravagant.com/lifestyle/real-estate/expensive-home-francisco/#:~:text=%E2%80%9CA%20home%20like%20Residence%20950,were%20our%20own%20dream%20home) (March 4, 2019).

1           26.    At no point during the negotiations and/or purchase of the home did  
2 DEVELOPER disclose the truth to the OWNER: that the Property had been plagued by  
3 shoddy construction, corner cutting, and development efforts to save money, all which  
4 lead to pervasive defects in the building. Instead, DEVELOPER rushed the Property to  
5 market to cover the financial holes left by a business model infected with systemic  
6 embezzlement, and then misrepresented the condition of the Property as of the highest  
7 quality in order to sell the Property as quickly as possible. DEVELOPER also offered  
8 misleading partial disclosures as part of DEVELOPER's statutorily required disclosure  
9 package. From the Award, DEVELOPER's apparent goal was to sell the Lombard  
10 Property before the other developed properties, and was under the gun to do so; it was a  
11 bad optic to have multiple properties listed on the market, so this meant the other  
12 properties could not be sold until the Lombard Property was sold (Award, pg. 32). Thus,  
13 desperate to get the other properties on the market and with the specter of investor  
14 lawsuits looming, DEVELOPER engaged in a fraudulent sales campaign that  
15 misrepresented to OWNER the actual condition of the Property.

16           27.    On or about March 26, 2020, in reliance on DEVELOPER's  
17 misrepresentations, OWNER entered into a Purchase Agreement in which OWNER  
18 agreed to buy the Property from EIGHT FORTY ONE for the sum of \$27,000,000. A true  
19 and correct copy of the Purchase Agreement is attached hereto as **Exhibit A**. Aware  
20 that the Property was plagued by instances of poor workmanship and defects,  
21 DEVELOPER crafted an "As-Is" provision in the Purchase Agreement under Addendum  
22 1, along with a Section 1542 waiver of all known and unknown claims. OWNER alleges  
23 that DEVELOPER provided misleading partial disclosures and/or intentionally concealed  
24 material facts about the quality of the Property during the sale process as a way to induce  
25 OWNER into accepting these terms. In fact, it was not until years later that OWNER  
26 discovered widespread examples of latent defects and poor work.

27           28.    In connection with the sale, DEVELOPER made various additional  
28 representations to OWNER. As part of DEVELOPER's Seller Disclosures, DEVELOPER

1 represented via its contractor IMPACT BUILDERS' letter of October 30, 2018 that a  
2 waterproofing consultant company was used to inspect the Property during the course of  
3 construction to confirm that the building was waterproof and weatherproof. The  
4 disclosure letter regarding waterproofing specifically represents that all waterproofing and  
5 weatherproofing issues "were addressed and corrected immediately following the  
6 inspections and were complete prior to covering up with finish work." DEVELOPER  
7 further represented that the Property was equipped with a state-of-the-art water damage  
8 mitigation system called "LeakDefense System" that was capable of detecting water  
9 leakage and preventing serious water damage.

10         29. The above representations by DEVELOPER, including those of reliability  
11 and quality and refusal to "cut corners" and the adequacy of the waterproofing system,  
12 were false. Within the last two to three years, OWNER has discovered widespread  
13 defective construction affecting multiple systems of the home. Many of the defects were  
14 in connection with poor design or installation of irrigation and drainage systems, plumbing  
15 and sewer systems, waterproofing, and other mechanical issues. OWNER had no  
16 reasonable basis for knowing of these latent defects prior to the last two to three years  
17 because these latent construction defects were concealed and/or not subject to discovery  
18 by reasonable investigation.

19         30. Specifically, these defects included a leak in the pump room that set off the  
20 LeakDefense system and appears to have arisen from a broken backflow preventer for  
21 the pool; an unconnected bathroom sewer line that dumped raw sewage on the ground in  
22 a hard to access area at the side of the residence; numerous leaking irrigation lines that  
23 were incorrectly installed on the rooftop garden; contractor bags jammed into a sewer  
24 lines, including adjacent to the Lombard Street entrance, apparently by a disgruntled,  
25 unpaid subcontractor; leaking and water intrusion at skylights installed at the residence;  
26 failure of the tread lights in the exterior staircase, which were repaired but then failed  
27 again; defects in the design and waterproofing of exterior planters; the failure and leaking  
28 of the pump for the fountain near the guest house; and a crushed sewer pipe running

1 from the laundry system that created a back-up and spillage.

2 31. While these previous incidents frustrated OWNER's use and enjoyment of  
3 the residence, the Property recently suffered a massive damage/loss event caused by a  
4 flood of water into lower level of the main residence. This issue was discovered on or  
5 around August 23, 2023, after water had filled the entire subfloor of the lower level,  
6 traveled to the edge of the lower level slab and poured down into a gypsum drop ceiling  
7 located in the gym. The intruding water caused the gypsum ceiling in that area to fail.  
8 This prompted an investigation into the source of the water, which included chemical  
9 testing of the water. The test confirmed that the intruding water was chlorinated.

10 32. OWNER's consultants have investigated the issue further and traced the  
11 source of the chlorinated water to a leak in the cantilevered pool system and have  
12 concluded there are several defects in the pool system, including its poor and  
13 substandard waterproofing design and installation, which caused the leaking and  
14 resulting damages and losses.

15 33. Environmental testing was performed, which confirmed the widespread  
16 presence of mold in the lower level of the residence. The hazardous condition has  
17 prevented occupation and use of the entire lower level of the main residence. Estimates  
18 to remediate the hazardous condition, replace the pool, and repair the damage in the  
19 lower level exceed \$4 million.

20 34. Additionally, while investigating the pool leak and related property damage  
21 to the lower level of the Property, OWNER discovered four clogged area drains in the  
22 deck adjacent to the pool and a clogged drain in the secondary containment area of the  
23 pool. Inches of standing water was found underneath the pedestal pavers in that area.  
24 These drainage systems were designed without clean-outs, and were not able to be  
25 unclogged by commercially reasonable means. The materials which were lodged in the  
26 deck drains appear to be a mix of sand, dirt, and soil which came from nearby planters.  
27 The design or construction of these planter boxes failed to prevent these materials from  
28 traveling to the deck and underneath the pedestal paver walkways. Because the sand,

1 dirt, and soil was hidden under the paver system, the OWNER was unaware that these  
2 materials were creating a massive clog in the drainage system and inches of standing  
3 water was accumulating and pooling throughout the entire deck.

4 35. OWNER is informed and believes and thereon alleges that the Defendants,  
5 and each of them, are responsible for or contributed to the defective conditions on the  
6 Property and the resulting substantial property damage. In addition, OWNER anticipates  
7 there are additional still undiscovered defects that plague the Property and for which  
8 OWNER will seek damages after conducting discovery in this action.

9 36. In sum, OWNER was misled into buying a \$27,000,000 "lemon" and files  
10 this lawsuit to recover its losses under the Purchase Agreement and all applicable law  
11 against all responsible parties. Moreover, OWNER has spent hundreds of thousands of  
12 dollars in repairs to date on the Property, and it will exceed \$4 million to repair the  
13 Property to the state DEVELOPER represented it to be at the time of sale. OWNER did  
14 not realize, and could not have realized, the existence or extent of DEVELOPER's  
15 fraudulent scheme and related misconduct until Petitioners in the embezzlement action  
16 moved to confirm the arbitration Award on or around May 1, 2024 in San Francisco  
17 County Superior Court, at which point the previously confidential facts about MALIN and  
18 TROON became public. It was not until reviewing the allegations and conclusions in the  
19 Award—in particular the allegations concerning the underfunding of projects, and other  
20 apparent crises affecting the progress and quality of the work specifically on the 950  
21 Lombard project, as well as the diversion of construction funds to line MALIN's pockets at  
22 the expense of the quality of the projects—that OWNER realized that OWNER had been  
23 misled about the Property and defrauded.

24 37. Upon discovery of the defects described herein, OWNER provided formal  
25 notice of claims to all known Defendants in an attempt to meet and confer in good faith to  
26 settle the dispute, including an invitation to Defendants to visit the Property to inspect the  
27 defects. As of the filing of this Complaint, none of the Defendants have visited the  
28 Property to review the issues, or formally responded to OWNER's notice.

1 38. Paragraph 35 the Purchase Agreement provides for pre-litigation mediation  
2 of all disputes. By filing this complaint, OWNER does not intend to waive any right or  
3 obligation of mediation and only intends to preserve its rights under all applicable law.  
4 OWNER will agree to a stay of the action pending a reasonable and prompt mediation.

5 39. Paragraph 36 the Purchase Sale Agreement provide for arbitration of all  
6 disputes. By filing this Complaint, OWNER does not intend to waive any right of  
7 arbitration it has under the Purchase Agreement.

8 **FIRST CAUSE OF ACTION**

9 **(Breach of Contract against EIGHT FORTY ONE, TROON, and MALIN and DOES 1**  
10 **through 25)**

11 40. OWNER realleges and incorporates herein by reference each and every  
12 allegation contained in the paragraphs above.

13 41. Pursuant to the March 26, 2020 Purchase Agreement between EIGHT  
14 FORTY ONE and OWNER, OWNER agreed to pay a purchase price of \$27,000,000.00  
15 in exchange for title to the Property. EIGHT FORTY ONE specifically agreed as follows:

16 (i) Pursuant to Paragraph 19 of the Purchase Agreement, EIGHT FORTY  
17 ONE agreed to make certain disclosures to OWNER, including the execution and  
18 delivery of a Real Estate Transfer Disclosure Statement ("TDS") in accordance  
19 with Civil Code § 1102. The TDS specifically required EIGHT FORTY ONE to  
20 disclose any significant defects/malfunctions in, among other areas, the interior  
21 walls, ceilings, floors, roof(s), foundation, and plumbing/sewer/septic systems, or  
22 any other structural components of the building. See TDS, Section II.B. The TDS  
23 further required EIGHT FORTY ONE to explain any such significant  
24 defects/malfunctions. See *id.* EIGHT FORTY ONE also agreed to amend said  
25 disclosure at any time prior to Close of Escrow upon discovery of any inaccurate  
26 or undisclosed material facts. Paragraph 19 ("If prior to [Close of Escrow], Seller  
27 becomes aware of any inaccurate or undisclosed material facts, Seller shall  
28 amend Seller's disclosure accordingly.").

1 (ii) Pursuant to Paragraph 26 of the Purchase Agreement, EIGHT FORTY  
2 ONE agreed to "deliver the Property free of debris and in broom-clean condition."

3 42. OWNER has performed all terms, conditions, and obligations of the  
4 Agreement to be performed on its part, except only those that have been waived,  
5 excused, and/or prevented by acts, omissions, or failures of performance.

6 43. All other conditions required by the Agreement for OWNER's performance  
7 have occurred, including but not limited to payment in full to EIGHT FORTY ONE for the  
8 Property.

9 44. OWNER is informed and believes and thereon alleges that EIGHT FORTY  
10 ONE breached the Purchase Agreement by the following acts:

11 (i) Failing to disclose significant defects, non-compliant work, and/or  
12 malfunctions known to EIGHT FORTY ONE in either EIGHT FORTY ONE's  
13 original disclosures or an amended disclosure before the Close of Escrow.  
14 OWNER is informed and believes and thereon alleges that, before the Close of  
15 Escrow, EIGHT FORTY ONE was aware of pervasive and significant defects in  
16 connection with poor or unfinished installation of irrigation and drainage systems,  
17 plumbing and sewer systems, waterproofing, and other mechanical issues, as well  
18 as the defective design and installation of the cantilevered pool system. Yet,  
19 EIGHT FORTY ONE included only a small fraction of these defects in the  
20 disclosure and/or minimized any such defects on the Property, including  
21 specifically in the plumbing and sewer systems, creating the illusion that all  
22 significant issues had been resolved and lulling OWNER into a false sense of  
23 comfort. Moreover, EIGHT FORTY ONE failed to disclose the full extent of the  
24 significant defects as required by Paragraph 19 of the Purchase Agreement. By  
25 way of example, and as described in paragraph 77 of this Complaint, EIGHT  
26 FORTY ONE's disclosures indicated that the plumber had made only "a few"  
27 mistakes that resulted in water leaks, all of which had been resolved. In fact, the  
28 plumber's mistakes were pervasive (and with respect to contractor bags stuffed



1 into sewer lines, perhaps intentional), facts that were known to EIGHT FORTY  
2 ONE before the Close of Escrow. In failing to disclose such issues, EIGHT  
3 FORTY ONE breached Paragraph 19 of the Purchase Agreement to the detriment  
4 of OWNER.

5 (ii) Failing to provide the Property free of debris and/or in broom-clean  
6 condition. As alleged above, the sewer and drainage system at the Property is  
7 clogged with garbage and debris. On information and belief, unknown to OWNER,  
8 the drainage system and sewer lines were clogged at the time of closing. EIGHT  
9 FORTY ONE failed to clean up this debris prior to turning over the Property to  
10 OWNER, as required by the Purchase Agreement.

11 45. Due to EIGHT FORTY ONE's breaches, including, but not limited to, those  
12 described herein, OWNER has suffered damages, including, without limitation, property  
13 damage, which in the aggregate are in excess of the jurisdictional limit and subject to  
14 proof at trial, and said breaches were a substantial factor in causing OWNER's harm.

15 46. OWNER is informed and believes and thereon alleges that DOES 1 through  
16 25 are individuals or entities that are alter egos or other affiliates of DEVELOPER that are  
17 responsible for the harm suffered by OWNER in connection with the sale of the Property  
18 to OWNER, and that DEVELOPER and DOES 1 through 25 were, and are, the agents,  
19 employees, and partners of each other, and were, in performing the acts complained of  
20 herein, acting within the scope of such agency, employment, or partnership activity, and  
21 ratified each other's conduct.

22 WHEREFORE, OWNER seeks relief as set forth in the Prayer for Relief.

23 **SECOND CAUSE OF ACTION**

24 **(Breach of Implied Covenant of Good Faith and Fair Dealing against EIGHT FORTY**  
25 **ONE, TROON, and MALIN and DOES 1 through 25)**

26 47. OWNER realleges and incorporates herein by reference each and every  
27 allegation contained in the paragraphs above.

28 ///

1           48. Pursuant to the March 26, 2020 Purchase Agreement between EIGHT  
2 FORTY ONE and OWNER, EIGHT FORTY ONE agreed to sell the Property to OWNER  
3 for use as a premium, luxury home in exchange for a purchase price of \$27,000,000.00.

4           49. OWNER has performed all terms, conditions, and obligations of the  
5 Agreement to be performed on its part, except only those that have been waived,  
6 excused, and/or prevented by acts, omissions, or failures of performance.

7           50. All other conditions required by the Agreement for OWNER's performance  
8 have occurred, including but not limited to payment in full to EIGHT FORTY ONE for the  
9 Property.

10          51. EIGHT FORTY ONE prevented OWNER from receiving the benefits and/or  
11 deprived OWNER of the benefit of the bargain under that Purchase Agreement by,  
12 among other things, providing a residence riddled with latent construction defects and/or  
13 failing to disclose or misrepresenting the pervasiveness of such latent defects in the  
14 building, which has prevented OWNER's use and enjoyment of the Property and has  
15 required and will require further costly repairs. In so doing, EIGHT FORTY ONE did not  
16 act fairly or in good faith.

17          52. Due to EIGHT FORTY ONE's conduct, including, but not limited to, those  
18 described herein, OWNER has suffered damages, including, without limitation, property  
19 damage, which in the aggregate are in excess of the jurisdictional limit and subject to  
20 proof at trial, and said breaches were a substantial factor in causing OWNER's harm.

21          53. OWNER is informed and believes and thereon alleges that DOES 1 through  
22 25 are individuals or entities that are alter egos or other affiliates of DEVELOPER that are  
23 responsible for the harm suffered by OWNER in connection with the sale of the Property  
24 to OWNER, and that DEVELOPER and DOES 1 through 25 were, and are, the agents,  
25 employees, and partners of each other, and were, in performing the acts complained of  
26 herein, acting within the scope of such agency, employment, or partnership activity, and  
27 ratified each other's conduct.

28           WHEREFORE, OWNER seeks relief as set forth in the Prayer for Relief.

1 **THIRD CAUSE OF ACTION**

2 **(Breach of Implied Warranty against EIGHTY FORTY ONE, TROON, MALIN, and**  
3 **DOES 1-25)**

4 54. OWNER realleges and incorporates herein by reference each and every  
5 allegation contained in the paragraphs above.

6 55. DEVELOPER impliedly warranted that the Property was constructed in a  
7 reasonable workmanlike manner, was free from serious defects, and was fit and proper  
8 for the uses intended. *See Pollard v. Saxe & Yolles Dev. Co.*, 12 Cal. 3d 374, 378-380  
9 (1974).

10 56. DEVELOPER breached this implied warranty by failing to construct the  
11 Property in a reasonable workmanlike manner free from serious defects and fit and  
12 proper for the uses intended. Instead, DEVELOPER provided a property plagued with  
13 serious defects that have and continue to affect OWNER's use and enjoyment of the  
14 Property. These defects include but are not limited to issues in connection with poor or  
15 unfinished installation of irrigation and drainage systems, plumbing and sewer systems,  
16 and other mechanical issues, as well as the defective design and installation of the  
17 cantilevered pool system.

18 57. OWNER has suffered and continues to suffer damages due to the  
19 aforementioned serious defects, including, without limitation, property damage, which in  
20 the aggregate are in excess of the jurisdictional limit and subject to proof at trial.

21 58. DEVELOPER's breach of the implied warranty was a substantial cause of  
22 OWNER's damages.

23 59. OWNER is informed and believes and thereon alleges that DOES 1 through  
24 25 are individuals or entities that are alter egos or other affiliates of DEVELOPER that are  
25 responsible for the harm suffered by OWNER in connection with the sale of the Property  
26 to OWNER, and that DEVELOPER and DOES 1 through 25 were, and are, the agents,  
27 employees, and partners of each other, and were, in performing the acts complained of  
28 herein, acting within the scope of such agency, employment, or partnership activity, and

1 ratified each other's conduct.

2 WHEREFORE, OWNER seeks relief as set forth in the Prayer for Relief.

3 **FOURTH CAUSE OF ACTION**

4 **(Breach of Implied Covenant to Perform Work in a Good and Competent Manner**  
5 **against THOMPSON SUSKIND, IMPACT BUILDERS, AQUASCAPE, and DOES 26-**  
6 **50)**

7 60. OWNER realleges and incorporates herein by reference each and every  
8 allegation contained in the paragraphs above.

9 61. OWNER is the third-party beneficiary of the contract(s) between  
10 DEVELOPER and its contractors on the Project, including THOMPSON SUSKIND and  
11 IMPACT BUILDERS, as well as the contract(s) between THOMPSON SUSKIND and  
12 IMPACT BUILDERS and their subcontractors, including AQUASCAPE. *See Burch v.*  
13 *Superior Ct.*, 223 Cal. App. 4th 1411, 1422 (2014), *disapproved of on other grounds by*  
14 *McMillin Albany LLC v. Superior Ct.*, 4 Cal. 5th 241 (2018); *Gilbert Fin. Corp. v. Steelform*  
15 *Contracting Co.*, 82 Cal. App. 3d 65, 69 (Ct. App. 1978).

16 62. OWNER is informed and believes and thereon alleges that DOES 26-50 are  
17 contractors, architects, design professionals, engineers, suppliers, vendors, or other  
18 persons or entities who participated in the process of designing, engineering,  
19 manufacturing, constructing, or installing some or all portions of the Project.

20 63. OWNER further alleges that OWNER is the third-party beneficiary of the  
21 contract(s) by, between, or among DEVELOPER, THOMPSON SUSKIND, IMPACT  
22 BUILDERS, AQUASCAPE, and/or DOES 26-50.

23 64. OWNER is informed and believes and thereon alleges that the  
24 aforementioned contract(s) between DEVELOPER, THOMPSON SUSKIND, IMPACT  
25 BUILDERS, AQUASCAPE, and/or DOES 26-50 required THOMPSON SUSKIND,  
26 IMPACT BUILDERS, AQUASCAPE, and DOES 26-50 to perform the work competently  
27 and/or use the proper materials for the Project.

28 ///

1           65.    OWNER is informed and believes and thereon alleges that all necessary  
2 prerequisites for THOMPSON SUSKIND, IMPACT BUILDERS, AQUASCAPE, and  
3 DOES 26-50's performance under the contract(s) existed, and THOMPSON SUSKIND,  
4 IMPACT BUILDERS, AQUASCAPE, and DOES 26-50 were not otherwise excused from  
5 performing their obligations under the contract(s).

6           66.    THOMPSON SUSKIND, IMPACT BUILDERS, AQUASCAPE, and DOES  
7 26-50 failed to perform the work for the work on the Project competently and/or use the  
8 proper materials for the Project, including but not limited to constructing and/or  
9 overseeing the design and construction of poor or unfinished installation of irrigation and  
10 drainage systems, defective plumbing and sewer systems, poor and substandard  
11 waterproofing, and other mechanical issues, as well as the defective design and  
12 installation of the cantilevered pool system.

13           67.    OWNER is informed and believes and thereon alleges that this failure to  
14 perform and/or use of improper materials for the Project breached the respective  
15 contract(s) between DEVELOPER, THOMPSON SUSKIND, IMPACT BUILDERS,  
16 AQUASCAPE, and DOES 26-50.

17           68.    OWNER was harmed by THOMPSON SUSKIND, IMPACT BUILDERS,  
18 AQUASCAPE, and DOES 26-50's failures to perform the work competently and/or use  
19 the proper materials for the Project, and is entitled to recover from these Defendant's  
20 breaches as a third-party beneficiary of the aforementioned development/building  
21 contract(s).

22           WHEREFORE, OWNER seeks relief as set forth in the Prayer for Relief.

23                                   **FIFTH CAUSE OF ACTION**

24                                   **(Negligence against All DEFENDANTS, and DOES 1-50)**

25           69.    OWNER realleges and incorporates herein by reference each and every  
26 allegation contained in the paragraphs above.

27           70.    It is well-established that developers, contractors, and subcontractors for a  
28 construction project are all liable in negligence to third-party purchasers of a property

1 owing to the foreseeability of harm to the purchaser. See Liability for development and  
2 construction of buildings; negligence liability to the buyer, 9 Cal. Real Est. § 33:32 (4th  
3 ed.) ("If the improvements are constructed negligently, the developer is liable to the  
4 purchaser for the damages suffered that were proximately caused by the developer's  
5 negligent construction."); see also, e.g., *Conolley v. Bull*, 258 Cal. App. 2d 183, 197-198  
6 (Ct. App. 1968) (developer liable to purchasers for constructing house on inadequately  
7 compacted earth); *Burch v. Superior Ct.*, 223 Cal. App. 4th 1411, 1420-22 (2014),  
8 *disapproved of on other grounds by McMillin Albany LLC v. Superior Ct.*, 4 Cal. 5th 241  
9 (2018) (general contractor owes duty of care to future purchaser of developed property);  
10 *Stewart v. Cox*, 55 Cal. 2d 857, 863 (1961) (subcontractors can be found liable in  
11 negligence action by purchasers of property despite lack of privity). Accordingly,  
12 DEVELOPER, IMPACT BUILDERS, THOMPSON SUSKIND, AQUASCAPE,  
13 AQUASCAPE, and DOES 1-50, owed a common law duty to exercise reasonable care  
14 and to conform to general construction industry standards for developers, contractors,  
15 and subcontractors in the execution of their work on the Project, including performing  
16 their work in a good and workmanlike manner and/or exercising reasonable care to  
17 supervise the work of contractors and/or subcontractors on the Project.

18         71. Each of the Defendants breached their respective standard of care by,  
19 among other things, constructing and/or overseeing the design and construction of poor  
20 or unfinished installation of irrigation and drainage systems, defective plumbing and  
21 sewer systems, poor and substandard waterproofing, and other mechanical issues, as  
22 well as the defective design and installation of the cantilevered pool system.

23         72. Due to Defendants' negligence, OWNER has suffered damages, including,  
24 without limitation, property damage, loss of use of tangible property, attorney's fees, and  
25 expert and consultant expenses.

26         73. These Defendants' negligence was a substantial cause of OWNER's  
27 damages.

28         WHEREFORE, OWNER seeks relief as set forth in the Prayer for Relief.

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**SIXTH CAUSE OF ACTION**

**(Fraudulent Inducement against EIGHT FORTY ONE, TROON, and MALIN and DOES 1-25)**

74. OWNER realleges and incorporates herein by reference each and every allegation contained in the paragraphs above.

75. DEVELOPER made myriad representations as detailed in paragraphs 22 to 28 above, including that the Property was of utmost quality as well as suitable for use and enjoyment as a luxurious residential property and free from serious defects that would impair such use and enjoyment. DEVELOPER also specifically represented that the waterproofing on the building was inspected and that any defects had been corrected.

76. DEVELOPER further represented that it would disclose any known serious defects at the Property at the time of sale and to update those disclosures upon discovery of any inaccurate or undisclosed material facts prior to close of escrow, as described in paragraph 41. Purporting to follow through on those obligations, DEVELOPER disclosed only a handful of defects, creating the illusion that all significant problems had been resolved and lulling OWNER into a false sense of comfort. These half-truths are actionable.

77. For example, as relating to the plumbing and sewer systems, DEVELOPER offered, among various minor issues, the following: "Please note, during construction the plumber has had a few occasions where mistakes were made that resulted in some water leaking onto floors, ceilings and walls. The Seller has opened these areas and confirmed they are dry and void of mold. Moisture tests were conducted at these locations with a moisture meter and were deemed dry prior to ceiling and walls being closed up." This statement reassuringly indicates that only "a few" mistakes were made by plumber and that all such problems were confirmed resolved. But in fact, OWNER alleges, the plumber's mistakes were pervasive and have contributed to damage to the Property. Moreover, DEVELOPER provided disclosures that appeared thorough enough to suggest that it had done its due diligence and creating the illusion that the Property was in proper

1 working condition, but in fact masked the pervasive shoddy workmanship and corner-  
2 cutting that had characterized the Project.

3 78. All of the above representations were false and/or materially misleading  
4 half-truths. OWNER is informed and believes and thereon alleges that, in fact, there  
5 were many more serious and pervasive latent defects with the Property at the time of  
6 sale, which include but are not limited to: defects in connection with poor or unfinished  
7 installation of irrigation and drainage systems, plumbing and sewer systems, and other  
8 mechanical issues; defective design and installation of the cantilevered pool system; and  
9 failures of the building's poor and substandard waterproofing systems.

10 79. OWNER is informed and believes and thereon alleges that DEVELOPER  
11 knew that said pervasive serious defects existed as a result of, among other things, poor  
12 management during construction and DEVELOPER's failure to timely pay subcontractors,  
13 which resulted in shoddy workmanship and, at times, intentional sabotage of the Project  
14 by disgruntled subcontractors. OWNER is informed and believes and thereon alleges  
15 that DEVELOPER, as the party responsible for the renovation and as the prior occupant  
16 of the Property, knew that said defects materially impacted the use, functionality, and  
17 value of the Property for OWNER, and/or made the representation recklessly and without  
18 regard for its truth, but made the above false representations and/or half-truths to deceive  
19 and mislead OWNER into entering into the Purchase Agreement on unfavorable terms,  
20 including inducing OWNER to enter into an "As Is" clause and related Civil Code section  
21 1542 waiver of claims and rights. OWNER is informed and believes and thereon alleges  
22 that DEVELOPER intended that OWNER rely on its misrepresentations in executing the  
23 Purchase Agreement and negotiating the terms thereof, and/or intended to deceive  
24 OWNER by concealing and/or failing to disclose the existence of the serious defects on  
25 the Property.

26 80. OWNER is informed and believes and thereon alleges that DEVELOPER  
27 knew that DEVELOPER's false statements and/or misleading half-truths were false  
28 and/or misleading when DEVELOPER made such representations and/or made the



1 representations recklessly and without regard for the truth of such statements.

2 81. OWNER is informed and believes and thereon alleges that DEVELOPER  
3 intended that OWNER rely on the misrepresentations in executing the Purchase  
4 Agreement and negotiating the terms thereof.

5 82. OWNER did not know that the Property suffered from pervasive defects at  
6 the time OWNER purchased the Property from DEVELOPER and/or OWNER reasonably  
7 relied on DEVELOPER's misrepresentations because, among other reasons, the serious  
8 defects were concealed and/or not uncoverable by reasonable inspection of the Property.  
9 DEVELOPER did not disclose any of the aforementioned serious defects in the Property  
10 to OWNER prior to entering into the Purchase Agreement.

11 83. The aforementioned serious defects were submerged beneath the ground  
12 and/or within the structure and/or under the pool and were therefore concealed from  
13 view. OWNER did not know, and could not have reasonably discovered, the serious  
14 defects in the Property, which were not and could not have been revealed by reasonable  
15 investigation prior to the sale.

16 84. OWNER is informed and believes and thereon alleges that DEVELOPER  
17 knew that OWNER did not know, and could not reasonably have discovered, the  
18 aforementioned serious defects in the Property.

19 85. OWNER would have behaved differently if the concealed serious defects  
20 had been disclosed by, among other things, not purchasing the Property or demanding a  
21 price reduction to account for the cost to repair the Property and/or further warranties and  
22 protections in the Purchase Agreement.

23 86. OWNER suffered damages resulting from DEVELOPER's  
24 misrepresentations and/or concealment of the aforementioned serious defects in that  
25 OWNER would not have purchased the Property at the price in the Purchase Agreement  
26 had OWNER known of said defects, and the present fair market value of the Property is  
27 far less than the fair market value in the absence of such defects. OWNER further  
28 suffered damages in the amount of the cost of repairing and remediating the defective

1 conditions on the Property as well as the disturbance to OWNER's use and enjoyment of  
2 the Property during the periods of remediation and/or during the periods of damage to the  
3 Property. The damage caused by the pool defects alone are in excess of \$4 million, in  
4 addition to the cost of repairing and remediating damage due to the drainage systems,  
5 plumbing and sewer systems, and other mechanical issues.

6 87. OWNER's reliance on DEVELOPER's misrepresentation and/or  
7 concealment of the serious defects in the Property were substantial factors in causing the  
8 aforementioned damages.

9 88. DEVELOPER committed the intentional and wrongful acts alleged above  
10 with malice, fraud and oppression and with conscious disregard of OWNER's rights. As a  
11 consequence, Plaintiff is entitled to an award of punitive damages against DEVELOPER.

12 89. OWNER is informed and believes and thereon alleges that DOES 1 through  
13 25 are individuals or entities that are alter egos or other affiliates of DEVELOPER that are  
14 responsible for the harm suffered by OWNER in connection with the sale of the Property  
15 to OWNER, and that DEVELOPER and DOES 1 through 25 were, and are, the agents,  
16 employees, and partners of each other, and were, in performing the acts complained of  
17 herein, acting within the scope of such agency, employment, or partnership activity, and  
18 ratified each other's conduct.

19 WHEREFORE, OWNER seeks relief as set forth in the Prayer for Relief.

20 **SEVENTH CAUSE OF ACTION**  
21 **(Negligent Misrepresentation against EIGHT FORTY ONE, TROON, and MALIN and**  
22 **DOES 1-25)**

23 90. OWNER realleges and incorporates herein by reference each and every  
24 allegation contained in the paragraphs above.

25 91. DEVELOPER represented to OWNER that the Property was generally in  
26 proper working order and suitable for use and enjoyment as a luxurious residential  
27 property, and free from serious defects that would impair such use and enjoyment.  
28 DEVELOPER further represented to OWNER that the waterproofing system was

1 adequate. DEVELOPER further represented to OWNER that it was making a disclosure  
2 of all known serious defects in the building as of Close of Escrow, as detailed in  
3 Paragraphs 75-76.

4 92. OWNER is informed and believes and thereon alleges that DEVELOPER's  
5 representations were false. In fact, the Property was plagued with serious defects as a  
6 result of DEVELOPER's poor oversight during construction, failure to timely pay  
7 subcontractors which resulted in shoddy workmanship and, at times, intentional sabotage  
8 of the Project by disgruntled subcontractors. These serious defects include but are not  
9 limited to defects in connection with poor or unfinished installation of irrigation and  
10 drainage systems, plumbing and sewer systems, and other mechanical issues; defective  
11 design and installation of the cantilevered pool system; and failures of the building's poor  
12 and substandard waterproofing systems.

13 93. OWNER is informed and believes and thereon alleges that DEVELOPER  
14 had no reasonable grounds for believing that DEVELOPER's representation was true  
15 when DEVELOPER made such representation because, among other reasons,  
16 DEVELOPER was an eye witness to the shoddy workmanship and rancor on the Project  
17 and knew that there were serious, systematic issues with the work performed during the  
18 Project.

19 94. OWNER is informed and believes and thereon alleges that DEVELOPER  
20 intended that OWNER rely on the representation in executing the Purchase Agreement  
21 and negotiating the terms thereof.

22 95. OWNER reasonably relied on DEVELOPER's misrepresentation because,  
23 among other reasons, the serious defects were concealed and/or not uncoverable by  
24 reasonable inspection of the Property.

25 96. OWNER suffered damages resulting from DEVELOPER's representation in  
26 that OWNER would not have purchased the Property at the price in the Purchase  
27 Agreement had OWNER known of said defects, and the present fair market value of the  
28 Property is far less than the fair market value in the absence of such defects. OWNER

1 further suffered damages in the amount of the cost of repairing and remediating the  
2 defective conditions on the Property as well as the disturbance to OWNER's use and  
3 enjoyment of the Property during the periods of remediation and/or during the periods of  
4 damage to the Property.

5 97. OWNER's reliance on DEVELOPER's representation as to the absence of  
6 pervasive serious defects on the Property was a substantial factor in causing OWNER's  
7 damages.

8 98. OWNER is informed and believes and thereon alleges that DOES 1 through  
9 25 are individuals or entities that are alter egos or other affiliates of DEVELOPER that are  
10 responsible for the harm suffered by OWNER in connection with the sale of the Property  
11 to OWNER, and that DEVELOPER and DOES 1 through 25 were, and are, the agents,  
12 employees, and partners of each other, and were, in performing the acts complained of  
13 herein, acting within the scope of such agency, employment, or partnership activity, and  
14 ratified each other's conduct.

15 WHEREFORE, OWNER seeks relief as set forth in the Prayer for Relief.

16 **EIGHTH CAUSE OF ACTION**

17 **(Unfair Competition Law/Business and Professions Code § 17200 against EIGHT**  
18 **FORTY ONE, TROON, and MALIN and DOES 1-25)**

19 99. OWNER realleges and incorporates herein by reference each and every  
20 allegation contained in the paragraphs above.

21 100. As alleged in paragraphs 22 to 28 above, DEVELOPER engaged in an  
22 unfair, deceptive, untrue and/or misleading advertising campaign in an attempt to sell the  
23 Property.

24 101. OWNER suffered damages resulting from DEVELOPER's unfair, deceptive,  
25 untrue and/or misleading advertising campaign, including, without limitation, property  
26 damage, loss of use of tangible property, attorney's fees, and expert and consultant  
27 expenses.

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1           102. OWNER is informed and believes and thereon alleges that DOES 1 through  
2 25 are individuals or entities that are alter egos or other affiliates of DEVELOPER that are  
3 responsible for the harm suffered by OWNER in connection with the sale of the Property  
4 to OWNER, and that DEVELOPER and DOES 1 through 25 were, and are, the agents,  
5 employees, and partners of each other, and were, in performing the acts complained of  
6 herein, acting within the scope of such agency, employment, or partnership activity, and  
7 ratified each other's conduct.

8           WHEREFORE, OWNER seeks relief as set forth in the Prayer for Relief.


9   **PRAYER FOR RELIEF**

10           WHEREFORE, OWNER prays for relief as follows:

- 11           1. Damages in an amount according to proof at trial;
- 12           2. For interest at the legal rate of ten percent per annum through date of entry of  
13           judgment;
- 14           3. Punitive damages;
- 15           4. Civil penalties under Business and Professions Code § 17200;
- 16           5. For costs of suit herein, including attorneys' fees according to contract; and
- 17           6. For such other and further relief as the Court may deem just and proper,  
18           including but not limited to partial rescission of the Purchase Agreement's  
19           release and waiver provisions as unconscionable and/or procured by fraud.

20  
21 DATED: July 12, 2024

HANSON BRIDGETT LLP

22  
23     
24 By: \_\_\_\_\_  
25 BRIAN M. SCHNARR  
26 DILLON D. JACKSON  
27 Attorneys for 950 LOMBARD LLC  
28

# **EXHIBIT A**



SAN FRANCISCO PURCHASE AGREEMENT

SAN FRANCISCO ASSOCIATION OF REALTORS® STANDARD FORM
This is intended to be a legally binding contract for the purchase of real property in San Francisco

March 26, 2020 (Date Prepared)

950 Lombard, LLC. a California Limited Liability Co ("Buyer")

offers to purchase the real property known as 950 Lombard St, San Francisco, CA 94133-2218
or (if checked) this is a purchase of a % undivided interest in the entire Tenants-in-Common (TIC) property above pursuant to the attached TIC Purchase Addendum (the "Property") for the Purchase Price of Twenty-Seven Million Dollars (\$27,000,000.00) and upon the following TERMS and CONDITIONS.

1. FINANCIAL TERMS:

- A. \$ 810,000.00 INITIAL DEPOSIT by electronic funds transfer or N/A check payable to Escrow Holder or to N/A ("Payee"), which Buyer or Buyer's Broker/Agent shall deposit with Payee within 2 or 2 business days of Acceptance of this Contract.
B. \$ ADDITIONAL DEPOSIT to be deposited with Escrow Holder within days after Acceptance or on or before N/A
C. \$ NEW FIRST LOAN: This Contract is contingent upon Buyer obtaining a new conventional or FHA VA other N/A first loan for a term of 30 or years at an initial annual rate of interest not to exceed % for a loan which is fixed for the entire term or fixed for an initial period of X year(s) or month(s) and thereafter adjustable according to the lender's predetermined schedule, secured by a first deed of trust on the Property, with a loan fee of zero or not more than points and on other terms and conditions satisfactory to Buyer. For an FHA/VA loan, an Amendatory Clause Addendum is attached.
D. \$ OTHER FINANCING: This Contract is contingent upon Buyer obtaining a new second loan or other additional financing on the following terms: N/A
E. \$ NON-CONTINGENT FINANCING: Buyer intends to obtain new financing in the amount specified. Buyer acknowledges that the full amount may not be obtainable and that the terms and availability of loans are subject to change. Buyer acknowledges that obtaining financing is not a contingency of this Contract.
F. \$ 26,190,000.00 CASH BALANCE which shall be deposited by Buyer with Escrow Holder prior to Close of Escrow ("COE").
G. \$ 27,000,000.00 PURCHASE PRICE, EXCLUDING CLOSING COSTS (Total of A through F).

- 2. ESCROW: Escrow shall close on X March 30, 2020 (date) or (if checked) days after Acceptance. If COE falls on a weekend or legal holiday, it shall be extended to the next business day. This Contract, including all addenda and counter offers, shall constitute escrow instructions of Buyer and Seller (the "Parties"). The Parties shall execute and deliver additional instructions consistent with this Contract when requested by Old Republic Title (Attn: Annie Nobilione ("Escrow Holder").
3. FINANCING PROVISIONS: Buyer affirms that only the loan(s) specified in Paragraph 1 are needed to complete this purchase and shall act diligently and in good faith to obtain them. If Buyer does not remove this financing contingency within 21 or days after Acceptance, either Party may terminate this Contract. Brokers/Agents urge Buyer to personally confirm loan(s) will fund before removing the financing contingency. Buyer further represents that the funds required for the Deposits, Cash Balance and Closing Costs are available at Buyer's disposal, and that obtaining these funds is not a contingency of this Contract. Any credits to Buyer from any source shall be disclosed to Buyer's lenders. If the total credits exceed the lenders' limits then they shall be reduced accordingly with no adjustment in Purchase Price to make up the difference. Seller agrees to provide prompt access to the Property for appraisal purposes, but has no obligation to cooperate with Buyer's efforts to obtain any financing other than as specified herein.
4. APPRAISAL: This Contract is (if checked) subject to written appraisal at no less than the Purchase Price or \$
If Buyer does not remove this contingency within 15 or days after Acceptance, either Party may terminate this Contract.
5. AGENCY RELATIONSHIPS CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:
Seller's Brokerage Firm None License Number N/A
is the broker of (check one): X the Seller; or both the Buyer and Seller (dual agent).
Seller's Agent N/A License Number N/A
is (check one): X the Seller's Agent (salesperson or broker associate) both the Buyer's and Seller's Agent (dual agent).
Buyer's Brokerage Firm None License Number N/A
is the broker of (check one): X the Buyer; or both the Buyer and Seller (dual agent).
Buyer's Agent N/A License Number N/A
is (check one): X the Buyer's Agent (salesperson or broker associate) both the Buyer's and Seller's Agent (dual agent).
6. PHYSICAL POSSESSION: Physical possession of the Property shall be delivered to Buyer upon recordation of the deed or X (if checked) by 10 a.m. or N/A (time) on March 31, 2020 (date). (If checked) An Addendum setting forth terms upon which Seller may continue to use the Property after COE is attached to and made a part of this Contract.
7. OCCUPANCY: Buyer intends (or does not intend) to occupy the Property as Buyer's residence.

Buyer's Initials

Seller's Initials



8. **TITLE REVIEW:** Within **3 days** after Acceptance, Buyer, at Buyer's expense, shall order a Preliminary Report ("Prelim") from Escrow Holder. A Prelim is only an offer to issue a policy of title insurance and may not contain every item affecting title. Buyer shall take title to the Property subject to all encumbrances, easements, rights, covenants, conditions, restrictions and other matters, whether of record or not, as of the day of Acceptance except: (1) monetary liens which, unless otherwise agreed in writing, Seller will pay off from Seller's proceeds at COE; and (2) any matters which Seller has agreed in writing to remove prior to COE. Within **3 days** after Acceptance, Seller shall disclose to Buyer all matters known to Seller affecting title, whether those matters are of record or not. Buyer's review and approval of the Prelim, and of all matters affecting title, is a contingency of this Contract. If Buyer does not remove this contingency within **5 or 1 days** after receipt of the Prelim, either Party may terminate this Contract. At COE Buyer shall receive a grant deed conveying title including any associated rights owned by Seller. (If the Property is a cooperative apartment Buyer shall receive a pledge or assignment of the stock and an assignment of the leasehold interest.) Title shall vest as specified by Buyer. **The manner of taking title may have significant legal and tax consequences. Buyer should consult with their legal and tax advisors.** Buyer should direct all questions regarding title insurance coverage, its cost, and the availability of enhanced coverages, such as those offered by an ALTA policy, to the Escrow Holder or Title Company.

9. **ITEMS INCLUDED IN THE SALE:** To the extent owned by Seller, unless excluded in Paragraph 10 below, all existing fixtures and fittings attached to the Property and major appliances for which custom openings or encasements have been made are included, free of liens, in the Purchase Price, **including** electrical, lighting, plumbing and heating fixtures, hardware, solar systems, screens, awnings, shutters, window coverings, attached floor coverings, television antennas/satellite dishes and related equipment, water softening systems, air coolers or conditioners, pool and spa equipment, mailbox, garage door openers and transmitters, trees, shrubs and outdoor plants planted in the ground, private telephone systems, security systems and home automation systems, together with any dedicated hardware and/or applicable software and passwords needed to operate them.

**A. PERSONAL PROPERTY ITEMS INCLUDED: Items listed in the MLS, disclosures or marketing materials, are not included in the sale unless specified in this Contract.** The personal property checked below, on the Property at Acceptance, is **included** in the sale, free of liens, but with no warranty of condition:

<input checked="" type="checkbox"/> All refrigerators	<input checked="" type="checkbox"/> Washers and dryers	<input type="checkbox"/> Microwave	<i>N/A</i>	<i>N/A</i>
<input checked="" type="checkbox"/> All ranges/stoves	<input checked="" type="checkbox"/> Wine cooler	<input checked="" type="checkbox"/> Freezer	<i>N/A</i>	<input type="checkbox"/> See Additional Terms

**B. LEASED OR LIENED ITEMS:** If any included items are leased or liened, Seller shall identify them within **3 days** of Acceptance and deliver to Buyer all leases, contracts, terms of use, and warranties, which shall be subject to Buyer's reasonable approval. If Buyer does not remove this contingency within **12 or \_\_\_ days** after receipt of documents, either Party may terminate this Contract.

10. **ITEMS EXCLUDED FROM THE SALE:** All items owned by the staging company, which may include window coverings and mirrors; furniture attached only for earthquake safety; externally mounted audio-visual equipment (e.g. flat panel screens) and brackets (when removed, holes shall be repaired but not painted); **and these additional exclusions: All Staging, accessories and Artwork is NOT included.**

11. **CLOSING COST ALLOCATIONS:** Buyer shall pay: escrow fees; title insurance premiums; new and assumed loan fees; and supplemental taxes resulting from the Property's reassessment after COE. Seller shall pay: City & County transfer tax; costs of loans paid off through escrow; and property taxes for periods of time **before** COE. Buyer and Seller shall prorate, based on a 30-day month, and bring current at COE: property taxes; rents; operating expenses; interest on assumed loans; HOA dues and regular assessments. Buyer shall pay: community enhancement fees; project certification fees; move-in fees; and, unless otherwise agreed, all special assessments due after COE. Seller shall pay: HOA document preparation, move-out, transfer and demand fees; and all HOA special assessments due prior to COE. Any existing HOA fees or special assessments not disclosed by Seller within the time required in this Contract shall be paid by Seller. Unless specified in this Contract, any other expenses shall be paid by Buyer or Seller in accordance with San Francisco Escrow Holder practice.

12. **BUYER'S DUE DILIGENCE: Brokers/Agents strongly recommend that Buyer obtain the inspection reports provided by Paragraph A and any further inspections recommended in those reports.**

**A. PROPERTY INSPECTIONS:** Buyer's obligations under this Contract are contingent upon Buyer's written approval, at Buyer's sole discretion, of the physical condition of the Property, including parking and storage availability, the ability to obtain adequate property insurance, neighborhood issues, and any other matter reasonably affecting the Property. Within the time specified below, Buyer shall have the right to conduct inspections of the Property by contractors, engineers, architects, and/or other experts retained by Buyer, which inspections may include, but are not limited to, a general property inspection, a structural pest control inspection, the foundation, framing, roof, plumbing, sewer lines, heating, air conditioning, electrical and mechanical systems, built-in appliances, retaining walls, geologic conditions, pool/spa and related equipment, environmental hazards (such as asbestos, mold, electromagnetic fields, radon gas, lead-based paint or lead hazards, fuel or chemical storage tanks, and other materials or products), noise transmission, water/utility use restrictions, and location of property lines. **Brokers/Agents do not certify or verify lot size, boundary lines or interior square footage, information contained in inspection reports, advertising, or representations of others.** Seller shall permit the inspections upon receiving reasonable advance notice from Buyer. Buyer shall provide Seller with copies of all written reports received. During the due diligence period, Buyer may request that Seller make repairs or credit Buyer for the estimated costs of identified repair work, but Seller shall not be obligated to agree to any such request. **If Buyer does not remove this contingency within 15 or \_\_\_ days after Acceptance, either Party may terminate this Contract.**

Buyer's Initials

Seller's Initials

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B. **WAIVER OF PROPERTY INSPECTIONS:** If initialed below, Buyer waives the contingency established in Paragraph 12A above and the right to perform inspections. Buyer is aware that all real property and improvements contain defects and conditions which are not readily apparent and which may affect the value and/or desirability of the Property. Buyer and Seller acknowledge that Broker/Agents do not guarantee and in no way assume responsibility for the condition of the Property. Buyer also is aware of Buyer's own affirmative duty to exercise due diligence in observing the condition of and inspecting the Property to protect Buyer's interests. **Buyer understands, acknowledges and agrees that any reports Buyer may have received from any source do not constitute representations or warranties by either Seller or Brokers/Agents as to the past, present or future condition, use or development potential of the Property. Brokers/Agents strongly recommend that Buyer retain Buyer's own contractors and other appropriate experts to investigate the condition and suitability of all aspects of the Property including, but not limited to, all matters affecting its use, value and desirability for the purposes intended by Buyer. If Buyer waives any or all rights to perform the inspections as specified in Paragraph 12A above, then Buyer is proceeding against the advice of Brokers/Agents, and Buyer agrees to release Seller and Brokers/Agents from all claims, demands, and liabilities which in any way relate to or arise from any issue which might have been disclosed, detected and/or evaluated by such inspections.**

**Buyer's Initials**

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13. **CONDOMINIUM / COOPERATIVE APARTMENT DISCLOSURE:** If the Property is a condominium or cooperative apartment, this Contract is contingent upon Buyer's review of the documents described below. Within **10 or \_\_\_ days** after Acceptance, Seller, at Seller's expense, shall furnish Buyer with copies of the Property's legal description (including parking and storage spaces, if any), covenants, conditions and restrictions, articles of incorporation, bylaws, rules and regulations currently in force, the most recent financial statements of the HOA, a current operating budget, the most recent 12 months' HOA meeting minutes, a Condominium/Cooperative Financial Disclosure Statement prepared by the HOA or its management company, and any other documents required by law. Seller shall also disclose within this time all HOA dues, fees, special assessments, including unpaid assessments and assessments levied but not due until a future date, any anticipated extraordinary maintenance or repair expenses, and any pending or anticipated litigation affecting the Property. Seller may be responsible to pay any undisclosed fees or assessments, as set forth in paragraph 11. **Seller shall promptly notify Buyer of any new or revised HOA documents received by Seller prior to COE.** If Buyer does not remove this contingency within **5 or \_\_\_ days** after receipt of the documents, either Party may terminate this Contract. Buyer is hereby advised that any structural pest control or other inspections of common areas may be subject to the approval of, and limited in scope by, the HOA. If the Property is new construction or newly converted to condominiums, and this is the first sale of this unit, Buyer shall pay a pro-rata share of any new insurance policy placed on the entire building; otherwise Seller will not receive any credit for insurance, other than through a proration of the established periodic HOA fee for this unit as of COE.

**(If checked)** The attached Cooperative Apartment Purchase Addendum is made a part of this Contract and the time frames specified in this Paragraph shall apply to that Addendum.

14. **RENTAL PROPERTY: Buyer purchases the Property subject to existing leases and the rights of parties in possession.** If it is intended that one or more tenant-occupied units be delivered vacant, the Parties should consult with a qualified San Francisco landlord-tenant attorney. Prior to COE, Seller agrees that no new (or changes to those existing) leases or rental agreements shall be entered into without Buyer's prior written consent, which consent shall not be unreasonably withheld. Within **3 days** after Acceptance, Seller shall deliver to all tenants Residential Tenancy Estoppel Certificates, requesting from each tenant acknowledgment of the terms and conditions of the tenant's rental. Protected Tenant Status Information forms shall also be delivered by Seller to all eligible tenants. Within **7 or \_\_\_ days** after Acceptance, Seller shall deliver to Buyer copies of all leases, rental agreements, applications and §6.14 notices as well as copies of all outstanding notices sent to tenants and Seller shall complete a Rental Property Statement which shall include: (1) any and all oral agreements with tenants; (2) uncured defaults by Seller or tenants; (3) claims made by Seller against tenants or by tenants against Seller in any court of law or to the San Francisco Rent Board or other government agencies, whether pending, threatened or resolved; (4) all tenants' deposits held by Seller, including any claimed offsets against those deposits; (5) any pass-throughs which constitute part of the existing rent, including the nature of the pass-through, the amount, and the period of time for which it is in effect; (6) which units include parking or storage spaces as part of the rent, whether any parking or storage spaces are rented to non-tenants, the amount received for each space, and the terms of any rental agreement or lease for the space; (7) each unit's rental status, with a disclosure and information on any buyouts if vacant or, from the start of the current tenant's occupancy, notices of rent increases, reductions, and/or changes to the terms of the tenancy; (8) any Default or Termination Notices served on tenants and, if the notices have been filed with the San Francisco Rent Board, proof of such filing; and (9) any requests from tenants for repairs, defective conditions, concessions or rent reductions, new services, or substitution of roommates. No later than **10 or \_\_\_ days** after Acceptance, Seller shall deliver to Buyer all completed Residential Tenancy Estoppel Certificates and Protected Tenant Status Information forms returned by tenants to Seller. If any forms are returned after that day, Seller agrees to provide them to Buyer within **2 days** of Seller's receipt. This contract is contingent upon Buyer's approval of the above documents, at Buyer's sole discretion. If Buyer does not remove this contingency within **7 or \_\_\_ days** after receipt of the documents, either Party may terminate this Contract. Seller shall deliver to Escrow Holder prior to COE: (1) all tenant deposits, including security deposits, last month's rents, cleaning, key or other deposits, and any required interest accrued thereon through COE, which deposits and interest shall be disbursed to Buyer at COE; and (2) copies of any notice(s) of the transfer of deposits given by Seller to tenants.

15. **INCOME AND EXPENSE STATEMENT:**  (If checked) Within 7 or \_\_\_ days after Acceptance, Seller shall deliver to Buyer a true and complete statement of the income and expenses of the Property for the current year and calendar years N/A. This contract is contingent upon Buyer's approval of the statement(s), at Buyer's sole discretion. If Buyer does not remove this contingency within 7 or \_\_\_ days after receipt of the statement(s), either Party may terminate this Contract.
16. **RENTAL PERSONAL PROPERTY:**  (If checked) All personal property on the Property at Acceptance owned by Seller and used in operation of the Property is included. Seller shall provide, within 7 or \_\_\_ days after Acceptance, an inventory of the personal property.
17. **INTENT TO EXCHANGE PROPERTY:**  Buyer and/or  Seller intends to include this Property in an IRC §1031 exchange, subject to the terms of the attached Addendum. Any exchange is **not** a contingency of this Contract unless specified as such in the Addendum or elsewhere. The other Party consents to an exchange on the condition that they incur no additional expense or liability.
18. **SALE OF BUYER'S PROPERTY:**  This Contract is contingent upon the sale of another property owned by Buyer, as stated in the attached Addendum.
19. **SELLER'S MANDATED AND CONTRACTUAL DISCLOSURES:** The following disclosures shall be delivered to Buyer **within 3 days** of Acceptance. This Contract is contingent upon Buyer's review of these disclosures. If Buyer does not remove these contingencies within 5 or 3 days after Buyer's receipt of the disclosures or any amendment, either Party may terminate this Contract. Buyer shall return to Seller signed copies of all of the following disclosure documents within 7 or 1 days of receipt. If prior to COE, Seller becomes aware of any inaccurate or undisclosed material facts, Seller shall amend Seller's disclosure accordingly. No amendment is required for any conditions of which Buyer is or becomes otherwise aware, or which are contained in reports given to or ordered by Buyer.
- A. **REAL ESTATE TRANSFER DISCLOSURE STATEMENT ("TDS"):** (Applies to properties with 1 to 4 residential units.) Unless exempt, Seller shall complete and deliver to Buyer a statutory TDS (Civil Code §1102), which shall be deemed complete when Seller has answered all questions and signed Section II, and Seller's Broker/Agent has completed and signed Section III. If the TDS is provided to Buyer prior to the making of an offer, there are no termination rights based on items disclosed.
  - B. **SAN FRANCISCO SELLER DISCLOSURE:** (Applies to all properties.) Even if exempt from delivery of a TDS, Seller shall complete and deliver to Buyer the San Francisco Seller Disclosure, which shall be deemed complete when Seller has answered all applicable questions and initialed/signed each page.
  - C. **NATURAL HAZARDS DISCLOSURE ("NHD"):** (Applies to all properties.) Seller shall provide an NHD report disclosing if the Property is located in a flood, fire, seismic hazard or other zone for which disclosure is required by law. If a TDS is required, the NHD report shall also disclose if the Property is in a special tax district or area.
  - D. **EARTHQUAKE HAZARDS DISCLOSURE:** (Applies only to properties with 1 to 4 residential units built prior to 1960.) Seller shall deliver to Buyer the "Homeowner's Guide to Earthquake Safety" and complete a disclosure in compliance with Gov. Code §8897.
  - E. **LEAD-BASED PAINT HAZARDS DISCLOSURE:** (Applies to all properties with residential units built prior to 1978.) Seller shall complete and deliver to Buyer a Lead-Based Paint Hazards Disclosure and Addendum in compliance with 42 U.S.C. 4852d.
  - F. **BUILDING PERMIT HISTORY:** (Applies to all properties with residential units, except new construction.) Seller shall provide to Buyer a current Report of Residential Building Record ("3R"). Brokers/Agents do not investigate or verify the accuracy of the information contained in a 3R. Buyer is advised to investigate to Buyer's own satisfaction the status of zoning, permits or code compliance with the local planning department and not rely on the 3R to determine if the Property meets Buyer's intended uses.
  - G. **OTHER DISCLOSURES:** Seller shall provide Buyer with all documents in Seller's possession needed to complete Seller's disclosure obligation.
20. **COMPLIANCE WITH OTHER LOCAL, STATE AND FEDERAL LAWS:** Buyer is advised to consult with the appropriate authorities to determine the extent to which other local, State and federal laws may affect the ownership and use of the Property.
- A. **SMOKE AND CARBON MONOXIDE DETECTORS:** Unless an exemption applies, State and local law requires that every residential property be properly equipped with approved and functioning smoke (or heat) and carbon monoxide detectors. If such detectors are not installed on the Property in accordance with applicable law, Seller shall install and pay for the detectors prior to COE.
  - B. **WATER HEATERS:** California law requires water heaters to be strapped, braced or anchored to resist falling or displacement. The State Uniform Plumbing Code also requires that new or replacement water heaters located in a garage area be installed such that their ignition point is at least 18 inches above the floor. Different local authorities may have more stringent requirements. Seller shall bring water heaters into compliance prior to COE.
  - C. **UNDERGROUND STORAGE TANKS ("USTs"):** The Parties acknowledge that Article 21 of the San Francisco Health Code requires owners of real property in San Francisco with USTs located on or immediately adjacent to the Property to file a plan for their closure within **30 days** of discovery. If Seller has not provided Buyer with a written report by a licensed contractor specializing in USTs stating that no such tanks can be located, then Buyer is advised to conduct Buyer's own professional inspection, which Seller shall permit, irrespective of para. 12B. If the inspection reveals the existence of USTs, then Seller shall, at Seller's expense, remove them and complete any necessary remedial work to the Property prior to COE. Buyer may be responsible for USTs found after COE.
  - D. **ENERGY AND WATER CONSERVATION:** Unless exempt, Seller shall order an energy and/or water conservation inspection. Seller shall pay for all requisite energy/water remediation work, not to exceed the maximum amount set by local law. Seller shall complete the work by COE and comply with all filing, recordation and other requirements.

Buyer's Initials

Seller's Initials

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- 21. **ILLEGAL UNITS OR ROOMS:** Buyer understands that units, rooms, or additions to the Property may not have been legally permitted. They may violate zoning ordinances, may have been built without building permits, and a certificate of final completion and occupancy may not have been issued. Buyer may be required to bring them into compliance or to remove kitchens or other facilities at Buyer's expense. A substantial fine may be imposed and Buyer may be prevented from renting any illegal units. **Buyer is advised to obtain legal advice from a qualified San Francisco real estate attorney with respect to potential claims tenants renting illegal units may have.**
- 22. **RESIDENTIAL RENT CONTROL ORDINANCE:** If the Property is located in San Francisco, Buyer is advised that there is in effect a Residential Rent Stabilization and Arbitration Ordinance, amended from time to time, which may severely affect Buyer's rights of ownership and right to move into the Property. **Buyer is advised to research documents filed with the San Francisco Rent Board pertaining to the Property and to obtain legal advice from a qualified San Francisco landlord-tenant attorney.**
- 23. **MEGAN'S LAW:** Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet website maintained by the Department of Justice at <http://www.meganslaw.ca.gov>. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.
- 24. **NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet website maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet website.
- 25. **RISK OF LOSS:** (Civil Code §1662) If the Property is materially destroyed prior to the transfer of title or delivery of possession to Buyer, Seller cannot enforce this Contract and Buyer is entitled to recover deposits already made.
- 26. **PROPERTY CONDITION AND KEYS:** Seller shall maintain this Property in the same general condition as when this Contract was signed by both Parties until possession is delivered to Buyer. Seller is not required to repair holes remaining after the removal of hanging items. Seller shall deliver the Property free of debris and in broom-clean condition. Seller shall provide Buyer, at possession, with keys to all locks, mailboxes, alarms and garage doors; garage door remote controls and any codes or passwords. Buyer and Seller agree that Brokers/Agents are not responsible for Seller's performance under this Paragraph.
- 27. **WALK-THROUGH:** Buyer shall have the right to make a final inspection of the Property within **5 or 2** days prior to COE, not as a condition of the sale but solely to confirm that: (a) the Property is in substantially the same condition as on the Date of Acceptance, unless otherwise agreed to in writing; and (b) Seller has complied with all additional written obligations regarding the condition of the Property.
- 28. **HOME WARRANTY PLANS:** Buyer and Seller acknowledge they are aware of the availability of home warranty plans which provide limited coverage against system and appliance failures, but have not relied upon any representation by Brokers/Agents regarding the extent of coverage of any such plan.  (If checked) A 1-year home warranty plan shall be purchased at a cost not to exceed \$ \_\_\_\_\_, to be paid by N/A, with the cost of any additional coverage borne by Buyer.  A home warranty plan is declined by Buyer.
- 29. **BROKERS/AGENTS:** No Brokers or Agents are parties to this Contract between Buyer and Seller. The term "Brokers/Agents" as used in this Contract shall mean the licensees who have served as real estate brokers or agents for either the Buyer or the Seller in the preparation, negotiation and review of this Contract.
- 30. **TAX WITHHOLDING:** The California Revenue and Taxation Code §18662 requires Buyer to withhold from Seller's proceeds 3 1/3% of the gross sale price, unless Seller signs an affidavit stating that the Property has been Seller's principal residence as defined in IRC §121, or another exemption applies. Further, if Seller is a foreign person or corporation, as defined in the Foreign Investment in Real Property Tax Act (FIRPTA), Buyer must, unless an exemption applies, withhold from Seller's proceeds up to 15% of the gross sale price of the Property. At least **7 or 1** days prior to COE, the Parties shall deliver to Escrow Holder, acting as a Qualified Substitute under IRC §1445 and a State REEP, all documentation necessary to carry out the provisions of these laws. The Parties instruct Escrow Holder to deduct from Seller's proceeds any amounts required. If Escrow Holder receives a Non-Foreign affidavit from Seller, they shall give Buyer a Qualified Substitute Statement attesting to that, under penalty of perjury, prior to COE.
- 31. **NON-CONFIDENTIALITY OF OFFERS:** Buyer is advised that Seller or Seller's representatives may not treat the existence, terms or conditions of offers as confidential unless such is required by law, regulation or a pre-existing agreement between the Parties.
- 32. **TIME:** Time is of the essence. All references to "days" shall mean calendar days, expiring at 11:59 p.m., unless otherwise specified.
- 33. **DELIVERY OF DOCUMENTS:** All documents to be delivered by a Party under this Contract, including but not limited to the Acceptance, contingency removals, and/or any termination notice issued by Buyer or Seller, shall be in writing and effective only upon personal receipt by the other Party or that Party's Broker/Agent. Delivery by any method (e.g. personal, mail, fax, e-mail, etc.) is effective.
- 34. ~~**MULTIPLE LISTING SERVICE:** The Parties hereby grant to the San Francisco Association of REALTORS® Multiple Listing Service ("MLS") the right to publish and disseminate the sales price, terms of this Contract and other information about the Property and authorize their respective Brokers/Agents to submit such information under the applicable MLS rules.~~

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Buyer's Initials

Seller's Initials

Page 5 of 7  
(Rev. 12/19)

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35. **MEDIATION OF DISPUTES:** If a dispute arises regarding this Contract, Buyer and Seller agree to first attempt in good faith to settle the dispute by non-binding mediation before resorting to court action or binding arbitration. In mediation, a mutually acceptable resolution is sought rather than a settlement being imposed on the Parties. Mediation fees shall be paid equally by Buyer and Seller. The C.A.R. Real Estate Mediation Center for Consumers ([www.consumermediation.org](http://www.consumermediation.org)) shall be used, unless another mediation provider is mutually agreed to by the Parties. This Paragraph shall not apply to any disputes within the jurisdictional limits of Small Claims Court. Any Party who fails or refuses to mediate as required by this Paragraph, shall not be entitled to any attorney's fees award under this Contract. A court action filed to obtain a provisional remedy, including a notice of pending action or to stop the expiration of a statute of limitations, shall not be a violation of this Paragraph provided the Party commencing the action agrees, pending mediation, to a stay of the court action. This Paragraph shall apply regardless of whether the Parties also agree to arbitration.

36. **ARBITRATION OF DISPUTES:** Any dispute or claim in law or equity arising out of this Contract or any resulting transaction shall be decided by neutral binding arbitration in accordance with the rules of JAMS and not by court action, except as provided by California law for judicial review of arbitration proceedings. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. Arbitrators can award compensatory damages, punitive damages, and/or order specific performance, injunctive relief and declaratory relief. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The following matters are excluded from arbitration hereunder: (a) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or real property sales contract as defined in Civil Code §2985; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court or a Small Claims Court; or (e) an action for bodily injury or wrongful death. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to arbitrate under this provision.

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

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

Buyer's Initials  
MB

Seller's Initials  
GRM

37. **LIQUIDATED DAMAGES:** If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. If the Property is a dwelling with no more than four units, one of which Buyer intends to occupy, then the amount retained shall be no more than 3% of the Purchase Price. Any excess shall be returned to Buyer. Release of funds will require mutual, signed release instructions from both Buyer and Seller, judicial decision or arbitration award. **BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES AGREEMENT FOR ANY INCREASED DEPOSIT.**

Buyer's Initials  
MB

Seller's Initials  
GRM

38. **LEGAL ADVICE ON ARBITRATION AND LIQUIDATED DAMAGES:** Buyer and Seller acknowledge that they have not received or relied upon any representation by Brokers/Agents regarding Arbitration and Liquidated Damages and that they have been advised by Brokers/Agents to seek legal advice from a qualified real estate attorney. In the event only one Party initials either clause (Arbitration or Liquidated Damages), that clause shall not be part of this Contract as formed.

39. **ATTORNEYS' FEES:** In any action, proceeding or arbitration between Buyer and Seller arising out of this Contract, the prevailing Party shall be entitled to reasonable attorney fees and costs from the non-prevailing Party.

40. **ACCEPTANCE:** Under this Contract, Acceptance occurs only when Seller signs Buyer's original offer and Addenda without any changes and a signed copy is delivered to Buyer or Buyer's Broker/Agent, OR when the last of any counter offers has been signed by the receiving Party without any changes and a signed copy of that counter offer is delivered to the issuing Party. Signed means by application of a written signature or, to the fullest extent allowed by California law, an electronic signature on an original document, counterpart, photocopy or electronic copy. The Parties agree that electronic means will not be used by either of them to alter the content or integrity of the Contract.

41. **REMOVAL OF CONTINGENCIES:** Buyer's removal of contingencies requires a written Contingency Removal (  attached if checked).

- 42. **TERMINATION:** The following provisions apply except for a good faith exercise by either Party of a contractual contingency or a statutory right to terminate which can be done unilaterally by notice by a Party. Termination of this Contract by Seller shall be effected only after delivery of a Notice to Perform to Buyer which provides at least 2 days to perform contractual terms or remove contingencies. In the event that Buyer does not perform as noticed, Seller may terminate this Contract. Termination of this contract due to Seller's failure to perform contractual terms or remove contingencies, including Seller's failure to provide documents or reports mandated by this Contract or otherwise required by law, or Seller's failure to remove a Seller contingency, shall be effected only after delivery of a Notice to Perform to Seller which provides at least 2 days to perform as noticed. In the event that Seller does not perform as noticed, Buyer may terminate this Contract. Either Party may issue a Notice to Perform no sooner than 2 days prior to the contractual deadline. The obligation to close escrow as provided in paragraph 2 above is a contractual term requiring a Notice to Perform. Release of funds from escrow will require mutually consistent signed instructions from both Buyer and Seller, or the rendering of a judicial decision or arbitration award authorizing the release.
- 43. **BROKERS' COMPENSATION:** The Parties instruct Escrow Holder to disburse to Brokers at COE compensation from funds in escrow in accordance with the terms set forth in the listing agreement for the Property or other compensation agreement. Compensation instructions are irrevocable and amended only with the written consent of the Buyer's and Seller's Brokers.
- 44. **GENERAL PROVISIONS:** This Contract contains the entire agreement of the Parties. Any purported or prior agreement or representation respecting the Property or the duties of Buyer and Seller in relation thereto which is not expressly set forth herein is null and void. No amendment to or modification of this Contract shall be valid or enforceable unless in writing and signed by Buyer and Seller. This Contract shall be binding upon, and inure to the benefit of, the Parties' respective heirs, successors and assigns.
- 45. **REPRESENTATIVE CAPACITY:** A Party signing this Contract in a representative capacity hereby confirms the authority to do so and shall provide a Representative Capacity Signature Disclosure (RCSD form) to the other Party within **3 or N/A days** of Acceptance.  (If checked) Buyer attaches an RCSD-B form.
- 46. **FINCEN COMPLIANCE:** For a cash purchase, within **3 days** of request by Escrow Holder, Buyer shall provide all required information, including the identity of the natural person(s) behind the purchasing entity, or Seller may terminate this Contract.
- 47. **WIRE FRAUD:** The Parties acknowledge the risk of wire fraud and agree they are solely responsible for their own funds.
- 48. **ACKNOWLEDGMENT OF RECEIPT:** The Parties hereby acknowledge receipt of a copy of this Contract and represent that they have read, and that they understand, its provisions.
- 49. **ADDITIONAL TERMS AND CONDITIONS** including all attached Addenda signed by Buyer and Seller shall be deemed a part of this Contract. 1. Seller's Manager is licensed by the California Department of Real Estate as a Broker  
2. The Sale is an As-Is Sale with all faults (see As-Is Addendum attached)

50. **EXPIRATION:** This offer shall be deemed revoked unless a copy of this Contract with Seller's signature accepting it is delivered to Buyer or Buyer's Broker/Agent within **24 or \_\_\_\_\_ hours** of presentation to Seller, or  (if checked) not later than \_\_\_\_\_ (time) on \_\_\_\_\_ (date).

NO REPRESENTATION IS MADE AS TO THE LEGAL SUFFICIENCY OR VALIDITY OF ANY PROVISION OF THIS CONTRACT FOR ANY SPECIFIC TRANSACTION. BROKERS/AGENTS CAN ADVISE ON REAL ESTATE TRANSACTIONS ONLY. FOR LEGAL OR TAX ADVICE, CONSULT A QUALIFIED ATTORNEY OR CPA.

Buyer Malissa Beach, Manager  Date 03/27/2020 06:33 PM PDT Buyer \_\_\_\_\_ Date \_\_\_\_\_  
**950 Lombard, LLC. a California Limited Liability Co**

**ACCEPTANCE**

The undersigned Seller hereby accepts the foregoing offer and agrees to sell the Property on the terms and conditions set forth herein, **OR**  (if checked) accepts the above terms and conditions as amended by Seller's Counter Offer and  Back-Up Offer Addendum.

Seller Gregory R Malin  Date 03/30/2020 06:32 AM PDT Seller \_\_\_\_\_ Date \_\_\_\_\_  
**Eight Forty One, LLC A California Limited Liability Co. N/A**

**BROKER/AGENT COMPENSATION AGREEMENT AND ACKNOWLEDGMENT OF AGENCY RELATIONSHIPS**

Seller's Brokerage Firm agrees to assign and pay to Buyer's Brokerage Firm from the commission as set forth in a written listing agreement between Seller and Seller's Broker, the amount specified in the MLS, or  (if checked) in a separate written agreement between the Brokers. Any percentages shown shall be based upon the Purchase Price, unless otherwise specified. Broker(s) hereby agree to the terms and conditions for compensation stated above and acknowledge the agency relationships confirmed in this Contract.

Buyer's Brokerage Firm None

By (Broker/Agent for Buyer) \_\_\_\_\_ Tel. N/A Date \_\_\_\_\_  
N/A

Seller's Brokerage Firm None

By (Broker/Agent for Seller) \_\_\_\_\_ Tel. N/A Date \_\_\_\_\_  
N/A



The following terms and conditions are hereby incorporated in and made a part of the Purchase Agreement or other form for the Property known as 950 Lombard St, San Francisco, CA 94133-2218
in which 950 Lombard, LLC. a California Limited Liability Co is referred to as "Buyer"
and Eight Forty One, LLC A California Limited Liability Co., N/A is referred to as "Seller".

1) Addendum 1

As-Is Transfer. The Purchaser acknowledges that the Purchaser has received disclosure of, is fully aware of and accepts all of the defects, deficiencies, adverse conditions (including, without limitation, Hazardous Materials) and other facts, circumstances and matters disclosed by or contained in the Seller Disclosure Package. The Purchaser acknowledges and agrees that, except for the disclosures made in the Seller Materials or as expressly set forth in the Purchase Agreement, neither Seller, its agents, nor anyone else acting or claiming to act for or on behalf of Seller, has made any representations, warranties, promises or statements, whether oral or written, to the Purchaser concerning the condition of the Property. The Purchaser further acknowledges and agrees, except as provided in the express representations, warranties and covenants of Seller set forth in the Purchase Agreement: (a) that the condition of the Property has been independently verified by the Purchaser to its full satisfaction; (b) that the Purchaser will be acquiring the Property based solely upon and in reliance on its own inspections, analyses and conclusions and/or those of the Purchaser's agents, brokers, and consultants; and (c) that the Purchaser will acquire the Property in the Property's "AS IS" condition and "AS IS" state of repair, inclusive of all faults, defects, legal violations, and hazards, whether latent or patent, known or unknown, or foreseeable or unforeseeable. Without limiting the scope or generality of the foregoing, the Purchaser expressly assumes the risk that the Purchased Property may not now or in the future comply with the Americans With Disabilities Act or any other Applicable Laws now or hereafter in effect. Without limiting the scope or generality of this Section, the Purchaser expressly assumes the risk that adverse physical, environmental, financial and legal conditions not known to Seller may not be revealed by the Purchaser's inspections and evaluations of the Property and the Seller Materials.

Purchaser further waives any unknown claims against Seller with respect to the condition of the Property. In connection with such waiver, Purchaser hereby waives the benefit of California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Purchaser hereby initials this provision to confirm the AS IS language and waiver.

Purchaser's Initials: MB

Buyer Malissa Beach, Manager 950 Lombard, LLC. a California Limited Liability Co Date 03/27/2020 06:33 PM PDT

Buyer Date

Seller Gregory R Malin Eight Forty One, LLC A California Limited Liability Co. Date 03/30/2020 06:32 AM PDT

Seller N/A Date

BROKERS/AGENTS CAN ADVISE ON REAL ESTATE TRANSACTIONS ONLY. FOR LEGAL OR TAX ADVICE, CONSULT A QUALIFIED ATTORNEY OR CPA.

