

1 THOMAS C. LASKEN, Counsel  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED

DEC 10 1999

DEPARTMENT OF REAL ESTATE

By Juan Antonio

8 BEFORE THE  
9 DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of )  
13 ELLIS & ASSOCIATES, INC., ) NO. H-1417 FRESNO  
14 and FLORENTINO LAO JOSE, )  
15 Respondents. ) STIPULATION AND AGREEMENT

16 It is hereby stipulated by and between ELLIS &  
17 ASSOCIATES, INC. ("Respondent EAI") and FLORENTINO LAO JOSE  
18 ("Respondent JOSE") (collectively "Respondents"), by and through  
19 their attorney, David C. Mathias; and the Complainant, acting by  
20 and through Thomas C. Lasken, Counsel for the Department of Real  
21 Estate; as follows, for the purpose of settling and disposing of  
22 the Accusation filed on April 29, 1999, in this matter:

23 1. All issues which were to be contested and all  
24 evidence which was to be presented by Complainant and Respondent  
25 at a formal hearing on the Accusation, which hearing was to be  
26 held in accordance with the provisions of the Administrative  
27 Procedure Act (APA) (Government Code Section 11500 et seq.),  
H-1417 FRESNO

-1- ELLIS & ASSOCIATES, INC., and  
FLORENTINO LAO JOSE

1 shall instead and in place thereof be submitted solely on the  
2 basis of the provisions of this Stipulation and Agreement.

3           2. Respondents have received, read and understand the  
4 Statement to Respondent, the Discovery Provisions of the APA, and  
5 the Accusation and filed by the Department of Real Estate in this  
6 proceeding.

7           3. On May 24, 1999, Respondents filed their Notice of  
8 Defense pursuant to Section 11505 of the Government Code for the  
9 purpose of requesting a hearing on the allegations in the  
10 Accusation. Respondents hereby freely and voluntarily withdraw  
11 their Notice of Defense. Respondents acknowledge that by  
12 withdrawing said Notice of Defense they will thereby waive their  
13 right to require the Commissioner to prove the allegations in the  
14 Accusation at a contested hearing held in accordance with the  
15 provisions of the APA and that they will waive other rights  
16 afforded to them in connection with the hearing such as the right  
17 to present evidence in defense of the allegations in the  
18 Accusation and the right to cross-examine witnesses.

19           4. This Stipulation is based on the factual  
20 allegations contained in the Accusation. In the interests of  
21 expedience and economy, Respondents choose not to contest these  
22 allegations, but to remain silent and understand that, as a  
23 result thereof, these factual allegations, without being admitted  
24 or denied, will serve as a prima facie basis for the disciplinary  
25 action stipulated to herein. The Real Estate Commissioner shall  
26 not be required to provide further evidence to prove said factual  
27 allegations.

1           5. It is understood by the parties that the Real  
2 Estate Commissioner may adopt the Stipulation and Agreement as  
3 his Decision in this matter, thereby imposing the penalty and  
4 sanctions on Respondents' real estate license(s) and license  
5 rights as set forth in the below "Order". In the event that  
6 the Commissioner in his discretion does not adopt the  
7 Stipulation and Agreement, it shall be void and of no effect,  
8 and Respondents shall retain the right to a hearing and  
9 proceeding on the Accusation under all the provisions of the  
10 APA and shall not be bound by any admission or waiver made  
11 herein.

12           6. The Order or any subsequent Order of the Real  
13 Estate Commissioner made pursuant to this Stipulation and  
14 Agreement shall not constitute an estoppel, merger or bar to any  
15 further administrative or civil proceedings by the Department of  
16 Real Estate with respect to any matters which were not  
17 specifically alleged to be causes for accusation in this  
18 proceeding.

19           7. Respondents have received, read, and understand the  
20 "Notice Concerning Costs of Subsequent Audits". Respondents  
21 understand that by agreeing to this Stipulation and Agreement in  
22 Settlement, the findings set forth below in the DETERMINATION OF  
23 ISSUES become final, and that the Commissioner may charge  
24 Respondents for the cost of any audit conducted pursuant to  
25 Section 10148 of the Business and Professions Code to determine  
26 if the violations have been corrected. The maximum costs of said  
27 audit will not exceed \$4,812.92.

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1 Business and Professions Code and to the following  
2 limitations, conditions and restrictions imposed under  
3 authority of Section 10156.6 of said Code:

4 (1) The license shall not confer any property right in the  
5 privileges to be exercised, and the Real Estate  
6 Commissioner may by appropriate order suspend the right  
7 to exercise any privileges granted under the restricted  
8 license in the event of:

9 (a) The conviction of Respondent (including a plea of  
10 nolo contendere) to a crime which bears a  
11 significant relation to Respondent's fitness or  
12 capacity as a real estate licensee; or,

13 (b) The receipt of evidence that Respondent has  
14 violated provisions of the California Real Estate  
15 Law, Subdivided Lands Law, Regulations of the Real  
16 Estate Commissioner or conditions attaching to the  
17 restricted license.

18 (2) Respondent shall not be eligible to apply for issuance  
19 of an unrestricted real estate license nor the removal  
20 of any of the conditions, limitations or restrictions  
21 attaching to the restricted license until one (1) year  
22 has elapsed from the date of issuance of a restricted  
23 license to Respondent.

24 D. Respondents shall pay, pursuant to Section 10148 of the  
25 Business and Professions Code, the Commissioner's reasonable  
26 cost for an audit to determine if Respondents have corrected  
27 the trust fund violations as set forth in the Determination

1 of Issues above. In calculating the amount of the  
2 Commissioner's reasonable costs, the Commissioner may use  
3 the estimated average hourly salary for all persons  
4 performing audits of real estate brokers, and shall include  
5 an allocation for travel costs, including mileage, time to  
6 and from the auditor's place of work, and per diem. The  
7 Commissioner's reasonable costs shall in no event exceed  
8 \$4,812.92.

- 9 (1) Respondents shall pay such cost within 60 days of  
10 receipt of an invoice from the Commissioner  
11 detailing the activities performed during the audit  
12 and the amount of time spent performing those  
13 activities;
- 14 (2) If Respondents fail to pay, within 60 days from receipt  
15 of the invoice specified above, the Commissioner's  
16 reasonable costs for an audit to determine if  
17 Respondents have corrected the violations found as set  
18 forth in the Determination of Issues above, the  
19 Commissioner may order the indefinite suspension of  
20 Respondents' real estate licenses and license rights.  
21 The suspension shall remain in effect until payment is  
22 made in full, or until Respondents enter into an  
23 agreement satisfactory to the Commissioner to provide  
24 for such payment. The Commissioner may impose further  
25 reasonable disciplinary terms and conditions upon  
26 Respondents' real estate license and license rights as  
27 part of any such agreement.

1 E. Respondent JOSE shall, within six (6) months from the  
2 effective date of the restricted license, take and pass  
3 the Professional Responsibility Examination administered  
4 by the Department including the payment of the appropriate  
5 examination fee. If Respondent JOSE fails to satisfy this  
6 condition, the Commissioner may order the suspension of  
7 the restricted license until Respondent JOSE passes the  
8 examination.

9 F. Respondent JOSE shall, within nine (9) months from the  
10 effective date of this ORDER, present evidence  
11 satisfactory to the Real Estate Commissioner that he has,  
12 since the most recent issuance of an original or renewal  
13 real estate license, taken and successfully completed the  
14 continuing education requirements of Article 2.5 of  
15 Chapter 3 of the Real Estate Law for renewal of a real  
16 estate license. If Respondent JOSE fails to satisfy this  
17 condition, the Commissioner may order the suspension of  
18 the restricted license until Respondent JOSE presents  
19 such evidence. The Commissioner shall afford  
20 Respondent JOSE the opportunity for a hearing pursuant  
21 to the Administrative Procedure Act to present such  
22 evidence.

23 G. Prior to the effective date of the Decision herein,  
24 Respondents shall provide proof satisfactory to the Real  
25 Estate Commissioner that there is a deposit of \$9,809.77 in  
26 one or more trust bank accounts made to cure the shortage  
27 alleged in the Accusation filed in this matter.

1 H. Any restricted real estate broker license issued to  
2 Respondents may be suspended or revoked for a violation by  
3 Respondents of any of the conditions attaching to the  
4 restricted license.

5  
6 August 18, 1989  
7 DATED

Thomas C. Lasken  
8 THOMAS C. LASKEN, Counsel  
9 DEPARTMENT OF REAL ESTATE

10 \* \* \*

11 I have read the Stipulation and Agreement, have  
12 discussed it with my counsel, and its terms are understood by  
13 me and are agreeable and acceptable to me. I understand that I  
14 am waiving rights given to me by the California Administrative  
15 Procedure Act (including but not limited to Sections 11506,  
16 11508, 11509, and 11513 of the Government Code), and I  
17 willingly, intelligently, and voluntarily waive those rights,  
18 including the right of requiring the Commissioner to prove the  
19 allegations in the Accusation at a hearing at which I would  
20 have the right to cross-examine witnesses against me and to  
21 present evidence in defense and mitigation of the charges.

22 ELLIS & ASSOCIATES, INC.  
23 Respondent

24 7/21/99

25 DATED

26 BY:

27 FLORENTINO LAO JOSE  
President

7/21/99

DATED

FLORENTINO LAO JOSE  
Respondent

1 I have reviewed the Stipulation and Agreement in  
2 Settlement as to form and content and have advised my clients  
3 accordingly.

4  
5 7/21/99  
6 DATED

David C. Mathias  
7 DAVID C. MATHIAS  
8 Attorney for Respondents

9 \* \* \*

10 The foregoing Stipulation and Agreement is hereby  
11 adopted by the Real Estate Commissioner as his Decision and  
12 Order and shall become effective at 12 o'clock noon on  
13 December 30, 1999.

14 IT IS SO ORDERED December 3, 1999.

15 PAULA REDDISH ZINNEMANN  
16 Real Estate Commissioner

17 John R. Liberator  
18

19  
20 BY: John R. Liberator  
21 Chief Deputy Commissioner  
22  
23  
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27

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000

4 (916) 227-0789

FILED  
DEC 10 1999

DEPARTMENT OF REAL ESTATE

By John R. Liberator

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 TO: ) CASE NO. H-1417 FRESNO  
12 ELLIS & ASSOCIATES, INC., )  
and FLORENTINO LAO JOSE ) NOTICE CONCERNING COSTS  
OF SUBSEQUENT AUDITS

13 The attached Stipulation and Agreement contains a  
14 determination by the Real Estate Commissioner that you, have  
15 either violated Section 10145 of the Business and Professions  
16 Code or a regulation of the Commissioner interpreting Section  
17 10145, or both. Section 10148 of the Business and Professions  
18 Code provides that if this finding(s) becomes final, the  
19 Commissioner may charge you for the costs of any subsequent audit  
20 conducted as a result of the violations found herein.

21 Enclosed for your reference is a copy of the provisions  
22 of Section 10148 of the Business and Professions Code.

23 Dated: July 15, 1999.

24 JOHN R. LIBERATOR  
25 Acting Real Estate Commissioner

26 Thomas C. Lasken  
27 By: THOMAS C. LASKEN, Counsel

SECTION 10148  
CALIFORNIA BUSINESS AND PROFESSIONS CODE

10148. (a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature.

(b) The commissioner shall charge a real estate broker for the cost of an audit, if prior to the audit the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.

(c) If a broker fails to pay for the cost of an audit as described in subdivision (b) within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the broker's license or deny renewal of the broker's license. The suspension or denial shall remain in effect until the cost is paid or until the broker's right to renew a license has expired.

The commissioner may maintain an action for the recovery of the cost in any court of competent jurisdiction. In determining the cost incurred by the commissioner for an audit, the commissioner may use the estimated average hourly cost for all persons performing audits of real estate brokers.

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

JUN 25 1999

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

ELLIS & ASSOCIATES, INC.;  
and, FLORENTINO LAO JOSE,

Case No. H-1417 FRESNO

OAH No. N-1999060120

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at The

State Building, 2550 Mariposa Mall, Room 1038,

Fresno, California 93721

on July 15, 1999, at the hour of 9:00 AM,  
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: June 24, 1999

By

Thomas C. Lasken  
THOMAS C. LASKEN Counsel

1 THOMAS C. LASKEN, Counsel  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED

APR 29 1999

DEPARTMENT OF REAL ESTATE

By John W. Sweeney

8 BEFORE THE  
9 DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of )  
13 ELLIS & ASSOCIATES, INC.; and, ) NO. H-1417 FRESNO  
14 FLORENTINO LAO JOSE; ) ACCUSATION  
15 Respondents. )

16 The Complainant, John W. Sweeney, a Deputy Real  
17 Estate Commissioner of the State of California, for cause of  
18 Accusation against ELLIS & ASSOCIATES, INC., individually and  
19 doing business as "Equity Realty" and as "Century 21 Equity  
20 Realty"; and FLORENTINO LAO JOSE, individually and as Designated  
21 Officer of ELLIS & ASSOCIATES, INC.; is informed and alleges as  
22 follows:

23 FIRST CAUSE OF ACCUSATION

24 I

25 The Complainant, John W. Sweeney, a Deputy Real Estate  
26 Commissioner of the State of California, makes this Accusation in  
27 his official capacity.

1 II

2 At all times herein mentioned, Respondent ELLIS &  
3 ASSOCIATES, INC. (hereinafter "Respondent ELLIS"), individually  
4 and doing business as "Equity Realty" and as "Century 21 Equity  
5 Realty", was licensed and/or had license rights under the Real  
6 Estate Law, Part 1 of Division 4 of the Business and Professions  
7 Code (hereinafter "Code") as a real estate brokerage corporation,  
8 by and through Respondent FLORENTINO LAO JOSE (hereinafter  
9 "Respondent JOSE") as its Designated Officer.

10 III

11 At all times herein mentioned, Respondent JOSE was  
12 licensed, and/or has license rights under the Code, individually  
13 and as Designated Officer of Respondent ELLIS.

14 IV

15 At all times mentioned herein, Respondents engaged in  
16 the business of, acted in the capacity of, advertised or assumed  
17 to act as real estate broker within the State of California,  
18 within the meaning of Section 10131(a) ("Sales") and 10131(b)  
19 ("Property Management") of the Code.

20 V

21 During the course of the real estate sales brokerage  
22 activities described in Paragraph IV above, Respondents received  
23 and disbursed funds held in trust on behalf of another or others.

24 VI

25 Within the three-year period immediately preceding the  
26 filing of this Accusation, Respondents maintained the following  
27 trust account:

|   | <u>Account Name and Number</u> | <u>Bank</u>      |
|---|--------------------------------|------------------|
| 1 |                                |                  |
| 2 | Florentino Jose, Real Estate   | Bank of America  |
| 3 | Broker Trust Account           | 180 N. Redington |
| 4 | #00184-05069                   | Hanford, CA.     |

VII

Commencing on August 3, 1998, and continuing through August 13, 1998, an investigative audit ("Audit") was made by the Department of Real Estate ("Department") of Respondents' records for the period August 1, 1996, through July 31, 1998 ("the audit period"), as those records relate to Respondents' licensed activities in their real estate sales business.

VIII

During the audit period, in connection with the collection and disbursement of trust funds, Respondents failed to deposit and maintain trust funds in the trust account in such manner that as of June 30, 1998, there was a shortage of at least \$5,849.77 of trust funds.

IX

During the audit period, in connection with the collection and disbursement of trust funds, Respondents disbursed, or caused or permitted the disbursement of, trust funds from the trust account, without the prior written consent of every principal who was an owner of the funds in the account, where the disbursement reduced the balance of funds in the accounts to an amount which was at least \$5,849.77 less than the existing aggregate trust fund liability of Respondents to all owners of said funds, in violation of Section 2832.1 of Title 10, California Administrative Code ("the Regulations").

1 X

2 During the audit period, in connection with the receipt  
3 and disbursement of trust funds, Respondents failed to maintain  
4 columnar records of all the trust funds received and disbursed, in  
5 conformance with Section 2831 of the Regulations.

6 XI

7 During the audit period, in connection with the receipt  
8 and disbursement of trust funds, Respondents failed to reconcile  
9 the balances of all separate beneficiary or transaction records  
10 maintained with the record of all trust funds received and  
11 disbursed at least once a month, in violation of Section 2831.2 of  
12 the Regulations.

13 XII

14 Respondents' acts and omissions alleged above in  
15 Paragraphs VIII and IX constitute cause for discipline under  
16 Section 10177(d) of the Code in conjunction with Section 10145 of  
17 the Code and Section 2832.1 of the Regulations.

18 XIII

19 Respondents' acts and omissions alleged above in  
20 Paragraphs X and XI constitute cause for discipline under the  
21 provisions of Section 10177(d) of the Code.

22 SECOND CAUSE OF ACCUSATION

23 XIV

24 There is hereby incorporated in this Second, separate  
25 and distinct, Cause of Accusation all of the allegations contained  
26 in Paragraphs I through IV of the First Cause of Accusation with  
27 the same force and effect as if fully set forth herein.

1 XV

2 During the course of the real estate property management  
3 activities described in Paragraph IV above, Respondents received  
4 and disbursed funds held in trust on behalf of another or others.

5 XVI

6 Within the three-year period immediately preceding the  
7 filing of this Accusation, Respondents maintained the following  
8 trust account:

| 9  | <u>Account Name and Number</u> | <u>Bank</u>                      |
|----|--------------------------------|----------------------------------|
| 10 | Century 21 Equity Realty       | Bank of America                  |
| 11 | #00188-08259                   | 180 N. Redington<br>Hanford, CA. |

12 XVII

13 Commencing on August 3, 1998, and continuing through  
14 August 10, 1998, an investigative audit ("Audit") was made by the  
15 Department of Real Estate ("Department") of Respondents' records  
16 for the period July 1, 1997, through July 31, 1998 ("the audit  
17 period"), as those records relate to Respondents' licensed  
18 activities in their real estate property management business.

19 XVIII

20 During the audit period, in connection with the  
21 collection and disbursement of trust funds, Respondents failed to  
22 deposit and maintain trust funds in the trust account in such  
23 manner that as of June 30, 1998, there was a shortage of at least  
24 \$3,960.00 of trust funds.

25 XIX

26 During the audit period, in connection with the  
27 collection and disbursement of trust funds, Respondents disbursed,

1 or caused or permitted the disbursement of, trust funds from the  
2 trust account, without the prior written consent of every  
3 principal who was an owner of the funds in the account, where the  
4 disbursement reduced the balance of funds in the accounts to an  
5 amount which was at least \$3,960.00 less than the existing  
6 aggregate trust fund liability of Respondents to all owners of  
7 said funds, in violation of Section 2832.1 of Title 10, California  
8 Administrative Code ("the Regulations").

9 XX

10 During the audit period, in connection with the receipt  
11 and disbursement of trust funds, Respondents failed to maintain  
12 columnar records of all the trust funds received and disbursed,  
13 in conformance with Section 2831 of the Regulations.

14 XXI

15 During the audit period, in connection with the  
16 receipt and disbursement of trust funds, Respondents failed to  
17 maintain separate records for each beneficiary or transaction,  
18 accounting for all trust funds received, deposited, and disbursed,  
19 in conformance with Section 2831.1 of the Regulations.

20 XXII

21 During the audit period, in connection with the receipt  
22 and disbursement of trust funds, Respondents failed to reconcile  
23 the balances of all separate beneficiary or transaction records  
24 maintained with the record of all trust funds received and  
25 disbursed at least once a month, in violation of Section 2831.2 of  
26 the Regulations.

27 ///

1 XXIII

2 Respondents' acts and omissions alleged above in  
3 Paragraphs XVIII and XIX constitute cause for discipline under  
4 Section 10177(d) of the Code in conjunction with Section 10145 of  
5 the Code and Section 2832.1 of the Regulations.

6 XXIV

7 Respondents' acts and omissions alleged above in  
8 Paragraphs XX through XII constitute cause for discipline under  
9 the provisions of Section 10177(d) of the Code.

10 THIRD CAUSE OF ACCUSATION

11  
12 XXV

13 There is hereby incorporated in this Third, separate and  
14 distinct, Cause of Accusation all of the allegations contained in  
15 the First and Second Causes of Accusation with the same force and  
16 effect as if fully set forth herein.

17 XXVI

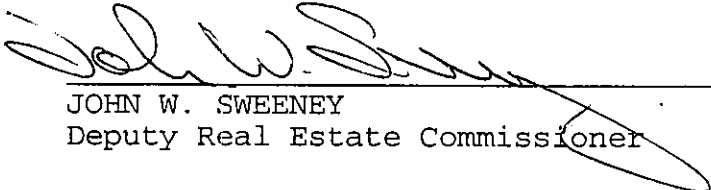
18 During the period July 1, 1997, through August 13, 1998,  
19 Respondent JOSE, as designated broker-officer for Respondent  
20 ELLIS, failed to exercise reasonable supervision and control over  
21 the licensed activities of Respondent ELLIS as required by Section  
22 10159.2 of the Code. Such failure is cause for the suspension or  
23 revocation of Respondent JOSE's licenses and/or license rights  
24 under Section 10177(h) of the Code.

25 ///

26 ///

27 ///

1           WHEREFORE, the Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against all licenses and license rights of Respondents  
5 under the Real Estate Law (Part 1 of Division 4 of the Business  
6 and Professions Code), and for such other and further relief as  
7 may be proper under other provisions of law.

8  
9  
10  
11   
12           JOHN W. SWEENEY  
13           Deputy Real Estate Commissioner  
14

15       Dated at Fresno, California,  
16       this 21<sup>st</sup> day of April, 1999.  
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