1 Robin Mashal (California State Bar No. 205003) Peter Y. Hong (California State Bar No. 213620) 2 HONG & MASHAL, LLP 1875 Century Park East, Suite 600 3 Los Angeles, California 90067-2507 4 Telephone: (310) 286-2000 Facsimile: (310) 286-2525 5 6 Attorneys for Creditor, NATIONAL GOLD & DIAMOND CENTER, INC. 7

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CLERK U.S. BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA BY: Deputy Clerk

# UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA LOS ANGELES DIVISION

In re:

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MINERVA P. ESMILLA,

Debtor.

Case No.: 2:08-bk-12485-VZ

Assigned to Hon. Vincent P. Zurzolo Chapter 7

SUPPLEMENTAL OPPOSITION TO DEBTOR'S MOTION TO AVOID LIEN UNDER 11 U.S.C. § 522(f) (REAL PROPERTY); DECLARATION OF ROBIN MASHAL; EXHIBIT

CASE NO.: 2:08-bk-12485-VZ

TO THE HONORABLE COURT, TO THE DEBTOR, TO ALL INTERESTED PARTIES, AND TO THEIR ATTORNEY(S) OF RECORD:

NATIONAL GOLD & DIAMOND CENTER, INC. ("Creditor") hereby respectfully submits its <u>Supplemental</u> Opposition to the Motion of MINERVA P. ESMILLA ("Debtor") to Avoid Lien under 11 U.S.C. § 522(f) (Real Property), scheduled to be heard on July 27, 2010, at 11:00 a.m., in Courtroom 1368, at 255 East Temple Street, Los Angeles, California.

#### I. INTRODUCTION.

Creditor's claims against the Debtor herein are based on commercial debts incurred by Debtor when she made wholesale purchase of diamonds and jewelry from Creditor for purposes of resale. On June 16, 2010, Creditor filed its original Opposition papers to Debtor's Motion to Avoid Lien under 11 U.S.C. § 522(f). Creditor hereby files its <u>supplemental</u> Opposition papers, and incorporates by references the original Opposition papers on file herein.

II. AS PROVIDED IN THE ORIGINAL OPPOSITION PAPERS, CREDITOR HAS BEEN PREJUDICED BY DEBTOR'S NEARLY TWO AND HALF YEAR DELAY TO BRING HER MOTION HEREIN.

This Court should reject Debtor's Motion herein, because Debtor's nearly two and half year delay in challenging Creditor's liens have been prejudicial. "The key factor in allowing the late avoidance of a lien pursuant to § 522(f) is whether the creditor is sufficiently prejudiced so that it would be inequitable to allow avoidance of the lien." ITT Financial Serv. v. Ricks (In re Ricks), 89 B.R. 73, 75-76 (9th Cir. BAP 1988). See also In re Biannucci, 4 F.3d 526, 528 (7th Cir. 1993) ("delay may be prejudicial when it is combined with other factors."). Here Debtor is attempting to use lower property values to argue for avoidance of Creditor's lien, and this is clearly prejudicial to Creditor.

III. AS PROVIDED IN THE ORIGINAL OPPOSITION PAPERS, DEBTOR HAS PROVIDED A CONSENSUAL LIEN TO CREDITOR BASED ON THE STIPULATION FOR ENTRY OF JUDGMENT, AND HAS AFFIRMED HER OBLIGATIONS TO THE CREDITOR.

In January 2010, Debtor reaffirmed her obligations to Creditor by stipulating to entry of judgment in favor of Creditor, in the amount of Creditor's attachment lien (see "Exhibit I"). Paragraph 1 of that Stipulation provides the Judgment shall be enforceable against Debtor's attached properties. Paragraph 4 of the Stipulation provides Debtor "waives any rights she may have to stay of execution of Judgment...or to have an

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appeal...." Paragraph 8 of the Stipulation provides that Debtor has been represented by 2

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legal counsel of her choice with respect to form and contents of the Stipulation and the advisability of executing the Stipulation. Therefore, Debtor has waived any challenges to Creditor's liens.

#### THIS COURT SHOULD DENY DEBTOR'S MOTION HEREIN, AS THE IV. DEBTOR FAILS TO PROVIDE PROPERTY FAIR MARKET VALUE AS OF THE TIME DEBTOR'S PETITION WAS FILED.

Debtor's motion herein should be denied as Debtor has failed to provide the value of her Condominium as of the date her bankruptcy petition was filed. Petition date is operative date to make all Section 522(f) determinations. In re Salanoa, 263 B.R. 120 (Bankr., S.D. Cal. 2001); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386 (B.A.P. 9<sup>th</sup> Cir. 2003). Exemption rights in bankruptcy, pursuant to Section 522, are determined as of date petition is filed. In re Yau, 115 B.R. 245 (Bankr. C.D. Cal 1990); In re Sanford, 403 B.R. 831 (Bankr., Nev. 2009). "As with any motion to avoid a judgment under section 522(f), the debtor carries the burden to establish the value of his property as of the date of the bankruptcy filing." In re Kelly, 311 B.R. 341, 345 (Bankr. W.D.N.Y. 2004).

Although a creditor does not have the burden to establish the value of a Debtor's property in opposition papers, Creditor here has retained a licensed real estate appraiser and made instructions for an appraisal of Debtor's condominium retrospective as to February 27, 2008. A true copy of this appraisal is attached hereto as "Exhibit J". This appraisal conservatively places the value of Debtor's condominium at \$365,000.00 as of the date of the bankruptcy petition.

$$50.00\% \times [\$365,000 - \$140,000] = \$112,000$$

Debtor's equity in her Condo at the bankruptcy filing was at least \$112,000, which equity was far greater than the sum of Debtor's \$50,000 claimed homestead and Creditor's \$49,595.20 judicial lien. Therefore, there has been in impairment of Debtor's homestead and her motion herein should be denied.

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#### V. CONCLUSION.

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Based on the above arguments, points and authorities, the attached Declaration and Exhibits, Creditor respectfully requests that this Court denies Debtor's motion herein because: (1) Debtor's delay in bringing her motion to challenge Creditor's judicial lien has been prejudicial to Plaintiff as she tries to use a lower property valuation in contravention of the Bankruptcy Code, (2) Debtor has stipulated to entry of judgment in the amount of attachment lien in favor of Creditor and waived stay of execution, (3) Debtor fails her burden to present value of her Condo as of the date she filed her bankruptcy petition; and (4) Based on appraisal provided by Creditor there was no impairment of Debtor's homestead amount as of the date of her bankruptcy petition.

Respectfully submitted,

HONG & MASHAL, LLP

Dated: July 22, 2010

Robin Mashal. Peter Y. Hong,

Attorneys for Creditor

NATIONAL GOLD & DIAMOND

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CENTER, INC.

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## **DECLARATION OF ROBIN MASHAL**

Robin Mashal, hereby declares:

- 1. I am the attorney for NATIONAL GOLD & DIAMOND CENTER, INC. ("Creditor"), a creditor of MINERVA P. ESMILLA ("Debtor"). I am licensed to practice law before all courts of the State of California, and also admitted to the Federal Courts in the Central District of California. I am over 18 years of age. My office is located at 1875 Century Park East, Suite 600, Los Angeles, California 90067-2507.
- 2. This Declaration is made out in support of Creditor's supplemental opposition papers to Debtor's motion to avoid Creditor's liens under 11 U.S.C. § 522(f). I am fully competent to make this declaration.
- 3. This office has been making various attempts to reach Debtor's counsel to obtain appointment for Creditor's real estate appraiser to visit and appraise Debtor's condominium located at 21828 S. Vermont, Unit # 1, Torrance, California (the "Condo") and the delays on the side of Debtor's counsel caused the delay in obtaining the appraisal and filing it with the Court.
- 4. This office retained Armando J. Ortiz ("Appraiser"), who is a California Certified General Real Estate Appraiser, holder of license number AG027708, for the purpose of obtaining an appraisal of the Condo. I instructed the Appraiser to appraise the Condo retrospectively as of February 27, 2008, and provide an official appraisal report of the same. Appraiser provided an appraisal of the Condo a true copy of which is attached hereto as "Exhibit J" and incorporated herein by this reference. At the bottom of "page 2 of 6", the report provides retrospective valuation of the Condo as of February 27, 2008, at \$365,000.00

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

Executed on this July 22, 2010, at Los Angeles, California.

Robin Mashal

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# Exterior-Only Inspection Residential Appraisal Report

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Freddie Mac Form 2055 March 2005

# Exterior-Only Inspection Residential Appraisal Report

File # 0610A1705

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	There are 12 comp	arable sales	in the sub	piect neight	borhood wid	A the such	et rwelv	remonths ranging i	n price from :	Ş		2 of 000,000		20,000
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	Address 21828 Sout					/. 220tl			22533 5	. Verm	ont #33		COMPARABLE Figueroa S	
	Torrance, CA.					343-02			AP#734				: Figueroa S 343-008-08	
	Proximity to Subject			and the	0.30 N		_		0.60 MI			0.30 N		<u> </u>
	Sale Price	s N/A						s 410,000			1 1 N N N		AT IAE	s 370,000
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	Exterior-Only inspection R	esidential Approximat Domest	
- 1	MARKET CONDITIONS:	esidential Appraisal Report File#	0610A1705
Į	The overall market for attached condominium dwellings in the Lo Disruptions in the mortgage finance sector have curtailed demand	og America/G at 5	
Į	Disruptions in the mortgage finance sector have curtailed demans	Jis Aligeres/South Bay Market area has been in de	cline since mid 2006
I	Stacketting in demand for compiler and the	THE PROPERTY OF THE PROPERTY O	in a inches
ı	activity noted. Such distressed sales tend to depress market value	S. Overall condominations. Significant foreclos	ure, REO and Short Sa
- [	activity noted. Such distressed sales tend to depress market value declining."	overant condominium prices in the subject ma	irket area are "stable-t-
ŀ	SCOPE OF WORK EXTERIOR INSPECTION:		
1	EXII 201 dinary Assumption: This part of the part of t	ALDATION Is in	
	of the subject property was more-or-less "Average" as observed in 2008." It is also assumed that all structures, given value in this re	the exterior in assumed for purposes of value	ation that the condition
ı	4000. If is also assumed that all atmosphere	as of the checking date of	tralia E-b as
	type of utilities are assumed to be as stated. It is assumed that there physical characteristics of the comparables were either verified the Collective.	rough county records and least or environmental ac	iverse issues. The
Ľ	Collective.	ough county records, multiple listing service and	Realist / NDC Data
E			
Е	APPRAISAL DEVELOPMENT AND REPORT PROCESS:		
COMMEN	This is a summary appraisal report which is intended to comply wind USPAP practice for a summary appraisal report. As such, it presents	th the reporting	
۲	USPAP practice for a summary appraisal report. As such, it present were used in the appraisal process to develop the appraiser's opinion	ats only suppressed discoursements set forth under stan	dard rule 2-2(B) of the
E	WEIG USED IN The approach becomes 4- 4- 1	- The contract of the contract	or and anti-
ADDITIONAL	ICDOR COncerning the data reasoning and	The state of the s	provided with at
Ĕ	report is specific to the needs of the client and for the intent	stated in this report. The arrest of the discussion con	tained in this appraisa
Ĕ	unauthorized use of his summary appraisal report.	states in this report. The appraiser is not respons	ible for any
۲			
1	Digital Signature:		- <u> </u>
	The digital signature used is authentic, under the sole use and contribe treated as an actual signature.	ol of the below appraiser in aggordance in Alex	
	be neated as an actual signature.	appraise in accordance with USI	PAP, (SMT-8) and will
	Final Reconciliation:		
	A flor review in the second se		
	After reviewing and analyzing all three approaches, the market, the be the strongest supporter of value. The Cost and the income Approaches.	cost and income approaches the monket	
_	be the strongest supporter of value. The Cost and the income Appr this assignment.	roaches to value were not included in the Co-	h was determined to
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1	and a least the state of the least of the state of the st	E (not required by Fannie Mae)	
. <u>1</u>	COST APPROACH TO VALU  Provide adequate information for the lender/client to replicate your cost figures and calculations.  Support for the opinion of site value (gummary of comparable land sales or other methods for estima		INSPECTION
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<u>1</u>	and a least the state of the least of the state of the st		INSPECTION
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ile# 0610A1705

This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit; including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

SCOPE OF WORK: The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a visual inspection of the exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

The appraiser must be able to obtain adequate information about the physical characteristics (including, but not limited to, condition, room count, gross living area, etc.) of the subject property from the exterior-only inspection and reliable public and/or private sources to perform this appraisal. The appraiser should use the same type of data sources that he or she uses for comparable sales such as, but not limited to, multiple listing services, tax and assessment records, prior inspections, appraisal files, information provided by the property owner, etc.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal

INTENDED USER: The intended user of this appraisal report is the client.

**DEFINITION OF MARKET VALUE:** The most probable price which a property should bring in a competitive and op market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions\* granted by anyone associated with the sale.

\*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

- 1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
- 2. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
- 3. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
- 4. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing this appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
- 5. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

Exterior-Only Inspection Residential Appraisal Report

File # 0610A1705

#### APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

- 1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
- 2. I performed a visual inspection of the exterior areas of the subject property from at least the street. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
- 3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
- 4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
- 5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
- I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior
  to the date of sale of the comparable sale, unless otherwise indicated in this report.
- 7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
- 8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
- 9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
- 10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
- 11. I have knowledge and experience in appraising this type of property in this market area.
- 12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
- 13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
- 14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
- 15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
- 16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
- 17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
- 18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
- 19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.

Exterior-Only Inspection Residential Appraisal Report

ile# 0610A1705

- 20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.
- 21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises, other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).
- 22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by the provision of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by the provision of the Uniform Standards of Professional Appraisal Practice that pertain the provision of the Uniform Standards of Professional Appraisal Practice that pertain the provision of the Uniform Standards of Professional Appraisal Practice that pertain the provision of the Uniform Standards of Professional Appraisal Practice that pertain the provision of the Uniform Standards of Professional Appraisal Practice that pertain the provision of the Uniform Standards of Professional Appraisal Practice that pertain the provision of the Uniform Standards of Professional Appraisal Practice that pertain the provision of the Uniform Standards of Profession of the Uniform
- 23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.
- 24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.
- 25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws. 90067

# SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

- 1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
- 2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
- 3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
- 4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
- 5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER	SUPERVISORY APPRAISER (ONLY IF REQUIRED)
Signature Our Taul	Signature
Name Ernesto Zavala, CREA	Name Armando J. Ortiz
Company Name A J ORTIZ & ASSOCIATES	Company Name A J ORTIZ & ASSOCIATES
Company Address 1379 PARK WESTERN DR. #275	Company Address 1379 PARK WESTERN DR. #275
SAN PEDRO CA 90731	SAN PEDRO CA 90731
Telephone Number (562) 453-3248	Telephone Number (310) 748-2663
Email Address ernestoag2000@yahoo.com	Email Address ajortiz365@yahoo.com
Date of Signature and Report 07/20/2010	Date of Signature 07/20/2010
Effective Date of Appraisal 02/27/2008	State Certification # AG027708
State Certification #	or State License #
or State License # AL 009424	State CA
or Other (describe) State #	Expiration Date of Certification or License 07/06/2010
State CA	
Expiration Date of Certification or License 12/06/2010	
ADDRESS OF PROPERTY APPRAISED	SUBJECT PROPERTY
21828 South Vermont Avenue #1	Did not inspect exterior of subject property
Torrance CA 90502-2104	X Did inspect exterior of subject property from street
APPRAISED VALUE OF SUBJECT PROPERTY \$ 365,000	Date of Inspection 07/20/2010
LENDER/CLIENT	
Name HONG & MASHAL LLP	
Company Name HONG & MASHAL LLP	COMPARABLE SALES
Company Address 1875 Century Park East, Sixt Floor	Did not inspect exterior of comparable sales from steed
Los Angeles CA 90067	X Did inspect exterior of comparable sales from street
Email Address robin@hmfirm.com	Date of Inspection 07/20/2010

# SUPPLEMENTAL SALES 4 5 6 ADDENDUM

File# 0610A1705

FEATURE			CC13.5	CALE III	1			1		
Addres 21828 Sour	th Vermont Ave	#1	21854 S Vermon				SALE#5		COMPARA	BLE SALE # 6
Address 21828 South Vermont Ave #1 Torrance, CA.			21854 S Vermont Ave #6 AP#7344-002-078		21415 S Vermont Ave #14			1		
			8	AP#7345-01		6				
Proximity to Subject	a NT/A	- 10 mg	0.00 MI EAST	T - 32.22	0.30 MI NORTH			L		
Sale Price	s N/A		260.66	s 336,000			s 363,500			S
Sale Price/Gross Liv. Area		sq. ft.	\$ 269.66 sq. ft.	Institute and the second	s 409.35			s	sq.	. A.
Data Source(s)	NDC DATA/R			S/Realist	NDCDATA		S/Realist			
Verification Source(s)	NDC DATA/Rea		DOC# 2549122	1	Doc# 25213	25		L		
VALUE ADJUSTMENTS	DESCRIPTION	N	DESCRIPTION	+(-) 5 Adjustment	DESCRIPTIO	N.	+(-) \$ Adjustment	DES	CRIPTION	+(-) \$ Adjustmen
Sale or Financing			Conventional		Conventiona	ıł			<u>,.</u>	(70) topulation
Concessions			1st TD.\$336,000		1st TD.\$290	,000		f		
Date of Sale/Time	47 5 T.	131.54	11/15/2007		11/09/2007					
Location	Traffic		Average	-10,000	Average		-10,000			<del></del>
Leaschold/Fee Simple	Fee		Fee	1	Fee		10,000	ļ		
Site	1,194 sf		1,194 sf	T -	1,516 sf			<del> </del>		<del>-                                    </del>
View	Residential		Residential		Residential			<del> </del> -		<del></del>
Design (Style)	Conventional		Conventional	<b>T</b>	Conventiona	<del></del>		<del>                                     </del>		<del></del>
	Average		Average	<del> </del>	Average	-				
Actual Age	1994/16 Yrs		1994/16 Yrs	<b>!</b>	1990/20 Yrs					
Condition	Average		Average (-)	10,000	Average			<del> </del>		
Above Grade	Total Bdms	Baths	Total Berms Baths	10,000				<b>-</b>		
Room Count	5 3	ouths 2	Total Berms Baths 5 2 2	10.000		Baths		Total E	Bdrms Bau	hs .
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	TWA.		NA	1	N/A					
Rooms Below Grade	Arramas		<b>-</b>	<del> </del>	<u> </u>			L		
Functional Utility	Average		Average	<del> </del>	Average					
	Fau/Cac		Fau/Cac	<b> </b>	Fau/Cac					
	None		None	ļ	None					
	2 Car Gar		2 Car Gar	L	2 Car Gar					
	Porch		Porch		Porch					
Common Pool	Common Pool		Common Pool		Common Po	ol				
Fireplace	Fireplace		Fireplace		Fireplace	. 1				
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#### FIRREA / USPAP ADDENDUM

#### 21828 S. Vermont Avenue, Unit 1, Torrance, CA 90502-2104, (Unincorporated Los Angeles County) Purpose of the Appraisal

The purpose of this appraisal is to estimate the market value of the subject property as defined herein, as of the date of

#### II. Intended Use of the Appraisal

The intended use of this appraisal is to provide the client with a professional valuation opinion which will serve for valuation of the asset for investigative purposes, estate planning and/or litigation support only. This report is intended for use in facilitating a settlement or for litigation support and is not intended for another use.

This appraisal report is prepared for the sole and exclusive use of the Client for the above purposes only. The appraiser is not a home inspector. This report should not be relied upon to disclose any conditions present in the subject property. The appraisal report does not guarantee that the property is free of defects. A professional home inspection is

#### III. Scope of the Appraisal

The following steps were taken in arriving at the final estimate of value included in the appraisal report of the subject

- After receiving the assignment, a preliminary search was made to determine market trends and other significant factors pertinent to the subject property.
- 2. A physical inspection of the property was conducted. Although due diligence was exercised while visiting the subject property, the appraiser is not an expert in such matters as pest control, structural engineering, soil slippage, hazardous waste, septic/cesspool system integrity, electrical-plumbing-roof-foundation systems, etc., and no warranty is given with regard to these elements. As needed, inspections by various licensed professionals within these fields might be
- regard to these elements. As needed, inspections by various horized professionals within these helds highly be recommended with the final estimate subject to their findings.

  3. A Highest and Best Use analysis was performed for the subject property.

  4. A detailed review of market sales data extracted from various sources, including Multiple Listing Service, First American Real Estate Solutions (FARES), National Data Collective (NDC), Realquest, Title Companies, Brokers, Principals, and the Appraiser's files, was undertaken by the appraiser. Relevant market factors were weighed and their influence on the subject considered in the Direct Sales Comparison Analysis. Reproduction Cost Data and, Market Rental Data were reviewed as needed.
- 5. Where an Income Approach is performed providing support for the estimate of value, market rent is abstracted for any owner-occupied unit so as to maintain consistency in reporting value indication by this approach.
- 6. A replacement cost approach was also performed, providing support for the estimate of value for the subject. 6. A replacement cost approach was also performed, providing support for the estimate of value for the subject. Estimates of value from all three approaches were then reconciled to a final estimate of market value for the subject.
  7. The appraisal report was then completed in accordance with Standards dictated by the Appraisal Foundation in the UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP). The report included such data and information needed to lead a reader to a similar market value conclusion
- 8. The Client and the appraiser agree that all Assumptions and Limiting Conditions, including any Extraordinary Assumptions and Limiting Conditions which are necessary and proper for a complete analysis and valuation of the Assumptions and Limiting Conditions which are necessary and proper for a complete analysis and valuation of the Subject property and for the protection of the appraiser from unreasonable liability for conditions unknown and/or undiscovered affecting the value or physical condition of the Subject property are made a part of the Scope of Work. Valuation is subject to all such binding Assumptions and Limiting Conditions whether in the body or addenda of the
- 9. The appraisal report was delivered to the client which constituted completion of the assignment. IV. USPAP Compliance

The intent of this report is to comply with the Uniform Standards of Professional Appraisal Practice as adopted by the Appraisal Standards Board of the Appraisal Foundation as of January 1, 2008, the Office of the Comptroller of the Currency's (OCC) Minimum Appraisal Standards, FHA Guidelines and the Fannie Mae (FNMA) Selling Guide and

#### V. Competency of the Appraiser

The appraiser possesses the appropriate knowledge and experience to complete this assignment competently. The appraiser is Licensed in good standing by the State of California as a Residential Real Estate Appraiser, OREA License

The reviewer of this appraisal, Armando J. Ortiz, Certified General Appraiser, License No AG027708 is currently in expired status, pending renewal as of the delivery date of this report.

#### VI. Rents and Vacancies

Any income analysis contained in this report is based upon current, supported market rental/sales and vacancy data. VII. Sales History

The previous transfer of the subject was on November 2, 2005 by interspousal Quit Claim Deed on unknown terms. The previous market transfer was on July 9, 1996 for \$135,000 by Corporation Grant Deed No. 1082133 on conventional financing terms. No prior market transfers discovered. Valuation assumes clear title. VIII. Trend Analysis

Current market demand/supply condition and reasonably expected marketing time in the subject's market are discussed in the report. The marketing time is in the three to six months range for properties in the subject's price range IX. Deductions and Discounts

The purpose of this report is to estimate a "cash equivalent" market value for the subject property. Concessionary practices currently observed (if they exist) in the subject's market are discussed in the body of the report. X. Prohibited Influences

Employment of the appraiser was not conditioned upon the appraisal producing a specific value or value within a given range. Neither employment nor compensation are based upon approval of any related loan application.

#### XI. Summary Appraisal

This appraisal report is intended to be a summary document including a brief recapitulation of all information necessary to enable the reader to understand the appraiser's opinion. Any third party studies that are referred to, such as pest control, systems inspection or hazardous waste detection have been verified by the appraiser to the extent the assumptions and conclusions therein are used.

#### XII. Personal Property

Any personal property involved in the transaction has been excluded from the valuation of the real property. Should a transaction which includes personal property of sufficient value to affect the market value be evident, a separate assessment of the personal property, fixtures, or intangible items will be included with the report as a separate valuation. XIII. Three Approaches to Value

The appraiser has made a reasonable effort to employ the three approaches to value. The Income Approach was omitted as the subject neighborhood was predominantly owner-occupied and therefore there was insufficient market data available to derive an accurate gross rent multiplier (GRM) and hence an accurate indication of market value. The GRM will only be used when:

- Requested by the client for a non-owner occupied single family residence.
- 2. When sufficient market evidence exists that rental properties or investor purchases are typical to the neighborhood and the analysis of same adds support to the appraisal report.

If the GRM Approach is not used, it is because it is considered insufficiently indicative of market value, given a lack of relevant market data.

#### XIV. Authorized Use

This file was completed for the Law Offices of Hong and Mashal, LLP, Robin Mashal, Esq. on behalf of their client for investigative, estate planning and/or litigation support purposes only. It is not intended for any other use including third parties such as Fannie Mae / Freddie Mac, or any other type of federally related transaction. Nothing in this report shall be construed as limiting the dissemination of this report to third parties in the normal course of business for the purposes of the client only. Copyright, 2010 all rights reserved.

#### XV. Litigation

The appraiser, by reason of this report, shall not be obligated to provide further testimony as to the valuation or the contents of this report, either in deposition or in open court, unless written contractual arrangements have been made and approved in advance.

#### XVI. Mold Identification

The appraiser is not a Home inspector or an Environmental Inspector. The appraiser provides an opinion of value only. The appraiser does not guarantee that the property is free of defects or adverse environmental conditions. The appraiser performs an inspection of visible and accessible areas only. Mold, fungus or other bio-efflorescence may be present in areas which the

appraiser cannot see or inspect. A professional Home Inspection and/or Environmental assessment is recommended. XVII. Digital Signatures

Appraiser and Client acknowledge and agree, in connection with electronic submission of appraisals as follows: Appraiser and Chern acknowledge and agree, in commence that the FHA or other Federal standards and requirements, 2.

1. This appraisal complies with USPAP and, when applicable, to FHA or other Federal standards and requirements, 2. 1. This appraisal complies will USHAP and, when applicable, to FHA or other rederal standards and requirements, 2. The software used by the appraiser to generate the appraisal report protects signature security by means of digital signature security features for each appraiser signing the report, and each appraiser maintains exclusive control of his/her related signature through a password, hardware device or other such measures. 3. Appraiser and client are each jointly and severally responsible for the use, integrity and authenticity of data and signatures transmitted electronically. Jointy and severally responsible for the use, megrity and authenticity of data and signatures transmitted electronically. Appraiser will hold the client harmless from and against any breach or failure of data integrity, signature authenticity or breach of data security emanating or originating from the point of transmission only. 4. Adobe Distiller, Nitro PDF or Ala Mode EDI software or equivalent is utilized by appraiser to transmit this pdf-formatted appraisal. 5. All such transmissions shall be routed only to the client at the e-mail address provided in the assignment request at the time the order was placed, unless subsequently instructed otherwise by the client. 6. No duplicate transmission of this report will be made and no delivery of a hard copy of this report will be made unless and until appraiser has received such written instruction from client.

#### **CERTIFICATION OF APPRAISER**

The undersigned do hereby certify that except as otherwise noted in this appraisal report:

1. I have no present or contemplated future interest in the real estate that is the subject of this appraisal report.

- 2. I have no personal interest in, or bias, with respect to the subject matter of this appraisal report, or the parties involved.
- 3.To the best of our knowledge and belief, the statements of fact contained in this appraisal report, upon which the analyses, opinions, and conclusions expressed herein are based, are true and correct.
- 4. This appraisal report sets forth all the limiting conditions (imposed by the term of my assignment or by the undersigned) affecting the analyses, opinions, and conclusions, contained in this report.
- 5. I certify that, to the best of my knowledge and belief, the reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
- 6. Ernesto Zavala, California Real Estate Appraiser, OREA License No. AL009424 is licensed in good standing and qualified to perform this appraisal. The opinions, analyses and conclusions herein are those of the undersigned. Armando J. Ortiz, California Certified General Real Estate Appraiser, OREA License No. AG027708 is currently in expired status pending license renewal. Armando J. Ortiz is otherwise qualified to supervise, review and advise the appraiser.
- 7. Jesse Ibarra, California Real Estate Appraiser Trainee, OREA License No. AT0429412 provided professional assistance in the preparation and assembly of this report. No other person provided significant professional assistance in the preparation of this report.
- 8. I certify that the use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- 9. Neither all nor any part of the contents of this report, especially any conclusions as to value, the identity of the appraisers, or the firm with which they are connected, or any reference to the Appraisal Institute, shall be disseminated to the public through advertising media, public relations media, news media, sales media, or any other public means of communication, without the prior written consent and approval of the undersigned.
- 10. The market value of the real property which is the subject of this report, as of the retrospective, effective date of value, February 27, 2008 is as follows:

Three Hundred Sixty Five Thousand Dollars (\$365,000)

#### SUBJECT PHOTOGRAPH ADDENDUM

	TO THE TABLETON	0610A1705
Borrower Realist: Esmilla / Pagdanganan Property Address 21828 South Vermont Avenue	#1	
City         Torrance         Count           Lender/Client         HONG & MASHAL LLP		CA Zip Code 90502-2104



FRONT OF SUBJECT PROPERTY



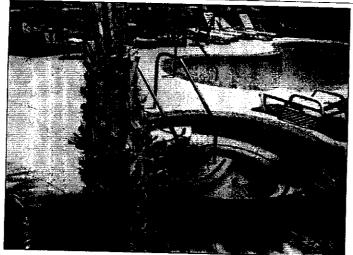
REAR OF SUBJECT PROPERTY



STREET SCENE

### ADDITIONAL PHOTOGRAPH ADDENDUM

	0610A1705
Borrower Realist: Esmilla / Pagdanganan Property Address 21828 South Vermont Avenue City Torrance Count	
Lender/Client HONG & MASHAL LLP	Los Angeles State CA Zip Code 90502-2104



COMMON POOL AREA



VIEW OF INTERIOR OF PROJECT



FRONT GATE / VIEW TO PROJECT

#### ADDITIONAL PHOTOGRAPH ADDENDUM

				0610A1705
Borrower Realist: Esmilla / Pagdanganan  Property Address 21828 South Vermont Avenue #1  City Torrance County				
Lender/Client HONG & MASHAL LLP	Los Angeles State	<u>CA</u>	Zip Code	90502-2104



ALTERNATE VIEW OF STREET SCENE (NORTH VIEW)



RIGHT VIEW (DETACHED SIDE) OF SUBJECT.



VIEW TO ACROSS THE STREET. VIEWED FROM FRONT OF SUBJECT

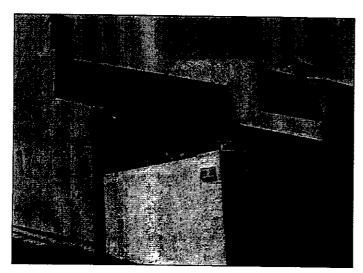
# COMPARABLES PHOTOGRAPH ADDENDUM

0610A1705 Borrower Realist: Esmilla / Pagdanganan Property Address 21828 South Vermont Avenue #1 City Torrance County Los Angeles State CA Zip Code 90502-2104 HONG & MASHAL LLP Lender/Client



#### COMPARABLE SALE # 1 539 W. 220th St. #39 AP#7343-021-085

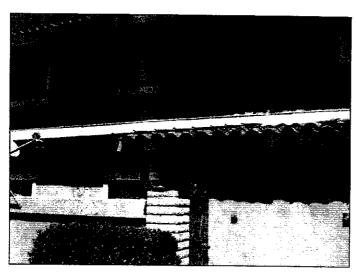
Date of Sale: 11/20/2007 Sale Price : 410,000 Sq. Ft. : 1,194 \$/Sq. Ft. : 343.38



# COMPARABLE SALE # 2

22533 S. Vermont #33 AP#7344-023-079 Date of Sale: 12/06/2007

Sale Price : 350,000 Sq. Ft. : 1,221 \$/Sq. Ft. : 286.65



#### COMPARABLE SALE #3 21602 Figueroa St #36

AP#7343-008-081 Date of Sale : 11/28/2007 Sale Price : 370,000 Sq. Ft. : 1,323 S / Sq. Ft. : 279.67

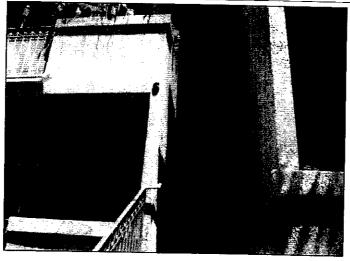
COMPARABLES 4 5 6 PHOTOGRAPH ADDENDUM

Borrower Realist: Esmilla / Pagdanganan

Property Address 21828 South Vermont Avenue #1

City Torrance County Los Angeles State CA Zip Code 90502-2104

Lender/Client HONG & MASHAL LLP



#### COMPARABLE SALE # 4 21854 S Vermont Ave #6 AP#7344-002-078

Date of Sale : 11/15/2007 Sale Price : 336,000 Sq. Ft. : 1,246 \$/Sq. Ft. : 269.66

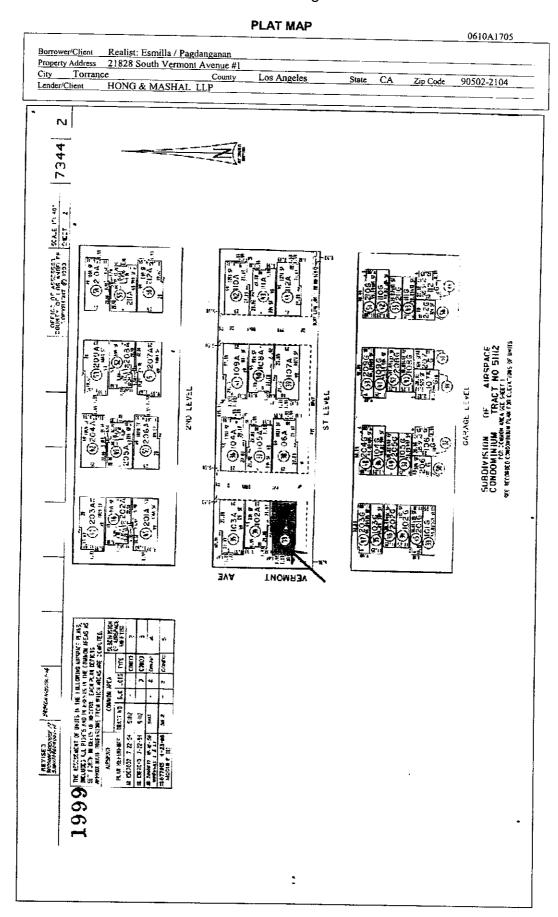


#### COMPARABLE SALE # 5 21415 S Vermont Ave #14 AP#7345-011-066

Date of Sale : 11/09/2007 Sale Price : 363,500 Sq. Ft. : 888 \$ / Sq. Ft. : 409,35

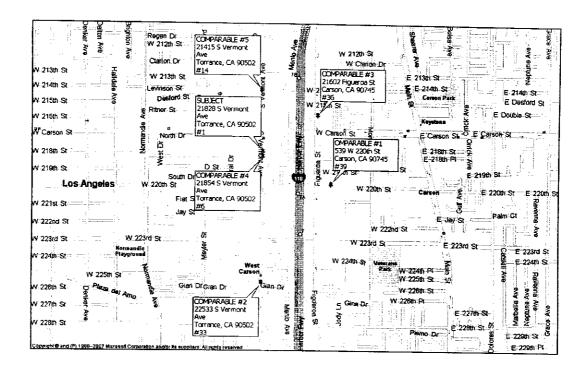


Date of Sale :
Sale Price :
Sq. Ft. :
\$ / Sq. Ft. :



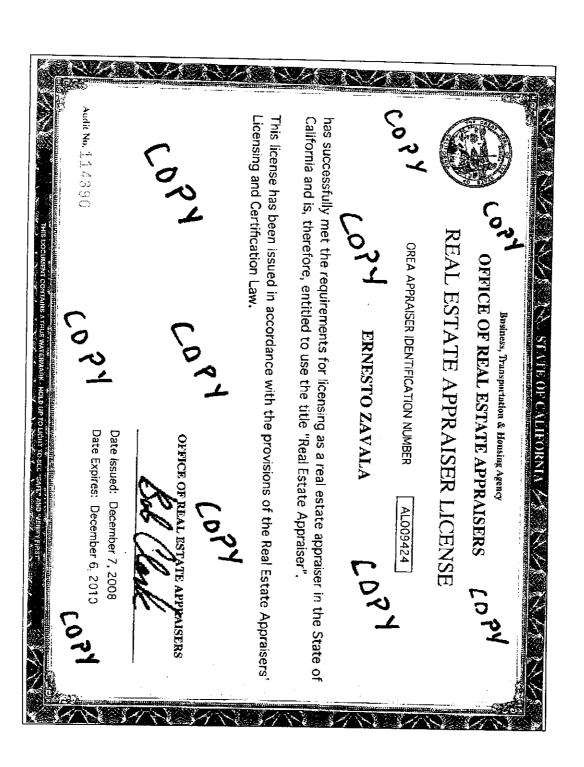
LOCATION MAP ADDENDUM

		0610A1705
Borrower / Client Realist: Esmilla / Pagdanganan Property Address 21828 South Vermont Avenue #1 City Torrance	Los Angeles State CA Zip Code	90502-2104



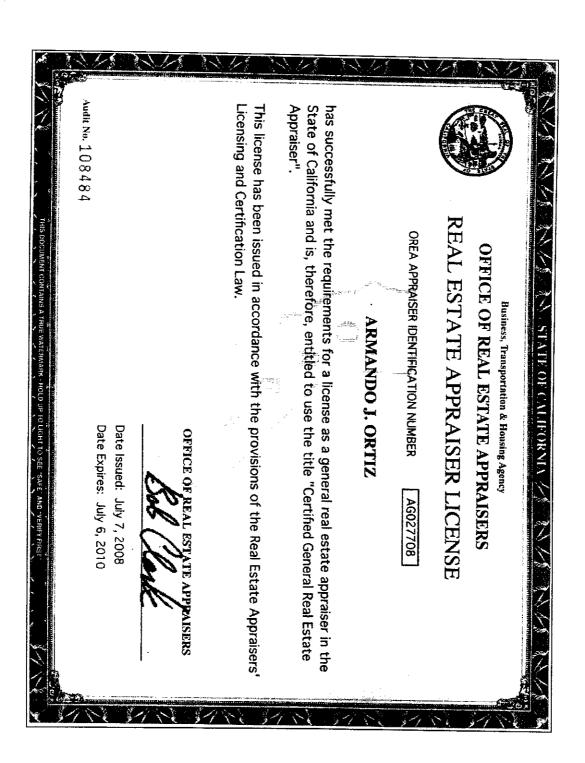
ADDITIONAL ATTACHMENT

	0610A1705
Borrower         Realist: Esmilla / Pagdanganan           Property Address         21828 South Vermont Avenue #1           City         Torrance         County           Lender/Client         HONG & MASHAL LLP	Los Angeles State CA Zip Code 90502-2104



ADDITIONAL ATTACHMENT

D. D. C. W. C. C.		- TOTAL PARTIES		0610A1705
Property Address 21828 South Vermont Avenue #1  City Torrance County Los Angeles State CA Zip Code 90502-2104  Lender/Client HONG & MASHAL LLP	City Torrance County	<del></del>	CA Zip Code	90502-2104



á	se 2:08-bk-12485-VZ	Doc 31	Filed 07/2	23/10	Entered 07/27/10 16:31:36	Desc
		Main Do	ocument	Page	25 of 26	

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1875 Century Park East, Suite 600, Los Angeles, California 90067-2507.  On July 22, 2010, I served on the interested parties in this action \( \sum_{\text{a}} \) a true and correct
copy of OR  the original of the foregoing document(s) described as: SUPPLEMENTAL OPPOSITION TO DEBTOR'S MOTION TO AVOID LIEN UNDER 11 U.S.C. § 522(f) (REAL PROPERTY); DECLARATION OF ROBIN MASHAL; EXHIBIT.
(BY MAIL) By placing said documents in postage pre-paid envelope(s), sealed and addressed as shown on the attached service list, and depositing the same with the United States Postal Service the same day. I am readily familiar with this firm's business practice for collection and processing of correspondence by U.S. Mail. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date stated in this proof of service.
(BY OVERNIGHT DELIVERY) By placing said documents in Overnite Express™ envelope(s), sealed and addressed as shown on the attached service list, and depositing the same within the Overnite Express™ deposit box at Los Angeles, California, before the scheduled pickup time, to be delivered to the parties the next day.
(BY FACSIMILE) By causing the said document(s) to be transmitted by electronic facsimile machine to the facsimile number(s) of those parties specifically indicated on the attached service list, in compliance with the California Rules of Court, with no error reported by the machine.
(BY PERSONAL SERVICE) I hand delivered said documents to the address(es) indicated on the attached service list.
(STATE) I declare under penalty of perjury under the laws of the State of California, that the above is true and correct.
(FEDERAL) I declare that ⊠ I am a member of the bar of this court OR □ I am employed in the office of a member of the bar of this court at whose direction this service was made, and that the above is true and correct.
Executed on July 22, 2010, at Los Angeles, California.
SUPPLEMENTAL OPPOSITION TO MOTION TO AVOID LIEN  CASE NO.: 2:08-bk-12485-VZ

Case 2:08-bk-12485-VZ Doc 31 Filed 07/23/10 Entered 07/27/10 16:31:36 Desc Main Document Page 26 of 26 **SERVICE LIST** Roman P. Mosqueda, Esq. [Debtor's Attorney] LAW OFFICES OF ROMAN P MOSQUEDA 3055 Wilshire Blvd., Suite 425 Los Angeles, CA 90010 Fax: (213) 252-5929 David L Hahn, Trustee [Chapter 7 Trustee] HAHN FIFE & CO., LLP 22342 Avenida Empresa, Suite 260 Rancho Santa Margarita, CA 92688 SUPPLEMENTAL OPPOSITION TO MOTION TO AVOID LIEN CASE NO.: 2:08-bk-12485-VZ