EXHIBIT D
I, Jerry Merry, declare and state as follows:

1. I am a principal of MADERA FRAMING, INC. ("MADERA FRAMING"), Defendant/Cross-Defendant in this action.

2. I have personal knowledge of each of the facts set forth in this declaration, and can testify competently thereto.

3. I am informed and believe that the first framer on the project was Multi-Building Structures, Inc.

4. I am informed and believe that around mid-2002, ROUNDS & BUROKER, INC. dba MADERA CONSTRUCTION ("MADERA CONSTRUCTION") became involved with the project, working on the project from 2002 to 2003.
5. MADERA CONSTRUCTION has a separate contractor’s license from MADERA FRAMING.

6. MADERA CONSTRUCTION is a separate legal entity from MADERA FRAMING.

7. In late 2003, MADERA FRAMING performed framing work at the One Pearl Place project ("PROJECT").

8. MADERA FRAMING was only on the PROJECT for approximately two months, in August and September 2003.

9. MADERA FRAMING performed its work without a written subcontract with CILKER APARTMENTS, LLC ("CLAIMANT"), WESTERN NATIONAL CONSTRUCTION ("WESTERN"), or MADERA CONSTRUCTION.

10. After its work was performed, MADERA FRAMING was never paid for the work.

11. On November 5, 2003, MADERA FRAMING filed a mechanic’s lien on the PROJECT.

12. MADERA FRAMING’s action against CLAIMANT and WESTERN ended in a Mutual Release and Settlement Agreement that was ultimately fully funded and executed. I executed that agreement on behalf of MADERA FRAMING, and can authenticate the document. Attached hereto as Exhibit 1 to this declaration is a true and correct copy of the settlement agreement.

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

Executed on October __, 2015, in Loomis, California.

JERRY MERRY

27470/703443
EXHIBIT 1
MUTUAL RELEASE AND SETTLEMENT AGREEMENT

THIS MUTUAL RELEASE AND SETTLEMENT AGREEMENT ("Agreement") is entered into by and among, on the one hand, Madera Construction, Inc., a California corporation ("Madera Construction") and Madera Framing, Inc., a California corporation ("Madera Framing"), collectively referred to herein as "Madera," and on the other hand, Western National Construction, a California corporation ("WNC"), Insurance Company of the West, an entity authorized to transact business as a surety in California ("ICOW"), Western Surety Corporation, an entity authorized to transact business as a surety in California ("Western Surety"), and Cilker Apartments, LLC, a California limited liability corporation ("Cilker") (all of the parties set forth above are sometimes hereinafter collectively referred to as the "Settling Parties"), based upon the following understandings:

A. Madera, as a subcontractor, supplied and furnished certain labor, equipment, materials, and services to, and performed certain rough framing and carpentry work for WNC, as general contractor, pursuant to a written subcontract between Madera and WNC for the performance of the work of improvement known as the One Pearl Place, located at 5210 Terner Way, San Jose, California (hereinafter referred to as the "Project"). Specifically, Madera subcontracted with WNC to perform rough framing and carpentry re-work and/or work arising from and necessitated by the alleged abandonment of the Project by WNC's previous framing subcontractor, Multi-Building Structures, Inc. ICOW issued a mechanics' lien release bond on behalf of Cilker and City National Bank ("City National"), the owners of the Project. Western Surety issued WNC's contractor's license bond.

B. During the course of the Project, Madera recorded a mechanics' lien against the Project with the Santa Clara County Clerk-Recorder as document number 17459021 in the amount of $286,675.00 for outstanding sums claimed due and owing to Madera upon the Project.

C. Disputes arose between the parties arising out of Madera's work on the Project, including but not limited to, Madera's claims for extra work and related costs and subcontract balance and WNC's claims that Madera performed Project work in an untimely, deficient and defective manner. With respect to those disputes, Madera filed a complaint against WNC, Cilker, City National, and Western Surety on December 1, 2003, Case No. CV010004 in Santa Clara County Superior Court, which alleged causes of action for Breach of Contract, To Foreclose on Mechanics' Lien, on Common Counts, for Statutory Penalties, and on Contractor's License Bond. Madera filed a first amended complaint on January 14, 2004 which substituted ICOW for the Project owners, and which amended the cause of action to foreclose on mechanics' lien to an action to foreclose on mechanics' lien release bond. On or about February 24, 2004 WNC, Western and ICOW filed answers asserting general denials, affirmative defenses and offsets to Madera's first amended complaint. The first amended complaint and all responsive pleadings, including all answers and cross-complaints, shall be referred to herein as the “Action.”
D. All of the Settling Parties to this Agreement deny any liability in connection with the various claims alleged in the Action and wish to reach full and final settlement of the respective disputes between them and to avoid further litigation.

In consideration of the mutual covenants set forth below, the Settling Parties agree and stipulate as follows:

1. In consideration for all Settling Parties’ signatures on this Agreement and the dismissal of the entire Action with prejudice, Cilker has agreed to pay to Madera the sum of Two Hundred and Fifteen Thousand Dollars and No Cents ($215,000.00) as follows:

(a) Cilker, through its counsel, David W. Mitchell at Hoge, Fenton, Jones & Appel, Inc., shall deliver a check, payable to the trust account of Murphy Austin Adams Schoenfeld LLP, Madera’s counsel, in the sum of Two Hundred and Fifteen Thousand Dollars and No Cents ($215,000.00) within five (5) business days after receipt by counsel for WNC, Michael T. Taurek of Green & Hall, and counsel for Cilker of an executed copy of this Agreement by Madera (the “settlement check”). The settlement check shall be deposited into the trust account of Murphy Austin Adams Schoenfeld LLP, but said funds shall be held in trust and not distributed to Madera until Madera delivers to counsel for Cilker and WNC the documents described below in paragraph 1(b). Upon delivery of said documents described below in paragraph 1(b) to counsel for Cilker and counsel for WNC, Madera’s counsel shall remit to Madera the sums from the settlement check held in its trust account.

(b) Within three (3) business days after receipt of the settlement check and a fully executed Agreement, counsel for Madera shall deliver to counsel for Cilker a fully executed and notarized release of Madera’s mechanic’s lien, recorded with the Santa Clara County Clerk-Recorder as the document number 1745921 in the amount of $286,675.00, in a form suitable for recording, and counsel for Madera shall also deliver to counsel for WNC (i) a Request for Dismissal, with prejudice, of the Action; and (ii) a conditional waiver and release upon final payment, using the form published as Civil Code Section 3262(d)(3), with the phrase “zero” typed in the lower blank on the form as to reserved/unresolved claims. Counsel for Cilker and counsel for WNC agree to hold in trust and not negotiate, record or file the lien releases or Request for Dismissal until counsel for Madera provides written confirmation via facsimile (to counsel for Cilker and counsel for WNC) that the settlement check has posted to the trust account of Murphy Austin Adams Schoenfeld LLP.

(c) Upon receipt of written confirmation via facsimile that the settlement check has posted to the trust account of Murphy Austin Adams Schoenfeld
LLP, counsel for Cilker may record the lien release and counsel for WNC may file the Request for Dismissal, with prejudice, of the entire Action. WNC, ICOW, Cilker, City National, and/or Western Surety shall also sign the Request for Dismissal with prejudice if necessary to dismiss the Action in its entirety with prejudice.

(d) Within three (3) business days after the settlement check has posted to the trust account of Murphy Austin Adams Schoenfeld LLP, Madera shall also provide counsel for WNC an unconditional waiver and release upon final payment, using the form published as Civil Code section 3262(d)(4), with the phrase "zero" typed in the lower blank on the form as to reserved/unresolved claims and extra work.

2. The Settling Parties on behalf of themselves, their heirs, executors, administrators and assigns, hereby release and forever discharge each other, and their respective predecessors, heirs, executors, partnerships, administrators, successors and assigns, and each of their respective past, present and future employees, attorneys, insurers, sureties, agents, representatives, partners, officers, directors and stockholders, from any and all claims, demands, arbitrations, actions, or causes of action, that arise out of or relate to the claims alleged in the Action, or which could have been alleged in the Action, whether known or unknown, and agree that no further litigation will occur with respect to these disputes except as may be provided in paragraph 3 herein. Also, this release does not apply to any claims Cilker and WNC have against each other regarding which party is ultimately responsible for this settlement payment.

3. Notwithstanding the mutual release set forth above, the Settling Parties agree to expressly except from this Agreement, and shall continue to retain any and all claims, rights and defenses concerning, responsibility for future claims by third parties for personal injury, construction defects and/or resultant property damage occurring at the Project or arising out of the work related to the Project, but only to the extent such claims arise out of conditions that were unknown to WNC or Cilker and not apparent by reasonable inspection as of the date this Agreement became fully executed. Each of the settling parties represent that they are currently unaware of any such claim(s) or contention(s).

4. The releases described above are full and final releases applying to all losses, except as stated in paragraphs 2 and 3 above, including but not limited to damages, costs, expenses, and attorneys' fees, incurred by said parties, arising out of or in any way connected with the above-described matters. It is the intention of the releasing parties, in executing this Agreement, that the same shall be effective as a bar to each and every claim, demand, and cause of action, by said parties based upon the above-described matters, except as provided in paragraphs 2 and 3 above, and said Settling Parties knowingly, voluntarily, and expressly waive any and all rights and benefits otherwise conferred by the provisions of section 1542 of the California Civil Code which states at follows:
A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which, if known by him, must have materially affected his settlement with the debtor.

The Parties to this Agreement expressly consent that, notwithstanding section 1542 of the California Civil Code, this Agreement shall be given full and final effect according to each and all of its express terms and conditions, including those related to unknown and unsuspected claims, demands, and causes of action, except as provided in paragraphs 2 and 3 above. The Settling Parties acknowledge and agree that this waiver is an essential and material term of this Agreement and, without such waiver, this Agreement would not have been entered into.

5. The Parties to this Agreement have been advised or have had the opportunity to be advised by their legal counsel with respect to the terms of this Agreement and understand and acknowledge the significance and consequences of its. The signer of this Agreement hereby represents and covenants that he or she is authorized to execute this agreement on behalf of the party for which he or she is signing.

6. This Agreement is binding upon all of the Settling Parties, as well as their past and present subsidiaries, parents, divisions, affiliates, partners, successors, assignees, officers, directors, agents, servants, employees, attorneys, representatives, and beneficiaries.

7. Each of the undersigned warrants that he or she is of legal age, legally competent to execute this Agreement, and has authority of the party for whom the undersigned is executing this Agreement.

8. Each party to this Agreement is to bear its own costs and attorneys’ fees.

9. This Agreement contains the entire agreement between the Parties hereto. The terms of this Agreement are contractual in nature and not a mere recital. This Agreement is executed without reliance upon any representation by any person concerning the nature or extent of damages or legal liability therefor, and the signer of this Agreement has carefully read and understood the contents of this Agreement and signs the same as his or her own free act.

10. Should any dispute arise hereunder, this Agreement shall be governed by and interpreted pursuant to California law.

11. If any provision of this Agreement is held to be invalid or unenforceable, all of the remaining provisions shall nevertheless continue in full force and effect.

12. This Agreement may be executed in one or more counter parts and, when said counter parts are taken together, shall constitute one original Agreement.
13. Each Party hereto has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party.

14. All Parties hereto agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of the Agreement. Time is of the essence in this Agreement, and all transactions contemplated hereby.

DATED: July 7, 2004

MADERA CONSTRUCTION, INC., a California corporation

BY

[Signature]

Its Secretary

DATED: July 7, 2004

MADERA FRAMING, INC., a California corporation

BY

[Signature]

Its V. P.

[SIGNATURES MAY BE IN COUNTERPART.
SIGNATURES CONTINUED ON NEXT PAGE.]
DATED: July 7, 2004

WESTERN NATIONAL CONSTRUCTION
a California corporation

BY

Its Chief Financial Officer

DATED: July ___, 2004

CILKER APARTMENTS, LLC,
a California limited liability corporation

BY

Its

DATED: July ___, 2004

INSURANCE COMPANY OF THE WEST,
a California surety

BY

Its

DATED: July ___, 2004

WESTERN NATIONAL SURETY,
a California surety

BY

Its

[SIGNATURES MAY BE IN COUNTERPART.]
DATED: July __, 2004

WESTERN NATIONAL CORPORATION,

a California corporation

BY ______________________

Its _____________________

DATED: July __, 2004

CILKEF APARTMENTS, LLC,

a California limited liability

corporation

BY ______________________

Its _____________________

DATED: July __, 2004

INSURANCE COMPANY OF THE WEST,

a California surety

BY ______________________

Its _____________________

DATED: July __, 2004

WESTERN SURETY CORPORATION,

a California surety

BY ______________________

Its _____________________

[SIGNATURES MAY BE IN COUNTERPART.]
DATED: July 7, 2004

WESTERN NATIONAL CONSTRUCTION
a California corporation

BY

Its Chief Financial Officer

DATED: July ___, 2004

CILKER APARTMENTS, LLC,
a California limited liability corporation

BY

Its

DATED: July 10th, 2004

INSURANCE COMPANY OF THE WEST,
a California surety

BY

Its SURETY CLERK REPRESENTATIVE

DATED: July ___, 2004

WESTERN NATIONAL SURETY,
a California surety

BY

Its

[SIGNATURES MAY BE IN COUNTERPART.]
DATED: July 1, 2004

CILKER APARTMENTS, LLC,
a California limited liability corporation

BY

[Signature]

DATED: July 1, 2004

INSURANCE COMPANY OF THE WEST,
a California surety

BY

[Signature]

DATED: July 1, 2004

WESTERN SURETY COMPANY, incorrectly named as WESTERN SURETY CORPORATION

BY

Robert L. Robinson
JR AS Claims Adjuster (Signature)

[SIGNATURES MAY BE IN COUNTERPART.]