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 8 GEOFF WINKLER, RECEIVER

9 UNITED STATES DISTRICT COURT  
 10 CENTRAL DISTRICT OF CALIFORNIA

12 GEOFF WINKLER, RECEIVER,  
 13 Plaintiff,  
 14 v.  
 15 915 ELM AVENUE CVL, LLC,  
 16 Defendant.

Case No. 2:21-cv-00869

COMPLAINT FOR DAMAGES AND  
 DECLARATORY RELIEF

18 Plaintiff Geoff Winkler (the "Receiver"), the Court-appointed permanent  
 19 receiver for Essex Capital Corporation ("Essex") and its subsidiaries and affiliates  
 20 (collectively, with Essex, the "Receivership Entities" or "Entities"), hereby brings  
 21 the following complaint (the "Complaint") against the above-captioned Defendant  
 22 and, on behalf of the Receivership Entities, alleges as follows:

23 **JURISDICTION AND VENUE**

24 1. This Court has jurisdiction over this matter under 28 U.S.C. Sections  
 25 1345 and 1367(a), and the doctrines of ancillary and supplemental jurisdiction, in  
 26 that this action arises from a common nucleus of operative facts as, and is  
 27 substantially related to the original claims in, the pending Securities and Exchange  
 28 Commission (the "Commission") enforcement action, styled *SEC v. Ralph Iannelli*

1 *and Essex Capital Corp.*, USDC, C.D. Cal. Case No. 2:18-cv-05008-FMO-AFM  
2 (the "Enforcement Action").

3 2. This Court may exercise personal jurisdiction over the above-captioned  
4 Defendant pursuant to Federal Rule of Civil Procedure 4(k)(1)(A).

5 3. Venue in the Central District of California is proper under 28 U.S.C.  
6 Section 1391 because this action is an ancillary proceeding to the Enforcement  
7 Action and because the Receiver was appointed in this District pursuant to the  
8 Court's previously entered "Order Regarding Preliminary Injunction and  
9 Appointment of a Permanent Receiver" (the "Appointment Order") in the  
10 Enforcement Action, which specifically authorized the Receiver "to institute,  
11 pursue, and prosecute all claims and causes of action of whatever kind and nature  
12 that may now or hereafter exist as a result of the activities of" the Receivership  
13 Entities. This Court's September 9, 2019 "Order Regarding Permanent Injunction"  
14 (the "Permanent Injunction") in the Enforcement Action reaffirmed the Receiver's  
15 authority.

16 **PARTIES**

17 4. The Receiver is the duly-appointed permanent receiver for the  
18 Receivership Entities. Among other things, the Appointment Order directs the  
19 Receiver to recover and marshal, for the benefit of creditors of, and investors in, the  
20 Receivership Entities, any and all assets which were owned, leased, occupied, or  
21 otherwise controlled by the Receivership Entities. The Permanent Injunction  
22 reaffirmed the Receiver's duties and obligations. Pursuant to the Appointment  
23 Order and the Permanent Injunction, the Receiver enjoys exclusive authority and  
24 control over the assets of the Receivership Entities, including over the causes of  
25 action alleged herein.

26 5. On information and belief, Defendant 915 Elm Avenue CVL, LLC  
27 ("CVL") is a California limited liability company, formed in 2015, with its principal  
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1 place of business listed as 915 Elm Avenue, Carpinteria, California 93013 (the  
2 "CVL Address").

3 **FACTUAL ALLEGATIONS**

4 **I. The Establishment of the Receivership Entities and Their**  
5 **Misappropriation of Investor Funds.**

6 6. As alleged by the Commission in its June 3, 2019 Complaint in the  
7 Enforcement Action (the "SEC Complaint"), Ralph Iannelli, Jr. ("Iannelli" or  
8 "Mr. Iannelli") has been Essex's sole shareholder and president and chief executive  
9 officer since approximately 1996.

10 7. As alleged by the Commission in the SEC Complaint, Mr. Iannelli  
11 attracted investment into Essex through the sale of promissory notes, the returns on  
12 which were alleged to be based on the strength of Essex's equipment leasing  
13 business, pursuant to which Essex's lease portfolio would generate sufficient income  
14 to fully offset its borrowing costs and obligations to noteholders.

15 8. As alleged by the Commission in the SEC Complaint, between 2014  
16 and early 2017, Essex's main source of funding was money that it received from  
17 investor-funded promissory notes and investor-funded LLC's, not income or revenue  
18 derived from its equipment leasing business.

19 9. As alleged by the Commission in the SEC Complaint, Essex was  
20 unable to cover the principal and interest obligations that it owed to its investors and  
21 creditors using lease revenue alone. As alleged by the Commission, payments on  
22 existing obligations were instead made in large part from new money, in a manner  
23 consistent with a Ponzi investment scheme.

24 10. Based on his review and analysis of the available business and financial  
25 records of the Receivership Entities, the Receiver has concluded that the  
26 Commission's allegations regarding Essex's unlawful conduct are essentially  
27 accurate, and that Essex and other Receivership Entities were used in part to operate  
28 a Ponzi investment scheme.

1 **II. The Establishment of CVL and the Apportionment of its Members'**  
2 **Interest Therein.**

3 11. On information and belief, Mr. Iannelli and William S. Reyner, Jr.  
4 established CVL in or around November 2015 in order to purchase a business  
5 operation and associated real property located at the CVL Address (collectively, the  
6 "Lumber Yard") from J&G Clay Properties, LLC and its principal, James Gally  
7 (collectively, "Mr. Gally").

8 12. CVL's purchase of the Lumber Yard was financed, in significant part,  
9 via a seller carryback note (the "Gally Note") issued by Essex to Mr. Gally, on or  
10 around January 14, 2016, in the principal amount of \$1,500,000.

11 13. Pursuant to the terms of the Gally Note, Essex was obligated to pay  
12 \$250,000 of the Gally Note's principal balance on January 14, 2017, and the  
13 remaining principal balance of \$1,250,000 on January 14, 2019.

14 14. Essex paid approximately \$453,683.56 to Mr. Gally in connection with  
15 its obligation on the Gally Note in the period prior to the Receiver's appointment.  
16 Essex remains obligated to Mr. Gally pursuant to the terms of the Gally Note and it  
17 is expected that Mr. Gally will submit a claim to recover on the Gally Note as part  
18 of the receivership claims process.

19 15. CVL executed a companion note to the Gally Note (the "CVL Note"),  
20 on or around January 14, 2016, whereby CVL agreed to pay Essex \$1,500,000 on  
21 January 14, 2019, the maturity date of the Gally Note.

22 16. On information and belief, the CVL Note was intended to repay Essex  
23 for its extension of credit and obligation to repay the Gally Note. Since his  
24 appointment, the Receiver has demanded that CVL pay the CVL Note.

25 17. The CVL Note matured on January 14, 2019 and is presently in default.

26 18. On or around October 14, 2016, CVL issued Essex a second note (the  
27 "Second CVL Note") in the principal amount of \$125,000, the balance of which is  
28 due on demand.

1 19. The Receiver has demanded payment of the Second CVL Note.

2 20. CVL has rejected the Receiver's payment demand on the Second CVL  
3 Note.

4 21. CVL has disclaimed its repayment obligations arising in connection  
5 with the CVL Note and the Second CVL Note.

6 22. Both the CVL Note and the Second CVL Note are presently in default.

7 23. As detailed herein, and on the basis of his review and analysis of the  
8 business and financial records of the Receivership Entities, and records relating to  
9 the business and financial activities of the Receivership Entities, the Receiver has  
10 concluded that at least \$643,000 in Essex funds were diverted to CVL in connection  
11 with CVL's purchase and administration of the Lumber Yard.

12 24. On or around January 11, 2016, \$500,000 was transferred from an  
13 account held by Essex at First Republic Bank an account held by Mr. Iannelli at  
14 Montecito Bank & Trust ("MBT").

15 25. On information and belief, on or around January 13, 2016, \$393,460 of  
16 the \$500,000 referenced in Paragraph 24, above, was transferred from Mr. Iannelli's  
17 MBT account to CVL.

18 26. On or around July 12, 2016, \$125,000 was transferred from an account  
19 held by Essex at MBT to Mr. Iannelli's personal account at MBT.

20 27. On information and belief, on or around July 12, 2016, the \$125,000  
21 referenced in Paragraph 26, above, was transferred from Mr. Iannelli's MBT  
22 account to CVL.

23 28. On or around October 13, 2016, \$125,000 was transferred from an  
24 account held by Essex at MBT to Mr. Iannelli's personal account at MBT.

25 29. On information and belief, the \$125,000 referenced in Paragraph 28,  
26 above, was transferred from Mr. Iannelli's MBT account to CVL.

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1 30. Accordingly, and inclusive of Essex's repayment obligation on the  
2 Gally Note, over \$2,100,000 in Essex funds and obligations were used and incurred  
3 for CVL's purchase or administration of the Lumber Yard.

4 31. At the time of the foregoing transfers, and despite the use of Essex  
5 funds and the incurrence of a substantial Essex obligation in connection with CVL's  
6 purchase or administration of the Lumber Yard, Essex had no memorialized legal,  
7 financial, or other interest in CVL or the Lumber Yard.

8 32. On information and belief, CVL maintains that its current members are:  
9 (1) The William S. Reyner, Jr. Trust [with a claimed 29.64% membership interest];  
10 (2) Reyner Family Partners, L.P. [with a claimed 29.64% membership interest];  
11 (3) William S. Reyner III [with a claimed 1% membership interest]; (4) Mr. Iannelli  
12 [with a claimed 39.04% membership interest, subsequently assigned to the  
13 Receiver]; and (5) Ralph T. Iannelli, III [with a claimed 0.68% membership  
14 interest].

15 33. On information and belief, at the time CVL was established, its  
16 members were: (1) The William S. Reyner, Jr. Trust [with a 20.5% membership  
17 interest]; (2) Reyner Family Partners, L.P. [with a 20.5% membership interest];  
18 (3) William S. Reyner III [with a 1% membership interest]; (4) Mr. Iannelli [with a  
19 57% membership interest]; and (5) Ralph T. Iannelli, III [with a 1% membership  
20 interest].

21 34. On information and belief, the apportionment of percentage interests in  
22 CVL held by the entities and individuals identified in Paragraphs 32 and 33, above,  
23 changed in or around July 2018, at which time CVL made at least one (1) capital  
24 call to its members, which Mr. Iannelli and Ralph T. Iannelli, III were unable to  
25 satisfy. As a result of this failure, Mr. Iannelli's percentage interest in CVL was  
26 putatively reduced from 57% to 39.04%.

27 35. On information and belief, at the time that Mr. Iannelli's interest in  
28 CVL was putatively reduced from 57% to 39.04%, Mr. Iannelli challenged the

1 validity of the capital call(s) which resulted in such reduction, characterizing them  
2 as unnecessary and pretextual, intended only for the purpose of strategically  
3 reducing his interest in CVL, and its attendant value.

4 36. On or around July 28, 2020, Mr. Iannelli assigned his interest in CVL  
5 to the Receiver.

6 **COUNT I – AVOIDANCE AND RECOVERY OF ACTUAL**  
7 **FRAUDULENT TRANSFERS**

8 **(as against CVL under Cal. Civ. Code §§ 3439.04 and 3439.07)**

9 37. The Receiver incorporates herein each and every allegation contained  
10 in Paragraphs 1 through 36, inclusive, set forth above.

11 38. On the basis of his investigation and analysis of its business operations  
12 and financial affairs, the Receiver has concluded that Essex operated a Ponzi-like  
13 scheme, and was insolvent, or became insolvent, shortly after the subject  
14 transactions occurred.

15 39. On information and belief, Essex, while still under the control of  
16 Mr. Iannelli, fraudulently transferred at least \$643,000, in the aggregate, to CVL  
17 with the intent to hinder, delay, and/or defraud Essex's investors and creditors.

18 40. On information and belief, these transfer payments were made from the  
19 proceeds of the Ponzi-like scheme operated by Essex, and were generated from the  
20 investors in, and creditors of, that scheme.

21 41. On information and belief, Essex's conduct was a substantial factor in  
22 causing harm to the estate of the Receivership Entities.

23 42. On information and belief, the estate of the Receivership Entities,  
24 which the Receiver is charged with administering, has been harmed as a result of  
25 these actually fraudulent transfers in the amount of at least \$643,000, to be proven at  
26 trial, which amount is subject to immediate avoidance and disgorgement to the  
27 Receiver, in his capacity as receiver for the Receivership Entities.

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1 43. On information and belief, the creditors of, and investors in, the  
2 Receivership Entities, as well as estate of the Receivership Entities, have been  
3 harmed as a result of these actually fraudulent transfers in the amount of at least  
4 \$643,000, to be proven at trial, which amount is subject to immediate avoidance and  
5 disgorgement to the Receiver, in his capacity as receiver for the Receivership  
6 Entities.

7 **COUNT II – AVOIDANCE AND RECOVERY OF CONSTRUCTIVELY**  
8 **FRAUDULENT TRANSFERS**

9 **(as against CVL under Cal. Civ. Code §§ 3439.04 and 3439.07 )**

10 44. The Receiver incorporates herein each and every allegation contained  
11 in Paragraphs 1 through 43, inclusive, set forth above.

12 45. On information and belief, Essex, while still under the control of  
13 Mr. Iannelli, fraudulently transferred at least \$643,000, in the aggregate, to CVL  
14 with the intent to hinder, delay, and/or defraud Essex's creditors.

15 46. On information and belief, neither Essex, nor any of the Receivership  
16 Entities received reasonably equivalent value in exchange for any of its transfers to  
17 CVL.

18 47. On information and belief, at all relevant times, Essex intended to  
19 incur, or reasonably should have believed that it would incur, debts beyond its  
20 ability to pay as they became due.

21 48. On information and belief, at all relevant times, Essex was engaged in,  
22 or about to engage in, business transactions for which its remaining assets were  
23 unreasonably small in relation to the business transactions.

24 49. On information and belief, Essex's conduct was a substantial factor in  
25 causing harm to the estate of the Receivership Entities.

26 50. On information and belief, the estate of the Receivership Entities,  
27 which the Receiver is charged with administering, has been harmed as a result of  
28 these fraudulent transfers in the amount of at least \$643,000, to be proven at trial,



1 which amount is subject to immediate avoidance and disgorgement to the Receiver,  
2 in his capacity as receiver for the Receivership Entities.

3 51. On information and belief, the creditors of, and investors in, the  
4 Receivership Entities, as well as the estate of the Receivership Entities, have been  
5 harmed as a result of these actually fraudulent transfers in the amount of at least  
6 \$643,000, to be proven at trial, which amount is subject to immediate avoidance and  
7 disgorgement to the Receiver, in his capacity as receiver for the Receivership  
8 Entities.

9 **COUNT III – BREACH OF CONTRACT**

10 **(as against CVL)**

11 52. The Receiver incorporates herein each and every allegation contained  
12 in Paragraphs 1 through 51, inclusive, set forth above.

13 53. On information and belief, the CVL Note represents a contract between  
14 Essex, on the one hand, and CVL, on the other hand. A true and correct copy of the  
15 CVL Note is appended hereto as **Exhibit 1**, and incorporated herein by reference.

16 54. Essex performed all of its obligations under the CVL Note.

17 55. On information and belief, CVL was obligated to pay Essex \$1,500,000  
18 on January 14, 2019, pursuant to the CVL Note.

19 56. CVL has disclaimed its repayment obligations arising in connection  
20 with the CVL Note, and has failed to make any payment whatsoever to Essex in  
21 connection with the CVL Note, thereby breaching its contractual obligations.

22 57. CVL's breach of the CVL Note was a substantial factor in causing harm  
23 to the estate of the Receivership Entities, over which the Receiver has been vested  
24 with exclusive authority and control.

25 58. As a consequence, the estate of the Receivership Entities has been  
26 harmed and suffered damages in the amount of at least \$1,500,000, to be proven at  
27 trial.

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**COUNT IV – BREACH OF CONTRACT**

**(as against CVL)**

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3 59. The Receiver incorporates herein each and every allegation contained  
4 in Paragraphs 1 through 58, inclusive, set forth above.

5 60. On information and belief, the Second CVL Note represents a contract  
6 between Essex, on the one hand, and CVL, on the other hand. A true and correct  
7 copy of the Second CVL Note is appended hereto as **Exhibit 2**, and incorporated  
8 herein by reference.

9 61. Essex performed all of its obligations under the Second CVL Note.

10 62. On information and belief, CVL was obligated to pay Essex \$125,000,  
11 on demand, pursuant to the Second CVL Note.

12 63. As reflected in Paragraph 19, above, the Receiver has demanded  
13 payment of the Second CVL Note.

14 64. CVL has rejected the Receiver's payment demand on the Second CVL  
15 Note.

16 65. CVL has disclaimed its repayment obligations arising in connection  
17 with the Second CVL Note, and has failed to make any payment whatsoever to  
18 Essex in connection with the Second CVL Note, thereby breaching its contractual  
19 obligations.

20 66. CVL's breach of the Second CVL Note was a substantial factor in  
21 causing harm to the estate of the Receivership Entities, over which the Receiver has  
22 been vested with exclusive authority and control.

23 67. As a consequence, the estate of the Receivership Entities has been  
24 harmed and suffered damages in the amount of at least \$125,000, to be proven at  
25 trial.

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1 **COUNT V – UNJUST ENRICHMENT**

2 **(as against CVL)**

3 68. The Receiver incorporates herein each and every allegation contained  
4 in Paragraphs 1 through 67, inclusive, set forth above.

5 69. As described in more detail above, over \$2,100,000 in Essex funds and  
6 obligations were used and incurred, respectively, for CVL's purchase or  
7 administration of the Lumber Yard, which conferred exclusive direct benefit upon  
8 CVL and its members, but not Essex.

9 70. At the time of the foregoing transfers, and despite the use of Essex  
10 funds and the incurrence of a substantial Essex repayment obligation in connection  
11 with CVL's purchase or administration of the Lumber Yard, Essex received no  
12 memorialized legal, financial, or other interest in CVL or the Lumber Yard.

13 71. Essex did not receive funds or monetary benefits from CVL. CVL did  
14 not issue the CVL Note or the Second CVL Note in good faith, and has disclaimed  
15 any repayment obligations arising in connection therewith.

16 72. Essex did not receive reasonably equivalent value or consideration in  
17 exchange for the funds it transferred, through Mr. Iannelli, to CVL, or the  
18 repayment obligation it incurred for CVL's benefit.

19 73. Accordingly, CVL has been unjustly enriched in the amount of at least  
20 \$2,100,000, to be proven at trial, which amount is subject to immediate  
21 disgorgement to the Receiver.

22 **COUNT VI – DECLARATORY RELIEF**

23 **(as against CVL)**

24 74. The Receiver incorporates herein each and every allegation contained  
25 in Paragraphs 1 through 73, inclusive, set forth above.

26 75. On information and belief, over \$2,100,000 in Essex funds and  
27 obligations were used and incurred, respectively, for CVL's purchase or  
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1 administration of the Lumber Yard, which conferred an exclusive benefit upon  
2 CVL, and not Essex.

3 76. Despite the use of Essex funds and the incurrence of an Essex  
4 obligation for CVL's unilateral benefit, and at the time the Essex funds and  
5 obligations referenced in Paragraph 75, above, were expended or incurred, Essex  
6 received no memorialized legal, financial, or other interest in CVL or the Lumber  
7 Yard.

8 77. Given the magnitude of the cash and financing obligation that Essex  
9 deployed for CVL's unilateral benefit, the Receiver has determined, exercising his  
10 reasonable business judgment, that CVL is an affiliated entity of Essex.

11 78. Notwithstanding that, on information and belief, over \$2,100,000 in  
12 Essex funds and obligations were used and incurred, respectively, for CVL's  
13 purchase or administration of the Lumber Yard, and the Receiver's attendant  
14 determination that CVL is an affiliated entity of Essex, there remains a dispute  
15 regarding the percentage amount and value of the interest in CVL initially held by  
16 Mr. Iannelli, but subsequently transferred to the Receiver.

17 79. As noted above, and on information and belief, CVL maintains that, as  
18 a result of its capital call(s) to its members, and Mr. Iannelli's subsequent inability to  
19 satisfy such capital call(s), the interest in CVL originally held by Mr. Iannelli, but  
20 subsequently transferred to the Receiver, was reduced from 57% to 39.04%, with a  
21 corresponding diminution in value. This percentage interest reduction remains a  
22 matter of dispute with CVL, including on the grounds that, among other things, the  
23 capital call(s) that resulted in the reduction were unnecessary or pretextual, and  
24 made expressly and improperly for the purpose of reducing Mr. Iannelli's percentage  
25 interest in CVL.

26 80. The Receiver, therefore, desires and requests a judicial determination  
27 and declaration of the respective rights, duties, and obligations of CVL and the  
28 Receiver with respect to the contentions set forth above. Such determination and

1 declaration is necessary and appropriate at this time so that the respective rights,  
2 duties, and obligations of the parties are ascertained and complied with on a current  
3 and going forward basis, and to resolve any potential future claims between the  
4 parties. Specifically, the Receiver desires and requests a judicial determination  
5 regarding the percentage interest in CVL originally held by Mr. Iannelli, but  
6 subsequently assigned to the Receiver.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, the Receiver prays for judgment against CVL as follows:

9 **On Count I:**

10 A. For a judgment against CVL in an amount of at least \$643,000, which  
11 amount may be amended based on proof at trial, plus pre-judgment interest and  
12 costs;

13 B. For an order directing CVL to immediately disgorge to the Receiver the  
14 amount of all funds it received from Essex, in an amount of at least \$643,000, which  
15 amount may be amended based on proof at trial, plus pre-judgment interest and  
16 costs; and

17 C. For such other and further relief as the Court may deem proper.

18 **On Count II:**

19 A. For a judgment against CVL in an amount of at least \$643,000, which  
20 amount may be amended based on proof at trial, plus pre-judgment interest and  
21 costs;

22 B. For an order directing CVL to immediately disgorge to the Receiver the  
23 amount of all funds it received from Essex, in an amount of at least \$643,000, which  
24 amount may be amended based on proof at trial, plus pre-judgment interest and  
25 costs; and

26 C. For such other and further relief as the Court may deem proper.  
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1           **On Count III:**

2           A.     For a judgment against CVL in an amount of at least \$1,500,000, which  
3 amount may be amended based on proof at trial, plus pre-judgment interest and  
4 costs;

5           B.     For such other and further relief as the Court may deem proper.

6           **On Count IV:**

7           A.     For a judgment against CVL in an amount of at least \$125,000, which  
8 amount may be amended based on proof at trial, plus pre-judgment interest and  
9 costs;

10          B.     For such other and further relief as the Court may deem proper.

11          **On Count V:**

12          A.     For a judgment against CVL in an amount of at least \$2,100,000, which  
13 amount may be amended based on proof at trial, plus pre-judgment interest and  
14 costs;

15          B.     For an order directing CVL to immediately disgorge to the Receiver the  
16 amount of all funds it received from Essex, in an amount of at least \$2,100,000,  
17 which amount may be amended based on proof at trial, plus pre-judgment interest  
18 and costs; and

19          C.     For such other and further relief as the Court may deem proper.

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# **EXHIBIT 1**



**PROMISSORY NOTE****\$1,500,000.00**

January 14, 2016

Santa Barbara, California

For value received, **915 Elm Avenue CVL, LLC**, a California limited liability company ("**Borrower**"), hereby promises to pay to **Essex Capital Corporation** ("**Registered Owner**"), the principal sum of One Million Five Hundred Thousand Dollars (\$1,500,000). Interest shall accrue from the date of this Note on the unpaid principal amount of this Note at a rate equal to the lesser of six percent (6%) per annum and the maximum legal rate, compounded annually, and shall be paid at maturity. This Note is subject to the following terms and conditions.

**1. Maturity.** The principal balance of this Note shall be paid on the third anniversary of the date hereof. All accrued interest, and all other amounts payable by Borrower under this Note, shall be immediately due and payable, upon the occurrence of an Event of Default (as defined in Section 7 below) and without the need for Registered Owner to make any demand or provide any notice under this Note (the "Maturity Date").

**2. Payment; Prepayment.** All payments under this Note shall be made in lawful money of the United States of America at Registered Owner's address set forth in Section 7, below, or such other place as Registered Owner may designate in writing from time to time. All payments under this Note shall be credited first to the accrued interest and other charges, costs and expenses then due and payable and the remainder applied to principal.

**3. Representations.** Borrower hereby represents and warrants to Registered Owner that all of the following are true, correct and complete.

(a) Organization. Borrower is duly formed, validly existing and in good standing under the laws of the State of California.

(b) Authority. Borrower has the power and authority to execute and deliver this Note, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Borrower of this Note and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action by the Board of Managers of Borrower. This Note has been duly and validly executed and delivered by Borrower and, assuming the due authorization, execution and delivery by the other parties hereto, constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general principles of equity. Borrower has taken all action required by law and its charter documents to duly authorize the execution and delivery by Borrower of this Note and the performance of its obligations hereunder.

(c) No Conflicts. The execution and delivery by Borrower of this Note, the performance of its obligations under this Note and the consummation of the transactions contemplated hereby do not and will not: (i) conflict with or result in a violation or breach of any of the terms, conditions or, provisions of the formation documents of Borrower; or (ii) conflict with or result in a violation or breach of, constitute (with or without notice or lapse of time or both) a default under, or require Borrower to obtain any consent, approval or action of, make any filing with or give any notice to any person or entity, the terms of, any law or order applicable to Borrower or any material contract, license or agreement to which Borrower is a party or by which any of its assets are bound which have not been obtained or made.

**4. Default.** (a) Events of Default. Upon the happening of any of the following events (an "Event of Default"), Registered Owner may, at his option, declare immediately due and payable the entire unpaid principal balance of this Note together with all interest and late charges thereon, plus any other sums payable at the time of such declaration pursuant to this Note. Such events are the following:

(i) The failure of Borrower to pay in full when due any installment of principal or interest or both or Late Payment charges or Additional Payments, unless such failure is cured within five (5) days;

(ii) The default of Borrower in the performance of any of its obligations under this Note, whether or not requiring the payment of money, but excluding the payment of any installment of principal, interest or both, unless such default is cured to Registered Owner's reasonable satisfaction within thirty (30) days after Registered Owner's delivery to Borrower of written notice of such default;

(iii) The occurrence of any event of bankruptcy of Borrower or Guarantor, including, but not limited to, the filing by or against Borrower or Guarantor of a voluntary or involuntary petition under any provision of the Federal Bankruptcy Code, Borrower's or Guarantor's consent to a general assignment for the benefit of creditors, or Borrower's or Guarantor's admission in writing of his inability to pay his debts generally as they come due; or

(iv) The liquidation or dissolution of Borrower or the approval by the Board of Managers or members of Borrower of the liquidation or dissolution of Borrower.

(b) Notice of Default. Upon the occurrence of an Event of Default described in any of clauses (ii) or (iii) of Section 4(a), above, Registered Owner may deliver to Borrower written notice of the occurrence of such Event of Default and, unless such Event of Default is cured prior to the end of the applicable cure period, the entire unpaid principal balance of this Note together with all interest and late charges thereon, plus any other sums then payable under this Note, automatically shall be immediately due and payable and Registered Owner shall have no obligation to deliver to Borrower any further notice of default or acceleration of this Note. Upon the occurrence of an Event of Default described in any of clauses (i) or (iv) of Section 4(a), above, the entire unpaid principal balance of this Note together with all interest and late charges thereon, plus any other sums then payable under this Note, automatically shall be immediately due and payable upon the occurrence of such Event of Default and Registered Owner shall have no obligation to deliver to Borrower any further notice of default or acceleration of this

Note.

(c) Delay. The delay or failure of Registered Owner to declare a default or to deliver written notice of default upon the occurrence of any Event of Default shall not constitute a waiver of Registered Owner's right to declare a default or to deliver notice of default at any subsequent time in respect of the same event or any other event. No exercise of the rights and powers granted in or held pursuant to this Note by Registered Owner, and no delays or omission in the exercise of such rights and powers shall be held to exhaust the same or be construed as a waiver thereof, and every such right and power may be exercised at any time and from time to time.

(d) Remedies Cumulative. Registered Owner's rights and remedies under this Note upon the occurrence of an Event of Default are cumulative and Registered Owner's exercise of any such remedies shall not limit or restrict in any way his right to exercise the same or any other remedy in respect of the same or any other Event of Default.

**5. Payment to Registered Owner.** Borrower is obligated to pay the principal amount and any stated interest thereon only to the Registered Owner of this Note, and only the Registered Owner of the Note shall be entitled to payment of the principal amount and interest on the principal amount.

**6. Transfer, Successors and Assigns.** Borrower may not assign, pledge, or otherwise transfer this Note or any of its rights or obligations thereunder without the prior written consent of Registered Owner, which consent may be withheld for any reason or no reason.

**7. Notices.** Any notice required or permitted by this Note shall be in writing and shall be deemed delivered (a) if delivered personally, upon receipt, or (b) if sent by recognized over-night courier service, one (1) business day after delivery to the courier or delivery service, or (c) if sent by facsimile or other form of electronic transmission that provides for confirmation of delivery or notice of non-delivery, one (1) business day after transmission, or (d) if sent by U.S. first class, certified or registered mail with postage prepaid and return receipt requested, five (5) days after deposit with the U.S. Postal Service addressed to the party to be notified at such party's address or facsimile number set forth below or as subsequently modified by written notice.

Registered Owner:

Essex Capital Corporation  
1486 East Valley Road  
Santa Barbara, California 93108  
Attention: Ralph T. Iannelli,  
President  
Fax No.: 805-565-0993  
[Email: Ralph@essexcapitalcorp.com](mailto:Ralph@essexcapitalcorp.com)

Borrower:

915 Elm Avenue, CVL LLC  
915 Elm Ave.  
Carpinteria, CA 93113

**8. Miscellaneous Provisions.**

(a) Officers and Directors Not Liable. In no event shall any officer or Manager of Borrower be liable for any amounts due or payable pursuant to this Note.

(b) Loss of Note. Upon receipt by Borrower of evidence satisfactory to it of the loss, theft, destruction or mutilation of this Note or any Note exchanged for it, and indemnity satisfactory to Borrower (in case of loss, theft or destruction) or surrender and cancellation of such Note (in the case of mutilation), Borrower shall make and deliver in lieu of such Note a new Note of like tenor.

(c) Waiver of Notice of Protest, etc. Borrower hereby waives presentment, protest, notice of protest, notice of nonpayment, notice of dishonor and any and all other notices or demands relative to this Note, except as specifically provided herein.

(d) Amendments and Waivers. Any term of this Note may be amended only with the written consent of Borrower and Registered Owner. Any amendment or waiver affected in accordance with this Section 11(d) shall be binding upon Borrower, Registered Owner and each transferee of any Note.

(e) Severability. The unenforceability or invalidity of any provision or provisions of this Note as to any persons or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other persons or circumstances, and all provisions hereof, in all other respects, shall remain valid and enforceable.

(f) Counterparts. This Note may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single agreement.

(g) Interpretation. Borrower and Registered Owner have each had the opportunity to review and discuss with independent legal counsel this Note and the transactions contemplated herein. Therefore, the normal rule of construction that an agreement shall be interpreted against the drafting party shall not apply.

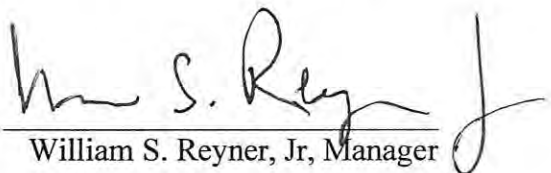
(h) Arbitration. Unless the relief sought requires the exercise of the equity powers of a court of competent jurisdiction, any dispute arising in connection with the interpretation or enforcement of the provisions of this Agreement, or the application or validity thereof, shall be submitted to arbitration. Such arbitration proceedings shall be conducted with JAMS/Endispute ([www.JAMSADR.com](http://www.JAMSADR.com)) ("JAMS") in Santa Barbara County, California, in accordance with the Commercial Arbitration Rules then obtaining of JAMS. The arbitration shall be conducted before a single arbitrator. The parties shall use their reasonable efforts to select a mutually acceptable arbitrator. If the parties have not selected a mutually acceptable arbitrator within thirty (30) days after the commencement of the arbitration, the arbitrator shall be selected in accordance with the rules of the JAMS. The arbitrator shall establish discovery procedures reasonable in light of the amount in controversy and the nature of the dispute and discovery shall not be limited to the discovery procedures set forth in the JAMS Rules. This agreement to arbitrate shall be specifically enforceable. Any award rendered in any such arbitration proceedings shall be final and binding on each of

the parties hereto, and judgment may be entered thereon in any court of competent jurisdiction. Any arbitration shall be conducted in private and neither party shall make any public announcement or disclosure about the conduct, status or result of any arbitration without the prior written consent of the other party; provided that, on not less than fifteen (15) days prior written notice thereof to the other party, which notice shall include a copy of the proposed announcement or disclosure, a party may make such public announcement or disclosure regarding the arbitration as may be required by law or court order.

(i) WAIVER OF JURY TRIAL. IN THE EVENT THE ARBITRATION PROVISION SET FORTH IN SECTION 11(h), ABOVE IS DETERMINED TO BE UNENFORCEABLE AND/OR REGISTERED OWNER IS NAMED IN ANY ACTION AT LAW WHICH WOULD OTHERWISE REQUIRE THE RESOLUTION OF ANY DISPUTE BETWEEN REGISTERED OWNER AND BORROWER TO BE HEARD IN A COURT OF LAW, THEN TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, BORROWER WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS NOTE, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT OR TORT OR OTHERWISE. BORROWER ACKNOWLEDGES THAT IT HAS BEEN INFORMED BY REGISTERED OWNER THAT THE PROVISIONS OF THIS SECTION CONSTITUTE A MATERIAL INDUCEMENT UPON WHICH REGISTERED OWNER HAS RELIED, IS RELYING AND WILL RELY IN ENTERING INTO THIS NOTE AND MAKING THE LOAN THEREUNDER. ANY PERSON MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 11(i) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF BORROWER TO THE WAIVER OF HIS RIGHTS TO TRIAL BY JURY.

(j) Governing Law. This Note shall be governed by and construed in accordance with the internal laws of the State of California applicable to contracts made and to be fully performed in the State of California and without regard to any conflict of law provisions thereof.

915 ELM AVENUE CVL, LLC

By:   
William S. Reyner, Jr, Manager

# **EXHIBIT 2**

**PROMISSORY NOTE****\$125,000.00**

October 14, 2016

Santa Barbara, California

For value received, **915 Elm Avenue CVL, LLC**, a California limited liability company ("Borrower"), hereby promises to pay to **Essex Capital Corporation** ("Registered Owner"), the principal sum of One Hundred Twenty-Five Thousand Dollars (\$125,000.00). Interest shall accrue from the date of this Note on the unpaid principal amount of this Note at a rate equal to the lesser of six percent (6%) per annum and the maximum legal rate, compounded annually, and shall be paid at maturity. This Note is subject to the following terms and conditions.

**1. Maturity.** The principal balance of this Note shall be paid on demand. All accrued interest, and all other amounts payable by Borrower under this Note, shall be immediately due and payable, upon the occurrence of an Event of Default (as defined in Section 7 below) and without the need for Registered Owner to make any demand or provide any notice under this Note (the "Maturity Date").

**2. Payment; Prepayment.** All payments under this Note shall be made in lawful money of the United States of America at Registered Owner's address set forth in Section 7, below, or such other place as Registered Owner may designate in writing from time to time. All payments under this Note shall be credited first to the accrued interest and other charges, costs and expenses then due and payable and the remainder applied to principal.

**3. Representations.** Borrower hereby represents and warrants to Registered Owner that all of the following are true, correct and complete.

(a) Organization. Borrower is duly formed, validly existing and in good standing under the laws of the State of California.

(b) Authority. Borrower has the power and authority to execute and deliver this Note, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Borrower of this Note and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action by the Board of Managers of Borrower. This Note has been duly and validly executed and delivered by Borrower and, assuming the due authorization, execution and delivery by the other parties hereto, constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general principles of equity. Borrower has taken all action required by law and its charter documents to duly authorize the execution and delivery by Borrower of this Note and the performance of its obligations hereunder.

(c) No Conflicts. The execution and delivery by Borrower of this Note, the performance of its obligations under this Note and the consummation of the transactions contemplated hereby do not and will not: (i) conflict with or result in a violation or breach of any of the terms, conditions or, provisions of the formation documents of Borrower; or (ii) conflict with or result in a violation or breach of, constitute (with or without notice or lapse of time or both) a default under, or require Borrower to obtain any consent, approval or action of, make any filing with or give any notice to any person or entity, the terms of, any law or order applicable to Borrower or any material contract, license or agreement to which Borrower is a party or by which any of its assets are bound which have not been obtained or made.

**4. Default.** (a) Events of Default. Upon the happening of any of the following events (an "Event of Default"), Registered Owner may, at his option, declare immediately due and payable the entire unpaid principal balance of this Note together with all interest and late charges thereon, plus any other sums payable at the time of such declaration pursuant to this Note. Such events are the following:

(i) The failure of Borrower to pay in full when due any installment of principal or interest or both or Late Payment charges or Additional Payments, unless such failure is cured within five (5) days;

(ii) The default of Borrower in the performance of any of its obligations under this Note, whether or not requiring the payment of money, but excluding the payment of any installment of principal, interest or both, unless such default is cured to Registered Owner's reasonable satisfaction within thirty (30) days after Registered Owner's delivery to Borrower of written notice of such default;

(iii) The occurrence of any event of bankruptcy of Borrower or Guarantor, including, but not limited to, the filing by or against Borrower or Guarantor of a voluntary or involuntary petition under any provision of the Federal Bankruptcy Code, Borrower's or Guarantor's consent to a general assignment for the benefit of creditors, or Borrower's or Guarantor's admission in writing of his inability to pay his debts generally as they come due; or

(iv) The liquidation or dissolution of Borrower or the approval by the Board of Managers or members of Borrower of the liquidation or dissolution of Borrower.

(b) Notice of Default. Upon the occurrence of an Event of Default described in any of clauses (ii) or (iii) of Section 4(a), above, Registered Owner may deliver to Borrower written notice of the occurrence of such Event of Default and, unless such Event of Default is cured prior to the end of the applicable cure period, the entire unpaid principal balance of this Note together with all interest and late charges thereon, plus any other sums then payable under this Note, automatically shall be immediately due and payable and Registered Owner shall have no obligation to deliver to Borrower any further notice of default or acceleration of this Note. Upon the occurrence of an Event of Default described in any of clauses (i) or (iv) of Section 4(a), above, the entire unpaid principal balance of this Note together with all interest and late charges thereon, plus any other sums then payable under this Note, automatically shall be immediately due and payable upon the occurrence of such Event of Default and Registered Owner shall have no obligation to deliver to Borrower any further notice of default or acceleration of this



Note.

(c) Delay. The delay or failure of Registered Owner to declare a default or to deliver written notice of default upon the occurrence of any Event of Default shall not constitute a waiver of Registered Owner's right to declare a default or to deliver notice of default at any subsequent time in respect of the same event or any other event. No exercise of the rights and powers granted in or held pursuant to this Note by Registered Owner, and no delays or omission in the exercise of such rights and powers shall be held to exhaust the same or be construed as a waiver thereof, and every such right and power may be exercised at any time and from time to time.

(d) Remedies Cumulative. Registered Owner's rights and remedies under this Note upon the occurrence of an Event of Default are cumulative and Registered Owner's exercise of any such remedies shall not limit or restrict in any way his right to exercise the same or any other remedy in respect of the same or any other Event of Default.

**5. Payment to Registered Owner.** Borrower is obligated to pay the principal amount and any stated interest thereon only to the Registered Owner of this Note, and only the Registered Owner of the Note shall be entitled to payment of the principal amount and interest on the principal amount.

**6. Transfer, Successors and Assigns.** Borrower may not assign, pledge, or otherwise transfer this Note or any of its rights or obligations thereunder without the prior written consent of Registered Owner, which consent may be withheld for any reason or no reason.

**7. Notices.** Any notice required or permitted by this Note shall be in writing and shall be deemed delivered (a) if delivered personally, upon receipt, or (b) if sent by recognized over-night courier service, one (1) business day after delivery to the courier or delivery service, or (c) if sent by facsimile or other form of electronic transmission that provides for confirmation of delivery or notice of non-delivery, one (1) business day after transmission, or (d) if sent by U.S. first class, certified or registered mail with postage prepaid and return receipt requested, five (5) days after deposit with the U.S. Postal Service addressed to the party to be notified at such party's address or facsimile number set forth below or as subsequently modified by written notice.

Registered Owner:

Essex Capital Corporation  
1486 East Valley Road  
Santa Barbara, California 93108  
Attention: Ralph T. Iannelli,  
President  
Fax No.: 805-565-0993  
[Email: Ralph@essexcapitalcorp.com](mailto:Ralph@essexcapitalcorp.com)

Borrower:

915 Elm Avenue, CVL LLC  
915 Elm Ave.  
Carpinteria, CA 93113

**8. Miscellaneous Provisions.**

(a) Officers and Managers Not Liable. In no event shall any officer or Manager of Borrower be liable for any amounts due or payable pursuant to this Note.

(b) Loss of Note. Upon receipt by Borrower of evidence satisfactory to it of the loss, theft, destruction or mutilation of this Note or any Note exchanged for it, and indemnity satisfactory to Borrower (in case of loss, theft or destruction) or surrender and cancellation of such Note (in the case of mutilation), Borrower shall make and deliver in lieu of such Note a new Note of like tenor.

(c) Waiver of Notice of Protest, etc. Borrower hereby waives presentment, protest, notice of protest, notice of nonpayment, notice of dishonor and any and all other notices or demands relative to this Note, except as specifically provided herein.

(d) Amendments and Waivers. Any term of this Note may be amended only with the written consent of Borrower and Registered Owner. Any amendment or waiver affected in accordance with this Section 11(d) shall be binding upon Borrower, Registered Owner and each transferee of any Note.

(e) Severability. The unenforceability or invalidity of any provision or provisions of this Note as to any persons or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other persons or circumstances, and all provisions hereof, in all other respects, shall remain valid and enforceable.

(f) Counterparts. This Note may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single agreement.

(g) Interpretation. Borrower and Registered Owner have each had the opportunity to review and discuss with independent legal counsel this Note and the transactions contemplated herein. Therefore, the normal rule of construction that an agreement shall be interpreted against the drafting party shall not apply.

(h) Arbitration. Unless the relief sought requires the exercise of the equity powers of a court of competent jurisdiction, any dispute arising in connection with the interpretation or enforcement of the provisions of this Agreement, or the application or validity thereof, shall be submitted to arbitration. Such arbitration proceedings shall be conducted with JAMS/Endispute ([www.JAMSADR.com](http://www.JAMSADR.com)) ("JAMS") in Santa Barbara County, California, in accordance with the Commercial Arbitration Rules then obtaining of JAMS. The arbitration shall be conducted before a single arbitrator. The parties shall use their reasonable efforts to select a mutually acceptable arbitrator. If the parties have not selected a mutually acceptable arbitrator within thirty (30) days after the commencement of the arbitration, the arbitrator shall be selected in accordance with the rules of the JAMS. The arbitrator shall establish discovery procedures reasonable in light of the amount in controversy and the nature of the dispute and discovery shall not be limited to the discovery procedures set forth in the JAMS Rules. This agreement to arbitrate shall be specifically enforceable. Any award rendered in any such arbitration proceedings shall be final and binding on each of

the parties hereto, and judgment may be entered thereon in any court of competent jurisdiction. Any arbitration shall be conducted in private and neither party shall make any public announcement or disclosure about the conduct, status or result of any arbitration without the prior written consent of the other party; provided that, on not less than fifteen (15) days prior written notice thereof to the other party, which notice shall include a copy of the proposed announcement or disclosure, a party may make such public announcement or disclosure regarding the arbitration as may be required by law or court order.

(i) WAIVER OF JURY TRIAL. IN THE EVENT THE ARBITRATION PROVISION SET FORTH IN SECTION 11(h), ABOVE IS DETERMINED TO BE UNENFORCEABLE AND/OR REGISTERED OWNER IS NAMED IN ANY ACTION AT LAW WHICH WOULD OTHERWISE REQUIRE THE RESOLUTION OF ANY DISPUTE BETWEEN REGISTERED OWNER AND BORROWER TO BE HEARD IN A COURT OF LAW, THEN TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, BORROWER WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS NOTE, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT OR TORT OR OTHERWISE. BORROWER ACKNOWLEDGES THAT IT HAS BEEN INFORMED BY REGISTERED OWNER THAT THE PROVISIONS OF THIS SECTION CONSTITUTE A MATERIAL INDUCEMENT UPON WHICH REGISTERED OWNER HAS RELIED, IS RELYING AND WILL RELY IN ENTERING INTO THIS NOTE AND MAKING THE LOAN THEREUNDER. ANY PERSON MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 11(i) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF BORROWER TO THE WAIVER OF HIS RIGHTS TO TRIAL BY JURY.

(j) Governing Law. This Note shall be governed by and construed in accordance with the internal laws of the State of California applicable to contracts made and to be fully performed in the State of California and without regard to any conflict of law provisions thereof.

915 ELM AVENUE CVL, LLC

By:   
William S. Reyner, Jr, Manager