



1 title or interest in or upon the property that is the subject of this action junior to ESR's interest.

2 5. ESR is informed and believes and thereon alleges that at all times herein  
3 mentioned each of the defendants was the agent and employee of each of the remaining  
4 defendants, and in doing the things alleged below, was acting within the scope of such agency.

5 **The Contract**

6 6. Millard Tong is the owner of two apartment buildings – one located at 310  
7 Esplanade Avenue (“310 Esplanade”) and the other at 320 Esplanade Avenue (“320 Esplanade”) in  
8 Pacifica, California (sometimes collectively, the “Properties”). The Properties are located on  
9 the edge of a cliff that has been consistently and rapidly eroding because of the ocean tides  
10 thereby putting the apartment buildings and the tenants within at risk.

11 7. In the fall of 2008, Tong and ESR entered into a contract (the “Contract”) for ESR  
12 to prevent further erosion by installing rock rip-rap at the base of the existing bluff and then  
13 installing a cutoff wall to protect the rock rip-rap.

14 8. Between 2008 and February 2010, ESR performed all work required of it under  
15 the Contract. Tong, however, has refused and continues to refuse to pay all amounts due under  
16 the Contract despite ESR's demands.

17 **FIRST CAUSE OF ACTION**

18 **(Foreclosure of Mechanics' Lien on 310 Esplanade)**

19 9. ESR realleges and incorporates by reference each and every allegation contained  
20 in paragraphs 1 through 8, inclusive, as though fully set forth herein.

21 10. In the fall of 2008, ESR and Tong entered into the Contract whereby ESR agreed  
22 to make certain improvements to the Properties, including 310 Esplanade, to prevent further  
23 erosion to the bluffs thereon.

24 11. Pursuant to the Contract, ESR, between the commencement of the Contract and its  
25 completion in February 2010, performed the work and labor for, and furnished all necessary  
26 services, materials and equipment to be used or consumed in the work of improvement, and  
27 performed all other conditions, covenants, and promises under the Contract on its part to be  
28 performed, except those of which were excused.



1 Official Records of San Mateo County as document number 2010-037522. The 320 Claim of Lien  
2 is for \$845,241.44 and represents the principal amount that is due and owing and unpaid under  
3 the Contract for the work performed at 320 Esplanade. Attached hereto as Exhibit "B" is a true  
4 and correct copy of the recorded 320 Claim of Lien. ESR has incurred additional amounts to  
5 record and verify the 320 Claim of Lien that have not been included in the above-stated amount  
6 but will be proven at trial.

7 18. ESR is informed and believes, and thereon alleges, that defendants, and each of  
8 them, claim some estate, lien, right, title or interest in or upon 320 Esplanade or some part  
9 thereof, which said claims and any and all such claims or liens are subject, subsequent and  
10 subordinate to ESR's lien.

11 19. The whole of 320 Esplanade and the entire estate of defendants thereon are  
12 required for its convenient use and occupation of ESR's work of improvement.

13 WHEREFORE, ESR prays for judgment as follows.

14 **THIRD CAUSE OF ACTION**

15 **(Breach of Contract)**

16 20. ESR hereby realleges and incorporates herein by reference the allegations  
17 contained in paragraphs 1 through 19, inclusive, as though fully set forth herein.

18 21. In the fall of 2008, ESR and Tong entered into the Contract whereby ESR agreed  
19 to make certain improvements to the Properties to prevent further erosion to the bluffs thereon.

20 22. ESR has performed all other services, conditions, covenants, and promises under  
21 the Contract on its part to be performed, except those of which were excused.

22 23. Tong has breached the Contract by refusing to pay the amounts owed under the  
23 Contract despite ESR's repeated demands.

24 24. As a direct and proximate result of Tong's breach of the Contract, ESR has been  
25 damaged in an amount to be proven at trial, but in no case less than \$971,489.44 plus interest,  
26 costs and attorneys' fees.

27 WHEREFORE, ESR prays for judgment as follows.

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **(Unjust Enrichment)**

3 25. ESR hereby realleges and incorporates herein by reference the allegations  
4 contained in paragraphs 1 through 24, inclusive, as though fully set forth herein.

5 26. ESR's work on the Properties has greatly increased their value. Specifically, the  
6 unpaid increase in value is no less than \$971,489.44, which is the unpaid reasonable value of the  
7 improvements and modifications to the Properties provided by ESR and also represents the  
8 amount by which defendants have been unjustly enriched.

9 WHEREFORE, ESR prays for judgment as follows:

10 **FIFTH CAUSE OF ACTION**

11 **(Common Counts)**

12 27. ESR realleges and incorporates herein by reference the allegations contained in  
13 Paragraphs 1 through 26, inclusive.

14 28. Defendants have become indebted to ESR in the agreed sum of no less than  
15 \$971,489.44 for engineering services rendered by ESR, at defendants' special request.

16 29. Neither the whole nor any part of the above sum has been paid, notwithstanding  
17 ESR's demand for payment thereon, and there is now due, owing and unpaid from defendants to  
18 ESR the sum of \$971,489.44.

19 WHEREFORE, ESR prays for judgment as follows:

20 **PRAYER**

21 **On the First Cause of Action:**

22 A. Judgment against defendants pursuant to the 310 Claim of Lien in the amount of  
23 \$971,489.44 plus interest at the legal rate plus the cost of verifying and recording  
24 the 310 Claim of Lien plus costs of suit;

25 B. That the above-described amounts owed to ESR be adjudged to be liens on 310  
26 Esplanade and that all of 310 Esplanade, including any interests therein, described  
27 in this complaint shall be adjudged and decreed to be sold by the Sheriff of the  
28 County of San Mateo, according to law and practice of this Court;

- 1 C. That the proceeds of said Sheriff's sale be applied to satisfy the costs of sale and
- 2 the costs of these proceedings and then to ESR's claim;
- 3 D. That defendants' interests in 310 Esplanade shall be adjudged and decreed
- 4 subsequent and subject to ESR's liens, that the equity of redemption of defendants,
- 5 and each of them, be forever barred and foreclosed, and that ESR may become a
- 6 purchaser at such sale;
- 7 E. Adjudging that if there is a deficiency of proceeds to satisfy the amounts due to
- 8 ESR, judgment for the deficiency be entered against defendants; and
- 9 F. For such other and further relief as the court may deem proper.

10 On the Second Cause of Action:

- 11 A. Judgment against defendants pursuant to the 320 Claim of Lien in the amount of
- 12 \$845,241.44 plus interest at the legal rate plus the cost of verifying and recording
- 13 the 320 Claim of Lien plus costs of suit;
- 14 B. That the above-described amounts owed to ESR be adjudged to be liens on 320
- 15 Esplanade and that all of 320 Esplanade, including any interests therein, described
- 16 in this complaint shall be adjudged and decreed to be sold by the Sheriff of the
- 17 County of San Mateo, according to law and practice of this Court;
- 18 C. That the proceeds of said Sheriff's sale be applied to satisfy the costs of sale and
- 19 the costs of these proceedings and then to ESR's claim;
- 20 D. That defendants' interests in 320 Esplanade shall be adjudged and decreed
- 21 subsequent and subject to ESR's liens, that the equity of redemption of defendants,
- 22 and each of them, be forever barred and foreclosed, and that ESR may become a
- 23 purchaser at such sale;
- 24 E. Adjudging that if there is a deficiency of proceeds to satisfy the amounts due to
- 25 ESR, judgment for the deficiency be entered against defendants; and
- 26 F. For such other and further relief as the court may deem proper.

27 On the Third, Fourth and Fifth Causes of Action:

- 28 A. For damages in the principal amount of no less than \$971,489.44;

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- B. For interest at the legal rate;
- C. For costs of suit, including reasonable attorneys fees; and
- D. For such other and further relief as the court may deem proper.

Dated: May 5, 2010

SHAPIRO BUCHMAN PROVINE LLP



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STEPHEN C. SETO  
Attorneys for Plaintiff Engineered Soil Repairs, Inc.

2010-037521

11:21am 04/07/10 MLL Fee: 28.00

Count of pages 3

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



Recording requested by and  
after recording return to:

Stephen C. Seto, Esq.  
Shapiro Buchman Provine LLP  
1333 N. California Blvd., Ste. #350  
Walnut Creek, CA 94596

(Space above this line for recorder's use)

**NOTICE AND CLAIM OF LIEN**

1. **Engineered Soil Repairs, Inc.**, a California licensed general contractor, and mechanics' lien claimant herein, with a business address of 1267 Springbrook Road, Walnut Creek, California 94597, hereby claims a mechanics' lien for labor, equipment and services rendered, and materials furnished to Millard Tong and used and consumed in a work of improvement located at 310 Esplanade Avenue, Pacifica, California (the "Property").
2. The legal description of the Property is attached hereto as Exhibit "A" and incorporated herein by reference.
3. The work of improvement to which Engineered Soil Repairs, Inc., contributed labor and services and furnished materials included winterizing the bluffs on the Property.
4. The fee owner of the Property is Millard Tong of 320 Esplanade Avenue, Apartment 56, Pacifica, California 94044.
5. After deducting all just credits and offsets, the balance owed for the improvements, which is also the reasonable unpaid value of the labor, services and materials, is **Nine Hundred Seventy-One Thousand Four Hundred Eighty-Nine and 44/100 Dollars (\$971,489.44)**. I declare of my own knowledge that this is a correct statement of Engineered Soil Repairs, Inc.'s demand after deducting all just credits and offsets, of which there are none.
6. Although demand has been made for the full amount owing, this account balance remains unpaid.
7. Therefore, pursuant to sections 3019-3153 of the California Civil Code relating to mechanics' liens, a Claim of Lien for **Nine Hundred Seventy-One Thousand Four Hundred Eighty-Nine and 44/100 Dollars (\$971,489.44)**, plus interest at the legal rate from the date of completion of the improvement, is hereby made against the Property, including the improvements made and the lot on which it now stands.

**EXHIBIT "A"**

April 5, 2010

ENGINEERED SOIL REPAIRS, INC.

By: William J. Gibson

Its: William J. Gibson  
Principal Engineer

VERIFICATION

I am an officer of Engineered Soil Repairs, Inc., the mechanics' lien claimant herein. I have read the above claim, know of its contents, and verify it as true of my knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Walnut Creek, California on April 5, 2010.

William J. Gibson

EXHIBIT "A"

PARCEL 1:

*Lot 6 in Block 2, as shown on that certain map entitled "SURF SIDE MANOR NO. 1 PACIFICA, CALIFORNIA", filed in the office of the County Recorder of San Mateo County, State of California on April 28, 1961 in Book 54 of Maps at page 40.*

PARCEL 2:

*Those certain parking privileges provided for in the Declaration of Parking Covenants recorded October 4, 1971 in Book 6024, page 102, Official Records (File No. 51401-AE), Records of San Mateo County, California. Said privileges are appurtenant to and for the benefit of Parcel 1 above and were created by that certain Deed recorded October 4, 1971 in Volume 6024 of Official Records at page 191 (File No. 51428-AE), Records of San Mateo County, California.*

A.P. No.: 009-413-010

JPN 009 041 413 01 A

Recording requested by and  
after recording return to:

Stephen C. Seto, Esq.  
Shapiro Buchman Provine LLP  
1333 N. California Blvd., Ste. #350  
Walnut Creek, CA 94596

2010-037522

11:22am 04/07/10 MLL Fee: 28.00

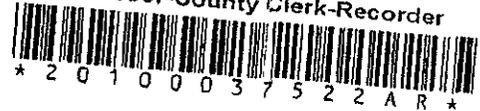
Count of pages 3

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



(Space above this line for recorder's use)

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2. The legal description of the Property is attached hereto as Exhibit "A" and incorporated herein by reference.
3. The work of improvement to which Engineered Soil Repairs, Inc., contributed labor and services and furnished materials included winterizing the bluff on the Property.
4. The fee owner of the Property is Millard Tong of 320 Esplanade Avenue, Apartment 56, Pacifica, California 94044.
5. After deducting all just credits and offsets, the balance owed for the improvements, which is also the reasonable unpaid value of the labor, services and materials, is **Eight Hundred Forty-Five Thousand Two Hundred Forty-One and 44/100 Dollars (\$845,241.44)**. I declare of my own knowledge that this is a correct statement of Engineered Soil Repairs, Inc.'s demand after deducting all just credits and offsets, of which there are none.
6. Although demand has been made for the full amount owing, this account balance remains unpaid.
7. Therefore, pursuant to sections 3019-3153 of the California Civil Code relating to mechanics' liens, a Claim of Lien for **Eight Hundred Forty-Five Thousand Two Hundred Forty-One and 44/100 Dollars (\$845,241.44)**, plus interest at the legal rate from the date of completion of the improvement, is hereby made against the Property, including the improvements made and the lot on which it now stands.

**EXHIBIT "B"**

April 5, 2010

ENGINEERED SOIL REPAIRS, INC.

By: William J. Gibson

Its: William J. Gibson  
Principal Engineer

**VERIFICATION**

I am an officer of Engineered Soil Repairs, Inc., the mechanics' lien claimant herein. I have read the above claim, know of its contents, and verify it as true of my knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Walnut Creek, California on April 5, 2010.

William J. Gibson

EXHIBIT "A"

PARCEL 1:

Lot 5 in Block 2, as shown on that certain map entitled "SURF SIDE MANOR NO. 1 PACIFICA, CALIFORNIA", filed in the office of the County Recorder of San Mateo County, State of California on April 28, 1961 in Book 54 of Maps at page 40.

Excepting any portion of the land below the ordinary high water mark where it was located prior to any artificial or avulsive changes in the location of the shoreline.

PARCEL 2:

Those certain parking privileges provided for in the Declaration of Parking Covenants recorded October 4, 1971 in Book 6024, page 110, Official Records (File No. 51402-AE), Records of San Mateo County, California. Said privileges are appurtenant to and for the benefit of Parcel 1 above and were created by that certain Deed recorded October 4, 1971 in Volume 6024 of Official Records at page 185 (File No. 51425-AE), Records of San Mateo County, California.

A.P. No.: 009-413-020

JPN 009 041 413 02 A