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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF RIVERSIDE

JAN 07 2013

C. Perez

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JAN 10 2013

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF RIVERSIDE (INDIO)

10 AMY COX

11 PLAINTIFF,

12 v.

13
 14 CAPITIS, INC., CAPITIS SOTHEBY'S
 15 INTERNATIONAL REALTY, SOTHEBY'S
 16 INTERNATIONAL REALTY AFFILIATES,
 17 LLC, ERIC BENNETT, DEAN SIPE, KEVIN
 18 BLESSING, AND DOES 1-100

19 DEFENDANTS

CASE NO.: INC 1205192

**PLAINTIFF'S SECOND AMENDED
 COMPLAINT FOR DAMAGES**

1. Breach of Fiduciary Duty
2. Negligent Misrepresentation
3. Constructive Fraud
4. Negligent Breach of Fiduciary Duty
5. Breach of Contract
6. Fraud

[Amount demanded exceeds \$10,000]

20 **FIRST CAUSE OF ACTION - BREACH OF FIDUCIARY DUTY**
 21 **(AGAINST ALL DEFENDANTS)**

22 Plaintiff alleges:

- 23 1. Plaintiff is an individual who resides in Palm Springs, in Riverside County, California,
 24 and is the owner of certain real property commonly known as 319 Westlake Terrace, in
 25 the City of Palm Springs, County of Riverside, California 92264, Assessor's Parcel No.
 26 009-602-852, (hereinafter the "Westlake Terrace Property.")
- 27 2. Defendant Capitis, Inc. is, and at all times mentioned in this complaint was, a California
 28

1 corporation, with its principal place of business at 515 N. Palm Canyon Drive, Palm
2 Springs, Riverside County, California 92262 (hereinafter "Capitis"). Plaintiff is informed
3 and believes and thereon alleges that Capitis has a number of affiliates, subsidiaries, and
4 otherwise related companies, sued as DOES 1-10. Plaintiff is further informed and
5 believes, and thereon alleges that Capitis is the parent company of Defendant Capitis
6 Sotheby's International Realty, and as the parent company is liable for the acts and
7 omissions and representations of Capitis Sotheby's International Realty and its employees
8 and agents. Plaintiff is further informed and believes that if Capitis is not the parent
9 company of Defendant Capitis Sotheby's International Realty, then Capitis Sotheby's
10 International Realty is a dba of Capitis, an affiliate of Capitis or in some way related to
11 Capitis, such that Capitis is responsible for the acts, omissions and representations of
12 Capitis Sotheby's International Realty, and its employees and agents.

13 3. Defendant Capitis Sotheby's International Realty, is an entity, business form unknown
14 (hereinafter "Capitis Sotheby's") which is and at all times mentioned in this complaint
15 was, a real estate brokerage company located in Palm Springs, County of Riverside, State
16 of California. Plaintiff is informed and believes and thereon alleges that Capitis
17 Sotheby's is either a dba of Capitis, a wholly owned subsidiary of Capitis, an affiliate of
18 Capitis, or in some way legally related to Capitis, such that Capitis is responsible for the
19 acts, omissions and representations of Capitis Sotheby's, and its employees and agents.

20 4. Defendant Sotheby's International Realty Affiliates, LLC (hereinafter "Sotheby's") is a
21 Delaware limited liability company, registered with the California Secretary of State, and
22 present and doing business in the State of California at all times mentioned in this
23 complaint. Sotheby's International Realty Affiliates, LLC has licensed the trademark
24 "Sotheby's International Realty" from Sotheby's, a company that Plaintiff is informed
25 and believes and thereon alleges conducts auctions. Plaintiff is further informed and
26 believes and thereon alleges that Defendant Sotheby's International Realty Affiliates,
27 LLC exerts power or control over Capitis Sotheby's or otherwise has a legal relationship
28 either as master/servant; franchisor/franchisee, or other relationship under which

1 Defendant Sotheby's International Realty Affiliates, Inc. is liable for the acts and
2 omissions and representations of Defendant Capitis Sotheby's.

3 5. Beau Monde Properties (hereinafter "Beau Monde") is and at all times mentioned in the
4 complaint was a California corporation with its principal place of business in Palm
5 Springs, Riverside County, California. Plaintiff is informed and believes and thereon
6 alleges that Beau Monde is a subsidiary or affiliate of Capitis, Inc. or otherwise controlled
7 by Capitis, Inc. to such an extent that Capitis Sotheby's and Capitis are liable for the acts
8 and omissions and representations of Beau Monde. They are both in the same building,
9 the President of Capitis Sotheby's Kevin Blessing is the agent for service of process for
10 Beau Monde, and Plaintiff is informed and believes and thereon alleges that Beau Monde
11 shares offices with Capitis and Capitis Sotheby's such that the knowledge of Beau Monde
12 should be imputed to Capitis, Inc. and Capitis Sotheby's. Beau Monde, *inter alia* acts as
13 a leasing agent for high end properties in Palm Springs, Riverside County, California.

14 6. Defendant Eric Bennett (hereinafter "Bennett") is an individual. Based on information
15 and belief, Plaintiff further alleges that Mr. Bennett is and at all times mentioned in this
16 complaint was a California licensed real estate broker for Capitis Sotheby's, who works
17 in Palm Springs, Riverside County, California.

18 7. Defendant Dean Sipe (hereinafter "Sipe") is and at all times mentioned in this complaint
19 was an individual who is a real estate salesperson for Capitis Sotheby's who works in
20 Palm Springs, Riverside County, California. Dean Sipe, at all time mentioned in this
21 complaint, was authorized by Capitis Sotheby's to speak for Capitis Sotheby's, to make
22 representations on behalf of Capitis Sotheby's, and to sign documents, including but not
23 limited to listing agreements on behalf of Capitis Sotheby's that are binding on Capitis
24 Sotheby's.

25 8. Defendant Kevin Scott Blessing (hereinafter "Blessing") is an individual and at all times
26 mentioned in this complaint was an individual who is the president of Capitis Sotheby's
27 and the agent for service of process of Beau Monde, who works in Palm Springs,
28 Riverside County, California. Plaintiff is informed and believes and thereon alleges that

1 as the President of Capitis Sotheby's, Blessing is responsible for acts and omissions and
2 representations of Defendants Bennett, Sipe, and Capitis Sotheby's, and as to the acts and
3 omissions and representations alleged herein below, knew of and ratified those acts and
4 omissions and representations as President of Capitis Sotheby's. Defendant Blessing
5 knew of the representations that Dean Sipe made to Amy Cox, and either approved of
6 them before they were made, or approved of, ratified, and condoned them after they were
7 made.

8 9. Windermere Real Estate (hereinafter "Windermere") is a realtor company with offices,
9 *inter alia* in South Palm Springs at 2465 E. Palm Canyon Drive, Palm Springs, Riverside
10 County, California 92264.

11 10. Chris Anderson (hereinafter "Anderson") is an individual who is the Branch Manager of
12 the South Palm Springs Windermere office. Plaintiff is informed, believes, and thereon
13 alleges that Anderson is a real estate broker.

14 11. Tony Otten (hereinafter "Otten") is an individual who is a real estate salesperson who
15 works in the South Palm Springs Windermere office.

16 12. Stephen A. LoCascio (hereinafter "LoCascio") is an individual who Plaintiff is informed
17 and believes and thereon alleges lives in Palm Springs, Riverside County, California.

18 13. Michael Russell (hereinafter "Russell") is an individual who, Plaintiff is informed and
19 believes and thereon alleges lives in Palm Springs, Riverside County, California.
20 Plaintiff is further informed and believes and thereon alleges that Russell is the legal
21 spouse of LoCascio.

22 14. Plaintiff is ignorant of the true names and capacities of Defendants sued in this complaint
23 as DEFENDANTS DOES 1-100, inclusive, and therefore sues these Defendants by these
24 fictitious names. Plaintiff will amend this complaint to allege their true names and
25 capacities when ascertained. Plaintiff is informed and believes and thereon alleges that
26 each of the fictitiously named Defendants is responsible in some manner for the
27 occurrences herein alleged, and that plaintiff's damages as herein alleged were
28 proximately caused by such defendants. Plaintiff further alleges that as to all Defendants,

each is the servant, master, agent or principal of one another, such that each of the Defendants is responsible for the acts, omissions and representations of the others.

15. Defendants Capitis Sotheby's and Eric Bennett are, Plaintiff is informed and believes and thereon alleges, and at all times mentioned in this complaint were real estate brokers duly licensed by the State of California, with their principal place of business in Palm Springs, Riverside County, California. Defendant Eric Bennett is the supervising broker, i.e., broker of record for Defendant Dean Sipe.

16. On or about January 20, 2012, Ms. Cox employed Defendants and each of them by agreement in writing to act as plaintiff's agent to sell the real property owned by Ms. Cox, the Westlake Terrace Property. A copy of this agreement ("listing agreement") is attached to this complaint as Exhibit A and made a part of the complaint by reference. As Ms. Cox's agents, Defendants owed to Plaintiff Amy Cox a fiduciary duty to make the fullest disclosure of all material facts that might affect Ms. Cox's interest in entering into any transaction to sell the Westlake Terrace Property, and to protect Ms. Cox. Although the named party to the listing agreement is Capitis Sotheby's, and the signature is that of Defendant Dean Sipe, on behalf of Capitis Sotheby's, all Defendants may be treated as parties to the listing agreement by virtue of the relationships between the named Defendants and the other named Defendants, and the Doe Defendants as alleged in Paragraphs 2, 3, 4, 6, 7, 8 and 14, hereinabove, in that each is the master or servant, principal or agent of the other, and in that each is responsible for the acts, omissions, and representations of the other.

16A. Plaintiff Amy Cox listed her home for sale because she needed to turn her equity into cash. Defendants Dean Sipe and Eric Bennett knew Ms. Cox's financial position, and her reason for selling the Westlake Terrace Property, that Ms. Cox had no income, and that she needed the equity in her home to pay her bills and to support herself. Mr. Bennett and Ms. Sipe further knew Ms. Cox's financial condition because Dean Sipe was trying to find Ms. Cox a home in a neighborhood with much less expensive houses because Ms. Cox had to lower her cost of living, and Dean Sipe knew that Ms. Cox needed the money

1 from her present house to buy a less expensive house; and Eric Bennett, through another
2 business that he ran, AKT American Capital mortgage brokerage, was trying to obtain
3 financing for Ms. Cox to purchase a less expensive home, and had all of Ms. Cox's
4 financial information, which confirmed that she had no money and no income except for
5 her equity in the Westlake Terrace Property.

6 16B. Dean Sipe and Eric Bennett also personally knew that Ms. Cox had purchased the
7 Westlake Terrace Property in 2009, and had remodeled the house with all new appliances,
8 new cabinets, new plumbing, and new electrical. Dean Sipe and Eric Bennett also
9 personally knew that Ms. Cox needed all the equity in the Westlake Terrace Property, and
10 could not afford to repair any physical damage to the Westlake Terrace Property, and Ms.
11 Cox would be especially damaged such that she would suffer cruel and unjust hardship if
12 there was any waste or other destructive acts to the Westlake Terrace Property or any
13 diminution in its fair market value.

14 17. Defendant Sipe, on behalf of Defendants and each of them, as a salesperson working
15 under the broker's license of Bennett and Capitis Sotheby's, presented to Plaintiff Amy
16 Cox on or around March 23, 2012, Stephen LoCascio as a buyer of the Westlake Terrace
17 Property. LoCascio's agent was Otten, acting under Anderson's broker's license and on
18 behalf of Windermere. On or about March 27, 2012, Plaintiff, seller Amy Cox, signed
19 the offer from LoCascio to sell the Westlake Terrace Property to LoCascio. A copy of the
20 California Residential Purchase Agreement and Joint Escrow Instructions, (hereinafter
21 "Purchase Agreement") the document that Plaintiff Amy Cox signed to sell the Westlake
22 Terrace Property to LoCascio, is attached hereto as Exhibit "B" and incorporated by this
23 reference herein. Under the Purchase Agreement, the escrow under which Mr. LoCascio
24 would buy the Westlake Terrace Property was supposed to close on or about June 26,
25 2012.

26 18. In presenting LoCascio's offer, on or about March 23, 2012, Defendant Sipe represented
27 to Plaintiff Amy Cox that LoCascio was selling LoCascio's high end home, and was just
28 waiting for that escrow to close and for that reason, LoCascio needed to rent Plaintiff

1 Amy Cox's home, the Westlake Terrace Property for a few months. Further, Defendant
2 Sipe represented to Plaintiff Amy Cox that LoCascio owned an expensive, famous Albert
3 Frey house. In making those representations, Defendant Sipe spoke on behalf of all the
4 Defendants and each of them. But, the truth was that LoCascio did not own a high end
5 Albert Frey home, instead that home had been foreclosed upon and Mr. LoCascio had no
6 place to live.

7 19. The Purchase Agreement, Exhibit "B" hereto, includes three Addendums, which Plaintiff
8 is informed and believes and thereon alleges were drafted by Defendant Dean Sipe, two
9 were executed by Plaintiff Amy Cox on March 27, 2012, and the third was executed by
10 Plaintiff Amy Cox on April 5, 2012. *Inter alia*, the Addendums allowed the buyer,
11 LoCascio to rent the Westlake Terrace Property and to take possession of the Westlake
12 Property, under the Addendums, on April 5, 2012 as a tenant, nearly three months before
13 June 26, 2012, when escrow was supposed to close. The Addendums further provide that
14 a portion of the rent that LoCascio was obligated to pay goes towards the purchase of the
15 Westlake Terrace Property. Between or about March 27, 2012 to April 5, 2012,
16 Defendants, through their agent Dean Sipe urged Plaintiff Ms. Cox to sign the
17 Addendums; Defendant Dean Sipe stated to Plaintiff Amy Cox that there was no risk to
18 Ms. Cox if she signed the Addendums that allowed Stephen LoCascio to take possession
19 of the Westlake Terrace Property several months before the escrow was supposed to
20 close, because he, Defendant Sipe had verified the buyer Stephen LoCascio's funds, and
21 Mr. LoCascio had sufficient funds to purchase the Westlake Terrace Property. Defendant
22 Sipe made the representation that he had verified the buyer Stephen LoCascio's funds,
23 orally, on several different occasions directly to Ms. Cox, during the time period between
24 March 23, 2012 and April 16, 2012. In so doing, Defendant Sipe spoke on behalf of the
25 Defendants and each of them.

26 19A. Between March 23, 2012 and March 31, 2012 Dean Sipe made the following
27 representations to Plaintiff Amy Cox regarding Defendants' verification that the buyer,
28 Stephen LoCascio had sufficient funds to purchase the Westlake Terrace Property:

- 1 (i) On or about March 23, 2012, when Defendants first presented the offer of the buyer,
2 Stephen LoCascio to Plaintiff Amy Cox, Ms. Cox asked Mr. Sipe if the proposed buyer,
3 LoCascio definitely had money to complete the purchase. Dean Sipe stated that the buyer
4 had plenty of money, that the buyer owned an Albert Frey home (Albert Frey is a famous
5 architect who designed high end homes for Palm Springs) and could definitely afford to
6 purchase Plaintiff's Westlake Terrace Property. Ms. Cox at that time told Mr. Sipe she
7 wanted to see something in writing about LoCascio's assets, e.g. bank statements
8 showing that LoCascio had enough cash to purchase Plaintiff's Westlake Terrace
9 Property, because it was supposed to be an all cash purchase. Mr. Sipe stated that he
10 would provide Ms. Cox with such documents forthwith.
- 11 (ii) On or about March 31, 2012, Mr. Sipe arrived early at Ms. Cox's home for the appraisal
12 of Plaintiff's Westlake Terrace Property. Plaintiff asked Mr. Sipe about the verification
13 of Buyer LoCascio's funds. Mr. Sipe claimed that he, Mr. Sipe, had been ill and not
14 himself because he was ill, and would furnish Ms. Cox with the verification of Buyer
15 LoCascio's funds forthwith. Mr. Sipe further represented that he had the Verification of
16 Funds documents showing that LoCascio had sufficient funds to purchase the Westlake
17 Terrace Property in a file in Mr. Sipe's office and Mr. Sipe just needed to dig it out.
- 18 20. At that time, the Defendants including specifically Capitis Sotheby's, Blessing, Bennett
19 and Sipe knew or should have known that LoCascio had no funds with which to purchase
20 the Westlake Terrace Property, by reason of the following facts:
- 21 a. Plaintiff is informed and believes and thereon alleges that between on or about
22 June 6, 2011, until on or about April 5, 2012, LoCascio and Russell lived together
23 as legally married spouses at 660 Palisades Drive, Palm Springs, Riverside
24 County, California 92262, known at that time as the Russell House, and owned by
25 Russell, and Plaintiff is informed and believes and thereon alleges, that LoCascio
26 was a co-owner, or as the spouse of Russell made payments on the mortgage of
27 the Russell House;
- 28 b. That the Russell House was designed by Architect Albert Frey and is one of the

1 most prominently photographed, architecturally significant properties in Palm
2 Springs, having a boulder that is 30 feet high with a 30 feet waterfall that cascades
3 into a koi pond; and is well known to all Palms Springs realtors. In fact, the house
4 is featured on Defendant Capitis Sotheby's website, on the front page in a large
5 photograph;

6 c. That while Russell was the owner, and LoCascio was a co-owner or had assumed
7 liability for the Russell House mortgage, and Russell and LoCascio lived in the
8 Russell House, Defendant Capitis Sotheby's listed the Russell House for sale on
9 or about June 6, 2011, a copy of the listing is Exhibit "C" hereto;

10 d. That on or about February 16, 2012, during the time Plaintiff is informed and
11 believes and thereon alleges Defendants Capitis Sotheby's listing agreement to
12 sell the Russell House was in full force and effect, is when Russell lost the Russell
13 House to foreclosure;

14 e. That Beau Monde, which describes itself as a member of the Capitis Group of
15 Luxury Home Services, acts or acted as the rental listing agent for the Russell
16 House, a copy of the rental listing is Exhibit "D" hereto. Plaintiff is informed and
17 believes, and thereon alleges that Beau Monde was aware, as the rental agent for
18 the Russell House, that LoCascio lacked sufficient funds to purchase the Westlake
19 Terrace Property. Plaintiff is further informed and believes that Beau Monde and
20 Capitis Sotheby's are so closely intertwined, that the knowledge of Beau Monde
21 that the Russell House was no longer owner occupied, that there had been a
22 foreclosure, and that instead the Russell House was being listed as a rental
23 property, can be imputed to Capitis Sotheby's, which imputed knowledge would
24 put Defendants including Defendants Capitis, Capitis Sotheby's, Blessing,
25 Bennett and Sipe on notice that Russell and his spouse, LoCascio did not have
26 sufficient funds to purchase the Westlake Terrace Property and/or that verifying
27 LoCascio's funds was a matter of utmost importance and urgency. Knowledge
28 that the Russell House was no longer owner occupied, had been foreclosed on,

1 and instead was on the rental market, which was common knowledge among Palm
2 Springs realtors, would put a reasonably prudent brokerage house, broker, and real
3 estate salesperson on notice not to rent (for later purchase) the Westlake Terrace
4 Property to the spouse of the owner of the Russell House, LoCascio, without first
5 verifying that LoCascio had sufficient funds to purchase the Westlake Terrace
6 Property.

7 f. That the individual salespeople employed by Capitis Sotheby's to sell the Russell
8 House, Tyler Morgan, Todd Monaghan, and Keith Markovitz, all work in the
9 same physical office of Capitis Sotheby's with Defendant Sipe and Defendant
10 Sipe frequently socializes with Messrs, Morgan, Monaghan and Markovitz, and
11 that at all times relevant to these allegations, there were only approximately 29
12 salespersons working for Capitis Sotheby's, in one office without cubicles.

13 Accordingly, Defendants knew or should have known all of the foregoing facts, and knew
14 or should have known that LoCascio's spouse, Russell had been unable to sell the Russell
15 House, which had been foreclosed on, and that LoCascio apparently had no funds and
16 knew that Defendants should have verified buyer LoCascio's funds before allowing
17 LoCascio, with his spouse Russell to take possession on April 5, 2012 of Ms. Cox's
18 Westlake Terrace Property, several months before the escrow was supposed to close,
19 without a security deposit, right to inspect, and any occupancy or pet restrictions.

20 21. The home inspection of the Westlake Terrace Property allowed under the Purchase
21 Agreement, took place on April 3, 2012. Present were Stephen LoCascio, Plaintiff Amy
22 Cox, Defendant Dean Sipe and Otten. Stephen LoCascio proudly told Plaintiff Amy Cox,
23 within earshot of Defendant Sipe and Otten, that he, Stephen LoCascio and Michael
24 Russell owned the famous Albert Frey "Russell House." At that point in time, Defendant
25 Sipe knew or should have known that the Russell House had been foreclosed, knew that
26 he had not verified that LoCascio had funds to purchase the Westlake Terrace Property,
27 and knew or should have known that Plaintiff Amy Cox should not sign Addendum Three
28 to the Purchase Agreement under which LoCascio could take possession of the Westlake

1 Terrace Property several months before the escrow closed. Despite that, Defendant Sipe
2 advised Plaintiff Amy Cox to sign Addendum Three to the Purchase Agreement, which
3 allowed LoCascio and Russell to move into and take possession of the Westlake Terrace
4 Property on April 5, 2012. Acting in reliance on Defendant Sipe's advice, and Defendant
5 Sipe's representation that he had confirmed LoCascio's funds as being sufficient to
6 purchase the Westlake Terrace Property, Ms. Cox executed Addendum Three to the
7 Purchase Agreement.

8 22. LoCascio and Russell moved into the Westlake Terrace Property with two large dogs on
9 or about April 5, 2012, at which time Ms. Cox vacated the Westlake Terrace Property.
10 After moving in, LoCascio never paid rent; LoCascio and Russell were sued by Plaintiff
11 Ms. Cox for unlawful detainer, and LoCascio and Russell vacated the Westlake Terrace
12 Property on June 16, 2012, a few days before the date set for the unlawful detainer trial.

13 23. Before surrendering possession of the Westlake Terrace Property on June 16, 2012, and
14 between April 5, 2012 and June 16, 2012, while in sole possession of the Westlake
15 Terrace Property, LoCascio and Russell committed waste, in that *inter alia* they ripped
16 large holes in the walls and ceiling, took down a wall, removed all the landscaping,
17 including mature trees, either urinated or allowed their two dogs to urinate throughout the
18 house on the carpeting, changed and damaged electrical wiring, damaged wallpaper,
19 damaged the ceiling and custom made drapery, damaged the plumbing system, and
20 otherwise committed acts of destruction and waste to the Westlake Terrace Property,
21 physically rendering the house uninhabitable, and substantially lowering the fair market
22 value of the Westlake Terrace Property.

23 23A. On or about April 16, 2012, Ms. Cox had gone to the Westlake Terrace Property to
24 retrieve a package for her that had been delivered to the property. Ms. Cox observed that
25 LoCascio had ripped out all the landscaping and had done other destructive acts to the
26 property. Ms. Cox telephoned Mr. Sipe and *inter alia* asked him again for the documents
27 that verified that Mr. LoCascio had sufficient funds to purchase the Westlake Terrace
28 Property. Mr. Sipe stated that he would forthwith provide Ms. Cox with the documents
that verified that Mr. LoCascio had sufficient funds to purchase the Westlake Terrace

Property. Mr. Sipe stated that he, Dean Sipe already had the documents and just needed to find them in his files.

23B. On or about April 18, 2012, Mr. Sipe stated to Ms. Cox that he had never verified that LoCascio had sufficient funds to purchase the Westlake Terrace Property. Mr. Sipe stated that he had confused Ms. Cox's escrow with another escrow in 7 Lakes, in which escrow he had verified the buyer's funds.

24. Defendants and each of them breached their fiduciary duties as plaintiff's agents when Defendants failed to disclose to Plaintiff, seller Amy Cox the following: that Stephen LoCascio lacked sufficient funds to pursue the Westlake Terrace Property; and that Defendant Dean Sipe failed to verify the funds of LoCascio, and that no one else had verified the buyer LoCascio's funds; and that Defendants allowed LoCascio to take possession of the Westlake Terrace Property several months before the escrow was supposed to close, without having verified the funds of LoCascio. Defendants and each of them further breached their fiduciary duties to Plaintiff Amy Cox by only drafting an Addendum to the Purchase Agreement, instead of a lease. That Addendum allowed LoCascio to move into the Westlake Terrace Property several months before the escrow was supposed to close, without a security deposit, without a right of Plaintiff Amy Cox to enter to inspect, without a limit to the number of occupants, and without a limitation of the right to have other persons or pets occupy the property.

25. Escrow for the sale of the Westlake Terrace Property to LoCascio did not close on June 26, 2012, or at anytime before or after that date, because LoCascio did not deposit the necessary funds into escrow.

26. On June 29, 2012, pursuant to Paragraph 20A of the listing agreement, Exhibit "A" hereto, and under Paragraph 26A of the Purchase Agreement, Ms. Cox demanded in writing that Defendants Blessing, Bennett, Sipe, Capitis, Inc. (erroneously named as Capitis Group, Inc.) and Capitis Sotheby's International Realty all agree to mediate her dispute with the Defendants as set forth in the allegations hereinabove. A copy of the written demand for mediation is Exhibit "E" hereto and incorporated by this reference herein. The demand was sent by United States mail, by facsimile transmission to Capitis

1 Sotheby's International Realty, Inc.'s fax number, and by e-mail directly to Defendant
2 Dean Sipe. The initial complaint in this action was not filed until July 24, 2012. At no
3 point during the 25 day period between June 29, 2012 and July 24, 2012, did any of the
4 defendants communicate with Plaintiff Amy Cox to agree to mediation, or to request
5 more time to consider mediation, or otherwise concerning any topic whatsoever.

6 27. Defendants and each of them are responsible for all the acts of LoCascio and Russell in
7 that had Defendants not breached their fiduciary duties, by failing to verify funds of
8 LoCascio as a buyer, and failing to prepare a proper rental agreement with protection for
9 Plaintiff Ms. Amy Cox, Russell and LoCascio would not have been allowed by Plaintiff
10 Amy Cox to occupy the Westlake Terrace Property, several months before the escrow
11 was supposed to close, and would not have been able to damage it by committing acts of
12 waste.

13 28. Further, as a consequence of permitting the rent to also be a part of the purchase price,
14 Defendants are liable for the fact that LoCascio now has a pretext to falsely claim that he
15 is a part owner of the Westlake Terrace Property.

16 29. Further, as a result of the waste committed by LoCascio and Russell, Plaintiff Ms. Cox
17 cannot now sell her home, the Westlake Terrace Property, as she lacks the funds
18 necessary to repair the damages that LoCascio and Russell inflicted on the property, and
19 further now needs but does not have the funds that she would have received for her equity
20 in the Westlake Terrace Property, to make the mortgage payments for the Westlake
21 Terrace Property, and to avoid foreclosure of the Westlake Terrace Property. Without the
22 funds to pay her mortgage on the Westlake Terrace Property, Ms. Cox faces foreclosure.

23 30. Further, Ms. Cox, the Plaintiff suffers from chronic encephalitis and all of the foregoing
24 events have exacerbated that condition.

25 31. As a result of Defendants' breaches of fiduciary duties, Plaintiff Amy Cox has been
26 damaged in an amount according to proof, but no less than \$200,000. Moreover, as a
27 consequence of Defendants' conduct, Ms. Cox was left without a place to live, and had
28 no assets with which to pay for both alternative living space and to pay the mortgage,
homeowner's dues, and a monthly land payment, and other expenses, to maintain

ownership of the Westlake Terrace Property.

32. In acting as alleged hereinabove, including *inter alia*, failing to verify the buyer LoCascio's funds, ignoring the facts set forth in Paragraphs 20 and 21, which would have alerted said Defendants to verify LoCascio's funds as soon as possible, and not to allow LoCascio to occupy the Westlake Terrace Property, several months before the escrow was supposed to close, Defendants acted in a despicable manner with a willful and conscious disregard for Ms Cox's rights and placed her in a position of cruel and unjust hardship in that while LoCascio and Russell occupied the Westlake Terrace Property, Ms. Cox could no longer reside in her former home, the Westlake Terrace Property, had no assets and no income or rental income with which to maintain ownership of the Westlake Terrace Property and to pay for alternative living space, at the same time. Then, when LoCascio and Russell abruptly and unexpectedly abandoned the Westlake Terrace Property, Ms. Cox was left with an uninhabitable property, the Westlake Terrace Property, that was unmarketable because of Locascio and Russell's waste, and Ms. Cox did not have funds to repair the waste and damage to her former home, the Westlake Terrace Property and could not then sell the Westlake Terrace Property to obtain her equity in the Westlake Terrace Property.

SECOND CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION
(AGAINST ALL DEFENDANTS)

33. Plaintiff Amy Cox hereby incorporates Paragraphs 1-32 of this Complaint, as though each allegation therein was incorporated herein as though set forth in full herein.

34. Defendant Dean Sipe breached his fiduciary duty to investigate material facts when he represented to Plaintiff Amy Cox on more than one occasion, that he, Defendant Dean Sipe, had verified the funds of the buyer LoCascio, and that the buyer LoCascio had sufficient funds to purchase the Westlake Terrace Property, without Defendant Sipe investigating whether those facts that he represented to Plaintiff Amy Cox were in fact true. Defendant Dean Sipe further breached his fiduciary duty to Plaintiff Amy Cox when he represented to Plaintiff Amy Cox that Stephen LoCascio had just sold his high end house, an Albert Frey house, and was waiting for money from that sale to be able to close

1 escrow on the Westlake Terrace Property. That was also a false statement that the
2 Defendant Sipe made to Plaintiff Amy Cox without investigating whether the facts he
3 represented to Plaintiff Amy Cox were true or false, and without caring whether the
4 statements were true or false. Moreover, as alleged hereinabove, Defendants Sipe knew
5 or should have known that the representations were false.

6 35. Defendant Dean Sipe and all the Defendants intended that Plaintiff Amy Cox rely on the
7 representations of Defendant Sipe that LoCascio had sufficient funds to purchase the
8 Westlake Terrace Property, and that LoCascio was just waiting for the money from the
9 sale of his high end real property to close escrow to the Westlake Terrace Property, and in
10 reliance on those representations that Amy Cox would execute the Purchase Agreement,
11 approve the buyer, LoCascio and sign the Addendums to the Purchase Agreement, all to
12 her damage, as alleged herein.

13 36. Plaintiff Amy Cox did reasonably rely on Defendant Sipe's representations that he had
14 verified the funds of LoCascio, and that LoCascio had sufficient funds to purchase the
15 Westlake Terrace Property and that LoCascio was just waiting for the money from the
16 sale of his high end real property to close escrow on the Westlake Terrace Property, and
17 changed her position in reasonable reliance on those representations in that she signed the
18 Purchase Agreement and the Addendums that allowed LoCascio to take possession of the
19 Westlake Terrace Property, on April 5, 2012, several months before escrow was supposed
20 to close, and with no protection, such as a security deposit, right to enter, and restrictions
21 on occupancy would have afforded.

22 37. Had Plaintiff Amy Cox known the true facts, that LoCascio did not have sufficient funds
23 to purchase the Westlake Terrace Property, and that Defendant Sipe did not verify funds
24 to determine whether LoCascio had sufficient funds to purchase the Westlake Terrace
25 Property, and that Defendant Sipe was making false representations without knowledge of
26 their truth or falsity and without caring whether the representations were true or not,
27 which false representations included that Dean Sipe had verified LoCascio's funds, and
28 that LoCascio was just waiting for his money from the sale of his high end real property
to close the escrow on the Westlake Terrace Property, then Plaintiff Ms. Amy Cox would

1 not have signed any of the Addendums to the Purchase Agreement, and would not have
2 allowed LoCascio to take possession of the Westlake Terrace Property before escrow
3 closed, and would have cancelled the sale to LoCascio.

4 38. As the result of Defendant Dean Sipe's breach of fiduciary duty to investigate material
5 facts, and his negligent misrepresentation of facts which were untrue, without knowledge
6 or caring whether they were true or not, Plaintiff Amy Cox has been damaged in that Ms.
7 Cox was deprived of her property, and her legal rights to possess that property, the
8 Westlake Terrace Property, from April 15, 2012 to June 16, 2012, and Ms. Cox did not
9 recover the equity in the Westlake Terrace Property, and LoCascio and Russell occupied
10 the Westlake Terrace Property and committed waste to the property, all in a sum
11 according to proof, but no less than \$200,000, in that Ms. Cox cannot sell the Westlake
12 Terrace Property in its present condition, cannot recover the equity that was in her
13 Westlake Terrace Property of about \$120,000, and is in danger of being unable to pay her
14 mortgage on the Westlake Terrace Property and could lose it to foreclosure.

15 39. As Dean Sipe's broker and realtor respectively, Defendant Eric Bennett and Capitis
16 Sotheby's are liable for the acts and omissions of Defendant Sipe. Further, Plaintiff is
17 informed and believes and thereon alleges that Defendants Blessing and Bennett were
18 aware of the aforesaid representations of Defendant Sipe, and each ratified and approved
19 of those representations either before or after the misrepresentations were made. Further,
20 Defendant Capitis, Inc. is responsible for the misrepresentations of Defendant Sipe, as the
21 parent company of Capitis Sotheby's, and because Plaintiff is informed and believes and
22 thereon alleges that Defendant Capitis, Inc. is controlled, owned, and operated by the
23 same individuals who control Capitis Sotheby's such that the approval and ratification by
24 Capitis Sotheby's is approval and ratification of Capitis, Inc. Further, Sotheby's as the
25 franchisor of Capitis Sotheby's is responsible for the acts of Capitis Sotheby's, because of
26 the power and control exercised over Capitis Sotheby's.

27 40. Defendant Dean Sipe, in acting as he did as alleged herein, in failing to verify LoCascio's
28 funds, and in misrepresenting that he had verified LoCascio's funds, when Dean Sipe
knew that he had not done so and in misrepresenting LoCascio's source of funds as a sale

1 of another real property without knowing or caring whether that was true or false, and in
2 persuading Ms. Cox to execute the three Addendums to the Purchase Agreement based on
3 the misrepresentations, acted despicably.

4 **THIRD CAUSE OF ACTION FOR CONSTRUCTIVE FRAUD**
5 **(AGAINST ALL DEFENDANTS)**

6 41. Plaintiff hereby incorporates herein by reference Paragraphs 1-32, and 33-40 of this
7 complaint as though each allegation therein was set forth in full herein.

8 42. At all times material to the complaint, Plaintiff Amy Cox was in a fiduciary relationship
9 with all the Defendants including Capitis, Inc., Capitis Sotheby's, Kevin Blessing, Eric
10 Bennett, and Dean Sipe.

11 43. Defendants, and each of them concealed and failed to disclose that they had failed to
12 verify that LoCascio had sufficient funds to close the escrow for the Westlake Terrace
13 Property. In fact, Defendant Sipe, on behalf of Defendants Blessing, Bennett, Capitis
14 Sotheby's, and Capitis, orally, and affirmatively represented to Plaintiff Ms. Cox, on
15 more than one occasion, between March 23, 2012 and April 16, 2012, that he had verified
16 that LoCascio had sufficient funds. Further, Defendant Sipe on behalf of all the
17 Defendants, further misrepresented that LoCascio was just waiting for the money from
18 the sale of his high end real property to close escrow on the Westlake Terrace Property,
19 when the truth was the high end real property had been lost to foreclosure, and LoCascio
20 needed a place to live.

21 44. In failing to disclose that no Defendants had ever verified that LoCascio had sufficient
22 funds to purchase the Westlake Terrace Property, and in affirmatively representing to the
23 contrary, which was false, Defendants Capitis, Capitis Sotheby's, Kevin Blessing and
24 Eric Bennett, speaking through Defendant Sipe, intended to deceive Plaintiff Amy Cox
25 into believing that they had verified the buyer Stephen LoCascio's funds. Further, in
26 failing to disclose that LoCascio's high end home had not been sold, but had been lost to
27 foreclosure, and in affirmatively representing to the contrary, which was false, the
28 Defendants, speaking through Defendant Sipe, intended to deceive Plaintiff Amy Cox
into believing that buyer LoCascio had sufficient funds to purchase the Westlake Terrace

Property.

45. Plaintiff Ms. Cox reasonably believed that the Defendants had verified LoCascio's funds, and that LoCascio was just waiting for money from a house he had sold to close escrow on the Westlake Terrace Property, and relied on those representations concerning the verification of funds and alleged source of funds in signing the Purchase Agreement and the three Addendums, and in allowing LoCascio to take possession of the Westlake Terrace Property several months before the date that escrow was supposed to close, which resulted in the damages alleged hereinabove.

46. Had said Defendants not advised Plaintiff Amy Cox that they had verified the buyer, LoCascio's funds, and the source of those funds, Plaintiff Ms. Cox would not have signed the Addendums, and would not have allowed LoCascio to take possession of the Westlake Terrace Property several months before the date that the escrow was supposed to close.

47. In so acting, Defendants and each of them are liable to the Plaintiff, Amy Cox, for constructive fraud.

**FOURTH CAUSE OF ACTION FOR NEGLIGENT BREACH OF FIDUCIARY DUTY
(AGAINST ALL DEFENDANTS)**

48. Plaintiff hereby incorporates by reference Paragraphs 1-31, of this Complaint, as though each allegation therein was set forth in full herein.

49. Defendants Capitis, Capitis Sotheby's, Kevin Blessing, Eric Bennett, and Dean Sipe all owed a fiduciary duty to Plaintiff Amy Cox, under Exhibit "A" hereto.

50. Defendants Capitis, Capitis Sotheby's, Kevin Blessing, Eric Bennett, and Dean Sipe all negligently breached that duty by failing to verify that the buyer, LoCascio had sufficient funds to purchase the Westlake Terrace Property and by failing to verify the source of those funds. Further, Defendants negligently breached that fiduciary duty in preparing the Purchase Agreement Addendums without sufficient protection for Ms. Cox.

51. Because of that negligence, Plaintiff Amy Cox executed the Purchase Agreement, Exhibit "B" hereto and the three Addendums that permitted LoCascio to take possession of the Westlake Terrace Property several months before the escrow was supposed to close.

1 52. As a result of the Defendants' negligence, it was foreseeable to Defendants that Plaintiff
2 Amy Cox would execute the Purchase Agreement and three Addendums as alleged in
3 Paragraph 51.

4 53. As a result of the negligent breach of the Defendants fiduciary duty, Plaintiff Amy Cox
5 suffered damages in that LoCascio took possession of the Westlake Terrace Property with
6 Russell and two large dogs, committed waste to such an extent that the Westlake Terrace
7 Property could not be sold and to such an extent that Ms. Cox does not have the money
8 needed to repair the damages to the Westlake Terrace Property, and Ms. Cox cannot sell
9 the Westlake Terrace Property to get her equity from the property, and Ms. Cox sustained
10 other damages according to proof.

11 **FIFTH CAUSE OF ACTION FOR BREACH OF CONTRACT**
12 **(AGAINST DEFENDANT CAPITIS SOTHEBY'S INTERNATIONAL REALTY)**

13 54. Plaintiff hereby incorporates Paragraphs 1-31 of this Complaint as though each allegation
14 therein was set forth in full herein.

15 55. In acting as alleged herein, Defendants Capitis Sotheby's breached the contract that it
16 entered into with Plaintiff Amy Cox, to wit, the Residential Listing Agreement, Exhibit
17 "A."

18 56. Defendant Dean Sipe signed the contract Exhibit "A" on behalf of Capitis Sotheby's and
19 with full authority to do so.

20 57. As a result of the breach, no Defendant is entitled to a commission under the Residential
21 Listing Agreement, Exhibit "A" hereto.

22 58. Under paragraph 18 of the Residential Listing Agreement, Exhibit "A" herto, Plaintiff
23 Amy Cox is entitled to attorney's fees for this litigation.

24 **SIXTH CAUSE OF ACTION FOR FRAUD AGAINST DEFENDANTS DEAN SIPE,**
25 **ERIC BENNETT AND CAPITIS SOTHEBY'S**

26 59. Plaintiff Amy Cox hereby incorporates Paragraphs 1-31, and 42 - 46 of this Complaint as
27 though each allegation therein was set forth in full herein.

28 60. At all times mentioned herein, Defendant Dean Sipe had the authority to speak for
Defendant Capitis Sotheby's as a real estate salesperson for Defendant Capitis Sotheby's.

- 1 61. At all times mentioned herein, Defendant Dean Sipe had the authority to speak for
2 Defendant Eric Bennett, Defendant Dean Sipe's broker of record.
- 3 62. On the following dates, Defendant Dean Sipe, on behalf of Defendant Capitis Sotheby's
4 and Defendant Eric Bennett orally made the following representations of material facts,
5 which were false, and which Dean Sipe knew to be false when he made the
6 representations, to Plaintiff Amy Cox in the following locations:
- 7 A. On March 23, 2012, Defendant Dean Sipe in person orally represented to Plaintiff Amy
8 Cox, at Ms. Cox's residence that Stephen LoCascio was a qualified buyer for Ms. Cox's
9 home, the Westlake Terrace Property.
- 10 B. On March 23, 2012, Defendant Dean Sipe in person orally represented to Plaintiff Amy
11 Cox at Ms. Cox's residence that Mr. LoCascio was selling a high end home and waiting
12 for the escrow on that sale to close, and that for that reason, LoCascio needed to rent Ms.
13 Cox's home, the Westlake Terrace Property before he could close escrow on the
14 Westlake Terrace Property.
- 15 C. On March 23, 2012, Defendant Dean Sipe orally represented in person to Ms. Cox, at Ms.
16 Cox's home, that LoCascio owned an expensive, famous Albert Frey home, that
17 LoCascio was selling.
- 18 D. On March 23, 2012, Defendant Dean Sipe orally represented in person to Plaintiff Ms.
19 Cox at Ms. Cox's home, that LoCascio had sufficient funds to purchase Ms. Cox's home,
20 the Westlake Terrace Property. Defendant Sipe further promised that he would forthwith
21 provide documentation of LoCascio's assets, which documentation he represented he had
22 already seen.
- 23 63. All of the foregoing representations in Paragraph 62 hereinabove were false, and
24 Defendant Sipe knew that they were false when he made the representations.
- 25 64. Defendant Sipe had an intent to defraud Ms. Cox when he made the foregoing
26 representations to her, and intended that Ms. Cox sign the Purchase Agreement, Exhibit B
27 hereto.
- 28 65. Plaintiff Amy Cox had no knowledge that the representations were false, and reasonably
believed them to be true. On March 27, 2012, in reasonable reliance on the foregoing

1 representations, Plaintiff Amy Cox signed the Purchase Agreement, Exhibit B hereto,
2 agreeing to sell her house to LoCascio with escrow to close on June 26, 2012.

3 66. On the following dates, Defendant Dean Sipe, on behalf of Defendant Capitis Sotheby's
4 and Defendant Eric Bennett orally made the following representations of material facts,
5 which were false, and which Dean Sipe knew to be false when he made the
6 representations, to Plaintiff Amy Cox in the following locations:

7 On March 31, 2012, at Ms. Cox's home, just before the appraisal of Ms. Cox's home, the
8 Westlake Terrace Property, Defendant Dean Sipe orally represented to Ms. Cox in person
9 that he had the documents verifying that LoCascio had sufficient funds to purchase the
10 Westlake Terrace Property, that those documents were in a file in Defendant Sipe's
11 office, and that he, Defendant Sipe just needed to "dig them out."

12 67. On April 3, 2012 at Ms. Cox's home, in person, Defendant Dean Sipe orally represented
13 to Plaintiff Amy Cox that he, Defendant Sipe, had verified that LoCascio had sufficient
14 funds to purchase Ms. Cox's home, the Westlake Terrace Property.

15 68. On April 3, 2012, at Ms. Cox's home, during the home inspection of Ms. Cox's home,
16 Dean Sipe orally represented to Ms. Cox in person that Ms. Cox should sign Addendum
17 Three to the Purchase Agreement, because he, Defendant Sipe had verified LoCascio's
18 funds, therefore there was no risk to letting LoCascio occupy the Westlake Terrace
19 Property, Ms. Cox's home, before the close of escrow.

20 69. Defendant Dean Sipe made the representations alleged in Paragraphs 66, 67 and 68 herein
21 above on behalf of Defendant Capitis Sotheby's and Eric Bennett.

22 70. Defendant Sipe knew that the representations that he made on March 31, 2012 and April
23 3, 2012 as alleged in Paragraphs 66, 67 and 68 hereinabove, were false at the time that he
24 made the representations, and intended to defraud Ms. Cox by making the false
25 representations.

26 71. Plaintiff Amy Cox had no knowledge that the representations were false, and reasonably
27 believed them to be true. In justifiable reliance on the representations alleged in
28 Paragraphs 66, 67 and 68 hereinabove, Plaintiff Ms. Cox signed Addendum Three to the
Purchase Agreement, which allowed LoCascio and Russell to move into Ms. Cox's

1 home, the Westlake Terrace Property on April 5, 2012, nearly three months before the
2 contractual date for the close of escrow, with no security deposit, no pet restriction, and
3 no right of inspection for Ms. Cox.

4 72. Between April 5, 2012, and June 16, 2012, LoCascio and Russell committed waste,
5 physically destroying Ms. Cox's home, as further alleged in Paragraphs 22, 23 and 23A,
6 hereinabove and substantially lowering the fair market value of Ms. Cox's home, all to
7 Ms. Cox's damage.

8 73. But for the false representations of material facts, alleged hereinabove in Paragraphs 62,
9 66, 67 and 68 made by Defendant Sipe to Ms. Cox orally and in person, on which Ms.
10 Cox reasonably relied, as Defendant Sipe intended that she rely, Ms. Cox would not have
11 signed either the Purchase Agreement or Addendum Three thereto, and LoCascio and
12 Russell would not have been given possession almost three months before escrow was set
13 to close, of Ms. Cox's home, the Westlake Terrace Property, and would not have been
14 able to commit waste to the Westlake Terrace Property, Ms. Cox's home.

15 74. Ms. Cox is informed and believes, and thereon alleges that Defendants Eric Bennett,
16 Kevin Blessing, the President of Capitis Sotheby's, knew of all of Dean Sipe's
17 representations as alleged in Paragraphs 62, 66, 67 and 68 hereinabove at the time that
18 they were made or shortly thereafter, knew that they were false, and ratified and approved
19 them.

20 75. Because their conduct was fraud, Plaintiff Ms. Amy Cox is entitled to punitive damages
21 to be paid by Defendants Dean Sipe, Eric Bennett, and Capitis Sotheby's.

22 PRAYER

23 WHEREFORE, Plaintiff prays for the following relief.

24 //

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//

1 **ON ALL CAUSES OF ACTION**

- 2 1. For damages according to proof;
3 2. For interest on this sum at the prevailing legal rate from March 27, 2012;
4 3. For costs of suit incurred; and
5 4. For such other and further relief as the Court may deem proper, just or equitable.

6 **ON THE FIFTH CAUSE OF ACTION**

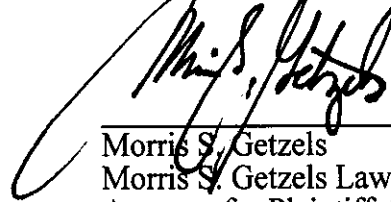
- 7 1. For attorney's fees

8 **ON THE SIXTH CAUSE OF ACTION**

- 9 1. For Punitive Damages
10

11 Date: January 3, 2013

Respectfully submitted,

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14

Morris S. Getzels
Morris S. Getzels Law Office
Attorney for Plaintiff Amy Cox
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CALIFORNIA
ASSOCIATION
OF REALTORS®

EXHIBIT A

RESIDENTIAL LISTING AGREEMENT

(Exclusive Authorization and Right to Sell)

(C.A.R. Form RLA, Revised 11/11)

1. **EXCLUSIVE RIGHT TO SELL:** Amy Cox ("Seller")
hereby employs and grants Capitis Sotheby's International Realty ("Broker")
beginning (date) January 20, 2012 and ending at 11:59 P.M. on (date) July 30, 2012 ("Listing Period")
the exclusive and irrevocable right to sell or exchange the real property in the City of Palm Springs
County of Riverside, Assessor's Parcel No. 009-602-852
California, described as: 319 Westlake Terrace ("Property").
2. **ITEMS EXCLUDED AND INCLUDED:** Unless otherwise specified in a real estate purchase agreement, all fixtures and fittings that are attached to the Property are included, and personal property items are excluded, from the purchase price.
ADDITIONAL ITEMS EXCLUDED: MASTER HEADBOARD AND DRAPES
ADDITIONAL ITEMS INCLUDED: ALL APPLIANCES
Seller intends that the above items be excluded or included in offering the Property for sale, but understands that: (i) the purchase agreement supersedes any intention expressed above and will ultimately determine which items are excluded and included in the sale; and (ii) Broker is not responsible for and does not guarantee that the above exclusions and/or inclusions will be in the purchase agreement.
3. **LISTING PRICE AND TERMS:**
 - A. The listing price shall be: THREE HUNDRED NINETEEN THOUSAND Dollars (\$ 319,000).
 - B. Additional Terms: COMMISSION SHALL BE 5% IF LISTING AGENT REPRESENTS BOTH BUYER AND SELLER.
4. **COMPENSATION TO BROKER:**
Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between Seller and Broker (real estate commissions include all compensation and fees to Broker).
 - A. Seller agrees to pay to Broker as compensation for services irrespective of agency relationship(s), either ☒ 6.000 percent of the listing price (or if a purchase agreement is entered into, of the purchase price), or ☐ \$ _____, as follows:
AND
(1) If during the Listing Period, or any extension, Broker, cooperating broker, Seller or any other person procures a buyer(s) who offers to purchase the Property on the above price and terms, or on any price or terms acceptable to Seller. (Broker is entitled to compensation whether any escrow resulting from such offer closes during or after the expiration of the Listing Period, or any extension).
 - OR (2) If within 180 calendar days (a) after the end of the Listing Period or any extension; or (b) after any cancellation of this Agreement, unless otherwise agreed, Seller enters into a contract to sell, convey, lease or otherwise transfer the Property to anyone ("Prospective Buyer") or that person's related entity: (i) who physically entered and was shown the Property during the Listing Period or any extension by Broker or a cooperating broker; or (ii) for whom Broker or any cooperating broker submitted to Seller a signed, written offer to acquire, lease, exchange or obtain an option on the Property. Seller, however, shall have no obligation to Broker under paragraph 4A(2) unless, not later than 3 calendar days after the end of the Listing Period or any extension or cancellation, Broker has given Seller a written notice of the names of such Prospective Buyers.
 - (3) If, without Broker's prior written consent, the Property is withdrawn from sale, conveyed, leased, rented, otherwise transferred, or made unmarketable by a voluntary act of Seller during the Listing Period, or any extension.
 - B. If completion of the sale is prevented by a party to the transaction other than Seller, then compensation due under paragraph 4A shall be payable only if and when Seller collects damages by suit, arbitration, settlement or otherwise, and then in an amount equal to the lesser of one-half of the damages recovered or the above compensation, after first deducting title and escrow expenses and the expenses of collection, if any.
 - C. In addition, Seller agrees to pay Broker:
 - D. Seller has been advised of Broker's policy regarding cooperation with, and the amount of compensation offered to, other brokers.
 - (1) Broker is authorized to cooperate with and compensate brokers participating through the multiple listing service(s) ("MLS") by offering to MLS brokers out of Broker's compensation specified in 4A, either ☒ 3.000 percent of the purchase price, or ☐ \$ _____.
 - (2) Broker is authorized to cooperate with and compensate brokers operating outside the MLS as per Broker's policy.
 - E. Seller hereby irrevocably assigns to Broker the above compensation from Seller's funds and proceeds in escrow. Broker may submit this Agreement, as instructions to compensate Broker pursuant to paragraph 4A, to any escrow regarding the Property involving Seller and a buyer, Prospective Buyer or other transferee.
 - F. (1) Seller represents that Seller has not previously entered into a listing agreement with another broker regarding the Property, unless specified as follows: n/a
(2) Seller warrants that Seller has no obligation to pay compensation to any other broker regarding the Property unless the Property is transferred to any of the following individuals or entities: n/a
- (3) If the Property is sold to anyone listed above during the time Seller is obligated to compensate another broker: (i) Broker is not entitled to compensation under this Agreement; and (ii) Broker is not obligated to represent Seller in such transaction.

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RLA REVISED 11/11 (PAGE 1 OF 4)

RESIDENTIAL LISTING AGREEMENT - EXCLUSIVE (RLA PAGE 1 OF 4)

Agent: Dean Sipe

Phone: 760.668.5386

Fax: 760.406.5850

Prepared using zipForm® software

Broker: Capitis Sotheby's International Realty 515 N. Palm Canyon Drive, Bldg B Palm Springs, CA 92262

Seller's Initials AC

Reviewed by _____ Date _____



319 Westlake Terrace
Property Address: Palm Springs, CA 92264

Date: January 20, 2012

5. **OWNERSHIP, TITLE AND AUTHORITY:** Seller warrants that: (i) Seller is the owner of the Property; (ii) no other persons or entities have title to the Property; and (iii) Seller has the authority to both execute this Agreement and sell the Property. Exceptions to ownership, title and authority are as follows: _____

6. **MULTIPLE LISTING SERVICE:** All terms of the transaction, including financing, if applicable, will be provided to the selected MLS for publication, dissemination and use by persons and entities on terms approved by the MLS. Seller acknowledges that Broker is required to comply with all applicable MLS rules as a condition of entry of the listing into the MLS and Seller authorizes Broker to comply with all applicable MLS rules. MLS rules require that the listing sales price be reported to the MLS. MLS rules allow MLS data to be made available by the MLS to additional Internet sites unless Broker gives the MLS instructions to the contrary. MLS rules generally provide that residential real property and vacant lot listings be submitted to the MLS within 48 hours or some other period of time after all necessary signatures have been obtained on the listing agreement. However, Broker will not have to submit this listing to the MLS if, within that time, Broker submits to the MLS a form signed by Seller (C.A.R. Form SEL or the locally required form).

Information that can be excluded:

A. Internet Display;

(1) Seller can instruct Broker to have the MLS not display the Property on the Internet. Seller understands that this would mean consumers searching for listings on the Internet may not see information about the Property in response to their search; (2) Seller can instruct Broker to have the MLS not display the Property address on the Internet. Seller understands that this would mean consumers searching for listings on the Internet may not see the Property's address in response to their search.

B. Features on MLS Participant and Subscriber Websites;

(1) Seller can instruct Broker to advise the MLS that Seller does not want visitors to MLS Participant or Subscriber Websites that display the Property listing to have (i) the ability to write comments or reviews about the Property on those sites; or (ii) the ability to hyperlink to another site containing such comments or reviews if the hyperlink is in immediate conjunction with the Property. Seller understands (i) that this opt-out applies only to Websites of MLS Participants and Subscribers who are real estate broker and agent members of the MLS; (ii) that other Internet sites may or may not have the features set forth herein; and (iii) that neither Broker nor the MLS may have the ability to control or block such features on other Internet sites. (2) Seller can instruct Broker to advise the MLS that Seller does not want MLS Participant or Subscriber Websites that display the Property listing to operate (i) an automated estimate of the market value of the Property; or (ii) have the ability to hyperlink to another site containing such automated estimate of value if the hyperlink is in immediate conjunction with the Property. Seller understands (i) that this opt-out applies only to Websites of MLS Participants and Subscribers who are real estate brokers and agent members of the MLS; (ii) that other Internet sites may or may not have the features set forth herein; and (iii) that neither Broker nor the MLS may have the ability to control or block such features on other Internet sites.

Seller acknowledges that for any of the above opt-out instructions to be effective, Seller must make them on a separate instruction to Broker signed by Seller (C.A.R. Form SEL or the locally required form). Information about this listing will be provided to the MLS of Broker's selection unless a form instructing Broker to withhold the listing from the MLS is attached to this listing Agreement.

7. **SELLER REPRESENTATIONS:** Seller represents that, unless otherwise specified in writing, Seller is unaware of: (i) any Notice of Default recorded against the Property; (ii) any delinquent amounts due under any loan secured by, or other obligation affecting, the Property; (iii) any bankruptcy, insolvency or similar proceeding affecting the Property; (iv) any litigation, arbitration, administrative action, government investigation or other pending or threatened action that affects or may affect the Property or Seller's ability to transfer it; and (v) any current, pending or proposed special assessments affecting the Property. Seller shall promptly notify Broker in writing if Seller becomes aware of any of these items during the Listing Period or any extension thereof.

8. **BROKER'S AND SELLER'S DUTIES:** (a) Broker agrees to exercise reasonable effort and due diligence to achieve the purposes of this Agreement. Unless Seller gives Broker written instructions to the contrary, Broker is authorized to (i) order reports and disclosures necessary, (ii) advertise and market the Property by any method and in any medium selected by Broker, including MLS and the Internet, and, to the extent permitted by these media, control the dissemination of the information submitted to any medium; and (iii) disclose to any real estate licensee making an inquiry the receipt of any offers on the Property and the offering price of such offers. (b) Seller agrees to consider offers presented by Broker, and to act in good faith to accomplish the sale of the Property by, among other things, making the Property available for showing at reasonable times and referring to Broker all inquiries of any party interested in the Property. Seller is responsible for determining at what price to list and sell the Property. Seller further agrees to indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments and attorney fees arising from any incorrect information supplied by Seller, or from any material facts that Seller knows but fails to disclose.

9. **DEPOSIT:** Broker is authorized to accept and hold on Seller's behalf any deposits to be applied toward the purchase price.

10. AGENCY RELATIONSHIPS:

- A. **Disclosure:** If the Property includes residential property with one-to-four dwelling units, Seller shall receive a "Disclosure Regarding Agency Relationships" form prior to entering into this Agreement.
- B. **Seller Representation:** Broker shall represent Seller in any resulting transaction, except as specified in paragraph 4F.
- C. **Possible Dual Agency With Buyer:** Depending upon the circumstances, it may be necessary or appropriate for Broker to act as an agent for both Seller and Buyer, exchange party, or one or more additional parties ("Buyer"). Broker shall, as soon as practicable, disclose to Seller any election to act as a dual agent representing both Seller and Buyer. If a Buyer is procured directly by Broker or an associate licensee in Broker's firm, Seller hereby consents to Broker acting as a dual agent for Seller and such Buyer. In the event of an exchange, Seller hereby consents to Broker collecting compensation from additional parties for services rendered, provided there is disclosure to all parties of such agency and compensation. Seller understands and agrees that: (i) Broker, without the prior written consent of Seller, will not disclose to Buyer that Seller is willing to sell the Property at a price less than the listing price; (ii) Broker, without the prior written consent of Buyer, will not disclose to Seller that Buyer is willing to pay a price greater than the offered price; and (iii) except for (i) and (ii) above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.
- D. **Other Sellers:** Seller understands that Broker may have or obtain listings on other properties, and that potential buyers may consider, make offers on, or purchase through Broker, property the same as or similar to Seller's Property. Seller consents to Broker's representation of sellers and buyers of other properties before, during and after the end of this Agreement.
- E. **Confirmation:** If the Property includes residential property with one-to-four dwelling units, Broker shall confirm the agency relationship described above, or as modified, in writing, prior to or concurrent with Seller's execution of a purchase agreement.

11. **SECURITY AND INSURANCE:** Broker is not responsible for loss of or damage to personal or real property, or person, whether attributable to use of a key safe/lockbox, a showing of the Property, or otherwise. Third parties, including, but not limited to, appraisers, inspectors, brokers and prospective buyers, may have access to, and take videos and photographs of, the interior of the Property. Seller agrees: (i) to take reasonable precautions to safeguard and protect valuables that might be accessible during showings of the Property; and (ii) to obtain insurance to protect against these risks. Broker does not maintain insurance to protect Seller.
12. **KEYSAFE/LOCKBOX:** A key safe/lockbox is designed to hold a key to the Property to permit access to the Property by Broker, cooperating brokers, MLS participants, their authorized licensees and representatives, authorized inspectors, and accompanied prospective buyers. Broker, cooperating brokers, MLS and Associations/Boards of REALTORS® are not insurers against injury, theft, loss, vandalism or damage attributed to the use of a key safe/lockbox. Seller does (or if checked ☐ does not) authorize Broker to install a key safe/lockbox. If Seller does not occupy the Property, Seller shall be responsible for obtaining occupant(s)' written permission for use of a key safe/lockbox (C.A.R. Form KLA).
13. **SIGN:** Seller does (or if checked ☐ does not) authorize Broker to install a FOR SALE/SOLD sign on the Property.
14. **EQUAL HOUSING OPPORTUNITY:** The Property is offered in compliance with federal, state and local anti-discrimination laws.
15. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon Seller and Seller's successors and assigns.
16. **MANAGEMENT APPROVAL:** If an associate licensee in Broker's office (salesperson or broker-associate) enters into this Agreement on Broker's behalf, and Broker or Manager does not approve of its terms, Broker or Manager has the right to cancel this Agreement, in writing, within 5 Days After its execution.
17. **ADDITIONAL TERMS:** ☐ REO Advisory Listing (C.A.R. Form REOL) ☐ Short Sale Information and Advisory (C.A.R. Form SSIA)

18. **ATTORNEY FEES:** In any action, proceeding or arbitration between Seller and Broker regarding the obligation to pay compensation under this Agreement, the prevailing Seller or Broker shall be entitled to reasonable attorney fees and costs from the non-prevailing Seller or Broker, except as provided in paragraph 20A.
19. **ENTIRE AGREEMENT:** All prior discussions, negotiations and agreements between the parties concerning the subject matter of this Agreement are superseded by this Agreement, which constitutes the entire contract and a complete and exclusive expression of their agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. This Agreement and any supplement, addendum or modification, including any photocopy or facsimile, may be executed in counterparts.

319 Westlake Terrace
Property Address: Palm Springs, CA 92264

Date: January 20, 2012

20. DISPUTE RESOLUTION:

- A. **MEDIATION:** Seller and Broker agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action, subject to paragraph 20B(2) below. Paragraph 20B(2) below applies whether or not the arbitration provision is initiated. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. **THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.**
- B. **ARBITRATION OF DISPUTES:** (1) Seller and Broker agree that any dispute or claim in law or equity arising between them regarding the obligation to pay compensation under this Agreement, which is not settled through mediation, shall be decided by neutral, binding arbitration, including and subject to paragraph 20B(2) below. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate law experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California law. The parties shall have the right to discovery in accordance with California Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part III of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. Interpretation of this agreement to arbitrate shall be governed by the Federal Arbitration Act.
- (2) **EXCLUSIONS FROM MEDIATION AND ARBITRATION:** The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or installment land sale contract as defined in California Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims, or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the mediation and arbitration provisions.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Seller's Initials AC Broker's Initials I

By signing below, Seller acknowledges that Seller has read, understands, received a copy of and agrees to the terms of this Agreement.

Seller [Signature] Date 01/20/2012
Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ E-mail _____

Seller _____ Date _____
Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ E-mail _____

Real Estate Broker (Firm) Capitol Sotheby's International Realty DRE Lic. # 01835131
By (Agent) Dean Sipe DRE Lic. # 01789257 Date 01/20/2012
Address 515 N. Palm Canyon, Bldg B City Palm Springs State CA Zip 92262
Telephone (760) 668-5386 Fax (760) 406-5850 E-mail dean@deansipe.com

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REAL ESTATE BUSINESS SERVICES, INC.
a subsidiary of the California Association of REALTORS®
525 South Virgil Avenue, Los Angeles, California 90020

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Reviewed by _____ Date _____



RESIDENTIAL LISTING AGREEMENT - EXCLUSIVE (RLA PAGE 4 OF 4)

319 Westlake



CALIFORNIA
ASSOCIATION
OF REALTORS®

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

For Use With Single Family Residential Property — Attached or Detached
(C.A.R. Form RPA-CA, Revised 4/10)

Date March 23, 2012

1. OFFER:
 - A. THIS IS AN OFFER FROM Stephen A. LoCascio, ("Buyer").
 - B. THE REAL PROPERTY TO BE ACQUIRED is described as 319 Westlake Dr. Palm Springs, CA 92264, situated in Palm Springs, County of Riverside, California, ("Property"). Assessor's Parcel No. 009602852
 - C. THE PURCHASE PRICE offered is Two Hundred Ninety Thousand (Dollars \$ 290,000.00).
 - D. CLOSE OF ESCROW shall occur on Refer to addendum #1 (date) (or ☐ Days After Acceptance).
2. AGENCY:
 - A. DISCLOSURE: Buyer and Seller each acknowledge prior receipt of a "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
 - B. POTENTIALLY COMPETING BUYERS AND SELLERS: Buyer and Seller each acknowledge receipt of a disclosure of the possibility of multiple representation by the Broker representing that principal. This disclosure may be part of a listing agreement, buyer representation agreement or separate document (C.A.R. Form DA). Buyer understands that Broker representing Buyer may also represent other potential buyers, who may consider, make offers on or ultimately acquire the Property. Seller understands that Broker representing Seller may also represent other sellers with competing properties of interest to this Buyer.
 - C. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:

Listing Agent Capita Rothbar's International Realty (Print Firm Name) is the agent of (check one): ☒ the Seller exclusively; or ☐ both the Buyer and Seller.

Selling Agent Windermere Real Estate (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one): ☒ the Buyer exclusively; or ☐ the Seller exclusively; or ☐ both the Buyer and Seller. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.
3. FINANCE TERMS: Buyer represents that funds will be good when deposited with Escrow Holder.
 - A. INITIAL DEPOSIT: Deposit shall be in the amount of \$ 10,000.00.

(1) Buyer shall deliver deposit directly to Escrow Holder by personal check, ☐ electronic funds transfer, ☐ Other _____ within 3 business days after acceptance (or ☐ Other _____);

OR (2) (if checked) ☐ Buyer has given the deposit by personal check (or ☐ _____) to the agent submitting the offer (or to ☐ _____). The deposit shall be held made payable to Windermere Real Estate. The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder (or ☐ into Broker's trust account) within 3 business days after Acceptance (or ☐ Other _____).
 - B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of \$ 2,400.00 within 2 Days After Acceptance, or ☒ 3 months rent toward purchase (\$800 mo). If a liquidated damages clause is incorporated into this Agreement, Buyer and Seller shall sign a separate liquidated damages clause (C.A.R. Form RID) for any increased deposit at the time it is deposited.
 - C. LOAN(S):

(1) FIRST LOAN: in the amount of \$ _____.

This loan will be conventional financing or, if checked, ☐ FHA ☐ VA ☐ Seller (C.A.R. Form SFA), ☐ assumed financing (C.A.R. Form PAA), ☐ Other _____. This loan shall be at a fixed rate not to exceed _____ % or, ☐ an adjustable rate loan with initial rate not to exceed _____ %. Regardless of the type of loan, Buyer shall pay points not to exceed _____ % of the loan amount.

(2) ☐ SECOND LOAN: in the amount of \$ _____.

This loan will be conventional financing or, if checked, ☐ Seller (C.A.R. Form SFA), ☐ assumed financing (C.A.R. Form PAA), ☐ Other _____. This loan shall be at a fixed rate not to exceed _____ % or, ☐ an adjustable rate loan with initial rate not to exceed _____ %. Regardless of the type of loan, Buyer shall pay points not to exceed _____ % of the loan amount.

(3) FHA/VA: For any FHA or VA loan specified above, Buyer has 17 (or ☐ _____) Days After Acceptance to Deliver to Seller written notice (C.A.R. Form FVA) of any lender-required repairs or costs that Buyer requests Seller to pay for or repair. Seller has no obligation to pay for repairs or satisfy lender requirements unless otherwise agreed in writing.
 - D. ADDITIONAL FINANCING TERMS: _____
 - E. BALANCE OF PURCHASE PRICE OR DOWN PAYMENT: in the amount of \$ 277,600.00 to be deposited with Escrow Holder within sufficient time to close escrow.
 - F. PURCHASE PRICE (TOTAL): \$ 290,000.00

Buyer's Initials (SAL)

Seller's Initials (K)

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Reviewed by _____ Date _____

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 1 OF 5)

Agent: Tony Otten

Phone: 760.333.9902

Fax: 760.325.9052

Prepared using zipForm® software

Broker: Windermere Real Estate 2465 E Palm Canyon Dr Ste 605 Palm Springs, CA 92264

319 Westlake Dr
Property Address: Palm Springs, CA 92264

Date: March 23, 2012

- G. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or loan broker pursuant to 3H(1)) shall, within 7 (or ☐) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. (If checked, ☐ verification attached.)
- H. LOAN TERMS:
- (1) LOAN APPLICATIONS: Within 7 (or ☐) Days After Acceptance, Buyer shall Deliver to Seller a letter from lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in 3C above. (If checked, ☐ letter attached.)
- (2) LOAN CONTINGENCY: Buyer shall act diligently and in good faith to obtain the designated loan(s). Obtaining the loan(s) specified above is a contingency of this Agreement unless otherwise agreed in writing. Buyer's contractual obligations to obtain and provide deposit, balance of down payment and closing costs are not contingencies of this Agreement.
- (3) LOAN CONTINGENCY REMOVAL:
(i) Within 17 (or ☐) Days After Acceptance, Buyer shall, as specified in paragraph 14, in writing remove the loan contingency or cancel this Agreement;
OR (ii) (If checked) ☐ the loan contingency shall remain in effect until the designated loans are funded.
- (4) ☒ NO LOAN CONTINGENCY (If checked): Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.
- I. APPRAISAL CONTINGENCY AND REMOVAL: This Agreement is (or, if checked, ☐ is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the specified purchase price. If there is a loan contingency, Buyer's removal of the loan contingency shall be deemed removal of this appraisal contingency (or, ☐ If checked, Buyer shall, as specified in paragraph 14B(3), in writing remove the appraisal contingency or cancel this Agreement within 17 (or ☐) Days After Acceptance). If there is no loan contingency, Buyer shall, as specified in paragraph 14B(3), in writing remove the appraisal contingency or cancel this Agreement within 17 (or ☐) Days After Acceptance.
- J. ☐ ALL CASH OFFER (If checked): Buyer shall, within 7 (or ☐) Days After Acceptance, Deliver to Seller written verification of sufficient funds to close this transaction. (If checked, ☐ verification attached.)
- K. BUYER STATED FINANCING: Seller has relied on Buyer's representation of the type of financing specified (including but not limited to, as applicable, amount of down payment, contingent or non contingent loan, or all cash). If Buyer seeks alternate financing, (i) Seller has no obligation to cooperate with Buyer's efforts to obtain such financing, and (ii) Buyer shall also pursue the financing method specified in this Agreement. Buyer's failure to secure alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.
4. ALLOCATION OF COSTS (If checked): Unless otherwise specified in writing, this paragraph only determines who is to pay for the inspection, test or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report.
- A. INSPECTIONS AND REPORTS:
- (1) ☐ Buyer ☒ Seller shall pay for an inspection and report for wood destroying pests and organisms ("Wood Pest Report") prepared by seller's choice a registered structural pest control company.
- (2) ☐ Buyer ☐ Seller shall pay to have septic or private sewage disposal systems pumped and inspected _____
- (3) ☐ Buyer ☐ Seller shall pay to have domestic wells tested for water potability and productivity _____
- (4) ☐ Buyer ☒ Seller shall pay for a natural hazard zone disclosure report prepared by seller's choice _____
- (5) ☒ Buyer ☐ Seller shall pay for the following inspection or report home inspection _____
- (6) ☐ Buyer ☐ Seller shall pay for the following inspection or report _____
- B. GOVERNMENT REQUIREMENTS AND RETROFIT:
- (1) ☐ Buyer ☒ Seller shall pay for smoke detector installation and/or water heater bracing, if required by Law. Prior to Close Of Escrow, Seller shall provide Buyer written statement(s) of compliance in accordance with state and local Law, unless exempt.
- (2) ☐ Buyer ☒ Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards, inspections and reports if required as a condition of closing escrow under any Law. _____
- C. ESCROW AND TITLE:
- (1) ☒ Buyer ☒ Seller shall pay escrow fee each to pay own fees _____
Escrow Holder shall be seller's choice _____
- (2) ☐ Buyer ☒ Seller shall pay for owner's title insurance policy specified in paragraph 12E _____
Owner's title policy to be issued by Orange Coast Title (Daniello) _____
(Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)
- D. OTHER COSTS:
- (1) ☐ Buyer ☒ Seller shall pay County transfer tax or fee _____
- (2) ☐ Buyer ☐ Seller shall pay City transfer tax or fee _____
- (3) ☐ Buyer ☒ Seller shall pay Homeowner's Association ("HOA") transfer fee _____
- (4) ☐ Buyer ☒ Seller shall pay HOA document preparation fees _____
- (5) ☐ Buyer ☒ Seller shall pay for any private transfer fee _____
- (6) ☐ Buyer ☒ Seller shall pay the cost, not to exceed \$ 430.00 _____, of a one-year home warranty plan, issued by Fidelity National Home Warranty _____, with the following optional coverages:
☒ Air-Conditioner ☐ Pool/Spa ☐ Code and Permit upgrade ☐ Other: Comprehensive Plus w/ exterior washer/dryer _____
Buyer is informed that home warranty plans have many optional coverages in addition to those listed above. Buyer is advised to investigate these coverages to determine those that may be suitable for Buyer.
- (7) ☐ Buyer ☐ Seller shall pay for _____
- (8) ☐ Buyer ☐ Seller shall pay for _____

Buyer's Initials (AS) (_____)
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Seller's Initials (AL) (_____)

Reviewed by _____ Date _____



