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Attorneys for Wesley H. Avery, Chapter 7 Trustee	
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: OCTAVIO ORTIZ, Debtor(s).	CASE NO.: 2:13-bk-26236-TD Chapter 7

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: N/A	Time: N/A
Location: N/A	

Type of Sale: Public Private Last date to file objections: 2/13/14
Description of Property to be Sold: **Real Property located at 5120 N. 68th Drive, Glendale, AZ 85303**

Terms and Conditions of Sale: **See the attached Motion for Order: 1) Approving the Sale of Real Property of the Estate Free and Clear of Liens Pursuant to Bankruptcy Code §§ 363(b)(1) and (f); 2) Approving Payment of Real Estate Commission; and 3) Granting Related Relief**

Proposed Sale Price: \$90,000.00

Overbid Procedure (If Any): N/A

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

N/A

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e:mail address):

Rika M. Kido, Esq.
Shulman Hodges & Bastian LLP
8105 Irvine Center Drive, Suite 600, Irvine, CA 92618
Telephone: (949) 340-3400; Facsimile: (949) 340-3000

Dated: **January 27, 2014**

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7

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

10 In re

11 **OCTAVIO ORTIZ,**

12 Debtor.

Case No. 2:13-bk-26236-TD

Chapter 7

13 **CHAPTER 7 TRUSTEE’S MOTION FOR ORDER:**

14 **(1) APPROVING THE SALE OF REAL PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS PURSUANT TO BANKRUPTCY CODE §§ 363(b)(1) AND (f);**

15 **(2) APPROVING PAYMENT OF REAL ESTATE COMMISSION; AND**

16 **(3) GRANTING RELATED RELIEF;**

17 **MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF WESLEY H. AVERY IN SUPPORT THEREOF**

18 [Real Property located at 5120 N. 68th Drive, Glendale, AZ 85303]

19 [No Hearing Required Pursuant to LBR 9013-1(o)]

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1 TO THE HONORABLE THOMAS B. DONOVAN, UNITED STATES
2 BANKRUPTCY JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, THE
3 DEBTOR AND ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

4 I. INTRODUCTION

5 Wesley H. Avery, Chapter 7 Trustee (“Trustee”) for the bankruptcy estate (“Estate”) of
6 Octavio Ortiz (“Debtor”), brings this Motion for Order: (1) Approving the Sale of Real Property
7 of the Estate Free and Clear of Certain Liens Pursuant to Bankruptcy Code §§ 363(b)(1) and (f);
8 (2) Approving Payment of Real Estate Commission; and (3) Granting Related Relief (“Sale
9 Motion”).

10 The Trustee has received an offer from Christopher Gilbert Fong and/or Elizabeth
11 Caroline Fong (“Buyer”) to purchase the real property located at 5120 N. 68th Drive, Glendale,
12 AZ 85303 (“Property”) for \$90,000.00. The Property is a single family residence. The Trustee
13 has received multiple offers for the Property. The offer by the Buyer is the best offer that the
14 Estate has received for the Property, and is the result of negotiations between the Trustee and the
15 Buyer for the highest and best offer. Additionally, the Trustee sought potential overbidders for
16 the sale of the Property. Pursuant to the Sale Procedures Order (defined below), any and all
17 overbids were due on or before January 21, 2014. The Trustee did not receive any overbids and
18 therefore, there are no viable alternative purchasers. Through the sale, the Trustee is expected to
19 generate proceeds of \$79,296.66 for the benefit of the Estate and its creditors, which will allow
20 the Trustee to pay all unsecured creditors in full. Accordingly, the Trustee believes that good
21 cause exists to grant the Sale Motion so the Trustee does not lose this favorable business
22 opportunity.

23 II. RELEVANT FACTS

24 A. Case Commencement

25 The Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code
26 on June 21, 2013 (“Petition Date”).

27 Wesley H. Avery is the duly appointed, qualified and acting Chapter 7 trustee for the
28 Debtor’s Estate.

1 The last day to file proof of claims in this case was on November 4, 2013. As of the
2 filing of this Motion, five (5) unsecured claims have been filed in this case totaling \$16,669.81.

3 **B. The Property**

4 The Debtor's Bankruptcy Schedule A lists an interest in the Property, which is legally
5 described as follows:¹

6 Lot 126, WEST CAMELBACK VILLAGE, according to the plat
7 of record in the office of the County Recorder of Maricopa,
Arizona, recorded in Book 148 of Maps, Page 25.

8 Parcel ID No.: 144-24-130

9 Pursuant to Court order entered on September 16, 2013 (Docket No. 30), the Trustee was
10 authorized to employ Octavio Ordonez of Coldwell Banker as Real Estate Broker ("Broker"), to
11 assist the Trustee in the marketing and sale of the Property.

12 On his Amended Schedule A, the Debtor lists an ownership interest in the Property.² The
13 Debtor lists the value of the Property at \$65,584.00. The Debtor did not claim an exemption³ in
14 the Property. On his Schedule D, the Debtor did not list any liens against the Property.
15 However, the Trustee is informed and believes that there are past due property taxes in the
16 amount of \$3,439.08.

17 The Broker reviewed the Property and believed that the Property had a higher fair market
18 value than the amount listed in the Debtor's Amended Schedule A. Accordingly, the Property
19 was originally listed for sale at \$90,000.00.

20 **C. Sale of the Property Subject to Overbids**

21 Although the Trustee received multiple offers, he did not receive any overbids for the
22 Property. Since the Property is located in Arizona and any potential buyers are likely to live in
23 Arizona, the Trustee filed his Motion for Order Establishing Procedures for the Sale of Estate
24 Property ("Sale Procedure Motion") (Docket No. 39). The Sale Procedure Motion sought Court

25 _____
26 ¹ The legal description for the Property is believed to be accurate but may be corrected or updated by the title
company in the transfer documents as necessary to complete the proposed sale transaction.

27 ² On his original Schedule A, the Debtor listed an ownership interest in the real property located at 5120 N. 68th
Drive, Glendale, CA 85303. The Debtor amended his Schedule A on July 16, 2013 to reflect the correct state.

28 ³ On his Schedule C, the Debtor claimed a homestead exemption in the real property located at 5120 N. 68th Drive,
Glendale, CA 85303 in the amount of \$62,700.00 under California Code of Civil Procedure § 704.730(a)(1).

1 authorizing for specific bidding procedures and approval for the final bidding round for the
2 Property, if necessary, to be scheduled via telephonic notice at Coldwell Banker, 3045 W. Agua
3 Fria Frwy, Suite #102, Phoenix, Arizona 85027.

4 The hearing on the Sale Procedure Motion was held on December 12, 2013. The Court
5 approved the Sale Procedure Motion and the order approving the Sale Procedure was entered on
6 January 7, 2014, docket number 44 (“Sale Procedure Order”). Pursuant to the Sale Procedure
7 Order, all overbids were to be received by the Trustee and his counsel on or before 4:00 p.m.
8 (PST)/5:00 p.m. (MST) on the date two (2) weeks after the entry of the Sale Procedure Order or
9 January 21, 2014.

10 **D. Liens and Encumbrances Against the Property and Their Proposed Treatment**
11 **Through the Sale**

12 The following chart sets forth the liens and encumbrances against the Property as detailed
13 in the Preliminary Title Report dated July 19, 2013 (“Preliminary Title Report”), a copy of which
14 is attached as **Exhibit “1”** to the Declaration of Wesley H. Avery (“Avery Decl.”) and the
15 proposed treatment of the liens and encumbrances through the sale:

<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owing</u>	<u>Treatment of Lien Through the Sale</u>
Maricopa County Treasurer’s Office	Real property taxes (estimated)	\$3,503.34	All outstanding real property taxes will be paid through escrow on the sale transaction.

20 All costs of sale, including escrow fees and real estate commissions will be paid at
21 closing. In addition, all outstanding real property taxes will be paid through the sale.

22 **E. The Purchase Offer and Summary of the Sale Terms**

23 The Buyer has offered to purchase the Property for \$90,000.00. The purchase price
24 includes a deposit of \$1,000.00. Attached as **Exhibit “2”** to the Avery Decl. is a true and correct
25 copy of the Residential Resale Real Estate Purchase Contract and related addendum (collectively
26 the “Agreement”).

27 ///

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1 A summary of the Agreement’s terms and highlights are discussed below, but the
2 summary and discussion are not meant to be a complete review of every provision of the
3 Agreement. The Agreement itself is the legally binding document the Trustee seeks approval of
4 and, in the event of any inconsistency between the terms, provisions or effect of the Agreement
5 and the description of it in these pleadings, the Agreement alone shall govern and not these
6 pleadings or the descriptions herein.

7 In summary, the principal terms of the sale of the Property shall be as follows (the
8 Trustee is referred to at times as the “Seller” in the following summary):

9 Buyer:	Christopher Gilbert Fong and/or Elizabeth Caroline Fong
10 Purchase Price:	\$90,000.00, subject to the Bidding Procedures set forth below. 11 \$1,000.00 to be paid as a deposit and the remainder to be paid by cash at close of 12 escrow.
13 Escrow Holder:	The escrow holder shall be Equity Title Agency, Inc.
14 Escrow, Title and Other Costs:	Escrow company fees shall be allocated equally between Seller and Buyer. Real 15 property taxes payable by the Seller shall be prorated to close of escrow based upon 16 the latest tax information available.
17 Disclosure or Warranty	To the degree that the Agreement contains disclose or warranty provisions, then the 18 undersigned is a federal 7 bankruptcy trustee and there will be no warranties or 19 disclosures made concerning the Real property.
20 “As-Is” Sale	Because the sale of the Real Property is a bankruptcy sale, any such sale shall be “as- 21 is” and without any warranties (whatsoever), and any transfer shall be by the 22 Bankruptcy Trustee’s Deed or Quitclaim deed at the Seller’s option.
23 Bankruptcy Court Approval	The Agreement is unenforceable and of no legal effect, unless and until approved by 24 the Bankruptcy Court. Any and all sales of the Real Property are subject to overbid 25 at the time of the hearing on the Motion to Approve the sale of the Real Property. If 26 the Buyer is overbid at the auction for the Real Property in the Bankruptcy Court, the 27 Buyer agrees to release the Seller from any and all obligations under this Agreement 28 and Addendum other than the return of any deposits made by the Buyer. Any Bankruptcy Court Order approving the sale of the Real Property is subject to a fourteen (14) day waiting period after the entry of said order before any escrow for the sale of the Real Property may close.
Real Estate Agent Commission	Through escrow on the sale of the Property, and subject to Court approval, the Trustee shall pay compensation for real estate agent services to the Buyer’s agent and the Estate’s agent. The agents shall equally split a commission in the amount of six percent (6%) of the final purchase price.
Jurisdiction of the Bankruptcy Court	Any and all disputes in connection with the Agreement and/or this Addendum are subject to the exclusive jurisdiction and venue of the United States Bankruptcy Court hearing in the Bankruptcy Case in Los Angeles, California.
Sale Subject to Overbidding	The sale of the Property is subject to the Bidding Procedures described in the Sale Procedure Motion.

1 **III. ARGUMENT**

2 **A. The Court May Authorize the Sale When There is a Good Faith Purchaser**

3 The Trustee may sell property of the estate. 11 U.S.C. § 363(b). The standards to
4 establish are that there is a sound business purpose for the sale, that the sale is in the best
5 interests of the estate, i.e., the sale is for a fair and reasonable price, that there is accurate and
6 reasonable notice to creditors and that the sale is made in good faith. *In re Wilde Horse*
7 *Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); *In re Lionel Corp.*, 722 F.2d 1063,
8 1069 (2d Cir. 1983). Business justification would include the need to close a sale to one of very
9 few serious bidders where an asset has been shopped and a delay could jeopardize the
10 transaction. *See, e.g., In re Crowthers McCall Pattner, Inc.*, 114 B.R. 877, 885 (Bankr. S.D.N.Y.
11 1990) (extreme difficulty finding a buyer justified merger when buyer found). The Trustee's
12 proposed sale of Property meets the foregoing criteria.

13 **1. Sound Business Purpose**

14 The Ninth Circuit has adopted a flexible, case-by-case test to determine whether the
15 business purpose for a proposed sale justifies disposition of property of the estate under Section
16 363(b). *In re Walter*, 83 B.R. 14 (B.A.P. 9th Cir. 1988). In *Walter*, the Ninth Circuit, adopting
17 the reasoning of the Fifth Circuit in *In re Continental Air Lines, Inc.*, 780 F.2d 1223 (5th Cir.
18 1986), and the Second Circuit in *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983), set forth the
19 following standard to be applied under Bankruptcy Code Section 363(b):

20 Whether the proffered business justification is sufficient depends on the case. As
21 the Second Circuit held in *Lionel*, the bankruptcy judge should consider all salient
22 factors pertaining to the proceeding and, accordingly, act to further the diverse
23 interests of the debtor, creditors and equity holders, alike. He might, for example,
24 look to such relevant factors as the proportionate value of the assets to the estate
25 as a whole, the amount of lapsed time since the filing, the likelihood that a plan of
26 reorganization will be proposed and confirmed in the near future, the effect of the
27 proposed disposition on future plans of reorganization, the proceeds to be
28 obtained from the disposition vis-a-vis any appraisals of the property, which of
the alternatives of use, sale or lease the proposal envisions and, most importantly
perhaps, whether the asset is increasingly or decreasing in value. This list is not
intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

Walter, 83 B.R. at 19-20 (quoting *Continental*, 780 F.2d at 1226).

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1 Here, the facts surrounding the sale of the Property support the Trustee's business
2 decision that the proposed sale is in the best interests of the Estate and its creditors. Through the
3 sale, the Trustee expects to generate net proceeds of approximately \$79,296.66 as follows
4 (amounts are estimated):

5 Sale Price	\$90,000.00
6 <i>Less</i> real estate commission & costs of sale (8% of sales price)	(\$7,200.00)
7 <i>Less</i> past due property taxes	(\$3,503.34)
Estimated Net Sale Proceeds for the benefit of the Estate	\$79,296.66

8 The estimated net proceeds will benefit the Estate by providing funds for distribution to
9 unsecured creditors. If the Sale Motion is not approved, then there will be a substantial loss to
10 the Estate. In such event, the Estate will not receive any benefit from the Property.

11 Furthermore, the Trustee believes that the proposed sale will be at fair market value
12 because it is the best offer the Estate has received thus far for the Property, and there are no
13 interested overbidders and thus no viable alternative purchaser. Accordingly, the Trustee
14 respectfully submits that, if this Court applies the good business reason standard suggested by
15 the Second Circuit in *Lionel*, the sale should be approved.

16 **2. [The Sale Serves the Best Interests of the Estate and Creditors](#)**

17 The Trustee believes that it would be in the best interest of the Estate and its creditors to
18 sell the Property. The benefits to the Estate, as set forth above, are tremendous due to the funds
19 to be generated from the sale that will be used to pay **all unsecured claims in full**. If the Sale
20 Motion is not approved, the Estate will not receive the sale proceeds and will likely lose the
21 Buyer. The Trustee does not want to lose this beneficial business opportunity. Thus, the Trustee
22 has made a business decision that it is in the best interest of the creditors of the Estate that this
23 Sale Motion be approved.

24 **3. [Accurate and Reasonable Notice](#)**

25 It is expected that notice of this Sale Motion will satisfy the requirements for accurate
26 and reasonable notice.

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1 The notice requirements for sales are set forth in Federal Rules of Bankruptcy Procedure
2 (“FRBP”) 6004 and 2002. The notice must include the time and place of any public sale and/or
3 the terms and conditions of any private sale, the time fixed for filing on objections and a general
4 description of the property. Fed. R. Bankr. P. 2002(c)(1).

5 In compliance with FRBP 2002 and Bankruptcy Code Section 102(1), the Trustee shall
6 provide notice of the proposed sale of the Property to creditors and parties in interest. The
7 Notice of Sale Motion will include a summary of the terms and conditions of the proposed
8 private sale, the time fixed for filing objections, and a general description of the Property. The
9 Trustee submits that the notice requirements will have been satisfied, thereby allowing creditors
10 and parties in interest an opportunity to object to the sale. Hence, no further notice should be
11 necessary.

12 4. The Sale is Made in Good Faith

13 The proposed sale has been brought in good faith and has been negotiated on an “arm’s
14 length” basis. The court, in *Wilde Horse Enterprises*, set forth the factors in considering whether
15 a transaction is in good faith. The court stated:

16 “Good faith” encompasses fair value, and further speaks to the integrity of the
17 transaction. Typical ‘bad faith’ or misconduct, would include collusion between
18 the seller and buyer, or any attempt to take unfair advantage of other potential
19 purchasers. . . . And, with respect to making such determinations, the court and
creditors must be provided with sufficient information to allow them to take a
position on the proposed sale.

20 *Id.* at 842 (citations omitted).

21 In the present case, the negotiation of the proposed sale was an arms-length transaction.
22 The sale price for the Property is the highest and best, which will have substantially benefit to the
23 Estate, allowing the Trustee to fully fund the Estate. As set forth in the Notice of the Sale
24 Motion, the creditors will have been provided with sufficient notice of the sale. Additionally, the
25 Buyer has filed declarations in support of the Sale Motion confirming their status as good faith
26 buyers pursuant to Section 363(m) of the Bankruptcy Code. Therefore, the sale is in good faith
27 and should be approved. Accordingly, the Trustee requests such a finding pursuant to
28 Bankruptcy Code Section 363(m).

1 **B. The Proposed Sale Should be Allowed Free and Clear of Liens**

2 Bankruptcy Code Section 363(f) allows a trustee to sell property of the bankruptcy estate
3 “free and clear of any interest in such property of an entity,” if any one of the following five
4 conditions is met:

- 5 (1) applicable non-bankruptcy law permits a sale of such property free
6 and clear of such interest;
- 7 (2) such entity consents;
- 8 (3) such interest is a lien and the price at which such property is to be
9 sold is greater than the aggregate value of all liens on such property;
- 10 (4) such interest is in bona fide dispute; or
- 11 (5) such entity could be compelled, in a legal or equitable proceeding,
12 to accept money satisfaction of such interest.

11 U.S.C. § 363(f).

12 Section 363(f) is written in the disjunctive and thus only one of the enumerated
13 conditions needs to be satisfied for Court approval to be appropriate. Based on the Preliminary
14 Title Report, other than the past due property taxes, the Trustee is not aware of any liens and
15 encumbrances impacting the Property. Out of an abundance of caution, the Trustee seeks to the
16 sell the Property free and clear of all such liens and encumbrances, with all such liens and
17 encumbrances not satisfied through the sale to attach to the proceeds of the sale with the same
18 priority, validity, force and effect as they existed with respect to the Property before the closing
19 of the sale pending further Court order or agreement with the parties. Accordingly, the Trustee
20 seeks to sell the Property under Bankruptcy Code Section 363(f)(3).

21 **C. The Court has the Authority to Waive the Fourteen-Day Stay of Sale**

22 Federal Rule of Bankruptcy Procedure 6004(h) provides that “[a]n order authorizing the
23 use, sale or lease of property other than cash collateral is stayed until the expiration of 14 days
24 after entry of the order, unless the Court orders otherwise.” Fed. Rule Bankr. P. 6004(h).

25 The Trustee desires to close the sale of the Property as soon as practicable after entry of
26 an order approving the sale. Accordingly, the Trustee requests that the Court, in the discretion
27 provided it under Federal Rule of Bankruptcy Procedure 6004(h), waive the fourteen-day stay
28 requirement.

1 **D. Request for Payment of Real Estate Commission**

2 Bankruptcy Code Section 327 allows, with court approval, for the trustee to employ
3 professional persons, “that do not hold or represent an interest adverse to the estate, and that are
4 disinterested persons.” 11 U.S.C. § 327(a). By an Order entered on September 16, 2013, the
5 Trustee was authorized to employ the Broker to assist the Trustee in the marketing and sale of
6 the Property.

7 Bankruptcy Code Section 328 allows employment of a professional person under section
8 327 “on any reasonable terms and conditions of employment, including on a retainer, on an
9 hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.” 11 U.S.C. §
10 328(a) (emphasis added). Through this Sale Motion, as provided in the Agreement, the Trustee
11 seeks authorization to pay a real estate broker commission in the amount of ten percent (10%) of
12 the purchase price. Through escrow on the sale of the Property, and subject to Bankruptcy Court
13 approval, the Trustee shall pay a real estate broker’s commission as follows:

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<u>Agent</u>	<u>Commission</u>
Trustee’s Broker: Octavio Ordonez of Coldwell Banker	\$2,700.00
Buyer’s Broker:	\$2,700.00
Total Commission:	\$5,400.00

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18 **IV. CONCLUSION**

19 **WHEREFORE**, based upon the foregoing, the Trustee respectfully submits that good
20 cause exists for granting the Sale Motion and requests that the Court enter an order as follows:

- 21 1. Authorizing the Trustee to sell the Property to the Buyer pursuant to the terms and
22 conditions as set forth in the Agreement attached as **Exhibit “2”** to the Avery Decl.
- 23 2. Authorizing the sale of the Property free and clear of liens with liens not satisfied
24 through the sale to attach to the sale proceeds in the same validity and priority as prior to the
25 closing of the sale.
- 26 3. Authorizing the Trustee to sign any and all documents convenient and necessary
27 in pursuit of the sale as set forth above, including but not limited to any and all conveyances
28 contemplated by the Agreement attached as **Exhibit “2”** to the Avery Decl.

1 4. Approving the payment of the real estate commission in the total amount not to
2 exceed six percent (6%) of the purchase price.

3 5. Authorizing the Trustee to pay the following from the proceeds of the sale of the
4 Property through escrow: all real estate taxes owed to the Maricopa County Tax Collector,
5 believed to be approximately \$3,503.34.

6 6. A determination by the Court that the Buyer is in good faith pursuant to
7 Bankruptcy Code Section 363(m).

8 7. Waiving the fourteen day stay of the order approving the sale of the Property
9 under Federal Rules of Bankruptcy Procedure 6004(h).

10 8. For such other and further relief as the Court deems just and proper under the
11 circumstances of this case.

12 Respectfully submitted,

13 **SHULMAN HODGES & BASTIAN LLP**

14 Dated: January 27, 2014

15 /s/ Rika M. Kido
16 Leonard M. Shulman
17 Lynda T. Bui
18 Rika M. Kido
19 Attorneys for Wesley H. Avery, Chapter 7 Trustee
20 for the bankruptcy estate of Octavio Ortiz
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DECLARATION

DECLARATION OF WESLEY H. AVERY

I, Wesley H. Avery, declare:

1. I am the duly appointed, qualified and acting Chapter 7 trustee for the bankruptcy estate (“Estate”) of Octavio Ortiz (“Debtor”). I have personal knowledge of the facts set forth herein, and if called and sworn as a witness, I could and would competently testify thereto, except where matters are stated on information and belief, in which case I am informed and believe that the facts so stated are true and correct.

2. I make this Declaration in support of my Motion for Order: (1) Approving the Sale of Real property of the Estate Free and Clear of Certain Liens Pursuant to Bankruptcy Code § 353(b)(1) and (f); (2) Approving Payment of Real Estate Commission; and (3) Granting Related Relief (“Sale Motion”). All capitalized terms not otherwise defined herein shall have the meaning set forth in the Sale Motion.

3. I have read and I am aware of the contents of the Sale Motion and the accompanying Memorandum of Points and Authorities. The facts stated in the Sale Motion and the Memorandum of Points and Authorities are true to the best of my knowledge.

4. The Court’s docket indicates that the Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on June 21, 2013 (“Petition Date”).

5. The last day to file proof of claims in this case was on November 4, 2013. As of the filing of this Motion, five (5) unsecured claims have been filed in this case totaling \$16,669.81.

6. One of the assets of the Estate is the real property located at 5120 N. 68th Drive, Glendale, AZ 85303 (“Property”) with the legal description set forth in the Preliminary Title Report dated July 19, 2103 (“Preliminary Title Report”), a true and correct copy of which is attached hereto as **Exhibit “1”**. The legal description for the Property is believed to be accurate but may be corrected or updated by the title company in the transfer documents as necessary to complete the proposed sale transaction.

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1 7. On his Amended Schedule A, the Debtor lists an ownership interest in the
2 Property.⁴ The Debtor lists the value of the Property at \$65,584.00. The Debtor did not claim an
3 exemption⁵ in the Property. On his Schedule D, the Debtor did not list any liens against the
4 Property.

5 8. Pursuant to Court order entered on September 16, 2013 (Docket No. 30), I was
6 authorized to employ Octavio Ordonez of Coldwell Banker as Real Estate Broker (“Broker”), to
7 assist the Trustee in the marketing and sale of the Property.

8 9. My Broker reviewed the Property and believed that the Property had a higher fair
9 market value than the amount listed in the Debtor’s Amended Schedule A. Accordingly, the
10 Property was originally listed for sale at \$90,000.00.

11 10. The Sale Motion sets forth the proposed treatment of all the liens and
12 encumbrances against the Property as detailed in the Preliminary Title Report.

13 11. Through my Broker, I have received an offer from the Buyer to purchase the
14 Property for \$90,000.00. The purchase price includes a deposit of \$1,000.00. Attached hereto as
15 **Exhibit “2”** is a true and correct copy of the Residential Resale Real Estate Purchase Contract
16 and related addendum (collectively, the “Agreement”).

17 12. The Buyer’s offer for the Property for \$90,000.00 is the highest and best offer the
18 Estate has received. Through the sale, I expect to generate proceeds of \$79,296.66 which will
19 benefit the Estate by allowing for payment of **all unsecured creditor claims**.

20 13. I have received multiple offers for the Property. The offer by the Buyer is the
21 best offer that the Estate has received for the property, and is the result of negotiations between
22 the Buyer and me for the highest and best offer. Additionally, I sought potential overbidders for
23 the sale of the Property. Pursuant to the Sale Procedures Order, any and all overbids were due on
24 or before January 21, 2014. I did not receive any overbids and therefore, there are no viable
25

26
27 ⁴ On his original Schedule A, the Debtor listed an ownership interest in the real property located at 5120 N. 68th
Drive, Glendale, **CA** 85303. The Debtor amended his Schedule A on July 16, 2013 to reflect the correct state.

28 ⁵ On his Schedule C, the Debtor claimed a homestead exemption in the real property located at 5120 N. 68th Drive,
Glendale, **CA** 85303 in the amount of \$62,700.00 under California Code of Civil Procedure § 704.730(a)(1).

1 alternative purchasers. Accordingly, I believe that good cause exists to grant the Motion to
2 ensure receiving the highest and best offer for the Property.

3 14. I am seeking to sell the Estate's interest in the Property free and clear of all liens,
4 claims, and encumbrances.

5 15. For the reasons set forth in the Sale Motion and this Declaration, I respectfully
6 request that the Court grant the Sale Motion so that I do not lose this favorable business
7 opportunity to net sufficient funds to fully fund the Estate.

8 I declare under penalty of perjury under the laws of the United States of America that the
9 foregoing is true and correct.

10 Executed on January ²⁶, 2014, at Los Angeles, California.

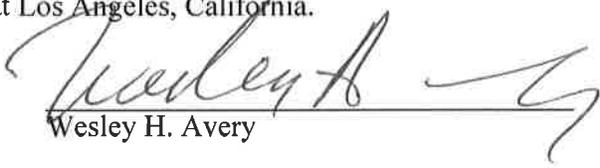
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Wesley H. Avery

EXHIBIT "1"

PRELIMINARY TITLE REPORT

The Title Insurance Commitment is a legal contract between you and the company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy.

The Company will give you a sample of the Policy form, if you ask.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT.



First American

**COMMITMENT FOR TITLE INSURANCE
ISSUED BY**

Equity Title Agency, Inc.
as agent for First American Title Insurance Company

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Commitment DateSchedule A (Page 1)

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Description of the Landon the following page

Exceptions – Part OneSchedule B (Inside)

Exceptions – Part TwoSchedule B (Inside)

Requirements (Standard)on the third page

Requirements (Continued)Requirements (Inside)

Conditionson the third page

YOU SHOULD READ THE COMMITMENT VERY CAREFULLY

We agree to issue a policy to you according to the terms of this Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when Policy is issued and then our obligation to you will be under the Policy.

Our obligation under the Commitment is limited by the following:

- The Provisions in Schedule A
- The Requirements
- The Exceptions in Schedule B – Parts 1 and 2
- The Conditions

This Commitment is not valid without SCHEDULE A and Parts 1 and 2 of SCHEDULE B.

SCHEDULE B – EXCEPTIONS

Part One of Schedule B will be eliminated from any A.L.T.A. Extended Coverage Policy, A.L.T.A. Plain Language Policy, A.L.T.A. Homeowner's Policy, A.L.T.A. Expanded Coverage Residential Loan Policy and any short form versions thereof. However, the same or similar exception may be made in Schedule B of those policies in conformity with Schedule B, Part Two of this Commitment.

Part One: (For use with 2006 ALTA policies)

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the Pubic Records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstances affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water; whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

Part One: (for use with 1992 and prior ALTA policies)

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interest or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water; whether or not the aforementioned matters excepted are shown by the public records.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

REQUIREMENTS (Standard)

The following requirements must be met:

- (a) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (b) Pay us the premiums, fees and charges for the policy.
- (c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (d) You must tell us in writing the name of anyone not referred to in this commitment who will get interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.

(Continued on Requirements Page)

CONDITIONS

1. DEFINITIONS

- (a) "Mortgage" means mortgage, deed of trust or other security instrument.
- (b) "Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.

2. LATER DEFECTS

The Exceptions in Schedule B may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attached between the Commitment date and the date on which all of the Requirements are met. We shall have no liability to you because of this amendment.

3. EXISTING DEFECTS

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

4. LIMITATION OF OUR LIABILITY

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, or liability will be limited to your actual loss caused by your relying on this commitment when you acted in good faith to:

Comply with the Requirements

Or

Eliminate with our written consent any exceptions shown in Schedule B

We shall not be liable for more than the Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

5. CLAIMS MUST BE BASED ON THIS COMMITMENT

Any claims, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this Commitment and is subject to its terms.

NOTE: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.



EQUITY
TITLE AGENCY, INC.

COMMITMENT FOR TITLE INSURANCE

Agent for: First American Title Insurance Company

SCHEDULE A

Effective Date: July 19, 2013 at 7:59 A.M.

Escrow/Title No.: 01616146/TV1

Escrow Officer: Tamie Vargo

Reference No.:

Title Officer: Kenneth Smith

1. Policy or Policies To Be Issued:

A. None

Amount : \$ 0.00

Premium: \$

Code:

Name of Insured:

PRESALE

B. None

Amount : \$ 0.00

Premium: \$

Code:

Name of Insured:

C. None

Amount : \$ 0.00

Premium: \$

Code:

Name of Insured:

2. The Estate or Interest in the land is A Fee.

3. Title to said estate or Interest in said land is at the effective date hereof vested in:

OCTAVIO ORTIZ, an unmarried man

4. The land referred to in Policy is described as follows:

SEE EXHIBIT "A"

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 126, WEST CAMELBACK VILLAGE, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 148 of Maps, Page 25.

Parcel ID No.: 144-24-130

**SCHEDULE B - SECTION 1
SPECIAL REQUIREMENTS:**

NOTE: NO EXISTING DEED OF TRUST APPEARS OF RECORD. If this information is not correct please notify Equity Title Agency as soon as possible, and provide information regarding the existing loan.

1. PAY 2009 and 2011 taxes by Redemption from Certificate of Purchase No. 09009855.
2. PAY 2010 taxes by Redemption from Certificate of Purchase No. 10008629.
3. RECORD Deed from **OCTAVIO ORTIZ, an unmarried man** to BUYERS.

NOTE: ARS 11:1133 may require the completion and filing of an Affidavit of Value.

PROPER showing as to the marital status of BUYERS prior to the close of Escrow. The right is reserved to make additional Exceptions and/or Requirements upon being furnished same.

TAX NOTE:

Year: 2012
Parcel No.: 144-24-130
Total Tax: \$495.42 (paid)

NOTE: 24 Month Chain of Title

Title, as of the effective date of this commitment, is currently vested as shown in Schedule A, Item No. 3 per:

Special Warranty Deed, recorded October 7, 2009 in 2009-0930254.

Other record conveyances within the last 24 months:

None

The subject property's address is purported to be:

5120 N 68TH DRIVE, GLENDALE, AZ 85303

ANY address information set forth herein has been obtained from sources such as the current record owner, The proposed insured named herein, recorded instruments, City Directories of Tax Records. This Company assumes no liability as to the validity and/or accuracy of any such address. This information is provided solely for the convenience of, and at the request of the proposed insured named herein.

Note: The ALTA Homeowner's Policy of Title Insurance (02-03-10) contains specific deductible amounts and specific liability maximums for Covered Risk numbers 16, 18, 19 and 21 of said policy. Please consult with your escrow or title officer if you have any questions regarding these provisions.

Note: The names of the proposed buyer(s) in this transaction has (have) not been searched in the public records. This report/commitment does not address matters, such as proceedings, liens, or decrees, which do not specifically describe said land, but may affect the title or impose liens or encumbrances against said land. Any loan policy issued pursuant to the terms hereof, that insures the lien of a mortgage securing a purchase money obligation on residential real property, will insure that such matters, if any, are subordinate to the lien of said insured mortgage.

Note : In order to comply with Arizona House Bill 2074, effective August 22, 2002, all funds deposited into an escrow account must be available for withdrawal prior to disbursement. It is the responsibility of all depositors in this transaction to make deposits in time and in a manner so that funds are available prior to recordation and disbursement.

**SCHEDULE B - SECTION 1
SPECIAL REQUIREMENTS
(Continued)**

Most forms of deposits require a "hold period" prior to funds being available. All parties are advised that this transaction will not record nor funds be disbursed until sufficient funds are available for withdrawal in the escrow bank account. For further information refer to " UNDERSTANDING ARIZONA'S GOOD FUNDS REQUIREMENTS" handout available from your escrow officer.

NOTE: In connection with Arizona Revised Statutes 11-480, as of January 1, 1991, the County Recorder may not accept documents for recording that do not apply with the following:

- (a) Print must be ten-point type or larger.
- (b) Margins of at least one-half inch along the left and right sides, one-half inch across the bottom and at least two inches on top for recording and return address information.
- (c) Each instrument shall be no larger than 8 ½ inches in width and 14 inches in length.

Privacy Notice (15 U.S.C. 6801 and 16 CFR Part 313):

We collect nonpublic personal information about you from information you provide on forms and documents and from other people such as your lender, real estate agent, attorney, escrow, etc. We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law. We restrict access to nonpublic personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information. Escrow Agent hereby adopts the Policy Statement as set forth by First American Title Insurance Company.

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

1. WATER RIGHTS, claims or title to water, and agreements, covenants, conditions or rights incident thereto, whether or not shown by the public records.
This exception is not limited by reason of the disclosure of any matter relating to Water Rights as may be set forth elsewhere in Schedule B.
2. Reservations or exceptions in Patents or in Acts authorizing the issuance thereof.
3. LIABILITIES AND OBLIGATIONS imposed upon said land by reason of its inclusion within the following named District:

West Maricopa Education Center
4. TAXES AND ASSESSMENTS collectible by the County Treasurer, a lien not yet due and payable for the following year:

2013
5. Easement, restrictions, reservations, conditions and set-back lines as set forth on the plat recorded in Book 148 of Maps, Page 25, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violated 42 USC 3604 (c).
6. All matters as set forth in the Covenants, Conditions and Restrictions in instrument recorded in Docket 9365, Page 24, but deleting any covenant, condition or restrictions indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604©.

NOTE FOR OWNERS POLICY ONLY:

The Policy of Title Insurance issued in connection herewith does not insure against various matters including those suffered, assumed, created or agreed to by the Purchaser. Therefore, no search has been conducted of items which might attach as a lien on the property by reason of the Purchaser having acquired title.

END OF SCHEDULE B

By: 
Authorized Signatory

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information – particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

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=phrasebox invoice=

EXHIBIT "2"

PURCHASE AGREEMENT

Service First Realty LLC

BUYER ATTACHMENT

Document updated:
February 2011



This attachment should be given to the Buyer prior to the submission of any offer and is not part of the Residential Resale Real Estate Purchase Contract's terms.



ATTENTION BUYER!

You are entering into a legally binding agreement.

- 1. Read the entire contract *before* you sign it.
- 2. Review the Residential Seller's Property Disclosure Statement (See Section 4a).
 - This information comes directly from the Seller.
 - Investigate any blank spaces, unclear answers or any other information that is important to you.
- 3. Review the Inspection Paragraph (see Section 6a).

If important to you, hire a qualified:

 - Mold inspector
 - Roof inspector
 - Pest inspector
 - Pool inspector
 - Heating/cooling inspector

Verify square footage (see Section 6b)
Verify the property is on sewer or septic (see Section 6f)
- 4. Confirm your ability to obtain insurance and insurability of the property during the inspection period with your insurance agent (see Sections 6a and 6e).
- 5. Apply for your home loan now, if you have not done so already, and provide your lender with all requested information (see Section 2f).

It is your responsibility to make sure that you and your lender deliver the necessary funds to escrow in sufficient time to allow escrow to close on the agreed upon date. Otherwise, the Seller may cancel the contract.
- 6. Read the title commitment within five days of receipt (see Section 3c).
- 7. Read the CC&R's and all other governing documents within five days of receipt (see Section 3c), especially if the home is in a homeowner's association.
- 8. Conduct a thorough final walkthrough (see Section 6m). If the property is unacceptable, speak up. After the closing may be too late.

You can obtain information through the Buyer's Advisory at <http://www.aaronline.com>.

Remember, you are urged to consult with an attorney, inspectors, and experts of your choice in any area of interest or concern in the transaction. Be cautious about verbal representations, advertising claims, and information contained in a listing. *Verify anything important to you.*

Buyer's Check List

Buyer Attachment • Updated: February 2011

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Service First Realty LLC 4813 W Desert Hills Drive Glendale, AZ 85304
Phone: 623 418-2970 Fax: 602.265.4613 Rhonda DuBois

Produced with zipForm® by zipLogix, 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com



Christopher Gilbert

EXHIBIT "2"

Service First Realty LLC

RESIDENTIAL RESALE REAL ESTATE PURCHASE CONTRACT

Document updated:
February 2011



The pre-printed portion of this form has been drafted by the Arizona Association of REALTORS®. Any change in the pre-printed language of this form must be made in a prominent manner. No representations are made as to the legal validity, adequacy and/or effects of any provision, including tax consequences thereof. If you desire legal, tax or other professional advice, please consult your attorney, tax advisor or professional consultant.



1. PROPERTY

- 1a. 1. BUYER: Christopher Gilbert Fong BUYER'S NAME(S)
2. SELLER: Octavio Ortiz through his Bankruptcy Trustee Wesley H. Avery or as identified in section 9c. SELLER'S NAME(S)
3. Buyer agrees to buy and Seller agrees to sell the real property with all improvements, fixtures, and appurtenances thereon
4. or incidental thereto, plus the personal property described herein (collectively the "Premises").
5. Premises Address: 5120 N. 68th Drive Assessor's #: 144-24-130
6. City: Glendale County: Maricopa AZ, Zip Code: 85303
7. Legal Description: West Camelback Village Lot 126
8. \$ 90,000.00 Full Purchase Price, paid as outlined below
9. \$ 1,000.00 Earnest money
10. \$ 89,000.00 Cash due at COE.
11. \$ _____
12. _____
13. _____
14. _____
15. Close of Escrow: Close of Escrow ("COE") shall occur when the deed is recorded at the appropriate county recorder's office. Buyer and Seller shall comply with all terms and conditions of this Contract, execute and deliver to Escrow Company all closing documents, and perform all other acts necessary in sufficient time to allow COE to occur on
18. December 30, 2013 ("COE Date"). If Escrow Company or recorder's office is closed on COE Date, MONTH DAY YEAR
19. COE shall occur on the next day that both are open for business.
20. Buyer shall deliver to Escrow Company a cashier's check, wired funds or other immediately available funds to pay any down payment, additional deposits or Buyer's closing costs, and instruct the lender, if applicable, to deliver immediately available funds to Escrow Company, in a sufficient amount and in sufficient time to allow COE to occur on COE Date.
23. Possession: Seller shall deliver possession, occupancy, existing keys and/or means to operate all locks, mailbox, security system/alarms, and all common area facilities to Buyer at COE or _____.
25. Broker(s) recommend that the parties seek appropriate counsel from insurance, legal, tax, and accounting professionals regarding the risks of pre-possession or post-possession of the Premises.
27. Addenda Incorporated: AS IS Additional Clause Assumption and Carryback Buyer Contingency Domestic Water Well
28. H.O.A. Lead-Based Paint Disclosure On-site Wastewater Treatment Facility Short Sale
29. Other: _____
30. Fixtures and Personal Property: Seller agrees that all existing fixtures on the Premises, and any existing personal property specified herein, shall be included in this sale, including the following:
- 32. • free-standing range/oven
 - 33. • ceiling fans
 - 34. • attached floor coverings
 - 35. • window and door screens, sun screens
 - 36. • garage door openers and controls
 - 37. • outdoor landscaping, fountains, and lighting
 - 38. • pellet, wood-burning or gas-log stoves
 - 39. • storage sheds
 - light fixtures
 - towel, curtain and drapery rods
 - flush-mounted speakers
 - storm windows and doors
 - attached media antennas/satellite dishes
 - attached fireplace equipment
 - timers
 - draperies and other window coverings
 - shutters and awnings
 - water-misting systems
 - solar systems
 - mailbox
 - central vacuum, hose, and attachments
 - built-in appliances

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Residential Resale Real Estate Purchase Contract • Updated: February 2011
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SELLER SELLER Initials

Initials> CF BUYER BUYER



Residential Resale Real Estate Purchase Contract >>

- 40. If owned by the Seller, the following items also are included in this sale:
41. • pool and spa equipment (including any mechanical or other cleaning systems)
42. • security and/or fire systems and/or alarms
43. • water softeners
44. • water purification systems
45. Additional existing personal property included in this sale (if checked): [] refrigerator [] washer [] dryer as described:
46.
47.
48. [] Other:
49.
50. Additional existing personal property included shall not be considered part of the Premises and shall be transferred with no monetary
51. value, and free and clear of all liens or encumbrances.
52. Fixtures and leased items NOT included:
53. IF THIS IS AN ALL CASH SALE, GO TO SECTION 3.

2. FINANCING

- 2a. 54. Pre-Qualification: A completed AAR Pre-Qualification Form [] is [] is not attached hereto and incorporated herein by reference.
2b. 55. Loan Contingency: Buyer's obligation to complete this sale is contingent upon Buyer obtaining loan approval for the loan described
56. in the AAR Loan Status Update ("LSU") form without Prior to Document ("PTD") conditions no later than three (3) days prior to the
57. COE Date. If Buyer is unable to obtain loan approval without PTD conditions, Buyer shall deliver a notice of the inability to obtain
58. loan approval without PTD conditions to Seller or Escrow Company no later than three (3) days prior to the COE Date.
2c. 59. Unfulfilled Loan Contingency: This Contract shall be cancelled and Buyer shall be entitled to a return of the earnest money if after
60. diligent and good faith effort, Buyer is unable to obtain loan approval without PTD conditions no later than three (3) days prior to the
61. COE Date. Buyer acknowledges that prepaid items paid separately from earnest money are not refundable.
2d. 62. Interest Rate / Necessary Funds: Buyer agrees that (i) the inability to obtain loan approval due to the failure to lock the interest
63. rate and "points" by separate written agreement with the lender during the Inspection Period or (ii) the failure to have the down
64. payment or other funds due from Buyer necessary to obtain the loan approval without conditions and close this transaction is not
65. an unfulfilled loan contingency.
2e. 66. Loan Status Update: Buyer shall deliver to Seller the LSU with at a minimum lines 1-40 completed describing the current status
67. of the Buyer's proposed loan within five (5) days after Contract acceptance and instruct lender to provide an updated LSU to
68. Broker(s) and Seller upon request.
2f. 69. Loan Application: Unless previously completed, during the Inspection Period, Buyer shall (i) complete, sign and deliver to the
70. lender a loan application and grant lender permission to access Buyer's Trimerged Residential Credit Report; and (ii) provide
71. to lender all initial requested signed disclosures and Initial Requested Documentation listed in the LSU on lines 32-35.
2g. 72. Loan Processing During Escrow: Buyer agrees to diligently work to obtain the loan and will promptly provide the lender with all
73. additional documentation required. Buyer shall sign all loan documents no later than three (3) days prior to the COE Date.
2h. 74. Type of Financing: [] Conventional [] FHA [] VA [] USDA [] Assumption [] Seller Carryback [X] Cash
75. (If financing is to be other than new financing, see attached addendum.)
2i. 76. Loan Costs: All costs of obtaining the loan shall be paid by the Buyer, unless otherwise provided for herein.
2j. 77. Seller Concessions (if any): In addition to the other costs Seller has agreed to pay herein, Seller agrees to pay up to _____ %
78. of the Purchase Price or \$ _____ for Buyer's loan costs including pre-pays, impounds and Buyer's title / escrow closing costs.
2k. 79. VA Loan Costs: In the event of a VA loan, Seller agrees to pay the escrow fee and up to \$ _____ of loan costs not
80. permitted to be paid by the Buyer, in addition to the other costs Seller has agreed to pay herein, including Seller's concessions.
2l. 81. Changes: Buyer shall immediately notify Seller of any changes in the loan program, financing terms, or lender described in the
82. Pre-Qualification Form if attached hereto or LSU provided within five (5) days after Contract acceptance and shall only make any
83. such changes without the prior written consent of Seller if such changes do not adversely affect Buyer's ability to obtain loan
84. approval without PTD conditions, increase Seller's closing costs, or delay COE.
2m. 85. Appraisal Contingency: Buyer's obligation to complete this sale is contingent upon an appraisal of the Premises acceptable to
86. lender for at least the purchase price. If the Premises fails to appraise for the purchase price in any appraisal required by lender,
87. Buyer has five (5) days after notice of the appraised value to cancel this Contract and receive a refund of the Earnest Money or the
88. appraisal contingency shall be waived.
2n. 89. Appraisal Fee(s): Appraisal Fee(s), when required by lender, shall be paid by [] Buyer [] Seller [] Other
90. Appraisal Fee(s) [] are [] are not included in Seller's Concessions, if applicable.

Handwritten signature and initials over a box labeled SELLER SELLER

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3. TITLE AND ESCROW

3a. 91. Escrow: This Contract shall be used as escrow instructions. The Escrow Company employed by the parties to carry out the 92. terms of this Contract shall be:

93. Equity Title Agency, Inc
ESCROW/TITLE COMPANY

94. 6685 W Beardsley Rd., Ste 205 Glendale Az 85308
ADDRESS CITY STATE ZIP

95. kimf@eta-az.com (623 580-1218 (623 580-1219
EMAIL PHONE FAX

3b. 96. Title and Vesting: Buyer will take title as determined before COE. Taking title may have significant legal, estate planning and tax 97. consequences. Buyer should obtain legal and tax advice.

3c. 98. Title Commitment and Title Insurance: Escrow Company is hereby instructed to obtain and deliver to Buyer and Seller directly, 99. addressed pursuant to 8t and 9c or as otherwise provided, a Commitment for Title Insurance together with complete and legible copies 100. of all documents that will remain as exceptions to Buyer's policy of Title Insurance ("Title Commitment"), including but not limited to 101. Conditions, Covenants and Restrictions ("CC&Rs"); deed restrictions; and easements. Buyer shall have five (5) days after receipt of the 102. Title Commitment and after receipt of notice of any subsequent exceptions to provide notice to Seller of any items disapproved. Seller 103. shall convey title by warranty deed, subject to existing taxes, assessments, covenants, conditions, restrictions, rights of way, easements 104. and all other matters of record. Buyer shall be provided at Seller's expense an American Land Title Association ("ALTA") Homeowner's 105. Title Insurance Policy, or if not available, an ALTA Residential Title Insurance Policy ("Plain Language"/"1-4 units") or, if not available, a 106. Standard Owner's Title Insurance Policy, showing title vested in Buyer. Buyer may acquire extended coverage at Buyer's own additional 107. expense. If applicable, Buyer shall pay the cost of obtaining the ALTA Lender Title Insurance Policy.

3d. 108. Additional Instructions: (i) Escrow Company shall promptly furnish notice of pending sale that contains the name and address of the 109. Buyer to any homeowner's association in which the Premises is located. (ii) If the Escrow Company is also acting as the title agency 110. but is not the title insurer issuing the title insurance policy, Escrow Company shall deliver to the Buyer and Seller, upon deposit of 111. funds, a closing protection letter from the title insurer indemnifying the Buyer and Seller for any losses due to fraudulent acts or breach 112. of escrow instructions by the Escrow Company. (iii) All documents necessary to close this transaction shall be executed promptly by 113. Seller and Buyer in the standard form used by Escrow Company. Escrow Company shall modify such documents to the extent 114. necessary to be consistent with this Contract. (iv) Escrow Company fees, unless otherwise stated herein, shall be allocated equally 115. between Seller and Buyer. (v) Escrow Company shall send to all parties and Broker(s) copies of all notices and communications 116. directed to Seller, Buyer and Broker(s). (vi) Escrow Company shall provide Broker(s) access to escrowed materials and information 117. regarding the escrow. (vii) If an Affidavit of Disclosure is provided, Escrow Company shall record the Affidavit at COE.

3e. 118. Tax Prorations: Real property taxes payable by the Seller shall be prorated to COE based upon the latest tax information available.

3f. 119. Release of Earnest Money: In the event of a dispute between Buyer and Seller regarding any Earnest Money deposited with 120. Escrow Company, Buyer and Seller authorize Escrow Company to release Earnest Money pursuant to the terms and conditions of 121. this Contract in its sole and absolute discretion. Buyer and Seller agree to hold harmless and indemnify Escrow Company against 122. any claim, action or lawsuit of any kind, and from any loss, judgment, or expense, including costs and attorney fees, arising from or 123. relating in any way to the release of Earnest Money.

3g. 124. Prorations of Assessments and Fees: All assessments and fees that are not a lien as of the COE, including homeowner's 125. association fees, rents, irrigation fees, and, if assumed, insurance premiums, interest on assessments, interest on encumbrances, 126. and service contracts, shall be prorated as of COE or [] Other: _____

3h. 127. Assessment Liens: The amount of any assessment, other than homeowner's association assessments, that is a lien as of the 128. COE, shall be [x] paid in full by Seller [] prorated and assumed by Buyer. Any assessment that becomes a lien after COE is 129. the Buyer's responsibility.

3i. 130. IRS and FIRPTA Reporting: Seller agrees to comply with IRS reporting requirements. If applicable, Seller agrees to complete, sign, 131. and deliver to Escrow Company a certificate indicating whether Seller is a foreign person or a non-resident alien pursuant to the 132. Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller acknowledge that if the Seller is a foreign person, the 133. Buyer must withhold a tax equal to 10% of the purchase price, unless an exemption applies.

SELLER SELLER

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BUYER BUYER



4. DISCLOSURE

- 4a. 134. **Seller Property Disclosure Statement ("SPDS"):** Seller shall deliver a completed AAR Residential SPDS form to the Buyer within 135. five (5) days after Contract acceptance. Buyer shall provide notice of any SPDS items disapproved within the Inspection Period or 136. five (5) days after receipt of the SPDS, whichever is later.
- 4b. 137. **Insurance Claims History:** Seller shall deliver to Buyer a written five-year insurance claims history regarding Premises (or a claims 138. history for the length of time Seller has owned the Premises if less than five years) from Seller's insurance company or an insurance 139. support organization or consumer reporting agency, or if unavailable from these sources, from Seller, within five (5) days after Contract 140. acceptance. (Seller may obscure any reference to date of birth or social security number from the document). Buyer shall provide 141. notice of any items disapproved within the Inspection Period or five (5) days after receipt of the claims history, whichever is later.
- 4c. 142. **Lead-Based Paint Disclosure:** If the Premises were built prior to 1978, the Seller shall: (i) notify the Buyer of any known lead-based 143. paint ("LBP") or LBP hazards in the Premises; (ii) provide the Buyer with any LBP risk assessments or inspections of the Premises in 144. the Seller's possession; (iii) provide the Buyer with the Disclosure of Information on Lead-based Paint and Lead-based Paint 145. Hazards, and any report, records, pamphlets, and/or other materials referenced therein, including the pamphlet "Protect Your Family 146. from Lead in Your Home" (collectively "LBP Information"). Buyer shall return a signed copy of the Disclosure of Information on Lead- 147. Based Paint and Lead-Based Paint Hazards to Seller prior to COE.
- 148. LBP Information was provided prior to Contract acceptance and Buyer acknowledges the opportunity to conduct LBP risk 149. assessments or inspections during Inspection Period.
- 150. Seller shall provide LBP Information within five (5) days after Contract acceptance. Buyer may within ten (10) days 151. or _____ days after receipt of the LBP Information conduct or obtain a risk assessment or inspection of the Premises for the 152. presence of LBP or LBP hazards ("Assessment Period"). Buyer may within five (5) days after receipt of the LBP Information or five 153. (5) days after expiration of the Assessment Period cancel this Contract.
- 154. Buyer is further advised to use certified contractors to perform renovation, repair or painting projects that disturb lead-based paint in 155. residential properties built before 1978 and to follow specific work practices to prevent lead contamination.
- 156. If Premises were constructed prior to 1978, (BUYER'S INITIALS REQUIRED) CF _____ BUYER BUYER
- 157. If Premises were constructed in 1978 or later, (BUYER'S INITIALS REQUIRED) _____ BUYER BUYER
- 4d. 158. **Affidavit of Disclosure:** If the Premises is located in an unincorporated area of the county, and five or fewer parcels of property 159. other than subdivided property are being transferred, the Seller shall deliver a completed Affidavit of Disclosure in the form required 160. by law to the Buyer within five (5) days after Contract acceptance. Buyer shall provide notice of any Affidavit of Disclosure items 161. disapproved within the Inspection Period or five (5) days after receipt of the Affidavit of Disclosure, whichever is later.
- 4e. 162. **Changes During Escrow:** Seller shall immediately notify Buyer of any changes in the Premises or disclosures made herein, in 163. the SPDS, or otherwise. Such notice shall be considered an update of the SPDS. Unless Seller is already obligated by Section 5a 164. or otherwise by this Contract or any amendments hereto, to correct or repair the changed item disclosed, Buyer shall be allowed 165. five (5) days after delivery of such notice to provide notice of disapproval to Seller.

5. WARRANTIES

- 5a. 166. **Seller Warranties:** Seller warrants and shall maintain and repair the Premises so that at the earlier of possession or COE: (i) all 167. heating, cooling, mechanical, plumbing, and electrical systems (including swimming pool and/or spa, motors, filter systems, cleaning 168. systems, and heaters, if any), free-standing range/oven, and built-in appliances will be in working condition; (ii) all other agreed upon 169. repairs and corrections will be completed pursuant to Section 6j; (iii) the Premises, including all additional existing personal property 170. included in the sale, will be in substantially the same condition as on the date of Contract acceptance; and (iv) all personal property 171. not included in the sale and all debris will be removed from the Premises.
- 5b. 172. **Warranties that Survive Closing:** Seller warrants that Seller has disclosed to Buyer and Broker(s) all material latent defects and 173. any information concerning the Premises known to Seller, excluding opinions of value, which materially and adversely affect the 174. consideration to be paid by Buyer. Prior to the COE, Seller warrants that payment in full will have been made for all labor, 175. professional services, materials, machinery, fixtures, or tools furnished within the 150 days immediately preceding the COE in 176. connection with the construction, alteration, or repair of any structure on or improvement to the Premises. Seller warrants that the 177. information regarding connection to a sewer system or on-site wastewater treatment facility (conventional septic or alternative) is 178. correct to the best of Seller's knowledge.
- 5c. 179. **Buyer Warranties:** Buyer warrants that Buyer has disclosed to Seller any information that may materially and adversely affect the 180. Buyer's ability to close escrow or complete the obligations of this Contract. At the earlier of possession of the Premises or COE, 181. Buyer warrants to Seller that Buyer has conducted all desired independent inspections and investigations and accepts the Premises. 182. **Buyer warrants that Buyer is not relying on any verbal representations concerning the Premises except disclosed as follows:**
- 183. _____
- 184. _____

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6. DUE DILIGENCE

6a. 185. Inspection Period: Buyer's Inspection Period shall be ten (10) days or _____ days after Contract acceptance. During the 186. Inspection Period Buyer, at Buyer's expense, shall: (i) conduct all desired physical, environmental, and other types of inspections 187. and investigations to determine the value and condition of the Premises; (ii) make inquiries and consult government agencies, 188. lenders, insurance agents, architects, and other appropriate persons and entities concerning the suitability of the Premises and the 189. surrounding area; (iii) investigate applicable building, zoning, fire, health, and safety codes to determine any potential hazards, 190. violations or defects in the Premises; and (iv) verify any material multiple listing service ("MLS") information. If the presence of sex 191. offenders in the vicinity or the occurrence of a disease, natural death, suicide, homicide or other crime on or in the vicinity is a 192. material matter to the Buyer, it must be investigated by the Buyer during the Inspection Period. Buyer shall keep the Premises free 193. and clear of liens, shall indemnify and hold Seller harmless from all liability, claims, demands, damages, and costs, and shall repair 194. all damages arising from the inspections. Buyer shall provide Seller and Broker(s) upon receipt, at no cost, copies of all inspection 195. reports concerning the Premises obtained by Buyer. Buyer is advised to consult the Arizona Department of Real Estate Buyer 196. Advisory provided by AAR to assist in Buyer's due diligence inspections and investigations.

6b. 197. Square Footage: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE PREMISES, BOTH THE 198. REAL PROPERTY (LAND) AND IMPROVEMENTS THEREON, IS APPROXIMATE. IF SQUARE FOOTAGE IS A MATERIAL 199. MATTER TO THE BUYER, IT MUST BE INVESTIGATED DURING THE INSPECTION PERIOD.

6c. 200. Wood-Destroying Organism or Insect Inspection: IF CURRENT OR PAST WOOD-DESTROYING ORGANISMS OR INSECTS 201. (SUCH AS TERMITES) ARE A MATERIAL MATTER TO THE BUYER, THESE ISSUES MUST BE INVESTIGATED DURING THE 202. INSPECTION PERIOD. The Buyer shall order and pay for all wood-destroying organism or insect inspections performed during the 203. Inspection Period. If the lender requires an updated Wood-Destroying Organism or Insect Inspection Report prior to COE, it will be 204. performed at Buyer's expense.

6d. 205. Flood Hazard: Flood hazard designations or the cost of flood hazard insurance shall be determined by Buyer during the 206. Inspection Period. If the Premises are situated in an area identified as having any special flood hazards by any governmental 207. entity, the lender may require the purchase of flood hazard insurance. Special flood hazards may also affect the ability to 208. encumber or improve the Premises.

6e. 209. Insurance: IF HOMEOWNER'S INSURANCE IS A MATERIAL MATTER TO THE BUYER, BUYER SHALL APPLY FOR AND 210. OBTAIN WRITTEN CONFIRMATION OF THE AVAILABILITY AND COST OF HOMEOWNER'S INSURANCE FOR THE 211. PREMISES FROM BUYER'S INSURANCE COMPANY DURING THE INSPECTION PERIOD. Buyer understands that any 212. homeowner's, fire, casualty, or other insurance desired by Buyer or required by lender should be in place at COE.

6f. 213. Sewer or On-site Wastewater Treatment System: The Premises are connected to a: 214. sewer system septic system alternative system 215. IF A SEWER CONNECTION IS A MATERIAL MATTER TO THE BUYER, IT MUST BE INVESTIGATED DURING THE 216. INSPECTION PERIOD. If the Premises are served by a septic or alternative system, the AAR On-site Wastewater Treatment 217. Facility Addendum is incorporated herein by reference. 218. (BUYER'S INITIALS REQUIRED) CF BUYER BUYER

6g. 219. Swimming Pool Barrier Regulations: During the Inspection Period, Buyer agrees to investigate all applicable state, county, and 220. municipal Swimming Pool barrier regulations and agrees to comply with and pay all costs of compliance with said regulations prior to 221. occupying the Premises, unless otherwise agreed in writing. If the Premises contains a Swimming Pool, Buyer acknowledges receipt 222. of the Arizona Department of Health Services approved private pool safety notice. 223. (BUYER'S INITIALS REQUIRED) CF BUYER BUYER

6h. 224. BUYER ACKNOWLEDGMENT: BUYER RECOGNIZES, ACKNOWLEDGES, AND AGREES THAT BROKER(S) ARE NOT 225. QUALIFIED, NOR LICENSED, TO CONDUCT DUE DILIGENCE WITH RESPECT TO THE PREMISES OR THE SURROUNDING 226. AREA. BUYER IS INSTRUCTED TO CONSULT WITH QUALIFIED LICENSED PROFESSIONALS TO ASSIST IN BUYER'S DUE 227. DILIGENCE EFFORTS. BECAUSE CONDUCTING DUE DILIGENCE WITH RESPECT TO THE PREMISES AND THE 228. SURROUNDING AREA IS BEYOND THE SCOPE OF THE BROKER'S EXPERTISE AND LICENSING, BUYER EXPRESSLY 229. RELEASES AND HOLDS HARMLESS BROKER(S) FROM LIABILITY FOR ANY DEFECTS OR CONDITIONS THAT COULD 230. HAVE BEEN DISCOVERED BY INSPECTION OR INVESTIGATION. 231. (BUYER'S INITIALS REQUIRED) CF BUYER BUYER

6i. 232. Inspection Period Notice: Prior to expiration of the Inspection Period, Buyer shall deliver to Seller a signed notice of any items 233. disapproved. AAR's Buyer's Inspection Notice and Seller's Response form is available for this purpose. Buyer shall conduct all 234. desired inspections and investigations prior to delivering such notice to Seller and all Inspection Period items disapproved shall be 235. provided in a single notice.

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- 6j. 236. **Buyer Disapproval:** If Buyer, in Buyer's sole discretion, disapproves of items as allowed herein, Buyer shall deliver to Seller notice of the items disapproved and state in the notice that Buyer elects to either:
 - 238. (1) immediately cancel this Contract and all Earnest Money shall be released to Buyer, or
 - 239. (2) provide the Seller an opportunity to correct the items disapproved, in which case:
 - 240. (a) Seller shall respond in writing within five (5) days or _____ days after delivery to Seller of Buyer's notice of items disapproved. Seller's failure to respond to Buyer in writing within the specified time period shall conclusively be deemed Seller's refusal to correct any of the items disapproved.
 - 241.
 - 242.
 - 243. (b) If Seller agrees in writing to correct items disapproved, Seller shall correct the items, complete any repairs in a workmanlike manner and deliver any paid receipts evidencing the corrections and repairs to Buyer three (3) days or _____ days prior to COE Date.
 - 244.
 - 245.
 - 246. (c) If Seller is unwilling or unable to correct any of the items disapproved, Buyer may cancel this Contract within five (5) days after delivery of Seller's response or after expiration of the time for Seller's response, whichever occurs first, and all Earnest Money shall be released to Buyer. If Buyer does not cancel this Contract within the five (5) days as provided, Buyer shall close escrow without correction of those items that Seller has not agreed in writing to correct.
 - 247.
 - 248.
 - 249.
- 250. VERBAL DISCUSSIONS WILL NOT EXTEND THESE TIME PERIODS. Only a written agreement signed by both parties will extend response times or cancellation rights.
- 251.
- 252. BUYER'S FAILURE TO GIVE NOTICE OF DISAPPROVAL OF ITEMS OR CANCELLATION OF THIS CONTRACT WITHIN THE SPECIFIED TIME PERIOD SHALL CONCLUSIVELY BE DEEMED BUYER'S ELECTION TO PROCEED WITH THE TRANSACTION WITHOUT CORRECTION OF ANY DISAPPROVED ITEMS.
- 253.
- 254.
- 6k. 255. **Notice of Non-Working Warranted Items:** Buyer shall provide Seller with notice of any non-working warranted item(s) of which Buyer becomes aware during the Inspection Period or the Seller warranty for that item(s) shall be waived. Delivery of such notice shall not affect Seller's obligation to maintain or repair the warranted item(s).
- 256.
- 257.
- 6l. 258. **Home Warranty Plan:** Buyer and Seller are advised to investigate the various home warranty plans available for purchase. The parties acknowledge that different home warranty plans have different coverage options, exclusions, limitations, service fees and most plans exclude pre-existing conditions.
- 259.
- 260.
- 261. A Home Warranty Plan will be ordered by Buyer or Seller with the following optional coverage
- 262. _____, to be issued by _____ at a cost not
- 263. to exceed \$ _____, to be paid for by Buyer Seller
- 264. Buyer declines the purchase of a Home Warranty Plan.
- 6m. 265. **Walkthrough(s):** Seller grants Buyer and Buyer's inspector(s) reasonable access to conduct walkthrough(s) of the Premises for the purpose of satisfying Buyer that any corrections or repairs agreed to by the Seller have been completed, warranted items are in working condition and that the Premises is in substantially the same condition as of the date of Contract acceptance. If Buyer does not conduct such walkthrough(s), Buyer releases Seller and Broker(s) from liability for any defects that could have been discovered.
- 266.
- 267.
- 268.
- 6n. 269. **Seller's Responsibility Regarding Inspections and Walkthrough(s):** Seller shall make the Premises available for all inspections and walkthrough(s) upon reasonable notice by Buyer. Seller shall, at Seller's expense, have all utilities on, including any propane, until COE to enable Buyer to conduct these inspections and walkthrough(s).
- 270.
- 271.

7. REMEDIES

- 7a. 272. **Cure Period:** A party shall have an opportunity to cure a potential breach of this Contract. If a party fails to comply with any provision of this Contract, the other party shall deliver a notice to the non-complying party specifying the non-compliance. If the non-compliance is not cured within three (3) days after delivery of such notice ("Cure Period"), the failure to comply shall become a breach of Contract.
- 273.
- 274.
- 275.
- 7b. 276. **Breach:** In the event of a breach of Contract, the non-breaching party may cancel this Contract and/or proceed against the breaching party in any claim or remedy that the non-breaching party may have in law or equity, subject to the Alternative Dispute Resolution obligations set forth herein. In the case of the Seller, because it would be difficult to fix actual damages in the event of Buyer's breach, the Earnest Money may be deemed a reasonable estimate of damages and Seller may, at Seller's option, accept the Earnest Money as Seller's sole right to damages; and in the event of Buyer's breach arising from Buyer's failure to deliver the notice required by Section 2b, or Buyer's inability to obtain loan approval due to the waiver of the appraisal contingency pursuant to Section 2m, Seller shall exercise this option and accept the Earnest Money as Seller's sole right to damages. An unfulfilled contingency is not a breach of Contract. The parties expressly agree that the failure of any party to comply with the terms and conditions of Section 1d to allow COE to occur on the COE Date, if not cured after a cure notice is delivered pursuant to Section 7a, will constitute a material breach of this Contract, rendering the Contract subject to cancellation.
- 277.
- 278.
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- 285.

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- 7c. 286. **Alternative Dispute Resolution ("ADR"):** Buyer and Seller agree to mediate any dispute or claim arising out of or relating to this 287. Contract in accordance with the REALTORS® Dispute Resolution System, or as otherwise agreed. All mediation costs shall be paid 288. equally by the parties. In the event that mediation does not resolve all disputes or claims, the unresolved disputes or claims shall be 289. submitted for binding arbitration. In such event, the parties shall agree upon an arbitrator and cooperate in the scheduling of an 290. arbitration hearing. If the parties are unable to agree on an arbitrator, the dispute shall be submitted to the American Arbitration 291. Association ("AAA") in accordance with the AAA Arbitration Rules for the Real Estate Industry. The decision of the arbitrator shall be 292. final and nonappealable. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. 293. Notwithstanding the foregoing, either party may opt out of binding arbitration within thirty (30) days after the conclusion of the 294. mediation conference by notice to the other and in such event either party shall have the right to resort to court action.
- 7d. 295. **Exclusions from ADR:** The following matters are excluded from the requirement for ADR hereunder: (i) any action brought in the 296. Small Claims Division of an Arizona Justice Court (up to \$2,500) so long as the matter is not thereafter transferred or removed from 297. the small claims division; (ii) judicial or nonjudicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or 298. agreement for sale; (iii) an unlawful entry or detainer action; (iv) the filing or enforcement of a mechanic's lien; or (v) any matter that is 299. within the jurisdiction of a probate court. Further, the filing of a judicial action to enable the recording of a notice of pending action ("lis 300. pendens"), or order of attachment, receivership, injunction, or other provisional remedies shall not constitute a waiver of the 301. obligation to submit the claim to ADR, nor shall such action constitute a breach of the duty to mediate or arbitrate.
- 7e. 302. **Attorney Fees and Costs:** The prevailing party in any dispute or claim between Buyer and Seller arising out of or relating to this 303. Contract shall be awarded their reasonable attorney fees and costs. Costs shall include, without limitation, attorney fees, expert 304. witness fees, fees paid to investigators, and arbitration costs.

8. ADDITIONAL TERMS AND CONDITIONS

- 8a. 305. Buyer shall waive SPDS and CLUE report.
- 306. _____
- 307. Property sold AS IS.
- 308. _____
- 309. see attached addendum.
- 310. _____
- 311. _____
- 312. _____
- 313. _____
- 314. _____
- 315. _____
- 316. _____
- 317. _____
- 318. _____
- 319. _____
- 320. _____
- 321. _____
- 322. _____
- 323. _____
- 324. _____
- 325. _____
- 326. _____
- 327. _____
- 328. _____
- 329. _____
- 330. _____
- 331. _____
- 332. _____
- 333. _____
- 334. _____

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8q. 389. THIS CONTRACT CONTAINS NINE PAGES EXCLUSIVE OF ANY ADDENDA AND ATTACHMENTS. PLEASE ENSURE THAT 390. YOU HAVE RECEIVED AND READ ALL NINE PAGES OF THIS OFFER AS WELL AS ANY ADDENDA AND ATTACHMENTS.

8r. 391. Broker on behalf of Buyer:

392. Rhonda DuBois rd076 Service First Realty LLC srvc01
PRINT SALESPERSON'S NAME AGENT CODE PRINT FIRM NAME FIRM CODE
 393. 4813 W. Desert Hills Drive Glendale Az 85304
FIRM ADDRESS STATE ZIP CODE
 394. (623)418-2970 866 274-8244 rhondadubois19@yahoo.com
PREFERRED TELEPHONE FAX EMAIL

8s. 395. Agency Confirmation: The Broker named in Section 8r above is the agent of (check one):
 396. the Buyer; the Seller; or both the Buyer and Seller

8t. 397. The undersigned agree to purchase the Premises on the terms and conditions herein stated and acknowledge receipt of 398. a copy hereof including the Buyer Attachment.

399. Chris Fong 11/16/2013 Christopher Gilbert Fong
BUYER'S SIGNATURE MO/D/YR BUYER'S SIGNATURE MO/D/YR
 400. 6357 Beatrice St.
ADDRESS ADDRESS
 401. Van Nuys, CA, Canada V5P3R5
CITY, STATE, ZIP CODE CITY, STATE, ZIP CODE

9. SELLER ACCEPTANCE

9a. 402. Broker on behalf of Seller:

403. OCTAVIO ORDONEZ 00002 COLDWELL BANKER CBRD10
PRINT SALESPERSON'S NAME AGENT CODE PRINT FIRM NAME FIRM CODE
 404. 3045 W. AGUA FRIA FRWY #102 & 104 AZ 85027
FIRM ADDRESS STATE ZIP CODE
 405. 602-570-4524 602-323-0013 OORDONEZ@REALTOR.COM
PREFERRED TELEPHONE FAX EMAIL

9b. 406. Agency Confirmation: The Broker named in Section 9a above is the agent of (check one):
 407. the Seller; or both the Buyer and Seller

9c. 408. The undersigned agree to sell the Premises on the terms and conditions herein stated, acknowledge receipt of a 409. copy hereof and grant permission to Broker named on Section 9a to deliver a copy to Buyer.

410. Counter Offer is attached, and is incorporated herein by reference. Seller should sign both this offer and the Counter Offer.
 411. If there is a conflict between this offer and the Counter Offer, the provisions of the Counter Offer shall be controlling.
 412. [Signature] 11/18/13 [Signature]
SELLER'S SIGNATURE MO/D/YR SELLER'S SIGNATURE MO/D/YR
 413. OCTAVIO ORDONEZ [Signature]
SELLER'S NAME PRINTED SELLER'S NAME PRINTED
 414. _____
ADDRESS ADDRESS
 415. _____
CITY, STATE, ZIP CODE CITY, STATE, ZIP CODE

416. OFFER REJECTED BY SELLER: _____ MONTH _____ DAY _____ YEAR _____ (SELLER'S INITIALS)

For Broker Use Only:
 Brokerage File/Log No. _____ Manager's Initials _____ Broker's Initials _____ Date _____
MO/D/YR



ADDENDUM

The terms of this addendum (the "Addendum") supplement, amend and supersede the terms of the foregoing Residential Purchase Agreement (the "Agreement") between Wesley H. Avery, Chapter 7 Trustee (the "Seller" or "Trustee") for the bankruptcy estate (the "Estate") of Octavio Ortiz, an individual (the "Debtor") in Bankruptcy Case No. 2:13-bk-26236-TD (the "Bankruptcy Case") on the one hand, and Christopher Gilbert Fong, an individual (collectively, the "Buyer") on the other hand, as follows:

1. The Seller of the single family residence commonly known as 5120 N. 68th Drive, Glendale, AZ 85303, APN 144-24-130 (hereinafter the "Real Property"), is Wesley H. Avery as the chapter 7 bankruptcy trustee for the Estate of the Debtor, and not Wesley H. Avery as an individual.

2. To the degree that the Agreement conflicts with this Addendum, this Addendum controls and the Agreement is not binding and is superseded.

3. The foregoing Agreement and this Addendum are unenforceable and of no legal effect, unless and until approved by the Bankruptcy Court. Any and all sales of the Real Property are subject to review and approval by the Bankruptcy Court, and any proposed sale is subject to overbid at the time of the hearing on the Motion to Approve the sale of the Real Property. If the Buyer is overbid at the auction for the Real Property in the Bankruptcy Court, the Buyer agrees to release the Seller from any and all obligations under this Agreement and Addendum other than the return of any deposits made by the Buyer.

4. Any Bankruptcy Court Order approving the sale of the Real Property is subject to a fourteen (14) day waiting period after the entry of said order before any escrow for the sale of the Real Property may close.

5. To the degree that the Agreement contains disclosure or warranty provisions, then the undersigned is a federal 7 bankruptcy trustee and there will be no warranties or disclosures made concerning the Real Property.

6. Because the sale of the Real Property is a bankruptcy sale, any such sale shall be "as-is" and without any warranties (whatsoever), and any transfer shall be by the Bankruptcy Trustee's Deed or Quitclaim deed at the Seller's option.

7. Any and all disputes in connection with the Agreement and/or this Addendum are subject to the exclusive jurisdiction and venue of the United States Bankruptcy Court hearing in the Bankruptcy Case in Los Angeles, California.

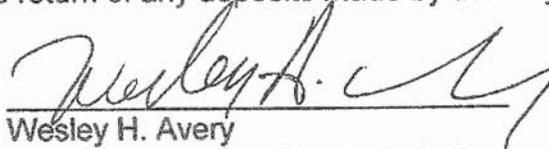
8. No fees shall be paid and no costs shall be reimbursed unless and until ordered by the Bankruptcy Court under 11 U.S.C. Section 328, 330 and/or 331. Any

and all such fees and costs shall be the sole and exclusive liability of and claim against the Estate and Wesley H. Avery shall not have any personal liability on any account.

9. To the extent that liens, claims or co-owners, or other encumbrances against the Real Property, if any, make the sale infeasible or unprofitable to the Estate, then the Seller may at this option terminate this Agreement and cancel any proposed sale under this Agreement. In such case, the Buyer agrees to fully completely release Seller from any and all obligations under this Agreement other than the return of any deposits made by the Buyer.

10. The Agreement and this Addendum shall automatically terminate in the event that the Real Property cannot be administered, or if title insurance satisfactory to the Seller and the Buyer cannot be obtained. In such an event, the Buyer then agrees to fully and completely release Seller from any and all obligations under the Agreement and this Addendum other than the return of any deposits made by the Buyer.

Dated: 11/18/13



Wesley H. Avery
Chapter 7 Trustee of Octavio Ortiz

Dated: 11/20/2013



Christopher Gilbert Fong, an individual

Coldwell Banker Residential Brokerage

ADDENDUM 1

Document updated:
June 1993



The pre-printed portion of this form has been drafted by the Arizona Association of REALTORS®. Any change in the pre-printed language of this form must be made in a prominent manner. No representations are made as to the legal validity, adequacy and/or effects of any provision, including tax consequences thereof. If you desire legal, tax or other professional advice, please consult your attorney, tax advisor or professional consultant.



1. This is an addendum originated by the: Seller Buyer Landlord Tenant.
2. This is an addendum to the Contract dated December 3, 2013 between the following Parties:
MO/DAYR
3. Seller/Landlord: Octavio Ortiz, Westley H. Avery Chapter 7 Tru
4. Buyer/Tenant: Christopher Gilbert Fong
5. Premises: 5120 N 68th, Glendale, AZ 85303
6. The following additional terms and conditions are hereby included as a part of the Contract between Seller and Buyer for the above referenced Premises:
7. The buyer is Christopher Gilbert Fong and/or Elizabeth Caroline Fong in the sale
8. motion and the order approving the sale motion
9. _____
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41. _____

42. The undersigned agrees to the additional terms and conditions and acknowledges receipt of a copy hereof.

- | | |
|--|--|
| <p>43. <u>Christopher Gilbert Fong</u> <u>1/21/2014</u></p> <p>44. <input type="checkbox"/> Seller <input checked="" type="checkbox"/> Buyer <small>MO/DAYR</small></p> <p>45. <input type="checkbox"/> Landlord <input type="checkbox"/> Tenant</p> | <p><u>Elizabeth Caroline Fong</u> <u>1/21/2014</u></p> <p><input type="checkbox"/> Seller <input type="checkbox"/> Buyer <small>MO/DAYR</small></p> <p><input type="checkbox"/> Landlord <input type="checkbox"/> Tenant</p> |
| <p>46. <u>Westley H. Avery</u> <u>1/21/14</u></p> <p>47. <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Buyer <small>MO/DAYR</small></p> <p>48. <input type="checkbox"/> Landlord <input type="checkbox"/> Tenant</p> | <p><input type="checkbox"/> Seller <input type="checkbox"/> Buyer <small>MO/DAYR</small></p> <p><input type="checkbox"/> Landlord <input type="checkbox"/> Tenant</p> |

49. **For Broker Use Only:**
 Brokerage File/Log No. _____ Manager's Initials _____ Broker's Initials _____ Date _____
MO/DAYR

