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10
11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

12
13 IN AND FOR THE COUNTY OF MARICOPA

14 REALTY EXECUTIVES, INC., an Arizona
15 corporation; REALTY EXECUTIVES
16 INTERNATIONAL, INC., an Arizona
17 corporation,

18 Plaintiffs,

19 v.

20 JOHN E. FOLTZ and MARIE D. FOLTZ,
21 husband and wife,

22 Defendants.

NO:

COMPLAINT

(Breach of Contract; Breach of Fiduciary
Duty; Breach of Implied Covenant of
Good Faith and Fair Dealing;
Conversion; Declaratory Relief; and
Equitable Accounting)

(Jury Trial Demanded)

23 Plaintiffs Realty Executives, Inc. and Realty Executives International, Inc., for
24 their complaint against Defendants John E. Foltz and Marie D. Foltz, alleges as follows:

25 **NATURE OF THIS ACTION**

26 1. This case arises from claims of fiduciary misconduct, breach of contract,
27 breach of the implied covenant of good faith and fair dealing, conversion, declaratory
28

1 relief and equitable accounting. In substance, while employed by Plaintiffs and owing
2 Realty Executives the highest fiduciary duties, defendant John E. Foltz ("Foltz")
3 engaged in a course of conduct designed, at least in part, to irretrievably damage
4 Plaintiffs through deliberate acts of financial and operational mismanagement,
5 embezzlement, self-dealing and other willful misconduct and dishonest acts. While
6 Plaintiffs do not know the full nature or scope of Foltz's wrongful conduct because their
7 investigation is still ongoing and they have not yet had the benefit of discovery,
8 Plaintiffs have uncovered direct and circumstantial evidence, as set forth below, that
9 demonstrates extensive fraudulent activity, improper and unauthorized payments to
10 himself and misrepresentation to the owners of Realty Executives over a period of years.

11 As a result of Foltz's willful and deliberate misconduct, including misappropriation
12 of corporate assets and opportunities, Plaintiffs have incurred substantial losses, possibly
13 in the millions of dollars, and therefore seek compensatory and punitive damages.
14 Additionally, Plaintiffs seek declaratory relief authorizing the termination of the
15 agreements governing the parties' relationships.

16 **PARTIES, JURISDICTION AND VENUE**

17 2. Plaintiff Realty Executives, Inc. ("Realty Executives") is a corporation
18 organized under the laws of Arizona with its principal place of business located in
19 Phoenix, Arizona.

20 3. Plaintiff Realty Executives International, Inc. ("REI") is a corporation
21 organized under the laws of Arizona with its principal place of business located in
22 Phoenix, Arizona.

23 4. Foltz is an individual residing in Maricopa County, Arizona.
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5. Defendant Marie D. Foltz is Foltz's wife and has been named as a defendant because Foltz acted at all times both individually and on behalf of his marital community.

6. This court has jurisdiction over this matter pursuant to A.R.S. § 12-123.

7. Venue is proper in this Court pursuant to A.R.S. § 12-401(1), (7), (9) and (10) as Defendants reside in Maricopa County and have caused events to occur in this jurisdiction out of which this cause of action arises.

BACKGROUND FACTS

A. Realty Executives' Business.

8. There are two separate but related entities bearing the name "Realty Executives" that are named as plaintiffs in this lawsuit.

9. Plaintiff REI is one of the oldest real estate franchise systems in the United States and is widely known as a provider of residential real estate services, both domestically and internationally. Through a network of independently owned franchisees, REI's licensees or agents sell real estate under the Realty Executives brand name.

10. Plaintiff Realty Executives, as defined herein, and which is also commonly known as, and sometimes referred to herein as “Realty Executives of Phoenix,” owns the Phoenix area rights to operate the Realty Executives franchise system and use the Realty Executives federally-registered trademarks and trade name.

11. With the highest number of agents or licensees of any Realty Executives franchisee, Realty Executives of Phoenix was, at one point, the largest franchisee within the REI franchise system.

12. Realty Executives was founded in 1965 by Dale Rector and, since that time, has been continuously owned and operated by the Rector family.

13. The sole shareholders of Realty Executives are effectively Richard Rector and Robyn Lee Dependahl. They are also effectively the majority shareholders of REI.

14. Foltz first became employed by Realty Executives in 1978.

15. From 1989 to 2009, Foltz served as President and Designated Broker of Realty Executives of Phoenix. In this capacity, Foltz was responsible for all facets of Realty Executives' business operations, and oversaw Realty Executives' key management personnel, CFO and its controller, all of whom reported directly to Foltz.

16. Foltz holds an undergraduate degree in accounting and an MBA in real estate finance.

17. Throughout his career with Realty Executives, Foltz has been active in Realtor Professional Standards and Ethics matters, and served as President of the Arizona Association of Realtors in 1998.

18. Based on his extensive background in real estate, real estate finance and accounting, Foltz holds himself out as a highly competent and ethical real estate professional with substantial expertise in accounting. Realty Executives consequently was justified in relying on Foltz's background and expertise in real estate finance and accounting for many years.

19. Through his leadership role, Foltz was privy to extensive amounts of detailed financial information and had, at all relevant times, considerable knowledge of and unfettered access to Realty Executives' books and records, including balance sheets, profit and loss statements, accounts and ledgers. Foltz used his extensive real estate experience, thorough knowledge and access to all accounting records to perpetuate fraudulent and other inappropriate schemes for his own benefit, without authorization and to the detriment of the company.

20. In 2009, Realty Executives hired Dominic Scappaticci to replace Foltz as President and Designated Broker and reassigned Foltz to the position of President

1 Emeritus. In his new role, which was more limited, Foltz participated in speaking
2 engagements, coaching programs, headed company projects and continued to report to
3 and assist Realty Executives' Board of Directors.

4 **B. The Employment Agreement Between Realty Executives and Foltz.**

5 21. On or about November 10, 1997, Realty Executives and Foltz entered into
6 a written Employment Agreement. (A true and correct copy of the Employment
7 Agreement is attached hereto as **Exhibit A.**)

8 22. Under the Employment Agreement, Foltz agreed to continue serving as
9 Designated Broker for Realty Executives until December 31, 2010 unless terminated
10 earlier in accordance with its terms and conditions.

11 23. Pursuant to section 1 of the Employment Agreement, the duties of Foltz's
12 position included the following:

13
14 "[t]he design and implementation of a comprehensive risk management
15 program, the education of real estate associates, monitoring Realty
16 Executives' compliance with the rules and laws of the Arizona Department
17 of Real Estate and the representation of Realty Executives in arbitrations,
lawsuits and settlement negotiations, and other duties as determined by the
Board of Directors of Realty Executives."

18 24. Section 2 of the Employment Agreement sets forth Foltz's salary as
19 Designated Broker. Specifically, this section provides as follows:

20
21 Until August 1, 1998, Broker's monthly salary will be Nineteen and 53/100
22 Dollars (\$19.53) ("Base Rate") per licensee of Realty Executives.
23 Thereafter, and on each successive August 1st, Broker's Base Rate per
24 licensee shall be increased by (i) five percent (5%) plus or minus (ii) the
25 change in the U.S. Consumer Price Index (All Urban Consumers: West
26 region) from the previous period. Realty Executives and Broker agree that
27 the number of licensees used to compute Broker's compensation shall
28 include neither licensees who are on leave of absence nor licensees in the
spouse program.

1 25. Section 3 of the Employment Agreement sets forth the terms of an
2 incentive program under which Foltz would receive additional compensation from an
3 Incentive Fund according to the number of transactions generated by Realty Executives.
4 Specifically, Section 3 provides as follows:

5 Broker shall participate in an incentive program, to which Realty Executives
6 shall contribute \$0.80 per transaction side (the "Incentive Fund"), which
7 incentive program shall be mutually agreed to by Realty Executives and
8 Broker.

9 26. The \$0.80 per transaction side incentive payment specified in section 3 of
10 the Employment Agreement is not subject to any annual adjustment, such as the U.S.
11 Consumer Price Index, like the Base Rate specified in section 1 of the agreement.

12 27. The parties intended the "per side transaction" incentive to apply only to
13 closed transactions, that is, residential real estate transactions that have closed and
14 funded as opposed to potential or pending transactions.

15 28. Pursuant to Section 8 of the Employment Agreement, Foltz was to receive
16 a monthly automobile allowance in the amount of \$700.00, subject to annual
17 adjustments. Specifically, this section provides as follows:

18 Broker shall receive an automobile allowance of Seven Hundred Dollars
19 (\$700.00) per month. The amount of Broker's automobile allowance shall
20 be increased annually each August 1st by any increase in the prior 12 months
21 in the U.S. Consumer Price Index (All Urban Consumers: West region).

22 29. In Section 1 of the Employment Agreement, Foltz agreed, in exchange for
23 the consideration provided under the agreement, that he "shall serve Realty Executives
24 faithfully, loyally, honestly and to the best of his ability."

25 30. The Employment Agreement further provides, in Section 1, that he will
26 not "at any time during or after the Noncompetition Period, disparage the Business or
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1 [Realty Executives], or any of their respective shareholders, directors, officers,
2 employees or agents.”

3 **C. The Independent Contractor Agreement Between Realty Executives**
4 **International and Foltz.**

5 31. On or about January 15, 1998, REI and Foltz entered into an Independent
6 Contractor Agreement under which REI separately engaged Foltz’s services.
7 Specifically, REI hired Foltz to assist in promoting REI to the Realty Executives’
8 Phoenix licensees and facilitate the process of the agents’ payment of franchise fees to
9 REI. (A true and correct copy of the Independent Contractor Agreement is attached
10 hereto as **Exhibit B.**)

11 32. The Independent Contractor Agreement obligates Foltz to “apply his best
12 efforts in exposing the REALTY EXECUTIVES of Phoenix agents to the benefits of
13 REALTY EXECUTIVES INTERNATIONAL, thereby allowing the franchise fees to be
14 paid by the agents with the least possible resistance or rebellion.”

15 33. As part of the Independent Contractor Agreement, REI agreed “to
16 cooperate with John Foltz by providing information, services, and materials to support
17 John Foltz in the task described herein.”

18 34. As consideration for Foltz’s services under the Independent Contractor
19 Agreement, REI agreed to pay Foltz 20% of any fees paid or credited to REI by Realty
20 Executives (of Phoenix) for as long as Foltz is employed by Realty Executives of
21 Phoenix.

22 **D. The Equity Participation Plan.**

23 35. On October 4, 1999, Realty Executives and Foltz entered into an Equity
24 Participation Plan (“Equity Plan”) under which Realty Executives granted Foltz 20% of
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phantom ownership interests in the company. (A true and correct copy of the Equity Plan is attached hereto as **Exhibit C.**)

36. Pursuant to section 3.2 of the Equity Plan, Foltz will remain a participant in the plan only so long as he is actively employed by the company.

E. The 2005 Addendum to Employment Agreement.

37. On July 25, 2005, Realty Executives and Foltz executed an addendum to the Employment Agreement under which the parties agreed to extend the termination date of the Employment Agreement to December 31, 2015. (A true and correct copy of the Addendum to Employment Agreement is attached hereto as **Exhibit D.**)

38. Foltz did not provide any consideration to Realty Executives in exchange for the five-year extension that is the subject of the addendum.

F. Foltz Engages in a Systematic and Coordinated Campaign to Financially Damage Realty Executives.

39. Beginning in 2005, after the amendment to the Employment Agreement was signed, Foltz began exerting tighter control over the operations of Realty Executives of Phoenix and began undermining the Rectors and their authority in order to discredit them to the other employees of the company, as well as potential investors.

40. From 2005 to 2009, nearly all day-to-day decisions concerning Realty Executives' finances, operations, customer services, marketing, and products were made by Foltz or those acting according to his directives and instructions.

41. Upon information and belief, Foltz began making numerous disparaging statements regarding Realty Executives' owners, Richard Rector and Robyn Lee Dependahl to Realty Executives' employees, particularly management employees, as well as to Realty Executives licensees and vendors.

1 42. Through the use of disparaging comments about the owners, Foltz fostered
2 and encouraged an “anti-Rector” atmosphere among the employees and executives of
3 Realty Executives.

4 43. Upon information and belief, Foltz fostered a negative view of the owners
5 in an attempt to undermine their credibility and, as part of a scheme to allow him to
6 further his fraudulent and improper activities, to ultimately wrest control of the
7 ownership of the company from them.

8 **False and Misleading Accounting and Financial Practices**

9 44. At all relevant times herein, and with the assistance of others acting under
10 his direction, Foltz systematically and purposefully manipulated Realty Executives’
11 financial and accounting records by engaging in improper practices to increase his own
12 compensation and benefits under the Employment Agreement, Independent Contractor
13 Agreement and Equity Plan.

14 45. Under Foltz’s direction, Realty Executives’ accounting and internal
15 business practices were seriously flawed and yielded significantly misleading
16 information to the owners of the company.

17 46. During the time Foltz served as President and Designated Broker, there
18 was a consistent lack of controls and application of sound practices in accordance with
19 Generally Accepted Accounting Principles (GAAP). Some examples are balance sheet
20 accounts with no reserves set up, accruals not being recorded, and reserve cash and other
21 accounts not being established to cover liabilities.

22 47. As one specific example of improper accounting, Foltz and his staff failed
23 to set up a \$123,000 reserve account for the Premier Marketing Group to be used for
24 local marketing purposes. Instead of setting up this reserve account, Foltz set up the
25 account as a credit to accounts receivable and there was a debit to another accounts
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1 receivable, which caused the two receivables accounts to offset each other. However,
2 the funds were deposited into the operating account and used as operating expenses
3 instead of as a reserve account to offset a corresponding liability. The overall effect was
4 to obscure the liability and to inflate the company's operating capital.

5 48. In addition, in his capacity as President and Designated Broker, Foltz
6 failed to establish accounting controls over trust accounts which enabled an employee to
7 embezzle \$579,000 over the course of a seven year period.

8 49. After the employee embezzlement was discovered, Foltz made a
9 presentation to the Board on the new internal controls that were being implemented to
10 avoid similar occurrences. These new policies were never put into place despite Foltz's
11 representation that they were implemented.

12 50. In summary, Foltz or those acting at his direction engaged in numerous
13 improper accounting practices including, but not limited to, the following:

14 (a) preparing false financial statements that did not report the company's true
15 financial condition or results of operation;

16 (b) failing to monitor, manage and reduce expenses in response to declining
17 revenue;

18 (c) mismanaging cash and trust funds;

19 (d) leaving the general ledger for Realty Executives out of balance by more than
20 \$4 million for a period of several years;

21 (e) recording a \$300,000 bank line of credit as an overdraft cash account;

22 (f) transferring funds from related entities and recording the funds as revenues

23 (g) failing to set up cash reserve funds and properly disclose liabilities; and

24 (h) failing to establish effective procedures to retain executives and/or recruit new
25 ones during the economic downturn.

1 51. The above-described practices, at least in part and collectively, had the
2 effect of reducing shareholders' equity by nearly \$4,000,000 over a five-year period
3 between 2004 and 2009. This reduction in shareholder equity value has severely
4 impacted the company's balance sheet which, in turn, has negatively impacted the
5 owners' ability to effectively operate the company due to its inability to obtain credit.

6 52. Foltz knew or should have known that his mismanagement or
7 manipulation of Realty Executives' financial records would inflict significant harm on
8 Realty Executives and its owners.

9 **Foltz's Fraudulent Misrepresentations to the Arizona Department of Real Estate**

10 53. On September 5, 2005, the Arizona Department of Real Estate ("ADRE")
11 completed an audit of the company's operations and discovered eleven (11) violations of
12 state statutes.

13 54. During the course of the audit, Foltz and the CFO of Realty Executives,
14 acting under Foltz's direction, withheld the existence of nine (9) remote trust accounts,
15 some of which were out of compliance with applicable Arizona statutes and, as a result,
16 the ADRE did not discover the trust accounts as part of the audit.

17 55. Following the issuance of the 11 citations by the ADRE, Foltz and the
18 CFO prepared a formal response to the ADRE in which he committed to taking specific
19 remedial action to address each of the citations. Although the ADRE's findings and the
20 company's proposed corrective plan was shared with the Board of Directors, Foltz never
21 informed the Board of the withholding of the existence of the trust accounts from the
22 ADRE.

23 56. As part of the 2005 ADRE corrective plan, Foltz notified the state that all
24 non-compliance issues had been addressed, or were in the process of being addressed,
25 but never disclosed the existence of the remote trust accounts; nor did Foltz fully
26 implement the corrective plan as represented to the state and owners.

1 57. Subsequent to the 2005 ADRE audit, the ADRE conducted a follow up
2 audit, which took place in 2008. During the course of the 2008 audit Realty Executives
3 self-reported the existence of the nine remote trust accounts to the ADRE. The company
4 then retained an independent CPA firm to conduct an audit for each remote trust account
5 which revealed serious internal control violations and regulatory compliance issues.

6 **Foltz's Concealment of Excessive REO Sales Commissions**

7 58. In or around 2008, Foltz established a Real Estate Owned ("REO")
8 division of Realty Executives similar to the HUD program of the 1990's. Foltz asked
9 the owners of Realty Executives if he could share in the commissions on closings
10 generated through this program in an amount equal to the former HUD program.

11 59. The owners agreed to Foltz's request to set up an REO division and Foltz
12 established the REO division along with his managing broker Sandy Young and
13 supervising broker Gerry Russell.

14 60. The Board of Directors specifically inquired of Foltz as to the details of
15 the commissions to be paid to him and his managers through the REO program. Foltz
16 represented to the board that the commissions would be "the same as the old HUD
17 contract," with the clear implication being that there would be commissions of
18 approximately 22% of Realty Executives' fee paid to them.

19 61. Contrary to Foltz's representations regarding this program, Realty
20 Executives discovered that Foltz and his team were paying themselves commissions
21 equal to approximately 44% of Realty Executives' fee.

22 62. When Realty Executives confronted Foltz and Young about their receipt of
23 44% of the REO commissions, their explanation was that they "did not realize" they
24 were paying themselves so much of the commissions.
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1 **Foltz's Misappropriation of Corporate Assets and Receipt of Unauthorized Amounts**
2 **in Excess of his Agreed Upon Compensation**

3 63. Beginning in at least 2000, and continuing through some time in 2010,
4 Foltz has caused himself to be paid salary and benefits in excess of what is provided by
5 the Employment Agreement.

6 64. On numerous occasions, the exact number of which is not yet fully known,
7 Foltz prepared and submitted payment requests for employment services that either
8 comprised tasks or services that were within the description of his regular employment
9 duties as President and Designated Broker and, therefore he was already compensated
10 for under the Employment Agreement.

11 65. For example, on August 1, 2000, Foltz submitted to Realty Executives a
12 document entitled "John Foltz-Contract Labor Calculations" in which he authorized the
13 payment of an additional \$66,000 per year, payable to an entity called "True North
14 Consulting," for services that were already within the scope of his regular duties under
15 either the Employment Agreement or Independent Contractor Agreement, or both. (A
16 true and correct copy of the John Foltz-Contract Labor Calculations ["Foltz
17 Calculations"] is attached as **Exhibit E**)

18 66. As part of the Foltz Calculations, at least for the period beginning August
19 1, 2000, Foltz paid himself under the guise of "True North Consulting" for such things
20 as "Public Relations with Other Realty Executives Franchises" at the rate of \$6,000.00
21 per year even though he was obligated to provide the same "services" under the
22 Independent Contractor Agreement in exchange for 20% of the fees paid by Realty
23 Executives franchisees to REI.

24 67. At no time did Foltz ever ask the Realty Executives' Board of Directors
25 for authorization or approval of the payment of the amounts listed in the Foltz
26 Calculations, or any other similar document.

1 68. Realty Executives has also discovered that Foltz, for apparently many
2 years, has improperly calculated the "per transaction side" incentive payment, thereby
3 causing substantial overpayments. Specifically, Foltz has calculated the \$0.80 incentive
4 based on an annual 5% cost of living adjustment even though the contract does not allow
5 for any adjustment. (A true and correct copy of the "Memo From John Foltz" prepared
6 August 7, 2008 is attached as **Exhibit F**).

7 69. Foltz's application of a 5% annual increase in the per transaction side
8 incentive, without authorization to do so, has resulted in a substantial overpayment by
9 the company to Foltz.

10 70. At other times, Foltz appears to have applied different calculation methods
11 that are not authorized by the Employment Agreement.

12 71. Further, and unbeknownst to Realty Executives or its owners, Foltz has
13 miscalculated the \$0.80 incentive by including in the calculation transactions that did
14 not close or fund even though the Employment Agreement and industry standards,
15 acknowledged by Foltz, clearly contemplates the closing of a transaction as a condition
16 of earning the incentive.

17 72. Foltz's inclusion of pending or other non-closed transactions in the
18 calculation of the per transaction side incentive has resulted in a substantial
19 overpayment by the company to Foltz.

20 73. Upon information and belief, in or around the year 2000, used \$11,421.76
21 in corporate funds to pay off the loan balance for a personal automobile. Realty
22 Executives never authorized Foltz to use corporate funds for this purpose and he did so
23 without their knowledge.

24 74. Even though Foltz used corporate funds to pay off his personal automobile
25 loan, he has continued to receive the \$700.00 per month automobile allowance specified
26 in Section 3 of the Employment Agreement for the entire time since the inception of the
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1 agreement. To make matters worse, Foltz has for years after paying off his automobile
2 loan without authorization from the owners, improperly calculated the monthly
3 automobile allowance, which has resulted in substantial payments in excess of the
4 contract amount.

5 75. According to the August 7, 2008 memo (**Exhibit F**), Foltz purported to
6 “adjust” his automobile expense for the period from August 1, 2008 to July 31, 2009
7 based on a 5% annual increase even though the Employment Agreement only authorizes
8 annual adjustments based on increases or decreases in the U.S. Consumer Price Index.

9 76. At no time did Foltz disclose to Realty Executives’ Board of Directors that
10 he was paying himself, or causing others under his direction to pay him, amounts in
11 excess of the amounts authorized by the Employment Agreement.

12 77. As President and Designated Broker of Realty Executives, Foltz had a
13 duty to refrain from engaging in the self-dealing as described herein. Nonetheless, Foltz
14 knew and approved of the fraudulent self-payments despite the cost to and adverse effect
15 on Realty Executives.

16 78. In 2009 and 2010, the Board of Directors of Realty Executives asked
17 REI’s senior management team to accept reductions in pay due to the company’s severe
18 cash flow difficulties. The Board of Directors also asked the officers of Realty
19 Executives, including Foltz, to accept reduced compensation. All except Foltz agreed to
20 a pay reduction.

21 79. With respect to Foltz, Realty Executives advised him that the company
22 could no longer afford to pay him according to the purported terms of the Employment
23 Agreement and Independent Contractor and directed him to accept a temporary
24 reduction in pay along with the other officers and senior management personnel. Foltz
25 has refused to follow this directive and has refused to accept any reduction in salary or
26 benefits whatsoever.

COUNT I
BREACH OF FIDUCIARY DUTY/DUTY OF LOYALTY

80. Realty Executives re-alleges paragraphs 1 through 79 as though fully alleged herein.

81. As a key managerial employee of Realty Executives, Foltz owed the company the highest fiduciary duties including, without limitation, a duty to act at all times with the utmost good faith, care, honesty and fair dealing towards Realty Executives, and to act in the best interest of Realty Executives in all matters relating to its business.

82. As Realty Executives' President and Designated Broker, Foltz owed Realty Executives an undivided duty of loyalty, to avoid self-dealing, conflicts of interest and acting for his personal advantage.

83. These duties encompass, without limitation, obligations to act with the utmost care in his business activities on behalf of Realty Executives, not to misappropriate Realty Executives corporate opportunities for his own benefit, full and fair disclosure of all competitive interests or other conflicts of interest, and not undermine its business relationships and dealings for personal gain to the detriment of Realty Executives.

84. Realty Executives reposed trust and confidence in Foltz that he would abide by his fiduciary duties.

85. Foltz breached his fiduciary duties, including duties of loyalty and due care, to Realty Executives by, among other things, engaging in the following conduct while employed by Realty Executives:

(a) Improperly stating Realty Executives' records to secure higher bonuses for himself;

(b) Failing to use appropriate due care in his management of financial issues and to timely disclose and manage these issues;

1 (c) Failing to implement internal controls, as represented to the Board of
2 Directors, following the discovery of embezzlement by an employee under his
3 supervision;

4 (d) Concealing his receipt of two times the amount of REO commissions he
5 represented to the Board;

6 (e) Negotiating real estate and equipment leases on behalf of the company at
7 rates substantially higher rates than prevailing market rates;

8 (f) Procuring a commercial insurance policy on behalf of the company and
9 retaining a referral fee without passing the benefit of the fee to the company or disclosing
10 his receipt of it;

11 (g) Making negative and disparaging remarks concerning Richard Rector and
12 Robyn Lee Dependahl to Realty Executives employees, executives and others;

13 (h) Failing to use appropriate care in the execution of his duties, including,
14 among other things, his failure to account properly for accounts receivable and cash
15 reserve accounts, thereby causing a misstatement of Realty Executives' financial
16 statements; and

17 (i) Upon information and belief, usurping or allowing others to usurp corporate
18 opportunities that rightfully belonged to Realty Executives without disclosing these
19 opportunities to Realty Executives.

20 86. These various breaches of fiduciary duty have caused Realty Executives to
21 suffer substantial damages in an amount to be determined, including, but not limited to,
22 the loss of business and commercial reputation, goodwill, business and economic
23 opportunities, and value of services received in exchange for compensation paid to Foltz
24 during the period of his surreptitious wrongful conduct and breach of his fiduciary duties
25 to Realty Executives.

87. These breaches were part of an overall scheme and conspiracy, were knowing, intentional and willful, and were of such an aggravated character as to warrant the imposition of punitive damages.

88. This claim arises out of contract and Plaintiffs are therefore entitled to recover their attorneys' fees and costs pursuant to A.R.S. §12-341.01(A).

WHEREFORE, Plaintiffs respectfully request the Court to enter judgment in their favor on Count I and award the following relief:

(a) Disgorgement of salaries paid to Foltz while in breach of his duties to Realty Executives;

(b) Imposition of a constructive trust and disgorgement of profits received by Foltz as a result of his breaches of his fiduciary duty and duty of loyalty;

(c) Compensatory damages in an amount to be determined at trial;

(d) Punitive damages in an amount to be determined at trial;

(e) For an award of attorneys' fees and costs pursuant to A.R.S. §12-341.01(A);

(f) For an award of taxable costs incurred herein; and

(g) For such further relief as is appropriate under the circumstances.

**COUNT II
BREACH OF CONTRACT**

89. Realty Executives restates and re-alleges paragraphs 1 through 88 as though fully set forth herein.

90. Foltz entered into the valid and legally enforceable written Employment Agreement with Realty Executives in exchange for valuable consideration.

91. Realty Executives has materially performed all of its obligations under the Employment Agreement.

92. Section 1 of the Employment Agreement obligated Foltz to serve Realty Executives faithfully, loyally, honestly and to the best of his ability.

1 93. Foltz breached Sections 1 of the Employment Agreement by, among other
2 things, engaging in the following conduct:

3 (a) Distorting or manipulating Realty Executives' financial statements and
4 transaction reports to obtain higher bonuses for himself;

5 (b) Lying to Realty Executives or concealing his activities and/or receipt of
6 REO commissions;

7 (c) Lying to the ADRE regarding the existence of remote trust accounts;

8 (d) Paying himself, or causing others to pay him, salary in excess of what was
9 authorized by section 2 the Employment Agreement;

10 (e) Paying himself, or causing others to pay him, incentives in excess of what
11 was authorized by section 3 of the Employment Agreement;

12 (f) Paying off a personal automobile loan without the knowledge or approval of
13 the company and concealing this fact from the company;

14 (g) Paying himself, or causing others to pay him, automobile expenses in excess
15 of what was authorized by section 7 of the Employment Agreement;

16 (h) Brokering or arranging the company's purchase of insurance and retaining a
17 referral sales commission for himself without disclosure to the owners; and

18 (i) Failing to use appropriate care in the execution of his duties, including,
19 among other things, his failure to account properly for accounts receivable and cash
20 reserve accounts, thereby misstating Realty Executives' financial statements; and

21 94. Section 1 of the Employment Agreement provides that Foltz will not "at
22 any time during or after the Noncompetition Period, disparage the Business or [Realty
23 Executives], or any of their respective shareholders, directors, officers, employees or
24 agents."

25 95. Foltz has breached Section 1 of the Employment Agreement by making
26 negative and disparaging remarks concerning Richard Rector and Robyn Lee Dependahl
27

1 to Realty Executives employees, executives and potential investors as part of an effort to
2 undermine their authority and credibility.

3 96. The above breaches, and others, have caused Realty Executives to suffer
4 substantial damages in an amount to be determined, including, but not limited to, the
5 loss of business and commercial reputation, goodwill, business and economic
6 opportunities, and value of services received in exchange for compensation paid to Foltz
7 during the period where he was in breach of his contractual duties.

8 97. Foltz's material breaches of section 1 of the Employment Agreement
9 excuses Realty Executives' further performance under the agreement.

10 98. This claim arises out of contract and Plaintiffs are therefore entitled to
11 recover their attorneys' fees and costs pursuant to A.R.S. §12-341.01(A).

12 **WHEREFORE**, Plaintiffs respectfully request the Court to enter judgment in its
13 favor on Count II and award the following relief:

14 (a) Disgorgement of salaries paid to Foltz while in breach of his duties to
15 Realty Executives.

16 (b) Imposition of a constructive trust and disgorgement of profits received by
17 Foltz as a result of his breaches of fiduciary duty.

18 (c) Compensatory damages in an amount to be determined at trial.

19 (d) For an award of attorneys' fees pursuant to A.R.S. §12-341.01(A);

20 (e) For an award of taxable costs incurred herein; and

21 (f) Such further relief as is appropriate under the circumstances.

22
23 **COUNT III**
CONVERSION

24 99. Plaintiffs re-allege paragraphs 1 through 98 as though fully set forth
25 herein.

1 100. By paying himself, or causing others to pay him, in excess of what is
2 contractually required by the terms of the Employment Agreement, or otherwise
3 wrongfully diverting or retaining funds belonging to Realty Executives, Foltz exercised
4 dominion and control over Realty Executives' property in deprivation of Realty
5 Executives' rights.

6 101. As a direct and proximate result of Foltz's acts of conversion, Realty
7 Executives has incurred compensatory damages in an amount to be proven at trial.

8 102. Foltz's misconduct was part of an overall fraudulent scheme, was
9 knowing, intentional and willful, and was of such an aggravated character as to warrant
10 the imposition of punitive damages.

11 **WHEREFORE**, Plaintiffs respectfully request the Court to enter judgment in their
12 favor on Count III and award the following relief:

13 (a) Disgorgement of salaries paid to Foltz while in breach of his duties to
14 Realty Executives.

15 (b) Compensatory damages in an amount to be determined at trial.

16 (c) Punitive damages in an amount to be determined at trial.

17 (d) For an award of taxable costs incurred herein; and

18 (e) For such further relief as is appropriate under the circumstances.

19
20 **COUNT IV**
21 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR**
22 **DEALING**

23 103. Plaintiffs re-allege paragraphs 1 through 102 as though fully set forth
24 herein.

25 104. Pursuant to Arizona law, there is a duty of good faith and fair dealing
26 implied in the Employment Agreement, Independent Contractor Agreement and Equity
27 Plan.
28

105. As outlined above, Foltz has engaged in illicit and illegal conduct that directly or indirectly had the effect of depriving Plaintiffs of the benefits of these agreements.

106. Foltz's self-dealing and other wrongful conduct, as described herein, constitutes breach of the implied covenant of good faith and fair dealing.

107. As a direct and proximate result of Foltz's breach of the implied covenant of good faith and fair dealing, Plaintiffs have sustained damages in amounts to be proven at trial.

108. Foltz's misconduct was part of an overall fraudulent scheme and was knowing, intentional and willful, and was of such an aggravated character as to warrant the imposition of punitive damages.

109. This claim arises out of contract and Plaintiffs are therefore entitled to recover their attorneys' fees and costs pursuant to A.R.S. §12-341.01(A).

WHEREFORE, Plaintiffs respectfully requests the Court to enter judgment in its favor on Count IV and award the following relief:

(a) Disgorgement of salaries paid to Foltz while in breach of his duties to Realty Executives.

(b) Imposition of a constructive trust and disgorgement of profits received by Foltz as a result of his breaches of his fiduciary duty and duty of loyalty.

(c) Compensatory damages in an amount to be determined at trial.

(d) For an award of reasonable attorneys' fees pursuant to A.R.S. §12-341.01(A);

(e) For an award of taxable costs incurred herein; and

(f) Punitive damages, including reasonable attorneys' fees and pre-judgment interest, in an amount to be determined at trial.

(g) For such further relief as is appropriate under the circumstances.

COUNT V
DECLARATORY RELIEF

110. Plaintiffs re-allege paragraphs 1 through 109 as though fully set forth herein.

111. Plaintiffs contend that, due to Foltz's numerous material breaches of contract, breaches of fiduciary duty and breaches of the implied covenant of good faith and fair dealing, they are excused from any and all further performance under the Employment Agreement, the Independent Contractor Agreement and the Equity Plan.

112. Foltz has communicated to Plaintiffs his belief that Plaintiffs may not terminate the Employment Agreement and that Plaintiffs are liable to him for the entire amount of compensation due under this agreement through December 31, 2015.

113. Thus, there is an actual controversy, within the Court's jurisdiction, concerning the parties' respective rights and obligations under the Employment Agreement and Independent Contractor Agreement.

114. Foltz's numerous fraudulent and dishonest acts, as described herein, at a minimum constitute material breaches of section 1 of the Employment Agreement, which obligates Foltz to serve Realty Executives faithfully, loyally and honestly.

115. Foltz's breaches of section 1 do not entitle Foltz to any cure period as they are the types of breaches that so severely pervade the parties' contractual and fiduciary relationship that they cannot be cured.

116. In any event, Realty Executives is entitled to terminate the Employment Agreement for cause, pursuant to section 10(b) or (c) based on Foltz's failure or refusal to follow reasonable directives, such as accepting a pay reduction, or his willful or persistent failure to attend to material duties imposed under the agreement.

117. This claim arises out of contract and Plaintiffs are therefore entitled to recover their attorneys' fees and costs pursuant to A.R.S. §12-341.01(A).

WHEREFORE, Plaintiffs respectfully requests the Court to enter judgment in its favor on Count V and award the following relief:

(a) For a judicial declaration that Foltz materially breached the Employment Agreement and, therefore, Realty Executives' further performance under this agreement is legally excused;

(b) For a judicial declaration that Foltz's material breaches of the Employment Agreement excuses REI's further performance under the Independent Contractor Agreement;

(c) For a judicial declaration that Foltz's material breaches of the Employment Agreement excuses REI's further performance under the Equity Plan;

(d) For an award of reasonable attorneys' fees pursuant to A.R.S. §12-341.01(A);

(e) For an award of taxable costs incurred herein; and

(f) Such further relief as is appropriate under the circumstances.

COUNT VI ACCOUNTING

118. Plaintiffs re-allege paragraphs 1 through 117 as though fully set forth herein.

119. As a result of Foltz's misappropriation of corporate assets, concealment of payments and commissions, overpayment of salary and benefits and usurping of Realty Executives' corporate opportunities, Plaintiffs are unable, without a detailed accounting, to verify the sums of money Foltz has obtained from Realty Executives through illicit means.

120. Plaintiffs are entitled to an equitable accounting of Foltz's financial activities and income for the period in question so that, to the extent Realty Executives is deemed to owe Foltz any remaining compensation under the Employment Agreement,

1 Independent Contractor Agreement or Equity Plan, such amounts may be setoff by the
2 amount of Foltz's overpayments, unauthorized compensation and commissions or other
3 damages proximately caused by Foltz's illicit and improper activities.

4 121. This claim arises out of contract and Plaintiffs are therefore entitled to
5 recover their attorneys' fees and costs pursuant to A.R.S. §12-341.01(A).

6 **WHEREFORE**, Plaintiffs respectfully requests the Court to enter judgment in its
7 favor on Count VI and award the following relief:

8 (a) For an order directing Foltz to provide an accounting to Realty Executives
9 that details all transactions and income for the relevant time period sufficient to enable
10 Realty Executives to verify the extent of the overpayments, unauthorized payments and
11 other damages Realty Executives has incurred;

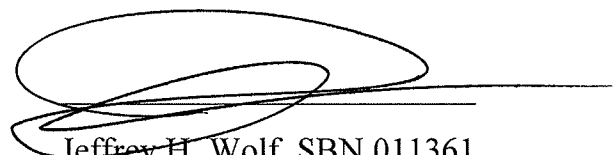
12 (b) For an award of reasonable attorneys' fees pursuant to A.R.S. §12-
13 341.01(A);

14 (c) For an award of taxable costs incurred herein; and

15 (d) Such further relief as is appropriate under the circumstances.

16 DATED: May 24, 2010

Respectfully submitted,

17
18
19 

20 Jeffrey H. Wolf, SBN 011361
21 GREENBERG TRAURIG, LLP
22 ATTORNEYS AT LAW
23 2375 EAST CAMELBACK ROAD
24 SUITE 700
25 PHOENIX, ARIZONA 85016
26 (602) 445-8410
27

EXHIBIT A

EXHIBIT A

EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made and entered into as of the date set forth below (the "Effective Date"), by and between John Foltz ("Broker") and Realty Executives, an Arizona corporation ("Realty Executives").

RECITALS

A. Broker is currently employed by Realty Executives in the position of Designated Broker.

B. Realty Executives has decided to offer Broker an Employment Agreement, the terms of which are set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby mutually agreed as follows:

1. POSITION AND DUTIES.

Broker will be employed as the Designated Broker of Realty Executives and shall perform the duties of his position which shall include the design and implementation of a comprehensive risk management program, the education of real estate sales associates, monitoring Realty Executives' compliance with rules and laws of the Arizona Department of Real Estate and the representation of Realty Executives in arbitrations, lawsuits and settlement negotiations, and other duties as determined by the Board of Directors of Realty Executives.

Broker shall serve Realty Executives faithfully, loyally, honestly and to the best of his ability. Broker will devote his best efforts to the performance of his duties for, and in the business and affairs, of Realty Executives. Realty Executives reserves the right to change or modify Broker's position, title and duties during the term of this Agreement.

2. SALARY.

Until August 1, 1998, Broker's monthly salary will be Nineteen and 53/100 Dollars (\$19.53) ("Base Rate") per licensee of Realty Executives. Thereafter, and on each successive August 1st, Broker's Base Rate per licensee shall be increased by (i) five percent (5%) plus or minus (ii) the change in the U.S. Consumer Price Index (All Urban Consumers: West region) from the previous period. Realty Executives and Broker agree that the number of licensees used to compute Broker's compensation shall include neither licensees who are on leave of absence nor licensees in the spouse program.

11/03 RED 17.00 FAX 002 002 0070 SNELL & HILMER D 0000

3. INCENTIVE PROGRAM.

Broker shall participate in an incentive program, to which Realty Executives shall contribute \$0.80 per transaction side (the "Incentive Fund"), which incentive program shall be mutually agreed to by Realty Executives and Broker.

4. OTHER BENEFIT PLANS.

Broker may participate in any benefit plans, including without limitation the life insurance, health insurance, and retirement plans that are from time to time made available to Realty Executives employees, subject to any restrictions (including waiting periods) specified in said plans.

5. VACATION.

Broker shall receive paid vacation in accordance with Realty Executives vacation policies as from time to time in effect. Vacation shall be scheduled and taken in accordance with such vacation policies.

6. SEMINARS AND PROFESSIONAL MEETINGS.

Broker shall receive paid leave each calendar year to attend professional meetings and seminars in accordance with and subject to such limitations as may be prescribed in Realty Executives policies as from time to time in effect. Realty Executives shall reimburse Broker for any expenses incurred by Broker to attend such meetings and seminars in accordance with such policies.

7. BUSINESS EXPENSES.

Realty Executives will reimburse Broker for any and all necessary, customary, and usual expenses, properly receipted in accordance with Realty Executives policies, as from time to time in effect, incurred by Broker on behalf of Realty Executives.

8. AUTOMOBILE.

Broker shall receive an automobile allowance of Seven Hundred Dollars (\$700.00) per month. The amount of Broker's automobile allowance shall be increased annually on each August 1st by any increase in the prior 12 months in the U.S. Consumer Price Index (All Urban Consumers: West region).

9. TERM AND TERMINATION.

This Agreement will continue in full force and effect until December 31, 2010, and thereafter shall automatically renew for successive one-year periods unless 180 days prior notice of non-renewal is given by either Realty Executives or Broker or until earlier terminated as provided herein.

10. TERMINATION BY REALTY EXECUTIVES FOR CAUSE.

Realty Executives may terminate this Agreement and Broker's employment for Cause at any time immediately upon written notice. For purposes of this Agreement, "Cause" shall be limited to discharge resulting from Broker (a) having been convicted of a felony involving dishonesty, fraud, theft or embezzlement; (b) having repeatedly failed or refused, after written notice from Realty Executives, in a material respect to follow reasonable policies or directives established by Realty Executives; or (c) having willfully and persistently failed, after written notice from Realty Executives, to attend to material duties or obligations imposed upon him under this Agreement.

11. TERMINATION BY BROKER.

Broker may terminate this Agreement and his employment for any reason at any time by giving ninety (90) days prior written notice to Realty Executives.

12. DEATH OR DISABILITY.

This Agreement will terminate automatically on Broker's death or disability. Any salary or other amounts due to Broker for services rendered prior to his death or disability shall be paid to Broker or Broker's surviving spouse, or if Broker does not leave a surviving spouse, to Broker's estate. No other benefits shall be payable to Broker or Broker's heirs pursuant to this Agreement. Broker shall be considered "Disabled" or to be suffering from a "Disability" for purposes of this paragraph 12 if Broker is unable, after any reasonable accommodations required by the Americans with Disabilities Act or any applicable state law, to perform the essential functions of his position because of a physical or mental impairment.

13. CONFIDENTIALITY AND NON-DISCLOSURE.

During the course of his employment, Broker will become exposed to a substantial amount of confidential and proprietary information, including, but not limited to financial information, audited and unaudited financial reports, operational budgets and strategies, methods of operation, customer lists, business plans, marketing plans and strategies, new business strategies, computer systems, personnel and compensation information, and other such reports, documents or information (collectively the "Confidential or Proprietary Information"). Broker promises that he will not use or disclose any Confidential or Proprietary Information in whole or in part to any unauthorized person or entity, in any manner either directly or indirectly. Excluded from this Agreement is information that is already disclosed to third parties and is in the public domain or that Realty Executives consents to be disclosed, with such consent to be in writing. The provisions of this paragraph shall survive the termination of this Agreement.

14. COVENANT-NOT-TO-COMPETE.

The parties acknowledge that prior to and during the term of his employment, Broker has been and will continue to perform essential services for Realty Executives and for real estate

agents of Realty Executives in training, motivating, and supporting Realty Executives' real estate agents. Therefore, Broker will be given an opportunity to meet, work with and develop close working relationships with Realty Executives's real estate agents. During the term of Broker's employment with Realty Executives and for a period of three (3) years after the termination of employment with Realty Executives, regardless of who initiates the termination and for whatever reason, Broker shall not directly or indirectly, for himself, or on behalf of, or in conjunction with, any other person(s), Realty Executives, partnership, corporation, or governmental entity, in any manner whatsoever, perform services similar to those provided by Broker for Realty Executives for any competitor of Realty Executives and will not solicit any real estate agents to join a competitor of Realty Executives.

15. NOTICES.

Any notice required or permitted under this Agreement shall be deemed to have been effectively made or given if in writing and personally delivered, mailed properly addressed, postage prepaid by certified or registered mail or delivered by a reputable overnight delivery service. Unless otherwise changed by notice, notice shall be properly addressed as set forth below:

John Foltz
10402 North 101st Street
Scottsdale, AZ 85258

Realty Executives
4427 North 36th Street
Phoenix, Arizona 85018
Attn: Richard Rector

16. ENTIRE AGREEMENT; AMENDMENTS.

This Agreement constitute the entire agreement between the parties as to the subject matters dealt with in this Agreements. Accordingly, there are no side agreements or verbal agreements other than those which are stated in this document. Any amendment, modification or change in this Agreement must be done so in writing and signed by both parties.

17. SEVERABILITY.

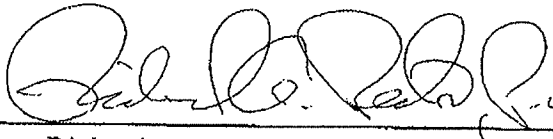
In the event a court or arbitrator declares that any provision of this Agreement is invalid or unenforceable, it shall not affect or invalidate any of the remaining provisions. Further, the court or arbitrator shall have the authority to re-write that portion of the Agreement it deems unenforceable, to make it enforceable.

18. GOVERNING LAW.

The law of the State of Arizona shall govern the interpretation and application of all of the provisions of this Agreement.

IN WITNESS WHEREOF, Realty Executives and Broker have executed this Agreement on this 5th day of November, 1997.

REALTY EXECUTIVES

By: 
Richard Rector, President

"BROKER"

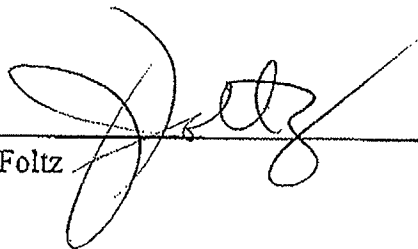

John Foltz

EXHIBIT B

EXHIBIT B

INDEPENDENT CONTRACTOR AGREEMENT

This agreement is entered into as of the date of signing by and between REALTY EXECUTIVES INTERNATIONAL, an Arizona Corporation, and John Foltz, Independent Contractor.

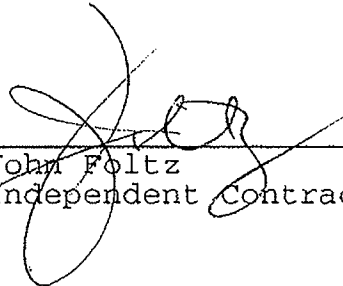
John Foltz shall not be an employee of REALTY EXECUTIVES INTERNATIONAL, but shall be engaged as an Independent Contractor for the purpose of assisting in the instituting of payments from REALTY EXECUTIVES of Phoenix to REALTY EXECUTIVES INTERNATIONAL as franchise fees. The parties recognize REALTY EXECUTIVES of Phoenix will pass those franchise fees along to its own independent contractor agents, and, therefore, the task for which John Foltz is being contracted is to assist in the evolution of the REALTY EXECUTIVES of Phoenix agents from the current situation to the payment of franchise fees.


John Foltz is to apply his best efforts in exposing the REALTY EXECUTIVES of Phoenix agents to the benefits of REALTY EXECUTIVES INTERNATIONAL, thereby allowing the franchise fees to be paid by the agents with the least possible resistance or rebellion.

REALTY EXECUTIVES INTERNATIONAL agrees to cooperate with John Foltz by providing information, services, and materials to support John Foltz in the task described herein.

In consideration of John Foltz efforts in the task described herein, REALTY EXECUTIVES INTERNATIONAL agrees to pay as a fee to John Foltz, 20% of any fees paid or credited to REALTY EXECUTIVES INTERNATIONAL by REALTY EXECUTIVES of Phoenix for so long as John Foltz is employed by Realty Executives of Phoenix.

Entered into this 15th day of January by 1998


John Foltz
Independent Contractor


Rich Rector, for
REALTY EXECUTIVES INTERNATIONAL

rei.jef

EXHIBIT C

EXHIBIT C

**REALTY EXECUTIVES
EQUITY PARTICIPATION PLAN
FOR JOHN FOLTZ**

**ARTICLE I
PREAMBLE**

Realty Executives (the "Company") hereby establishes the Realty Executives Equity Participation Plan (the "Plan"). The purpose of the Plan is to provide John Foltz ("Participant") with the opportunity to share in the Company's success through awards of "Units", each of which represents the value of one share of the Company's common stock.

The Plan is effective as of January 1, 1999 (the "Effective Date").

**ARTICLE II
DEFINITIONS**

2.1 DEFINITIONS.

(a) "**Affiliate**" means (1) a corporation which is a member of the same controlled group of corporations (within the meaning of Section 414(b) of the Code) as is the Company, (2) any other trade or business (whether or not incorporated) controlling, controlled by, or under common control with the Company, and (3) any other corporation, partnership, or other organization which is a member of an affiliated service group (within the meaning of Section 414(m) of the Code) with the Company or which is otherwise required to be aggregated with the Company pursuant to Section 414(o) of the Code.

(b) "**Beneficiary**" means the person or trust that the Participant, in his most recent written designation filed with the Plan Administrator, designates to receive his benefit under the Plan in the event of his death.

(c) "**Board of Directors**" means the Board of Directors of the Company.

(d) "**Cause**" means the termination of the Participant's employment by the Company for any one or more of the following reasons:

(1) The conviction for or admission of theft or embezzlement from the Company or any Affiliate; or

(2) The conviction for or admission of any felony involving moral turpitude that reflects adversely upon the standing of the Company in the community; or

(3) The conviction for or admission of fraud directed at the Company, any Affiliate, or any individual or entity that provides services to or services from, or otherwise deals with the Company or any Affiliate; or

(4) The repeated and material violation by the Participant of any employment agreement with the Company, any written employment policies of the Company, or any reasonable written directives of the Board of Directors of the Company. A violation will not be considered to be "repeated" unless such violation has occurred more than once after receipt of written notice from the Company of such violation.

(e) **"Change of Control"** means any one or more of the following events:

(1) The transfer of any of the Company's common stock to any individual or entity if immediately after such transfer more than 50% of the outstanding common stock of the Company, in the aggregate, is held beneficially by individuals and entities who are not Permitted Transferees;

(2) The transfer of all or substantially all of the assets of the Company to any individual or entity unless the transfer is to an entity and immediately after such transfer Permitted Transferees own a majority of each and every class of outstanding stock or other ownership interest of the entity to which the assets are transferred;

(3) The merger, consolidation, or other business combination of the Company with any other entity, no matter how such combination is structured, unless immediately after such event Permitted Transferees own a majority of each and every class of outstanding stock or other ownership interest of the combined entity;

(4) The approval, in accordance with applicable law, of a plan calling for the liquidation or dissolution of the Company;

(f) **"Company"** means Realty Executives.

(g) **"Disability"** means the inability of the Participant to perform the essential duties associated with his normal position with the Company, after accommodations required by the Americans with Disabilities Act or applicable state law, due to a physical or mental injury or illness that occurs while the Participant is actively employed by the Company, all as determined by the Board.

(h) **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended from time to time.

(i) **"Grant"** means the award of Units to the Participant pursuant to Section 4.1.

(j) **"Normal Retirement Age"** means the Participant's 65th birthday.

(k) **"Participant"** means John Foltz.

(l) **"Permitted Transferees"** means and includes (1) Richard Rector or Robyn Lee Dependahl; (2) any descendant of Richard Rector or Robyn Lee Dependahl; (3) any trust, partnership, corporation, limited liability company, limited liability partnership, or other entity established or created by Richard Rector or Robyn Lee Dependahl, but only if and so long as Richard Rector or Robyn Lee Dependahl is the owner or holder of a majority of all classes or forms of ownership or beneficial interests in such entity that have a right to vote with respect to the management or operation of the affairs of such entity; (4) any "employee benefit plan" (as such term is defined in ERISA) for the benefit of some or all of the employees of the Company or any Affiliate; and (5) the Participant in this Plan.

(m) **"Plan Administrator"** means the Board of Directors of the Company unless the Board appoints a committee to serve as the Plan Administrator pursuant to Section 9.2.

(n) **"Plan Year"** means the calendar year.

(o) **"Unit"** means an amount that represents the Value Per Share of the Company's common stock.

(p) **"Unit Value"** means, as of any Valuation Date, the value for each Unit, which shall be determined by the Value Per Share of the Company's common stock as of such Valuation Date, as determined in accordance with Article V.

(q) **"Valuation Date"** means the last business day of each Plan Year and such other dates as the Plan Administrator may designate.

(r) **"Value Per Share"** means the value assigned to one share of the Company's common stock, as determined pursuant to Section 5.2.

2.2 **CONSTRUCTION.**

Headings and subheadings are for the purpose of reference only and are not to be considered in the construction of this Plan. If any provision of this Plan is determined to be for any reason invalid or unenforceable, the remaining provisions shall continue in full force and effect. All of the provisions of this Plan shall be construed and enforced in accordance with the laws of the state of Arizona to the extent that such laws are not preempted by ERISA.

ARTICLE III ELIGIBILITY

3.1 GENERAL.

Participation in the Plan shall be limited to Participant as evidenced by a Grant Certificate signed by the Plan Administrator and Participant. No other executive shall be eligible to participate in the Plan. For purposes of Title I of ERISA, the Plan is intended to be an unfunded plan of deferred compensation covering a select group of management or highly compensated employees.

3.2 DISCONTINUANCE OF PARTICIPATION.

John Foltz will remain a participant in this Plan for all future Plan Years during which he is actively employed by the Company. The Participant may be entitled to receive distributions pursuant to Section 7.1.

ARTICLE IV GRANTS

4.1 GRANT.

The Plan Administrator will award a Grant of 100 Units to Participant as of the Effective Date. Such Units are intended to represent an amount equal to 20% of the ownership interests of the Company. No additional Units shall be granted to Participant.

ARTICLE V VALUATION

5.1 UNIT VALUE

(a) **UNIT VALUE AT TIME OF GRANT.** The Unit Value for each of the Units granted on the Effective Date shall be equal to the Value Per Share of the Company's common stock as of 12/31/98, determined in accordance with the provisions of Section 5.2. The initial Unit Value may be shown on the Grant Certificate issued for the Units if the Plan Administrator chooses to do so.

(b) **UNIT VALUE AT SUBSEQUENT VALUATION DATES.** As of any subsequent Valuation Date, the Unit Value for each Unit is equal to the Value Per Share of the Company's common stock as of such Valuation Date, determined in accordance with the provisions of Section 5.2.

5.2 VALUATION PROCESS.

The Value Per Share of the Company's common stock as of any Valuation Date shall be determined in accordance with the following valuation process:

(a) CALCULATION OF "EBITDA". The first step in the valuation process shall be the calculation of the Company's earnings before interest, taxes, depreciation amortization charges and amounts payable to the previous owner (Dale and June Rector) for acquisition of the Company's business ("EBITDA") for the fiscal years ending on the relevant Valuation Date and each of the preceding four Valuation Dates. For this purpose, the Company's EBITDA shall be calculated in accordance with generally accepted accounting principles and practices, consistently applied.

(b) CALCULATION OF WEIGHTED AVERAGE EBITDA. The EBITDA for the fiscal year ending on the relevant Valuation Date shall be assigned a weight of five and the EBITDA for the fiscal years ending on the four immediately preceding Valuation Dates (including Valuation Dates preceding the Effective Date) shall be assigned weights of four, three, two and one, with the higher weights being given to the more recent years. The weighted average EBITDA shall then be calculated by multiplying the EBITDA for each of such five fiscal years by the appropriate weight, adding all of the products of such calculation and dividing the result by 15.

For example, assume that a valuation is being conducted as of December 31, 1998 and that the EBITDA and related weighted average calculation for the fiscal years ending on December 31 of the following years is as follows:

<u>Year</u>	<u>Weight</u>	<u>EBITDA</u>	<u>Product</u>
1998	5	\$1,000,000	\$5,000,000
1997	4	\$ 700,000	\$2,800,000
1996	3	\$ 800,000	\$2,400,000
1995	2	\$ 600,000	\$1,200,000
1994	1	\$ 500,000	\$ 500,000
Total			\$11,900,000
Divided by			15
Average EBITDA			\$793,333

It is also acknowledged that John and Rich have agreed that the base year (1998) calculation will be based on the previous three years plus 1998 and the total will be divided by 14, rather than the previous four years plus 1998 being divided by 15. The reason for this is that 1994 had major accounting adjustments and does not fairly represent the true EBITDA of the company. All subsequent years will be calculated as described in the above table.

(c) **APPLICATION OF MULTIPLIER.** The weighted average EBITDA determined pursuant to Section 5.2(b) then shall be multiplied by a capitalization multiple of six to arrive at the assumed value for the entire Company. For example, using the weighted average EBITDA from the illustration included in Section 5.2(b), the value for the entire Company would be \$4,759,998 ($\$793,333 \times 6 = \$4,759,998$).

(d) **CALCULATION OF VALUE PER SHARE.** The value of the entire Company as determined pursuant to the foregoing provisions of this Section shall then be divided by the number of issued and outstanding shares of the Company's common stock to arrive at the Value Per Share of the Company's common stock. Only the outstanding common stock will be used for this purpose. The number of outstanding Units is irrelevant.

5.3 CALCULATIONS CONCLUSIVE.

All calculations required pursuant to this Article shall be made by an independent certified public accounting firm selected by the Company from time to time for this purpose. All such calculations shall be final and conclusive on the Company, the Participants and all parties claiming through the Participant.

ARTICLE VI VESTING

6.1 VESTING.

The Participant's Units shall vest in accordance with the following formula. A weighted average EBITDA shall be calculated as of 12/31/98 ("1998 Weighted EBITDA"). For the first Plan Year ending on 12/31/99, the actual EBITDA calculated as of 12/31/99 shall be compared with the 1998 Weighted EBITDA. The number of Units that may vest, if any, as of 12/31/99 will equal the actual EBITDA calculated as of 12/31/99 minus the 1998 Weighted EBITDA, multiplied by 50%, and then divided by the Unit Value calculated at the time of the Grant. The number of Units which vest shall be rounded to two decimal places.

For the second Plan Year ending on 12/31/00, the actual EBITDA calculated as of 12/31/00 shall be compared with the 1998 Weighted EBITDA. The number of Units that may vest, if any, as of 12/31/00 will equal the actual EBITDA calculated as of 12/31/00 minus the 1998 Weighted EBITDA multiplied by 50%, and then divided by the Unit Value calculated at the time of the Grant (rounded to two decimal places). This calculation shall be made each subsequent year in accordance with the preceding formula until the Units credited to the Participant have completely vested or are forfeited in accordance with the Plan.

Any Units which are not vested shall be forfeited as of the Participant's termination of employment. In addition, if Participant's employment is terminated with Cause as described in Section 2.1(d)(1 through 3), at any time, all Units held by Participant (including both vested and non-vested Units) shall be forfeited and any payments entitled to be made to Participant under the Plan shall cease.

ARTICLE VII PAYMENT OF BENEFITS

7.1 GENERAL RULES.

(a) ENTITLEMENT. The Participant shall be entitled to receive payments from the Company in exchange for the Units previously granted to the Participant that have vested pursuant to Section 6.1 upon the first to occur of the following events.

(1) The Participant's employment is terminated for no reason or for any reason other than for Cause, including retirement on or after his Normal Retirement Age;

(2) The Participant's death while in the employ of the Company;

- (3) The Participant's Disability while in the employ of the Company;
or
(4) A Change of Control while Participant is in the employ of the Company.

(b) **AMOUNT.**

(1) **General.** The payments to which the Participant (or the Participant's Beneficiary in the case of the Participant's death) is entitled pursuant to Section 7.1(a) (1 through 3) shall equal the aggregate Unit Value of all of the vested Units (as determined pursuant to Section 6.1) previously granted to the Participant. The Participant shall not be entitled to receive any payment for Units that have not yet vested and such non-vested Units shall be forfeited pursuant to Section 6.1. For purposes of this Section, the Unit Value shall be determined as of the Valuation Date immediately preceding the Participant's termination of employment.

(2) **Change of Control.** If a Change of Control occurs while the Participant is in the employ of the Company, the general valuation provisions of Sections 5.1 and 5.2 shall not apply. Instead, the value of each vested Unit shall be deemed to be the "Deal Value" of each share of the Company's common stock as a result of the Change of Control. In such case, the Participant shall not be entitled to receive any payment for Units that have not yet vested and such non-vested Units shall be forfeited pursuant to Section 6.1. For purposes of this Section 7.1(b) the "Deal Value" shall equal the amount to be received by a shareholder of the Company in connection with the Change of Control for each share of the Company's common stock, as calculated by the Plan Administrator using generally accepted accounting principles but disregarding any employment arrangements entered into between the shareholder and any acquiring entity.

(c) **TIMING.** Except as otherwise provided in Section 7.1(d), the amount payable pursuant to Section 7.1(b) shall be paid in four annual installments without interest. Each annual installment shall be equal to approximately 25% of the total amount due. The first installment shall be made as soon as possible following the completion of the audit for the fiscal year that ends on the Valuation Date specified in Section 7.1(b). The subsequent installments shall be paid on or within 60 days of the anniversaries of the date of the first installment. If payments are not paid as described in this Section 7.1(c), all delinquent amounts shall accrue interest at an annual rate equal to the prime rate plus 4%.

(d) **CHANGE OF CONTROL.** The amount payable pursuant to this Section shall be paid at the same time and in the same manner (for example, lump sum payments, installment payments, or payments in the stock or debt obligations of the acquiring entity, if applicable) as payments are made to the shareholders of the Company. In the exercise of its discretion, the Plan Administrator may elect to make payments to the Participant at a time or in a manner different than payments are made to shareholders, subject to any adjustments that the Plan Administrator deems to be appropriate (such as reductions to

present value or payments in cash rather than stock or debt obligations) as long as payments are made on terms that are at least as rapid as payments are made to shareholders, and as long as any adjustments are justified by changing liquidity or the quality of the investments, based upon generally accepted investment standards.

7.2 BENEFICIARY DESIGNATIONS.

The Participant has the right to designate, on forms supplied by and delivered to the Plan Administrator, a Beneficiary or Beneficiaries to receive his benefits hereunder in the event of the Participant's death. The Participant may change his Beneficiary designation from time to time in the manner described above. Upon receipt of such designation by the Plan Administrator, such designation or change of designation shall become effective as of the date of the notice, whether or not the Participant is living at the time the notice is received. There shall be no liability on the part of the Company or the Plan Administrator with respect to any payment authorized by the Plan Administrator in accordance with the most recent valid Beneficiary designation of the Participant in its possession before receipt of a more recent and valid Beneficiary designation. If no designated Beneficiary is living when benefits become payable, or if there is no designated Beneficiary, the Beneficiary shall be the Participant's spouse; or if no spouse is then living, the Participant's issue, including any legally adopted child or children, in equal shares by right of representation; or if no such designated Beneficiary and no such spouse or issue is living upon the death of the Participant, or if all such persons die prior to the full distribution of the Participant's benefits, then the Beneficiary shall be the estate of the Participant.

7.3 ACCELERATION OF PAYMENTS.

The Plan Administrator in the exercise of its discretion may accelerate the payment of any benefits due under this Plan without the consent of, and without any liability to, the Participant or Beneficiary.

7.4 SUSPENSION AND CANCELLATION OF PAYMENTS.

To the extent that the Participant breaches any noncompetition provisions provided in the Participant's employment agreement, the Board of Directors of the Company, by written notice to the Participant, may suspend future payments under the Plan for vested Units. Thereafter, if the Board of Directors shall find that the Participant has remained in breach of the noncompetition provisions for a period of one month following such suspension, the Board of Directors may permanently cancel all future payments under the Plan for vested Units, and thereupon, all rights of the Participant under this Plan shall terminate.

If any court of competent jurisdiction determines that any portion of this paragraph is invalid or unenforceable, the remainder of this paragraph shall not thereby be affected and shall be given full effect, without regard to invalid portions. If the noncompetition

provisions of Participant's employment agreement should ever be deemed to exceed the temporal, geographic, or occupational limitations permitted by applicable laws, those provisions shall be and are hereby reformed to the maximum temporal, geographic, or occupational limitations permitted by law to determine whether the Participant breached those provisions for purposes of this Section 7.4.

7.5 WITHHOLDING.

The Company is authorized to withhold from any payments called for by this Plan all withholding and other taxes due to the federal and any state governments and to take such other action as the Company may deem necessary or advisable to enable the Company and the Participant to satisfy obligations for the payment of withholding taxes and other tax liabilities relating to any payment.

7.6 UNITS HOLDER BENEFITS

The Participant is entitled to receive pro rata dividends with respect to his vested Units, only if and when dividends are actually paid to shareholders of the Company. The Participant shall have no right to demand or require that any dividends be paid with respect to his vested Units. These rights shall be attributed to any vested Units held on any dividend record date.

ARTICLE VIII
ADJUSTMENT OF UNITS

8.1 GENERAL.

In the event of any stock dividend, stock split or any other reorganization or combination of shares of common stock, the Plan Administrator shall make appropriate adjustment in the aggregate number of Units that have been granted to the Participant.

ARTICLE IX
ADMINISTRATION OF THE PLAN

9.1 POWERS OF THE PLAN ADMINISTRATOR.

(a) **GENERAL POWERS OF PLAN ADMINISTRATOR.** The Plan Administrator shall have the power and discretion to perform the duties assigned to it in this Plan or required for proper administration of the Plan and shall have all powers necessary to enable it to properly carry out such duties. Without limiting the generality of the foregoing, the Plan Administrator shall have the power and discretion to construe and interpret this Plan, to hear and resolve claims relating to the Plan and to decide all questions and disputes arising under the Plan. The Plan Administrator shall determine, in its discretion, the status and rights of the Participant and the identity of the Beneficiary or Beneficiaries entitled to receive any benefits payable on account of the death of the Participant.

(b) **DISPUTES.** Any disputes involving exercise of these powers shall be resolved in accordance with Article X.

9.2 CREATION OF COMMITTEE.

The Company may appoint a committee to perform the duties of the Plan Administrator by the adoption of appropriate Board of Directors resolutions. The committee must consist of at least two members, and they shall hold office during the pleasure of the Board of Directors. The committee members shall serve without compensation but shall be reimbursed for all expenses by the Company. The committee shall conduct itself in accordance with the provisions of this Article. The members of the committee may resign with 30 days notice in writing to the Company and may be removed immediately at any time by written notice from the Company.

9.3 LIMITATION ON POWERS.

If the Company appoints a committee to serve as the Plan Administrator, all decisions of the Committee concerning the Grant of Units shall be advisory only and shall be subject to the prior approval of the Board of Directors.

9.4 CHAIRMAN AND SECRETARY.

The committee shall elect a chairman from among its members and shall select a secretary who is not required to be a member of the committee and who may be authorized to execute any document or documents on behalf of the committee. The secretary of the committee or his designee shall record all acts and determinations of the committee and shall preserve and retain custody of all such records, together with such other documents as may be necessary for the administration of this Plan or as may be required by law.

9.5 APPOINTMENT OF AGENTS.

The committee may appoint such other agents, who need not be members of the committee, as it may deem necessary for the effective performance of its duties, whether ministerial or discretionary, as the committee may deem expedient or appropriate. The compensation of any agents who are not employees of the Company shall be fixed by the committee within any limitations set by the Board of Directors.

9.6 MAJORITY VOTE AND EXECUTION OF INSTRUMENTS.

In all matters, questions and decisions, the action of the committee shall be determined by a majority vote of its members. They may meet informally or take any ordinary action without the necessity of meeting as a group. All instruments executed by the committee shall be executed by a majority of its members or by any member of the committee designated to act on its behalf.

9.7 ALLOCATION OF RESPONSIBILITIES.

The committee may allocate responsibilities among its members or designate other persons to act on its behalf. Any allocation or designation, however, must be set forth in writing and must be retained in the permanent records of the committee.

9.8 CONFLICT OF INTEREST.

No member of the committee who is the Participant shall take any part in any action in connection with his participation as an individual. Such action shall be voted or decided by the remaining members of the committee.

9.9 ACTION TAKEN BY COMPANY.

Any action to be taken by the Company shall be taken by resolution adopted by the Board of Directors; provided, however, that by resolution, the Board of Directors may delegate to any committee of the Board or any officer of the Company the authority to take any actions hereunder.

9.10 DELEGATIONS OF AUTHORITY.

All delegations of responsibility set forth in this document regarding the determination of benefits and the interpretation of the terms of the Plan confer discretionary authority upon the Plan Administrator.

ARTICLE X
CLAIMS REVIEW PROCEDURE

10.1 CLAIMS.

(a) **FILING OF CLAIM.** The Participant or Beneficiary entitled to benefits need not file a written claim to receive benefits. If the Participant, Beneficiary or any other person is dissatisfied with the determination of his benefits, participation or any other right or interest under this Plan, such person may file a written statement setting forth the basis of the claim with the Plan Administrator in a manner prescribed by the Plan Administrator. In connection with the determination of a claim, or in connection with review of a denied claim, the claimant may examine this Plan and any other pertinent documents generally available to the Participant relating to the claim and may submit comments in writing.

(b) **NOTICE OF DECISION.** A written notice of the disposition of any such claim shall be furnished to the claimant within 30 days after the claim is filed with the Plan Administrator, provided that the Plan Administrator may have an additional period to decide the claim if it advises the claimant in writing of the need for an extension and the date on which it expects to decide the claim. The notice of disposition of a claim shall refer, if appropriate, to pertinent provisions of this Plan, shall set forth in writing the reasons for denial of the claim if the claim is denied (including references to any pertinent provisions of this Plan), and where appropriate shall explain how the claimant can perfect the claim.

10.2 APPEALS.

(a) **REVIEW.** If the claim is denied, in whole or in part, the claimant shall also be notified in writing that a review procedure is available. Thereafter, within 90 days after receiving the written notice of the Plan Administrator's disposition of the claim, the claimant may request in writing, and shall be entitled to, a review meeting with the Plan Administrator to present reasons why the claim should be allowed. The claimant shall be entitled to be represented by counsel at the review meeting. The claimant also may submit a written statement of his claim and the reasons for granting the claim. Such statement may be submitted in addition to, or in lieu of, the review meeting with the Plan Administrator. The Plan Administrator shall have the right to request of and receive from a claimant such additional information, documents or other evidence as the Plan Administrator may reasonably require. If the claimant does not request a review meeting within 90 days after receiving written notice of the Plan Administrator's disposition of the claim, the claimant shall be deemed to have accepted the Plan Administrator's written disposition, unless the claimant shall have been physically or mentally incapacitated so as to be unable to request review within the 90 day period.

(b) **DECISION FOLLOWING REVIEW.** A decision on review shall be rendered in writing by the Plan Administrator ordinarily not later than 60 days after

review, and a written copy of such decision shall be delivered to the claimant. If special circumstances require an extension of the ordinary period, the Plan Administrator shall so notify the claimant. In any event, if a claim is not determined within 120 days after submission for review, it shall be deemed to be denied

(c) **DECISIONS FINAL; PROCEDURES MANDATORY.** To the extent permitted by law, completion of the claims procedures described in this Section shall be a mandatory precondition that must be complied with prior to commencement of a legal or equitable action in connection with the Plan by a person claiming rights under the Plan or by another person claiming rights through such a person. The Plan Administrator may, in its sole discretion, waive these procedures as a mandatory precondition to such an action.

ARTICLE XI
LIMITATION ON ASSIGNMENT; PAYMENTS TO LEGALLY
INCOMPETENT DIBUTEE; CORRECTIONS

11.1 ANTI-ALIENATION CLAUSE.

No benefit which shall be payable under the Plan to any person shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of the same shall be void. No benefit shall in any manner be subject to the debts, contracts, liabilities, engagements or torts of any person, nor shall it be subject to attachment or legal process for or against any person, except to the extent as may be required by law.

11.2 PERMITTED ARRANGEMENTS.

Section 11.1 shall not preclude arrangements for the withholding of taxes from benefit payments, arrangements for the recovery of benefit overpayments, or arrangements for direct deposit of benefit payments to an account in a bank, savings and loan association or credit union (provided that such arrangement is not part of an arrangement constituting an assignment or alienation).

11.3 PAYMENT TO MINOR OR INCOMPETENT.

Whenever any benefit which shall be payable under the Plan is to be paid to or for the benefit of any person who is then a minor or determined by the Plan Administrator to be incompetent by qualified medical advice, the Plan Administrator need not require the appointment of a guardian or custodian, but shall be authorized to cause the same to be paid over to the person having custody of the minor or incompetent, or to cause the same to be paid to the minor or incompetent without the intervention of a guardian or custodian, or to cause the same to be paid to a legal guardian or custodian of the minor or incompetent if one has been appointed or to cause the same to be used for the benefit of the minor or incompetent.

11.4 UNDERPAYMENT OR OVERPAYMENT OF BENEFITS.

In the event that, through mistake or computational error, benefits are underpaid or overpaid, there shall be no liability for any more than the correct amount of benefits under the Plan. Overpayments may be deducted from future payments under the Plan, and underpayment may be added to future payments under the Plan.

ARTICLE XII **AMENDMENT, MERGER AND TERMINATION**

12.1 AMENDMENT.

The Company shall have the right at any time, by an instrument in writing duly executed, acknowledged and delivered to the Plan Administrator, to modify, alter or amend this Plan, in whole or in part; provided, however, that the duties and liabilities of the Plan Administrator shall not be substantially increased without its written consent; and provided further that the amendment shall not adversely affect in any material way the rights or Units granted to the Participant without the written consent of the Participant.

12.2 MERGER OR CONSOLIDATION OF COMPANY.

The Plan shall not be automatically terminated by the Company's acquisition by or merger into any other employer (except to the extent that the acquisition or merger constitutes a Change of Control), but the Plan shall be continued after such acquisition or merger if the successor employer elects and agrees to continue the Plan. All rights to amend, modify, suspend, or terminate the Plan shall be transferred to the successor employer, effective as of the date of the merger. If the acquisition or merger constitutes a Change of Control, the Plan shall automatically terminate and the Participant shall be entitled to receive payments from the Company in accordance with Section 7.1.

12.3 TERMINATION OF PLAN.

It is the expectation of the Company that this Plan will be continued indefinitely. However, continuance of the Plan is not assumed as a contractual obligation of the Company and the right is reserved at any time to terminate this Plan. Such termination shall not adversely affect in any material way the Units granted to the Participant without the written consent of the Participant.

ARTICLE XIII
GENERAL PROVISIONS

13.1 LIMITATION ON PARTICIPANTS' RIGHTS.

Participation in the Plan shall not give the Participant the right to be retained in the Company's employ or to the vesting of any Units in any particular year except to the extent provided under Section 6.1. The Company and the Participant hereby expressly reserve their right to terminate the employment of the Participant as provided for in the Participant's employment agreement.

13.2 STATUS OF PARTICIPANTS AS UNSECURED CREDITORS.


No assets of the Company will be segregated from the general assets of the Company for the payment of benefits under this Plan. If the Company acquires any insurance policies or other investments to assist it in meeting its obligations to the Participant, those policies or other investments will nonetheless remain part of the general assets of the Company. Participation in this Plan does not make the Participant a shareholder of the Company and for all purposes the Participant shall be treated as a general unsecured creditor of the Company.

13.3 HEIRS AND SUCCESSORS.

All of the provisions of this Plan shall be binding upon all persons who shall be entitled to any benefits hereunder, and their heirs and legal representatives.

To signify its adoption of this Plan document, the Company has caused this Plan document to be executed by a duly authorized officer of the Company on this 4th day of Oct, 1999.

REALTY EXECUTIVES

By  Its Chairman & EXECUTIVE V.P.

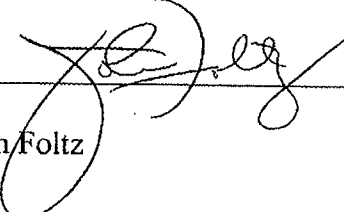
 10-4-99
John Foltz

EXHIBIT D

EXHIBIT D

ADDENDUM TO EMPLOYMENT AGREEMENT

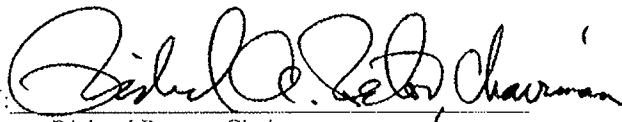
This is an Addendum to the Employment Agreement between John Foltz and Realty Executives, an Arizona Corporation, signed and dated by the parties November 10, 1997.

In Section 9, TERM AND TERMINATION, the date "December 31, 2010," shall be replaced by the date "December 31, 2015."

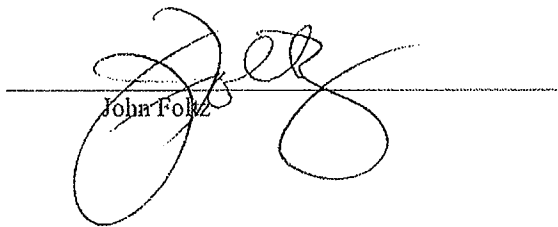
IN WITNESS WHEREOF, Realty Executives and John Foltz have executed this agreement on this 25th day of JULY, 2005.

REALTY EXECUTIVES

BY:

Handwritten signature of Richard Rector in cursive script.

Richard Rector, Chairman

Handwritten signature of John Foltz in cursive script, written over a horizontal line.

John Foltz

EXHIBIT E

EXHIBIT E

JOHN FOLTZ – CONTRACT LABOR CALCULATIONS

8/1/2000

Certain of the tasks done by John are a part of the job description for which he is paid wages as an employee. Other tasks are to be performed by John in the role of outside vendor/consultant, and are not part of the job description for which he is paid as an employee. These non employee activities are to be paid as contract amounts due to True North as an outside vendor.

For consultant, research, lobbying and other work which would otherwise require an outside vendor, John (DBA True North) will be compensated as a vendor/consultant. This will include the task of Profitability Coach for which John is qualified as an outside vendor and not a part of the employee job. Other task which would typically be done by outside consultants, educators, or vendors will, when done by John, be compensated as an outside vendor. This is to recognize the time for these functions is in addition to the time committed for employee duties (40 hour work-week) or in what would otherwise be allocatable as earned vacation time. The amounts indicated below are the initial amounts to be paid for those outside tasks, and will be adjusted from time to time, as the CPI changes, as results improve, and as time, experience, and credibility grow.

	<u>CONTRACT AMOUNT</u>	
Primary speaker at four major educational events per year w/research	\$4,500/ea.	\$18,000
Political lobbying @ NAR to impact future of Association	\$1,000/mo.	\$12,000
Public Relations with other National Franchises including national lobbying	\$ 500/mo.	\$ 6,000
Public Relations with other Realty Executives Franchises	\$ 500/mo.	\$ 6,000
Curriculum Planning @ Realty Executives University	\$ 500/mo.	\$ 6,000
Building Relationships for "Bundle of Services" and "Back-End Services"	\$ 500/mo.	\$ 6,000
Study of Mexican Market Feasibility/U.S. Marketing	\$ 1,000/mo.	<u>\$12,000</u>
Profitability Returns from variable agreement for profitability coach		\$as agreed
TOTAL ANNUAL CONTRACT LABOR		\$66,000

Payable monthly @
\$5500/mo.

To be credited to True North Consulting
Account #113909410, Valley Commerce bank

To be added are smaller speaker and motivational meetings to be conducted throughout the year specifically designed for pragmatic and emotional productivity support at a price to be determined from time to time.

EXHIBIT F

EXHIBIT F

MEMO FROM JOHN FOLTZ

Effective date Date: 8/1/09,
(...prepared 8/12/09)

To: Accounting

Re: Contract Adjustment Effective 8/1/09 – 7/31/10

According to the long-term employment agreement between REALTY EXECUTIVES and myself, there is to be an annual adjustment in the "agent multiplier," the auto allowance, and the annual transaction bonus. This year, part of the adjustment is downward, due to **CPI declining by 1.4%**. This year's adjustment is as follows:

Last Year's Multiplier for 8/1/08 through 7/31/09	\$46.85
Adjustments	
Annual 5% Contractual Increase	2.34
Cost of Living CPI Decrease (-1.4%)	-.66

New Total	Multiplier for 8/1/09 to 7/31/10...	\$48.53
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To be multiplied by the number of active licensees (exclude LOA and SP)

Also, there is a mid month payment made for "Auto Expense Allowance" of ...	\$1445.38
That is to be adjusted by the Cost of Living (CPI) change of -1.4%	20.24

New Total "Auto Expense Allowance" for 8/2009 – 7/2010	\$1425.14
--	-----------

And, finally, the calculation re: Bonus per transaction side, which for the period ending 7/31/08 was \$1.18, should be adjusted for a **CPI decrease by 1.4%**

New Bonus per Transaction Side for 8/2009 – 7/2010.....	\$1.16
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MEMO FROM JOHN FOLTZ

Date: 8/1/08, effective date ...prepared 8/7/08

To: Accounting

Re: Compensation Change Effective 8/1/08 -- 7/31/09

Each year my compensation is adjusted according to the long-term employment agreement between REALTY EXECUTIVES and myself. This year's adjustment is as follows:

Last Year's Multiplier for 8/1/07through 7/31/08 ...	\$42.59
Adjustments Annual 5% Contractual Increase	2.13
Cost of Living CPI Increase (5%)	2.13

New Total Multiplier for 8/1/08 to 7/31/09 \$46.85

To be multiplied by the number of active licensees (exclude LOA and SP)

Also, there is a mid month payment made for "Auto Expense Allowance" of ...	\$1374.32
That is to be adjusted by the Cost of Living (CPI) increase of 5%	71.05

New Total Auto Expense Allowance \$1445.38

And, finally, the calculation re: Bonus per transaction side, which for the period ending 7/31/08 was \$1.12 should be increased by 5%

New Bonus per Transaction Side \$1.18