

1 Anthony J. Dain (Bar No. 98947)
2 anthony.dain@procopio.com
3 Frederick K. Taylor (Bar No. 159838)
4 fred.taylor@procopio.com
5 PROCOPIO, CORY, HARGREAVES & SAVITCH LLP
6 525 B Street, Suite 2200
7 San Diego, CA 92101
8 Telephone: 619.238.1900
9 Facsimile: 619.235.0398

7 David S. Bright (Bar No. 60662)
8 dbright@whiteandbright.com
9 Frederick W. Pfister (Bar No. 260167)
10 fpfister@whiteandbright.com
11 WHITE AND BRIGHT, LLP
12 970 Canterbury Place
13 Escondido, CA 92025
14 Telephone: 760.747.3200
15 Facsimile: 760.747.5574

13 Attorneys for Plaintiffs/Complainants, North San Diego
14 County Association of REALTORS® and Pacific
15 Southwest Association of REALTORS®

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SAN DIEGO, CENTRAL

18 NORTH SAN DIEGO COUNTY ASSOCIATION
19 OF REALTORS®, a California corporation, and
20 PACIFIC SOUTHWEST ASSOCIATION OF
21 REALTORS®, a California corporation,

20 Plaintiffs/Complainants,

21 v.

22 SANDICOR, INC., a California corporation,

23 Defendant/Respondent.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/24/2016 at 03:07:02 PM

Clerk of the Superior Court
By Tamara Parra, Deputy Clerk

Case No.: 37-2016-00037384-CU-MC-CTL

**VERIFIED COMPLAINT FOR
INVOLUNTARY DISSOLUTION OF A
CORPORATION**

1 North San Diego County Association of REALTORS® and Pacific Southwest Association of
2 REALTORS® allege:

3 1. This Complaint is filed pursuant to Corporations Code section 1800. This Court has
4 jurisdiction of this case under Article VI, section 10 of the California Constitution because it is not
5 a cause given by statute to other trial courts.

6 2. Defendant/Respondent SANDICOR, INC., (“Sandicor”) is a corporation duly
7 organized and existing under the laws of the State of California, and has its principal office located
8 in the City of San Diego, San Diego County, California. Accordingly, venue is proper in this
9 judicial division.

10 3. Sandicor is not subject to the Banking Law, Public Utilities Act, Savings
11 Association Law, or Insurance Code Sections 1010-1062.

12 4. North San Diego County Association of REALTORS® (“NSDCAR”) and Pacific
13 Southwest Association of REALTORS® (“PSAR”) (collectively, “Complainants”) are the holders
14 of record of an aggregate of approximately 35% of the shares of Sandicor.

15 5. Sandicor presently has three shareholders: NSDCAR, PSAR, and San Diego
16 Association of REALTORS® (“SDAR”).

17 6. Sandicor is a close corporation as evidenced by the statement to that effect
18 contained in the articles of incorporation, a copy of which is attached hereto as “Exhibit A” and
19 made a part hereof.

20 **GENERAL ALLEGATIONS**
21 **(History of Sandicor)**

22 7. Sandicor was founded in 1991 by eleven Associations of REALTORS® (“AOR”) in
23 San Diego County for the purpose of merging the then separate Multiple Listing Services (“MLS”)
24 operating in the County into one consolidated database. Sandicor provides a means for real estate
25 professionals to establish contractual offers of cooperation and compensation with each other, and
26 to facilitate the sharing of information of properties for sale between subscribers to the MLS.

27 8. Several mergers and consolidations have taken place since Sandicor’s founding
28 between the AORs, and currently Sandicor has three AOR Shareholders: NSDCAR, PSAR, and

1 SDAR.

2 9. Each AOR is affiliated with, and is governed by, the California Association of
3 REALTORS® (“CAR”) and the National Association of REALTORS® (“NAR”), respectively the
4 California and national trade organizations for real estate agents and brokers.

5 10. Complainants are informed and believe and based thereon allege that at the time that
6 Sandicor was formed, SDAR had the majority of REALTOR® members throughout San Diego
7 County, which conferred significant market power on SDAR within the region. Due to the large
8 number of members of SDAR, the other AORs, including those AORs that became NSDCAR and
9 PSAR, were concerned that by sharing MLS data and information with a larger AOR like SDAR
10 (through Sandicor), it could lead to dominance by that larger AOR. Therefore, the other AORs
11 were only willing to give up a portion of their independence and provide their data and information
12 to Sandicor, so long as SDAR or another AOR would not be able to dominate the governance of
13 Sandicor. Accordingly, the AORs agreed that there would be specific protections within the
14 governance of Sandicor that protected smaller and less powerful AORs.

15 11. These protections were incorporated into Sandicor’s governing documents,
16 including its Articles of Incorporation, a Shareholders Agreement, and other documents, that
17 constrained the power of SDAR, or another AOR, to dominate the governance of Sandicor and take
18 actions to exclusively benefit itself.

19 12. Complainants are informed and believe and based thereon allege that as of August
20 1991, the predecessors-in-interest of Complainants and SDAR entered into Articles of
21 Incorporation for Sandicor, to establish Sandicor as an independent entity. In addition, the
22 Shareholders also entered into a Shareholders Agreement, dated July 25, 1994, to govern Sandicor
23 and define the benefits and burdens of being a Shareholder in Sandicor.

24 **(Second Shareholders Agreement)**

25 13. The Shareholder’s Agreement was amended by the Shareholders several times,
26 resulting in the now-operative Second Amended and Restated Shareholders Agreement of
27 Sandicor, Inc., entered into and effective May 10, 1999 (the “Second Shareholders Agreement”),
28 which preserves the voting structure and protections for AORs that had a minority of Shares in

1 Sandicor. The Second Shareholder Agreement is attached to this Petition as “Exhibit B” and made
2 a part hereof.

3 14. The Second Shareholder Agreement sets forth that Sandicor has both
4 “Shareholders” and “Shares.” Each AOR is a single Shareholder, and Shares are allocated to each
5 AOR based upon the number of REALTORS® in the AOR. To represent each Shareholder on
6 Sandicor’s Board of Directors, each Shareholder is permitted to appoint independent Directors. As
7 defined in the Second Shareholders Agreement, each Director is then entitled to a certain number
8 of votes based upon its AOR’s number of Shares, checked by a floor of minimum and a ceiling of
9 maximum representation.

10 15. At the present time, SDAR has two Directors, entitled to a total of four Director
11 votes, but like the other AORs, is a single Shareholder with only one Shareholder vote. NSDCAR
12 has identical representation to SDAR, two Directors, four Director votes, and a single Shareholder
13 vote. PSAR is also one of the three Shareholders with a single Shareholder vote. It has two
14 Directors, but due to its smaller size, has only three Director votes.

15 16. While the number of Shares may fluctuate between the AORs, the number of
16 Shareholders and the Director representation does not. This distinction is important because the
17 Second Shareholders Agreement specifically defines “Major Corporate Resolutions” that need the
18 consent of not only two thirds of the Shares, but also the consent of two of the three Shareholders.
19 Major Corporate Resolutions under the Second Shareholders Agreement include, but are not
20 limited to: 1) decisions that substantially change the corporate structure of Sandicor, including the
21 admission of new Shareholders; 2) amendments to the Articles; and 3) capital expenditures.

22 17. The purpose of the limitations within the Second Shareholders Agreement with
23 regard to voting rights of Shareholders was to constrain the power of any one AOR that sought to
24 dominate, manipulate, and/or dissolve Sandicor, or its voting structure, to the potential detriment of
25 the other minority AORs.

26 18. The check on the power of any one AOR to dominate Sandicor is borne out by the
27 terms of the Second Shareholder Agreement which provides that Sandicor was to be, and always
28 shall remain, a close corporation, stating, in pertinent part, that “[e]ach of the Shareholders agree

1 that during the term of this Agreement such Shareholder will take such additional actions as may
2 be necessary to maintain the status of SANDICOR as a ‘close corporation’ and will refrain from
3 taking any action that would jeopardize such status.”

4 **(Unresolvable Conflicts Between Complainants and SDAR Concerning Sandicor)**

5 19. Complainants are informed and believe and based thereon allege that in or about
6 2006, SDAR began to be controlled by a small group of directors and executives, led by its then-
7 new Chief Executive Officer, Michael Mercurio. Mr. Mercurio and SDAR have made multiple
8 attempts to wrest control of Sandicor and/or its assets so that the Sandicor assets could be used
9 principally for the benefit of SDAR (or SDAR’s organization), and to the detriment of
10 Complainants’ members.

11 20. Since 2006, there have been multiple unresolvable conflicts between Complainants
12 and SDAR over the governance of Sandicor such that those conflicts have culminated in SDAR
13 filing a federal lawsuit against both Complainants and Sandicor.

14 21. Among the unresolvable conflicts directly impacting Sandicor and the rights of
15 Complainants as shareholders is a disagreement concerning SDAR’s attempts to obtain an
16 unfettered data feed from the Sandicor MLS database. SDAR contends that it has an absolute right
17 to use such data in its own revenue generating website, and that the website should include MLS
18 listings from Complainants’ members.

19 22. Complainants contend that SDAR does not have unfettered rights to such data,
20 because each MLS listing is the property of the individual real estate professional who may
21 voluntarily opt to have his or her data included in SDAR’s website. SDAR has thus attempted to
22 strong-arm Sandicor into providing MLS data from Complainants’ members without their consent
23 or authorization.

24 23. Complainants are informed and believe and based thereon allege that SDAR wants
25 to use the unfettered MLS data feed in a website for a venture called Just Knock, LLC. Upon
26 information and belief, official documents filed on behalf of Just Knock, LLC with the California
27 Secretary of State reflect that Just Knock, a limited liability company, is managed by all of Just
28 Knock’s members (i.e., Paragraph 5 of the Articles of Organization of Just Knock LLC, filed

1 December 30, 2014), and that its managers are Donna Sanfilippo, Bob Kevane, Cory Shepard, and
2 Rob McNeilus (i.e., Just Knock's Statement of Information, paragraph 9, filed May 11, 2015 with
3 the California Secretary of State). Upon information and belief, SDAR wants to use the unfettered
4 MLS data feed for an entity in which individuals, not SDAR, may have an ownership interest.

5 24. Complainants are informed and believe and based thereon allege that SDAR has
6 repeatedly sought to replace the management of Sandicor (over Complainants' objections) and
7 replace it with management which would serve SDAR's goals. SDAR has also attempted to obtain
8 the contested MLS data from a third party. When all of those efforts failed, SDAR filed the federal
9 lawsuit, which is now pending.

10 25. Another unresolvable conflict arises because of the voting structure of Sandicor. As
11 a result of the above-referenced voting structure, which requires two thirds of the shares and two
12 shareholder votes in order to pass Major Corporate Resolutions, there is effectively a deadlock
13 between the AORs on such resolutions. While the Complainants have two shareholder votes, they
14 cannot pass a Major Corporate Resolution because they collectively lack two thirds of shares.
15 Similarly, SDAR cannot pass a Major Corporate Resolution because although it currently claims to
16 have two thirds of shares, it only can only get consent from a single shareholder, itself. Thus,
17 Complainants and SDAR are hopelessly deadlocked on passing Major Corporate Resolutions. This
18 deadlock prevented Sandicor from authorizing an upgrade to its computer hardware for over six
19 months.

20 26. As another example and without limitation, when the Sandicor Board voted to form
21 an ad hoc committee to merely explore a possible merger or data sharing agreement with CRMLS,
22 a statewide MLS service, SDAR's Sandicor directors voted against forming the ad hoc committee.
23 At that same Sandicor Board meeting, Mr. Mercurio, SDAR's CEO, stated emphatically that
24 SDAR's representatives on the Sandicor Board would never approve such a merger or data sharing
25 agreement. He so stated without even knowing the advantages of such a merger or data sharing
26 agreement, and apparently he did so acting as the de facto SDAR board of directors. This deadlock
27 similarly prevented business to be conducted to the advantage of the shareholders.

28 27. These and other deadlocks likewise prevent other business of Sandicor to be

1 conducted with advantage to the shareholders.

2
3 **(SDAR's Improper Attempts to Control Sandicor)**

4 28. The provisions of the Articles and Second Shareholders Agreement restricting the
5 close corporate status and requiring multiple Shareholder approval of certain actions reveal that
6 non-SDAR AORs were concerned at the inception of Sandicor about a dominant Shareholder
7 taking control of Sandicor and then using it for the exclusive benefit of that dominant Shareholder.
8 All the Shareholders of Sandicor, including SDAR, agreed that Sandicor would remain a close
9 corporation and they would refrain from taking any action to jeopardize that status.

10 29. Complainants are informed and believe and based thereon allege that in spite of this
11 agreement, SDAR has failed in its attempts to force the Shareholders of Sandicor to agree to
12 abolish the close corporate status of Sandicor so as to dominate governance of the MLS. The worn-
13 out refrain from SDAR is that it has more Realtor members than the other two AORs combined
14 and therefore should have more voting power at Sandicor. But SDAR had a majority of Realtor
15 members in 1991 when Sandicor was formed and when SDAR agreed to the present voting
16 structure of Sandicor which it now does not like and wishes to ultimately abolish. The Second
17 Shareholders Agreement is a contract to which all AORs, including SDAR, agreed to in writing,
18 upon advice of counsel. However, SDAR now wishes to ignore that agreement because it does not
19 fit within its vision of dominating Sandicor and the other AORs so as to profit on the hard-earned
20 and proprietary listings of the county's brokers and agents.

21 30. Complainants are informed and believe and based thereon allege that when SDAR's
22 attempts to change the close corporate status and governance of Sandicor failed, it then engaged in
23 uncompetitive conduct to increase its members in an attempt to wrest control of Sandicor. SDAR
24 engaged in this conduct under the mistaken belief that if it obtained two-thirds of the shares of
25 Sandicor by taking members from Complainants, it could pursue its stated goal of abolishing the
26 close corporate status of Sandicor.

27 31. Complainants are informed and believe and based thereon allege that SDAR has
28 also attempted to have its vote on Sandicor's Board of Directors increased from 33.3% of the total

1 to 50% in an attempt to seize more control of Sandicor. That effort ultimately failed.

2
3 **(SDAR's Litigation and Threats of Litigation Against Sandicor and Complainants)**

4 32. In or about 2011, SDAR had previously threatened that if its governance of
5 Sandicor is not strengthened, it would file an action for involuntary dissolution of the corporation.

6 33. On January 14, 2016, SDAR filed a lawsuit against Sandicor and the Complainants
7 in the United States District Court for the Southern District of California, entitled *San Diego*
8 *Association of REALTORS® v. Sandicor, Inc., et al.*, Case No. 16-CV-00096-MMA-KSC.

9 34. The lawsuit filed by SDAR alleges a wide variety of claims against Sandicor and
10 Complainants, including (i) antitrust; (ii) breach of fiduciary duty; (iii) waste of corporate assets;
11 (iv) violations of the Corporations Code; (v) unfair competition or business practices; (vi) breach of
12 contract; (vii) breach of the implied covenant of good faith and fair dealing; (viii) intentional
13 interference with contractual relations; and (ix) declaratory judgement.

14 35. The lawsuit is plain evidence of the internal dissention between the Shareholders
15 and likewise documents the extent to which the factions of Shareholders are deadlocked.

16 **CAUSE OF ACTION**
17 **(Involuntary Dissolution – Cal. Corp. Code § 1800 re: Sandicor, Inc.)**

18 36. Complainants hereby reallege and incorporate by reference, as though fully set forth
19 herein, paragraphs 1 through 35 above.

20 37. Complainants are informed and believe and based thereon allege that, based on the
21 facts alleged above, there is internal dissension in Sandicor and two factions of shareholders in
22 Sandicor are so deadlocked that its business can no longer be conducted with advantage to its
23 shareholders. (Cal. Corp. Code § 1800(b)(3).)

24 38. Complainants are informed and believe and based thereon allege that, as evidenced
25 by the facts described above, SDAR, which controls nearly two-thirds of the outstanding shares of
26 Sandicor, has knowingly countenanced persistent and pervasive mismanagement, or persistent
27 unfairness to Complainants. (Corp. Code § 1800(b)(4).)

28 39. Complainants are informed and believe and based thereon allege that, as evidenced

1 by the facts described above, liquidation is reasonably necessary for the protection of the rights and
2 interests of NSDCAR and PSAR. (Corp. Code § 1800(b)(5).)

3 40. Importantly, Sandicor must not be dissolved in such a way that a single Shareholder
4 AOR obtains complete control over the Sandicor's MLS database asset. Such a result would be
5 grossly inequitable. As alleged previously, Sandicor's Shareholders fundamentally disagree
6 regarding how the MLS data currently should be used and shared. This disagreement gave rise to
7 the parties' litigation in the United States District Court for the Southern District of California. In
8 particular, Complainants do not agree with SDAR's unauthorized use, marketing, and/or licensing
9 of the MLS data belonging to Complainants' members. Complainants believe and SDAR disagrees
10 that the shareholders of Sandicor are contractually bound by their service center agreements with
11 Sandicor limiting each shareholder's use of the MLS data.

12 41. Additionally, Complainants are informed and believe and based thereon allege that
13 if SDAR's leadership acquired sole control of Sandicor's MLS database, it would improperly
14 utilize the disputed MLS data to their own financial advantage and to the disadvantage of the
15 underlying members whom Complainants represent. This distribution structure would be even
16 more detrimental than not dissolving Sandicor at all.

17 42. Thus, in order to protect the rights and interests of each of the Shareholder AORs
18 and the members they represent, Sandicor must be equitably dissolved in such a way that its
19 primary asset (the shared MLS database) is distributed fairly. That is, no single Shareholder AOR
20 should be able to acquire the Sandicor MLS database in its current form and in such a way that it
21 could maintain the subscribers from all three AORs.

22 43. Further, in order to protect the rights and interests of each of the Shareholder AORs
23 and the members they represent, any derivative of the current Sandicor MLS database must be
24 maintained with rights to participate in a data share agreement with the Shareholder AORs. Likely,
25 the data share agreement would be between a statewide MLS service (to which Complainants'
26 members would subscribe) and a new MLS service maintained by SDAR for its members. Such a
27 data share agreement would allow the members of all three Shareholder AORs to not only maintain
28 their access to county-wide listings, but would also allow access to statewide listings. Further, the

1 members of the Shareholder AORs should have the right to opt-in to sharing their individual MLS
2 listing data with third-parties. This distribution structure would enable each AOR member to
3 utilize their own MLS data as they see fit.

4 44. Additionally, the corporate name "Sandicor" should not be allowed to be used or
5 acquired by a single AOR Shareholder. The goodwill associated with Sandicor cannot be equitably
6 distributed if a single AOR Shareholder has the exclusive use and/or control of the Sandicor name.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Complainants pray as follows:

- 9 1. That the court decree a winding up and dissolution of Sandicor;
10 2. That the court entertain such proceedings as may be necessary or proper for the involuntary
11 winding up or dissolution of Sandicor and, in that regard, make such orders for winding up
12 and dissolution of Sandicor as justice and equity require;
13 3. For costs of suit herein incurred; and
14 4. For such other and further relief as the court may deem proper.

15
16 DATED: October 24, 2016

PROCOPIO, CORY, HARGREAVES & SAVITCH
LLP

17
18
19 By: _____

Anthony J. Dain
Frederick K. Taylor

20
21 David S. Bright
Frederick W. Pfister
22 White and Bright, LLP

23 Attorneys for Plaintiffs/Complainants
24 North San Diego County Association of
25 Realtors and Pacific Southwest Association of
26 Realtor
27
28

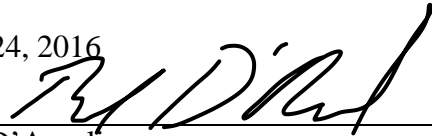
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Richard D'Ascoli, am a representative of one of the Complainants in this action. I have read the foregoing complaint and know the contents thereof. The same is true to my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

October 24, 2016



Richard D'Ascoli

EXHIBIT A

1697054

FILED
In the office of the Secretary of State
of the State of California

ARTICLES OF INCORPORATION

AUG 27 1991

OF

March Fong EU
MARCH FONG EU, Secretary of State

SANDICOR, INC.

I

The name of this corporation is SANDICOR, Inc.

II

This corporation is a close corporation. All of the corporation's issued shares of stock, of all classes, shall be held of record by not more than 35 persons.

III

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

IV

(a) **Liabilities of Directors.** The liability of directors of this corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

(b) **Indemnification Generally.** This corporation is authorized to provide indemnification of agents (as defined in Section 317 of the Corporations Code) for breach of duty to the Corporation and its stockholders through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code.

V

The name and address in the State of California of this corporation's initial agent for service of process is:

Manley Bland
c/o Carlsbad Association of REALTORS®
5120 Avenida Encinas
Suite A
Carlsbad, CA 92008

VI

This corporation is authorized to issue only one class of shares of stock designated as "Common Stock". The total number of shares of Common Stock which this corporation is authorized to issue is 100,000.

VII

Each shareholder shall be entitled to one vote, regardless of the number of shares owned.

VIII

The directors of this corporation are hereby granted power and authority to levy and collect from time to time, as in their discretion they may deem advisable, assessments upon all of the shares of stock of this corporation at any time issued and outstanding, and shall have and enjoy all of the rights and privileges with reference to such assessments as are fixed, provided and established by law in respect to corporations the directors of which have such power of assessment; provided, however, neither any assessment nor the levy thereof shall create any personal liability whatsoever on the part of any shareholder of this corporation.

IX

No shareholder may sell, transfer or hypothecate his shares in this corporation without first tendering such shares to the corporation for reacquisition. The formula for determining the value of shares to be repurchased and method of repayment shall be as stated in the Buy Out Agreement.

IN WITNESS THEREOF, the undersigned incorporators have executed these Articles this 12th day of July, 1991.

Carlsbad Association of REALTORS®

by: Barbara McClain Drummond
Barbara McClain Drummond, President

Coronado Association of REALTORS®

by: Malcolm Jolley
Malcolm Jolley, President

East San Diego County Board of REALTORS®

by: Margaret C. Whitehead
Marge Whitehead, President

Escondido Association of REALTORS®

by: Robert E. Brewbaker
Robert Brewbaker, President

Fallbrook Association of REALTORS®

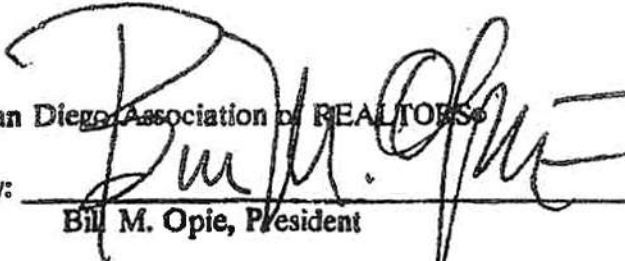
by: Glen A. Sharp
Glen A. Sharp, President

Oceanside Association of REALTORS®

by: Larry L. Hoover
Larry L. Hoover, President

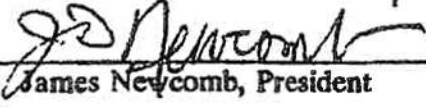
San Diego Association of REALTORS®

by:


Bill M. Opie, President

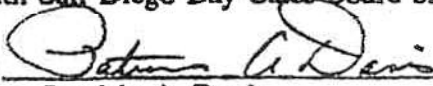
San Diego Association of REALTORS®

by:


James Newcomb, President

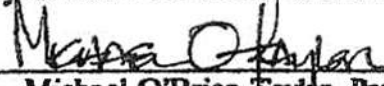
South San Diego Bay Cities Board of REALTORS®

by:


Patricia A. Davis

Valley Center Association of REALTORS®

by:


Michael O'Brien Taylor, President

Vista Board of REALTORS®

by:

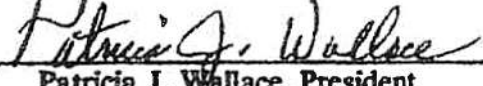

Patricia J. Wallace, President

EXHIBIT B

SECOND AMENDED AND RESTATED
SHAREHOLDERS AGREEMENT

OF

SANDICOR, INC.
(A California Corporation)

This Agreement is entered into and effective on this 2 day of July, 1999, by and among the undersigned Shareholders (individually referred to as "Shareholder" or collectively referred to as "Shareholders") of SANDICOR, Inc. ("SANDICOR"), a close corporation as defined in Sec. 158 of the California General Corporation Law.

WHEREAS, the Shareholders entered into a Shareholders' Agreement dated as of December 19, 1991; and

WHEREAS, the Shareholders entered into an Amended and Restated Shareholders Agreement dated as of July 25, 1994; such instrument was amended on March 27, 1995 and February 13, 1996; and

WHEREAS, the Shareholders desire again to amend and restate the aforementioned agreement;

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the Shareholders hereby amend and restate in its entirety the aforementioned agreement as follows:

1. Voting Rights

1.1 Each share of capital stock of SANDICOR (each "Share") shall entitle the holder thereof to one vote on all matters presented to the Shareholders, except as provided in Section 3.1 below.

2. Ownership Interest in the Corporation's Shares

2.1 The distributive share of each Shareholder may vary from year to year and is determined by the number of participants and subscribers enrolled for MLS services through such Shareholder. The number of SANDICOR participants and subscribers enrolled for MLS services through a Shareholder on April 1 each and every year, as reflected by the

information in the Compass system (or the then-current MLS data system) and verified by each Shareholder, shall determine the distributive share for each Shareholder for the following twelve months.

2.1.1 As used herein, the term "distributive share" shall mean the right of a Shareholder to receive a transfer of cash or property from SANDICOR without consideration, whether by way of dividend, distribution of assets upon dissolution and winding up or otherwise, excluding any transfer of cash or property pursuant to the Buy-Out Agreement dated December 19, 1991, as amended, entered into among the Shareholders (the "Buy-Out Agreement").

2.1.2 As used herein, the term "participant" shall mean a California-licensed real estate broker or licensed or certified appraiser who is authorized to use the SANDICOR MLS pursuant to the SANDICOR MLS Rules and Regulations and who is not within any class of inactive status including, without limitation, leave of absence or waiver.

2.1.3 As used herein, the term "subscriber" shall mean a California-licensed real estate agent or licensed or certified appraiser who is associated with a participant and who is authorized to use the SANDICOR MLS pursuant to the SANDICOR MLS Rules and Regulations and who is not within any class of inactive status including, without limitation, leave of absence or waiver.

2.2 The number of Shares held by each Shareholder shall be determined on April 1 of each year and shall be equal to the total number of REALTOR® members on such date of such Shareholder, as published by the California Association of REALTORS.

3. Board of Directors

3.1 Notwithstanding Section 2 above, at each annual meeting of the Shareholders, or at such time when pursuant to the bylaws a Shareholder is otherwise entitled to appoint directors, each Shareholder shall be entitled to appoint one director and may appoint two directors if the number of MLS participants and subscribers enrolled for MLS services through such Shareholder divided by 750, with the quotient thereof rounded to the next higher whole number, is 3 or greater. Each

director of a Shareholder entitled to appoint one director, and the aggregate of the directors of each Shareholder entitled to appoint two directors, shall have a weighted vote based on the following formula: Not less than one vote and not exceeding four votes equal to the number of MLS participants and subscribers enrolled for MLS services through such Shareholder, divided by 750 with the quotient thereof rounded to the next higher whole number. Each Shareholder entitled to appoint two directors shall specify in writing to the president or secretary of SANDICOR those number of votes each of its directors are entitled to cast from among the aggregate number of votes held provided, however, that if (i) one such director should fail to attend a meeting of the Board of Directors, the other director of such Shareholder in attendance may cast all votes held in the aggregate by the directors appointed by such Shareholder and (ii) if both directors are present at a meeting of the Board of Directors but the Shareholder has failed to specify those number of votes each director is entitled to have, the director serving a one-year term (or the most recently appointed director, as applicable) shall have one vote and the director serving a two-year term (or the director not most recently appointed) shall have the remaining votes. Each Shareholder may designate in writing to the president or secretary of SANDICOR from time to time prior to any Board of Directors meeting one alternate individual (who is qualified pursuant to Paragraph 3.1.1 below) to exercise all powers of the duly appointed director(s) of such Shareholder at the meeting or meetings so designated.

3.1.1 Each director, at the time of his or her appointment and at all times during his or her term, shall be a resident of the State of California and a REALTOR® member of the Shareholder which appointed such director and shall not be an officer or a director of any Shareholder of SANDICOR including, without limitation, of the Shareholder so appointing such director.

3.1.2 At the annual meeting of the Shareholders occurring on the date of this Agreement, the directors appointed shall be divided by lot into two groups, one such group to consist of four directors who hold two-year terms and the other such group to consist of three directors who hold one-year terms provided, however, that each director selected by a Shareholder entitled to appoint two directors to serve an initial one-year term pursuant to Paragraph 17.3 of the Bylaws of SANDICOR shall be included in the group of three directors holding a one-year term. Directors shall assume office on January 1 of the calendar

year immediately following the year in which such meeting occurred.

- 3.1.3 The Bylaws of SANDICOR shall not allow any employee of SANDICOR to serve as a voting director of SANDICOR.
- 3.2 Each director appointed pursuant to Paragraph 3.1 above, including any officer, shall cease to be a director upon tender by the Shareholder who had appointed such director of a notice of intention to transfer pursuant to Paragraph 3.1 of the Buy-Out Agreement or upon knowledge by SANDICOR of any event of involuntary transfer by such Shareholder pursuant to Paragraph 3.2 of the Buy-Out Agreement.
- 3.3 Thirty days after the acceptance for filing by the California Secretary of State of an agreement of merger among two or more Shareholders, the respective offices of the directors of SANDICOR appointed by the constituent merging entities shall be deemed vacant; following such thirty-day period, or upon the earlier giving of written notice of resignation by each of such directors in the manner provided in the Bylaws, the resulting or surviving entity shall appoint a number of directors of SANDICOR pursuant to Paragraph 3.1 above determined by reference to the aggregate number of REALTOR® members of the constituent merging entities on the immediately preceding April 1.

4. Required Vote for Corporate Resolution

- 4.1 ~~The following transactions shall require approval by not less than two-thirds of the total number of votes of the directors:~~
- (1) Employment or removal of officers.
 - (2) Renewal or change of MLS vendors.
 - (3) Amending the Articles of Incorporation or the Bylaws.
 - (4) Admission or removal of a Shareholder.
 - (5) Levying an assessment.
- 4.2 To pass a Major Corporate Resolution, as hereinafter defined in Paragraph 4.3 below, the holders of not less than two-thirds of the

outstanding Shares cast by not less than two Shareholders must vote or give their written consent in favor of the resolution.

- 4.3 A Major Corporate Resolution shall be defined as follows:
- (1) Any decision that effects future or new capital contributions by the Shareholders to the corporation.
 - (2) Any decision that substantially changes the corporate structure, including but not limited to, the admission of new Shareholders, or entering into an agreement with any other Board of REALTORS® or Shareholder.
 - (3) Amendment of the Articles of Incorporation.
 - (4) Approval of annual budget if such budget reflects an increase in expenditures greater than 10% of expenditures budgeted for the immediately preceding fiscal year.
 - (5) Approval of any one capital expenditure in excess of \$25,000 and capital expenditures in the aggregate during any fiscal year in excess of \$50,000; as used herein the term "capital expenditure" shall mean such amounts for which no deduction from income is allowed pursuant to section 263(a) of the Internal Revenue Code of 1986, as amended, or successor statute.
- 4.4 Nothing herein shall limit the power of the Board of Directors to incur additional expenditures or adjustment of fees or any expenditure needed to effectively and efficiently maintain the business purpose of SANDICOR.
- 4.5 Any action which would change the voting rights or limitations of the Shareholders shall be approved by the holders of not less than two-thirds of the outstanding Shares cast by not less than two Shareholders. Those provisions of the Bylaws in effect on the date hereof requiring the vote or consent of the holders of greater than a majority of the Shares of SANDICOR are hereby adopted by the Shareholders as an additional shareholders agreement.

5. Permission to Mandate Submission of Listings

Each Shareholder hereby gives SANDICOR permission to mandate the submission of listings of property located within the SANDICOR jurisdiction by SANDICOR Participants in accordance with SANDICOR rules.

6. Buy-Out Agreement

In the event the provisions of this Agreement conflict with the provisions of the Buy-Out Agreement the provisions of this Agreement shall prevail.

7. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of California.

8. Transferees, Successors or Assignees

Whether by voluntary sale, transfer and/or assignment, by operation of law or otherwise, all transferees, successors or assignees of the shares of SANDICOR shall be subject and bound by the terms and conditions of this Agreement as though such person was a signatory hereto.

9. Further Assurances

Each of the Shareholders agree that during the term of this Agreement such Shareholder will take such additional actions as may be necessary to maintain the status of SANDICOR as a "close corporation" and will refrain from taking any action that would jeopardize such status.

10. Severability

If any provision of this Agreement shall be declared by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect.

11. Filing of Agreement

A copy of this Agreement shall be filed with the Secretary of SANDICOR for inspection by any prospective purchaser of shares of SANDICOR.

IN WITNESS THEREOF, the parties hereto have signed this Agreement on the day and year first above written.

Coronado Association of REALTORS®,
a California nonprofit corporation

By: *Robert Schull*
President

By: *A. Scott [Signature]*
Executive Officer

East San Diego County Association of REALTORS®,
a California nonprofit corporation

By: _____
President

By: _____

San Diego Association of REALTORS®,
a California nonprofit corporation

By: _____
President

By: _____