

## EXPERT WITNESS RETAINER AGREEMENT

Katie Fones, Realtor (DRE #02028807), ("FONES") will render, on the terms set forth below, expert witness services and testimony to Party #1 and Party #2, ("CLIENTS"), regarding evaluation and potential testimony about the value of certain real property located at \_\_\_\_\_, San Francisco, CA in the case styled as \_\_\_\_\_.

**Conditions.** FONES will provide all appropriate and reasonable services, in her discretion, to accomplish the purpose set forth herein. However, CLIENTS understand and have been advised by FONES that there are no guarantees or assurances of a specific outcome. Although FONES has given her preliminary opinion, based upon telephone conversations with CLIENTS and their Attorney of Record, \_\_\_\_\_, FONES has not completed all research, study, and review of the matter. Accordingly, CLIENTS accept the risk that once FONES does complete that work, FONES'S opinion might not be one that the CLIENTS desire. In that event, CLIENTS understand that it will not under any circumstances receive a refund of any money for hours of legal services, and any expenses that FONES already has incurred.

FONES also does not guarantee that she will be accepted by the Court in this matter as an expert witness. Although FONES believes that her experience and qualifications indicate that she is an expert in this field, and that the Court should qualify her as one, if the Court fails to do so, CLIENTS understand that they will not be entitled to a refund of any amounts that FONES has already charged for her time spent on this matter.

**Expert Witness Fees.** Katie Fones will be compensated for fees relating to services rendered by CLIENTS paying at the rate of \$300 per hour. FONES will charge for all activities undertaken in providing expert witness services to CLIENTS under this Agreement, including, but not limited to, the following: conferences, court sessions, depositions (i.e., preparation and participation), prepare and review correspondence, review legal documents, telephone conversations, travel time, and waiting time for, including but not limited to, court appearances, depositions, and meetings.

In order to retain FONES and to secure payment of the initial hourly fees, CLIENTS shall deposit, either before or not later than delivery of this executed Agreement, the sum of \$10,000 (Ten Thousand U.S. Dollars). FONES shall apply this retainer deposit as compensation for hours of services as they are accumulated, including for services provided and costs incurred prior to the execution of this Agreement (i.e., see Paragraph 10 below).

**THIS RETAINER DEPOSIT IS FULLY REFUNDABLE, BUT ONLY AS TO AMOUNTS WHICH FONES HAS NOT YET ACCRUED IN HOURS OF SERVICE OR IN EXPENSES.**

CLIENTS shall make the deposit by bank wire transfer, using wiring information for FONES which she will provide under separate cover.

CLIENTS has the absolute right to terminate FONES'S services at any time, by facsimile or U.S. Mail or email written notice, for any reason or no reason at all, and to instruct her to spend no more time on the matter. In that event, FONES shall promptly refund to CLIENTS any portion of the \$10,000 that was deposited under this Agreement, or that may be on deposit from any future supplemental retainer deposit pursuant to this Agreement, which has not been charged to hours at the rate of \$300 per hour. CLIENTS acknowledge that FONES has made no promises about the total amount of fees and costs to be incurred by CLIENTS under this Agreement.

CLIENTS agrees to keep a positive retainer balance in its account and, specifically, to deposit additional amounts of at least \$10,000 upon FONES'S reasonable notice that they do so whenever CLIENTS' retainer balance is at or closely approaching zero.

CLIENTS specifically understand that in addition to fees for FONES'S hourly services, it may have to pay costs as set forth in Paragraph 3.

In addition, if and to the extent that an unpaid balance occurs on any bill from FONES for attorney's fees and costs, CLIENTS understand that simple interest will be added to the balance due at the rate of 10 percent per year.

**Costs and Expenses.** FONES will incur various costs and expenses on behalf of the CLIENTS in the performance of legal services under this Agreement. CLIENTS agrees that FONES may pay all such bills from retainer funds on deposit. If insufficient funds are on deposit, CLIENTS shall promptly send the required amounts upon receiving FONES'S bill.

Examples of costs that CLIENTS may have to pay include, without intending limitation, court filing fees, courier fees, process server fees, postage, expert witness fees, investigative services, telephone, facsimile, photocopying, federal express or other overnight delivery services, messenger services, computerized legal research fees, travel to and from depositions or other locations, and other similar charges. All charges will be itemized for CLIENTS and receipts will be available.

In addition, if and to the extent that an unpaid balance occurs on any bill from FONES for fees and costs, CLIENTS understand that simple interest will be added to the balance due at the rate of 10 percent per year.

Party #1 \_\_\_\_\_

Party #2 \_\_\_\_\_

Katie Fones -- K.F. \_\_\_\_\_

**CLIENTS' Responsibility.** The CLIENTS agree to be truthful and to cooperate with FONES at all times. The CLIENTS will, at their own expense, provide personal assistance and that of third parties (*i.e.*, accountants, experts, consultants and investigators, etc.) to assist FONES in assembling facts, data and other material pertinent to the matter represented. The CLIENTS agree to keep FONES informed of all facts and developments as they occur. The CLIENTS agree to abide by all terms of this Agreement including making payments to FONES in accordance with this Agreement. The CLIENTS agree to notify FONES of any change in CLIENTS' telephone number in a timely manner.

**Disclaimer of Guarantee.** The CLIENTS acknowledges that FONES has made **NO GUARANTEE WHATSOEVER** regarding the disposition of any phase of this matter. Expressions relating to FONES'S representation of the CLIENTS are only FONES'S opinion as a Realtor. **CLIENTS SPECIFICALLY ACKNOWLEDGE, ONCE AGAIN, THAT AFTER SPENDING LEGAL FEES IN THIS MATTER, IT MIGHT END UP WITHOUT ANY SUCCESS WHATSOEVER, AND MAY INCUR FINANCIAL LOSS. IN SUCH EVENT, CLIENTS WILL NOT BE ENTITLED TO ANY REFUND FROM FONES FOR FEES FOR HOURS FONES HAS ALREADY WORKED OR COSTS ALREADY INCURRED.** The CLIENTS further acknowledge

receiving, reading and understanding a copy of this Agreement, the terms of which are not set by law, but are the result of free and fair negotiations between FONES and the CLIENTS.

**Errors and Omissions Insurance Coverage.** As of the date of execution of this Agreement by FONES, FONES is covered by her real estate brokerage by its errors and omissions insurance coverage applicable to the services to be rendered under this Agreement. If there should be a change in coverage, FONES will immediately notify CLIENTS in writing.

Party #1 \_\_\_\_\_

Party #2 \_\_\_\_\_

Katie Fones -- K.F. \_\_\_\_\_

**Dispute Resolution.** Any controversy or claim in contract, tort or otherwise arising out of or relating to this contract, to breach or alleged breach of this contract, or to professional services rendered, omitted, or to be rendered under this contract, shall be resolved in the EXCLUSIVE venue of the state or federal court located in San Francisco, California. In regard to any such proceeding, or in any arbitration or other proceeding arising from or pertaining to this Agreement, the law of the State of California shall be the applicable law. If it is necessary for either FONES or the CLIENTS to file suit to protect either party's rights under this Agreement, including collection of any sums due under this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, plus court costs.

**Merger.** FONES and CLIENTS warrant that they are not relying upon any oral representation, promise, statement, or upon any representation contained in any other written instrument. This Agreement constitutes the final, complete, and exclusive statement of the terms of this Agreement between FONES and CLIENTS and supersedes all prior and contemporaneous understandings or agreements between them.

**Modification of this Agreement.** There is to be no change or waiver of any provision of this Agreement unless the change or waiver is in writing and signed by both parties.

**Effective Date.** This Agreement will take effect as of the date of execution by all parties hereto but its effective date shall be retroactive to the date FONES first performed services, which CLIENTS agrees was on

\_\_\_\_\_.

**Counterparts.** This Agreement may be executed in counterpart signature pages, and all of such pages, when taken together shall constitute one, single document of agreement.

**Validity of Facsimile or Email Signatures.** This Agreement may be executed by exchange of facsimile or email signatures without the need for exchange of paper original signatures, and such facsimile or email signatures shall be deemed to be the equivalent of originals.

Party #1 \_\_\_\_\_

Party #2 \_\_\_\_\_

Katie Fones -- K.F. \_\_\_\_\_

**Initials in Addition to Signatures.** In order to become effective, this Agreement must be signed below by FONES and both CLIENTS, and also must be initialed by both CLIENTS and by FONES in the lower right-hand corner of each page of this Agreement.

Dated: \_\_\_\_\_ KATIE FONES

Dated: \_\_\_\_\_ Party #1

Dated: \_\_\_\_\_ Party #2

Party #1 \_\_\_\_\_

Party #2 \_\_\_\_\_

Katie Fones -- K.F. \_\_\_\_\_

**\*SAMPLE ONLY**

(contact me with any questions)

Katie Fones

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415.815.8843