

**AGREEMENT FOR PURCHASE AND SALE**

**(For Use In Conjunction With 1031 Exchange Agreement)**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, (hereinafter referred to as "Seller"), whose address is \_\_\_\_\_, and \_\_\_\_\_, (hereinafter referred to as "Buyer"), whose address is \_\_\_\_\_.

The parties hereby agree that Seller shall sell to Buyer or Buyer's Assigns and Buyer or Buyer's Assigns shall buy the following described real property upon the following terms and conditions:

**1. Description.**

(a) Legal description of real estate (hereinafter referred to as "Property"), located in the County of \_\_\_\_\_, State of \_\_\_\_\_:

SEE ATTACHED EXHIBIT "A"

(b) Street address of the property: \_\_\_\_\_

(c) Personal property included: \_\_\_\_\_

**2. Purchase Price.** \$ \_\_\_\_\_

**Payment:**

(a) Deposit to be held in escrow by \_\_\_\_\_ \$ \_\_\_\_\_

(b) Subject to an assumption of a mortgage in favor of \_\_\_\_\_ with interest thereon at the rate \_\_\_\_\_ % per annum and payable in monthly installments of \$ \_\_\_\_\_ with an approximate balance of \$ \_\_\_\_\_

(c) Purchase money mortgage and note with interest thereon at \_\_\_\_\_ % on terms set forth in Exhibit "B" attached hereto, in the principal amount of \$ \_\_\_\_\_

(d) Balance to close in cash or certified or cashier's check, subject to prorations and adjustments \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

### 3. Financing.

(a) **New Financing.** If any part of the purchase price is to be financed by a third party, this Agreement for Sale and Purchase is conditioned upon the Buyer obtaining a firm commitment for said loan within \_\_\_\_\_ days from the date of this Agreement, at an interest rate not to exceed \_\_\_\_\_ %, with a term of \_\_\_\_\_ years, and in a principal amount of not less than \$ \_\_\_\_\_. Buyer agrees to make application for and to use reasonable diligence to obtain said loan. Should Buyer fail to obtain same or to waive Buyer's rights hereunder within said time, either party may cancel this Agreement.

(b) **Existing Mortgages.** Seller shall furnish a statement from the mortgagee setting forth the principal balance, method of payment, interest rate and whether the mortgage is in good standing. If a mortgage requires approval of Buyer by the mortgagee, and the mortgagee does not approve Buyer, Buyer may rescind this Agreement; or if the mortgagee requires an increase in the interest rate or charges a fee for any reason in excess of \$100.00, Buyer may rescind this Agreement unless Seller elects to pay such increase or excess. Seller and Buyer shall each pay 50% of any such fee not in excess of \$100.00. Buyer shall use reasonable diligence to obtain approval. The amount of any escrow deposits held by mortgagee shall be credited to Seller.

(c) **Purchase Money Mortgages.** The purchase money note and mortgage, if any, shall provide for a thirty (30) day grace period in the event of default if it is a first mortgage and a fifteen (15) day grace period if a second mortgage and right of prepayment in whole or in part without penalty; shall not provide for acceleration or interest adjustment in event of resale of the property; and shall be otherwise in form and content required by Seller's attorney; provided, however, Seller may require clauses customarily found in mortgages and mortgage notes generally utilized by private parties in the county wherein the property is located. Said mortgage shall require the owner of the encumbered property to keep all prior liens and encumbrances in good standing and forbid the owner of the property from accepting modifications of or future advances under prior mortgages. All personal property being conveyed will, at option of Seller, be subject to the lien of the mortgage and evidenced by a recorded Financing Statement.

4. **Title Evidence.** Within twenty-one (21) days from the date of this Agreement, or thirty (30) days from the date of closing, whichever occurs first, Seller shall, at his expense deliver to Buyer or his attorney, either:

(a) An abstract of title prepared or brought current by a reputable existing abstract firm, or if not existing, then certified as correct by a reputable firm, purporting to be an accurate synopsis of the instruments affecting the title to the subject property recorded in the public records of the county where the property is situated, through the effective date, and said abstract shall commence with the earliest public records or such later date as may be customary in the county where the property is situated. Seller shall convey a

marketable title subject only to liens, encumbrances, exceptions or qualifications set forth in this Agreement and those which shall be discharged by Seller at or before closing. Marketable title shall be determined in accordance with applicable Title Standards adopted by The Bar Association of this state and in accordance with the law. Upon closing of this transaction such abstract shall become the property of Buyer, subject to the right of retention thereof by first mortgagee until fully paid; or

- (b) A title insurance commitment, with fee owner's title policy premium to be paid by the Seller at closing, issued by a qualified title insurer agreeing to issue to Buyer, upon recording of the deed to Buyer, an Owner's policy of title insurance in the amount of the purchase price, insuring the title to the Buyer of the property, subject only to liens, encumbrances, exceptions or qualifications set forth in this Agreement and those which shall be discharged by Seller at or before closing.
- (c) Buyer shall have thirty (30) days, if an abstract is furnished, or five (5) days, if a title commitment is furnished, from date of receiving evidence of title to examine same. If title is found defective, Buyer shall, within three (3) days thereafter, notify Seller in writing specifying the defects. If said defects render title unmarketable, Seller shall have one hundred twenty (120) days from receipt of notice within which to remove said defects, and if Seller is unsuccessful in removing same within said time, Buyer shall have the option of either accepting the title as it then is, or demanding a refund of all monies paid hereunder which shall forthwith be returned to Buyer and thereupon Buyer and Seller shall be released, as to one another, of all further obligations under this Agreement; however, Seller agrees that he will, if title is found to be unmarketable, use diligent efforts to correct the defects in title within the time provided therefor, including the bringing of necessary suits.
- (d) Seller shall, both as to the property and personalty being sold hereunder, furnish to Buyer at time of closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statements, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements to the property for ninety (90) days immediately preceding date of closing. If the property has been improved within said time, Seller shall deliver releases or waivers of all mechanics' liens executed by general contractors, subcontractors, suppliers, and materialmen, in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors and materialmen and further reciting that in fact all bills for work to the property which could serve as a basis for a mechanic's lien have been paid or will be paid at closing.

**5. Time for Acceptance and Effective Date.** If this offer is not executed by both parties hereto on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the aforesaid

deposit shall be, at the option of the Buyer, returned to him and this offer shall thereafter be null and void. The date of Agreement ("Effective Date") shall be the date when the last one of the Seller and Buyer has signed this offer.

- 6. Closing Date.** This transaction shall be closed at \_\_\_\_\_ , and the deed and other closing papers delivered on the \_\_\_\_\_ day of \_\_\_\_\_ , 20 \_\_\_\_ , at \_\_\_\_\_ , \_\_\_ M., unless extended by other provisions of this Agreement.
- 7. Restrictions, Easements, Limitations.** The Buyer shall take title subject to: zoning, restrictions, reservations, prohibitions and other requirements imposed by governmental authorities; covenants, restrictions and matters appearing on the plat or otherwise common to the subdivision; public utility easements of record, provided said easements are located contiguous throughout the property lines and are not more than 10 feet in width as to the rear or front lines and 7 1/2 feet in width as to the side lines, unless otherwise specified herein; taxes for year of closing and subsequent years; assumed mortgages and purchase money mortgages, if any and \_\_\_\_\_ ; provided, however, that none of the foregoing shall prevent use of the property for the purpose of \_\_\_\_\_ .
- 8. Occupancy and Leases.** Seller warrants that there are no parties in occupancy other than Seller; but if property is intended to be rented or occupied beyond closing, the fact and terms thereof shall be stated herein, the tenants shall be disclosed by Seller to Buyer and Seller shall, not less than fifteen (15) days prior to closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the nature and duration of said tenant's occupancy, rental rates and advanced rent and security deposits paid by tenant. In the event Seller is unable to obtain such letter from each tenant, the same information shall be furnished by Seller to Buyer within said time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenants to confirm such information. Seller shall deliver and assign all original leases to Buyer at closing. Seller agrees to deliver occupancy of property at time of closing unless otherwise specified below. If occupancy is to be delivered prior to closing, Buyer assumes all risk of loss to property from date of occupancy, shall be responsible and liable for maintenance thereof from said date, and shall be deemed to have accepted the property, real and personal, in its existing condition as of time of taking occupancy unless otherwise noted in writing.
- 9. Survey.** The Buyer, within time allowed for delivery of evidence of title and examination thereof, may have the property surveyed at his expense. If the survey, certified by a property registered surveyor, shows any encroachment of said property or that improvements intended to be located on the property in fact encroach on lands of others, or violate any of the covenants of this Agreement, the same shall be treated as a title defect.

- 10. Termites.** The Buyer, within time allowed for delivery of evidence of title and examination thereof, or no later than ten (10) days prior to closing, whichever date occurs last, may have the improvements inspected at Buyer's expense by a Certified Pest Control Operator to determine whether there is any visible active termite infestation or visible existing damage from termite infestation in the improvements. If Buyer is informed of either or both of the foregoing, Buyer will have seven (7) days from date of written notice thereof or four (4) days after selection of a contractor, whichever occurs first, within which to have all damage, whether visible or not, inspected and estimated by a licensed building or general contractor. Seller shall pay valid costs of treatment and repair of all damage up to one and one-half (1 1/2%) percent of the purchase price. Should such costs exceed that amount, Buyer shall have the option of cancelling this Agreement within five (5) days after receipt of a contractor's repair estimate by giving written notice to Seller, or Buyer may elect to proceed with the transaction, in which event Buyer shall receive a credit at closing of an amount equal to one and one-half (1 1/2%) percent of said purchase price. "Termites" shall be deemed to include all wood destroying organisms required to be reported under any applicable state Pest Control Act in existence at the time of execution of this Agreement.
- 11. Ingress and Egress.** Seller warrants that there is ingress and egress to the property sufficient for the intended use as set out herein, the title to which is in accordance with Paragraph 4 hereof.
- 12. Time of Essence.** Time is of the essence of this Agreement. Any reference herein to time periods of less than six (6) days shall in the computation thereof exclude Saturdays, Sundays and legal holidays, and any time period provided for herein which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. on the next full business day.
- 13. Documents for Closing.** Seller shall furnish the deed, mechanic's lien affidavit, assignments of leases and any corrective instruments that may be required in connection with perfecting title. Buyer shall furnish the closing statement, mortgage, mortgage note, security agreement, and financing statements.
- 14. Expenses.** State documentary stamps which are required to be affixed to the instrument of conveyance, intangible tax on and recording of purchase money mortgage to Seller, and cost of recording any corrective instruments shall be paid by Seller. Documentary stamps to be affixed to the note or notes secured by the purchase money mortgage and the costs of recording the deed and financing statements shall be paid by Buyer.
- 15. Proration of Taxes (Real and Personal).** Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount and homestead or other exemptions, if allowed for said year. If closing occurs at a date when the current year's millage is not fixed, and current year's assessment is available, taxes will be prorated

based upon such assessment, and the prior year's millage. If current year's assessment is not available, then taxes will be prorated on the prior year's tax; provided, however, if there are completed improvements on the property by January 1st of the year of closing, which improvements were not in existence on January 1st of the prior year, then taxes shall be prorated based upon the prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request will be made to the County Property Appraiser for an informal assessment taking into consideration homestead exemption, if any. However, any tax proration based on an estimate may upon request of either party to the transaction be subsequently readjusted upon receipt of tax bill on condition that a statement to that effect is set forth in the closing statement.

- 16. Special Assessment Liens.** Certified, confirmed and ratified special assessment liens as of date of closing, and not as of Effective Date, are to be paid by Seller. Pending liens as of date of closing shall be assumed by Buyer; provided, however, that where the improvement has been substantially completed as of the Effective Date, such pending lien shall be considered as certified, confirmed or ratified and Seller shall, at closing, be charged an amount equal to the last estimate by the public body, of the assessment for the improvement.
- 17. Personal Property Inspection and Repair.** Seller warrants that all major appliances, heating, cooling, electrical, plumbing systems, and machinery are in working condition as of closing date. Buyer may, at his expense, have inspections made of said items by licensed persons dealing in the repair and maintenance thereof, and shall report in writing to Seller such items as found not in working condition prior to taking possession thereof, or as of the closing date, whichever is first. Unless Buyer reports failures within said period, he shall be deemed to have waived Seller's warranty as to failures not reported. Valid reported failures shall be corrected at Seller's cost with funds escrowed at closing. Seller agrees to provide access for inspection upon reasonable notice.
- 18. Risk of Loss.** If the improvements are damaged by fire or other casualty prior to closing, and costs of restoring same do not exceed 3% of the assessed valuation of the improvements so damaged, cost of restoration shall be an obligation of the Seller and closing shall proceed pursuant to the terms of this Agreement with cost therefor escrowed at closing. In the event the cost of repair or restoration exceeds 3% of the assessed valuation of the improvements so damaged, Buyer shall have the option of either taking the property as is, together with either the said 3% or any insurance proceeds payable by virtue of such loss or damage, or of cancelling this Agreement and receiving return of deposits made hereunder.
- 19. Maintenance.** Notwithstanding the provisions of Paragraph 17, between Effective Date and closing date, personal property referred to in Paragraph 17 and real property, including

lawn, shrubbery and pool, if any, shall be maintained by Seller in the condition they existed as of Effective Date, ordinary wear and tear excepted, and Buyer or Buyer's designated agent will be permitted access for inspection prior to closing to confirm compliance with this Paragraph.

**20. Proceeds of Sale and Closing Procedures.** The deed shall be recorded upon clearance of funds and evidence of title continued at Buyer's expense, to show title in Buyer, without any encumbrances or change which would render Seller's title unmarketable from the date of the last evidence, and the cash proceeds of sale shall be held in escrow by Seller's attorney or by such other escrow agent as may be mutually agreed upon for a period of not longer than five (5) days from and after closing date. If Seller's title is rendered unmarketable, Buyer shall within said five (5) day period, notify Seller in writing of the defect and Seller shall have thirty (30) days from date of receipt of such notification to cure said defect. In the event Seller fails to timely cure said defect, all monies paid hereunder shall, upon written demand therefor and within five (5) days thereafter, be returned to Buyer and simultaneously with such repayment, Buyer shall vacate the property and reconvey same to Seller by special warranty deed. In the event Buyer fails to make timely demand for refund, he shall take title as is, waiving all rights against Seller as to such intervening defect except as may be available to Buyer by virtue of warranties, if any, contained in the deed. In the event a portion of the purchase price is to be derived from institutional financing or refinancing, the requirements of the lending institution as to place, time of day and procedures for closing, and for disbursement of mortgage proceeds, shall control, anything in the Agreement to the contrary notwithstanding; provided, however, that the Seller shall have the right to require from such lending institution at closing a commitment that it will not withhold disbursement of mortgage proceeds as a result of any title defect attributable to Buyer-mortgagor. The escrow and closing procedure required by this Paragraph may be waived in the event the attorney, title agent or closing agent insures against adverse matters pursuant to applicable laws of this state.

**21. Escrow.** Any escrow agent receiving funds is authorized and agrees by acceptance thereof to promptly deposit and to hold same in escrow and to disburse same subject to clearance thereof in accordance with terms and conditions of this Agreement. Failure of clearance of funds shall not excuse performance by Buyer. In the event of doubts as to his duties or liabilities under the provisions of this Agreement, the escrow agent may in his sole discretion, continue to hold the monies which are the subject of this escrow until the parties mutually agree to the disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties thereto, or he may deposit all the monies then held pursuant to this Agreement with the Clerk of the Court of the County having jurisdiction of the dispute, and upon notifying all parties concerned of such action, all liability on the part of the escrow agent shall fully terminate, except to the extent of an accounting for any monies theretofore delivered out of escrow. In the event of any suit between Buyer

and Seller wherein the escrow agent is made a party by virtue of acting as such escrow agent hereunder, or in the event of any suit wherein escrow agent interpleads the subject matter of this escrow, the escrow agent shall be entitled to recover a reasonable attorney's fee and costs incurred, said fees and costs to be charged and assessed as court costs in favor of the prevailing party. All parties agree that the escrow agent shall not be liable to any party or person whomsoever for misdelivery to Buyer or Seller of monies subject to this escrow, unless such misdelivery shall be due to willful breach of this Agreement or negligence on the part of the escrow agent.

**22. Attorney Fees and Costs.** All matters pertaining to this Agreement (including its interpretation, application, validity, performance and breach), shall be governed by, construed and enforced in accordance with the laws of the State of \_\_\_\_\_ . The parties herein waive trial by jury and agree to submit to the personal jurisdiction and venue of a court of subject matter jurisdiction located in \_\_\_\_\_ County, State of \_\_\_\_\_ .

In the event that litigation results from or arises out of this Agreement or the performance thereof, the parties agree to reimburse the prevailing party's reasonable attorney's fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled. In such event, no action shall be entertained by said court or any court of competent jurisdiction if filed more than one year subsequent to the date the cause(s) of action actually accrued regardless of whether damages were otherwise as of said time calculable.

**23. Default.** If Buyer fails to perform this Agreement within the time specified, the deposits paid by the Buyer aforesaid may be retained by or for the account of Seller as liquidated damages, consideration for the execution of this Agreement and in full settlement of any claims; whereupon all parties shall be relieved of all obligations under this Agreement. If, for any reason other than failure of Seller to render his title marketable after diligent effort, Seller fails, neglects or refuses to perform this Agreement, the Buyer may seek specific performance or elect to receive the return of his deposits without thereby waiving any action for damages resulting from Seller's breach.

**24. Contract Not Recordable, Persons Bound and Notice.** This Agreement shall not be recorded in any public records. This Agreement shall bind and inure to the benefit of the parties hereto and their successors in interest. Whenever the context permits, singular shall include plural and on gender shall include all. Notice given by or to the attorney for either party shall be as effective as if given by or to said party.

**25. Prorations and Insurance.** Taxes, assessments, rent, interest, insurance and other expenses and revenues of the property shall be prorated as of date of closing. Buyer shall have the option of taking over any existing policies of insurance on the property, if

assumable, in which event premiums shall be prorated. The cash at closing shall be increased or decreased as may be required by said prorations. All references in this Agreement to prorations as of date of closing will be deemed "date of occupancy" if occupancy occurs prior to closing, unless otherwise provided for herein.

**26. Conveyance.** Seller shall convey title to the property by statutory warranty deed subject only to matters contained in Paragraph 7 hereof and those otherwise accepted by Buyer. Personal property shall, at the request of Buyer, be conveyed by an absolute bill of sale with warranty of title, subject to such liens as may be otherwise provided for herein.

**27. Other Agreements.** No prior agreements or representations shall be binding upon any of the parties hereto unless incorporated in this Agreement. No modifications or changes in this Agreement shall be valid or binding upon the parties hereto unless in writing, executed by the parties to be bound thereby.

**28. Typewritten or Handwritten Provision.** Typewritten or handwritten provisions inserted herein or attached hereto as Addenda shall control all provisions in conflict therewith.

**29. Contractual Procedures.** Unless specifically disallowed by law, should litigation arise hereunder, service of process therefor may be obtained through certified mail, return receipt requested; the parties hereto waiving any and all rights they may have to object to the method by which service was perfected.

**30. Special Clauses.** See "Addendum 1" attached hereto.

"BUYER"

Executed by Buyer on \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

"SELLER"

Executed by Seller on \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**ADDENDUM  
SPECIAL CLAUSES**

Addendum to Agreement for Sale and Purchase dated the \_\_\_\_\_ day of \_\_\_\_\_ ,  
20 \_\_\_\_ , by and between \_\_\_\_\_ , as Seller, and  
\_\_\_\_\_, as Buyer.

1. Buyer shall have thirty (30) days from acceptance of this Agreement to have the following inspections done and approved by Buyer: Roof inspection, plumbing inspection, electrical wiring inspection, air conditioning and heating systems inspection, termite inspection, and structural inspections. In the event that said inspections, or any others performed by or on behalf of Buyer, are not acceptable to Buyer, Buyer shall have the right to cancel this Agreement and have all funds on deposit with escrow agent, plus accrued interest, if applicable, returned to Buyer.
2. Buyer shall have sixty (60) days from acceptance of this Agreement to have the property appraised. In the event said appraisal reflects a value which is less than the purchase price to be paid by Buyer, Buyer shall have the right to cancel this Agreement and have all funds on deposit with escrow agent, plus accrued interest, if applicable, returned to Buyer.
3. Buyer shall, within three (3) days of acceptance hereof by Seller, assign to Escrow Agent a Certificate of Deposit in the amount of \_\_\_\_\_ Dollars, (\$ \_\_\_\_\_ ), which shall be returned to Buyer at closing.
4. Seller has been informed and understands that Buyer herein is arranging for the purchase of this property for \_\_\_\_\_ , pursuant to the terms of an Agreement of exchange, which is intended to qualify as a 1031 exchange under the Internal Revenue Code of 1954, and all subsequent amendments thereto. It is expressly understood and agreed that this Agreement is contingent upon Buyer closing on the purchase of property located at \_\_\_\_\_ , City of \_\_\_\_\_ , County of \_\_\_\_\_ , State of \_\_\_\_\_ , which said closing shall take place simultaneously with the closing of this transaction on the \_\_\_\_\_ day of \_\_\_\_\_ , 20 \_\_\_\_ . A termination of Buyer's Agreement with \_\_\_\_\_ shall terminate this Agreement and any and all monies paid Seller, pursuant hereto, shall be refunded to Buyer within \_\_\_\_\_ hours of notification in writing.
5. Buyer and Seller agree to extend the closing date of this transaction beyond the date set out hereinabove, or to close prior to that date, in the event the closing date of the aforementioned exchange is changed, in order that both closings take place simultaneously.

6. By their signatures hereto, Buyer and Seller agree to be bound by the terms of this Addendum as part and parcel of the above described Agreement for Sale and Purchase, as if the terms hereof were specifically set out therein.

7. This Addendum is executed contemporaneously with the above described Agreement for Sale and Purchase.

8. All escrow deposits shall be, pursuant to this contract, the property of the Buyer.

9. Seller shall leave the property free and clear of all trash, debris, garbage, miscellaneous loose items, and so forth.

10. The closing shall take place at the offices of \_\_\_\_\_, whose address is \_\_\_\_\_, which shall handle the closing and prepare title insurance for the Seller, with all standard closing costs apportioned according to this contract.

11. \_\_\_\_\_

12. \_\_\_\_\_

13. \_\_\_\_\_

Executed by Buyer on \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Buyer

Executed by Seller on \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Seller



warranties and representations are not accurate, the Buyer has been damaged by such inaccuracy, the Buyer has the right to set off such damage against the outstanding balance under the purchase money note and mortgage given the Seller by the Buyer herein:

a. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. \_\_\_\_\_  
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d. \_\_\_\_\_  
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e. \_\_\_\_\_  
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f. \_\_\_\_\_  
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\_\_\_\_\_

8. \_\_\_\_\_ 0  
\_\_\_\_\_

Executed by Seller on \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Seller