

EXCHANGE AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____ ,
20____ , by and between _____ , (hereinafter referred
to as "First Party"), whose address is _____
_____, and _____ , (hereinafter referred
to as "Second Party"), whose address is _____
_____ .

1. **Transfer by First Party.** First Party, in consideration of One Dollar paid, the receipt of which is hereby acknowledged, and the agreement of Second Party to arrange to have the property described in paragraph 2 hereinafter conveyed to First Party, hereby agrees to sell and convey to Second Party, at a valuation, for the purposes of this contract, of _____ (\$ _____) Dollars, the following described property:

together with the personal property described in Exhibit "A", which is attached hereto and made a part hereof by reference.

Street Address: _____ .

Said property shall be sold and conveyed subject to the following:

a. That certain first mortgage, described as follows:

_____,
which has an unpaid principal balance of approximately _____
_____ (\$ _____) Dollars.

b. That certain second mortgage, described as follows:

_____,
which has an unpaid principal balance of approximately _____
_____ (\$ _____) Dollars.

c. That certain third mortgage, described as follows:

_____ ,

which has an unpaid principal balance of approximately _____
_____ (\$ _____) Dollars.

d. Covenants and restrictions of record, provided same are not violated by the existing building and improvements on such premises and the use thereof.

e. Other: _____

_____ .

2. **Transfer by Second Party.** Second Party, in consideration of One Dollar, the receipt of which is hereby acknowledged, and of the conveyance by First Party, herein before agreed to be made, hereby agrees to sell and convey to the First Party, at a valuation, for the purpose of this contract, of _____
(\$ _____) Dollars, the following described property:

together with the personal property described in Exhibit "B", which is attached hereto and made a part hereof by reference.

Street Address: _____ .

Said property shall be sold and conveyed subject to the following:

a. That certain first mortgage, described as follows:

_____ ,

which has an unpaid principal balance of approximately _____
_____ (\$ _____) Dollars.

b. That certain second mortgage, described as follows:

_____ ,

which has an unpaid principal balance of approximately _____
_____ (\$ _____) Dollars.

c. That certain third mortgage, described as follows:

_____ ,

which has an unpaid principal balance of approximately _____
_____ (\$ _____) Dollars.

d. Covenants and restrictions of record, provided same are not violated by the existing building and improvements on such premises and the use thereof.

e. Other: _____

_____ .

3. **Payment of Difference of Net Values.** The difference between the market values of the respective properties, over and above encumbrances, for the purposes of this contract, shall be deemed to be _____ (\$ _____) Dollars, and that sum shall be due and payable by _____ Party to _____ Party as follows:

a. _____ Party shall execute, at the time of closing, in favor of _____ Party, a promissory note in the principal amount of _____ (\$ _____) Dollars, with interest thereon at the rate of _____ (_____ %) percent, and being due and payable as follows: _____

_____ .

Said promissory note shall be secured by a purchase money mortgage on the property, to be executed by _____ Party in favor of _____ Party.

4. **Financing.**

a. **New Financing.** This Agreement is conditioned upon _____ Party obtaining a firm commitment for a loan on the property to be obtained by him in this transaction,

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 \$ _____ . _____ Party agrees to make application for and to use reasonable diligence to obtain said loan. Should _____ Party fail to obtain same or to waive Buyer's rights hereunder within said time, either party may cancel this Agreement.

b. **Existing Mortgages.** Each party shall furnish, or cause to be furnished, to the other party, a statement from the mortgagee(s) on the property to be conveyed, or caused to be conveyed, setting forth the principal balance, method of payment, interest rate and whether the mortgage is in good standing. If a mortgage requires approval of the party who will be, at the time of closing, assuming and agreeing to pay the mortgage, and the mortgagee does not approve said party, that party 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 \$ _____ , that party may rescind this Agreement unless the other party elects to pay such increase or excess. The parties shall each pay 50% of any such fee not in excess of \$ _____ . Both parties shall use reasonable diligence to obtain any required approval. The amount of any escrow deposits held by mortgagee shall be credited to the party assuming and agreeing to pay that mortgage.

c. **Purchase Money Mortgages.** Any purchase money note and mortgage, executed pursuant hereto, 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 or third mortgage, and the 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 as required by the respective transferrors and/or their attorneys; provided, however, clauses customarily found in mortgages and mortgage notes generally utilized by private parties in the county wherein the property is located may be inserted. 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 the option of the Seller, be subject to the lien of the mortgage and evidenced by a recorded Financing Statement.

5. **Title Evidence.** Within fifteen (15) days from the date of this Agreement, or thirty (30) days from the date of closing, whichever occurs first, each Seller shall, at his expense, deliver, or cause to be delivered, to Buyer, or his designated representative, (1) an abstract of title prepared or brought current by a reputable and existing abstract firm (if not existing then certified as correct by an existing firm) purporting to be an accurate synopsis of the instruments affecting title to the property recorded in the public records of the county

wherein the property is located, through effective date and which shall commence with the earliest public records, or such later date as may be customary in the county. Each Seller shall convey a marketable title, subject only to liens, encumbrances, exceptions or qualifications set forth in this contract and those which shall be discharged by seller at or before closing. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Bar Association for the State of _____ and in accordance with the laws of the State of _____. Upon closing of this transaction the abstract shall become the property of Buyer, subject to the right of retention thereof by first mortgagee until fully paid; or (2) a title insurance commitment, issued by a licensed title insurer, with fee owner's title policy premium to be paid by the respective Seller at closing, agreeing to issue to Buyer, upon recording of the deed, an Owner's policy of title insurance in the amount of the purchase price, insuring the title of Buyer to the property, subject only to liens, encumbrances, exceptions or qualifications set forth in this Agreement and those which shall be discharged by Seller, if any, at or before closing.

The respective Buyers shall have thirty (30) days, if abstract, or five (5) days, if title commitment, from date of receiving the commitment for title insurance 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 or uninsurable, 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 both parties 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, or cause to be corrected, the defects in title within the time provided therefor, including the bringing of necessary suits.

Each party, as Seller, shall, both as to the property and personalty being sold hereunder, furnish, or cause to be furnished, to the other party 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 and further attesting that there have been no improvements to the property for ninety (90) days immediately preceding date of closing. If a 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.

6. **Effective Date.** The date of this Agreement (“Effective Date”) shall be the date when the last one of the parties has signed same.

7. **Closing Date.** The transactions contemplated by this Agreement shall be closed at _____, at ____ o'clock __ .m., on the _____ day of _____, 20 ____, and the deed and other closing papers delivered on that day, unless extended by other provisions of this Agreement.

8. **Restrictions, Easements, Limitations.** The respective Buyers 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; provided, however, that none of the foregoing shall prevent use of the property for which it is presently being used.

9. **Occupancy and Leases.** The respective Sellers warrant that there are no other parties in occupancy; 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 and the Seller shall, not less than fifteen (15) days prior to closing, furnish, or cause to be furnished, to the 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 a party is unable to obtain such letter from each tenant, the same information shall be furnished to Buyer within said time period in the form of an affidavit, and the respective 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.

10. **Survey.** The respective Buyers, within time allowed for delivery of evidence of title and examination thereof, may have the property he will acquire hereunder 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.

11. **Termites.** The respective Buyers, 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 he will acquire hereunder inspected at his 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, he 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. The respective Seller shall pay, or cause to be paid, 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, Seller 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.
12. **Ingress and Egress.** Each 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 5 hereof.
13. **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.
14. **Documents for closing.** The respective Sellers shall furnish, or cause to be furnished, the deed, mechanic's lien affidavit, assignments of leases and any corrective instruments that may be required in connection with perfecting title to the property being sold. The respective Buyers shall furnish, or cause to be furnished, the closing statement, mortgage, mortgage note, security agreement, and financing statements required in connection with the property purchased.

15. **Attorney's Fees.** Each party shall be responsible for paying his own attorney's fees incurred in connection with this agreement and the transactions contemplated hereby, unless otherwise agreed to in writing.
16. **Expenses of Exchange.** It is understood and agreed that Second Party shall not incur any additional expenses or costs because of the exchange transactions contemplated herein, over and above those which he would normally incur as a purchaser, and that First Party will pay, or reimburse Second Party for, all expenses and costs incurred in causing the property described in paragraph 2 herein above to be conveyed to First Party.
17. **Proration of Taxes (Real and Personal).** All 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.
18. **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 the respective 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.
19. **Personal Property Inspection and Repair.** The respective Sellers warrant 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.

20. **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.
21. **Maintenance.** Between Effective Date and closing date, personal property referred to herein and real property, including lawn, shrubbery and pool, if any, shall be maintained or caused to 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.
22. **Proceeds of Sale and Closing Procedures.** The deeds shall be recorded upon clearance of funds and evidence of title continued at the respective 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 a 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 the 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 this 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.

23. **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 the parties 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 a party 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.

24. **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.

25. Contingencies and Default. This Agreement is contingent upon Second Party conveying, or causing to be conveyed, to First Party, the property described in paragraph 2 herein above. If Second Party is unable to convey said title, or cause same to be conveyed, for reasons beyond his control, according to the terms of this Agreement, the parties shall only be responsible for paying their respective costs incurred to date, including, but not limited to, title examination fees and attorney's fees, and thereupon this Agreement shall be terminated, it being expressly understood that First Party shall not be obligated to sell the property described in paragraph 1 herein above to Second Party for cash or other terms not provided for in this Agreement.

If either party fails to perform this Agreement within the time specified, for any reason, other than the failure of a Seller to render his title marketable, after diligent effort, the defaulting party shall reimburse the non-defaulting party for all costs and expenses incurred, including a reasonable attorney's fee, and thereupon this Agreement shall be terminated, and neither party shall have any further rights against the other.

26. 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 one gender shall include all. The word "party" shall be construed as if it read "parties" whenever the sense of this Agreement so requires. Whenever the word "seller" is used it shall mean the party who has contracted to sell the parcel owned by or

- 29. **Notice on Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in this state. Additional information regarding radon and radon testing may be obtained from your county public health unit.

- 30. **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.

- 31. **Typewritten or Handwritten Provisions.** Typewritten or handwritten provisions inserted herein or attached hereto as Addenda shall control all provisions in conflict therewith.

- 32. **Special Clauses.** See "Addendum 1" attached hereto.

Executed by First Party on

Witness

Witness

Executed by Second Party on

Witness

Witness

ADDENDUM 1
SPECIAL CLAUSES

EXHIBIT "A"

PERSONAL PROPERTY TO BE CONVEYED WITH PROPERTY LOCATED AT

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