

## PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (the "Agreement") is entered into by and between \_\_\_\_\_ ("Buyer"), with an address of \_\_\_\_\_ and \_\_\_\_\_ ("Seller") with an address of \_\_\_\_\_.

**1. OPENING.** The "Opening" will occur upon the date this Agreement is mutually executed and acknowledged by Title, Escrow or Closing Agent/Attorney ("Escrow Agent").

**2. PROPERTY.** Seller hereby agrees to sell and Buyer hereby agrees to buy the real property in its "as-is" condition with all improvements, fixtures and appurtenances thereon or incidental thereto described below as \_\_\_\_\_ (the "Property").

**3. PURCHASE PRICE.** The purchase price to be paid at "Close of Escrow" (COE) defined below by Buyer for the Property is \_\_\_\_\_ (\$\_\_\_\_\_).

The Purchase Price shall be paid to Seller as follows:

An "Earnest Money Deposit" (EMD) of \$\_\_\_\_\_.

The balance of \$\_\_\_\_\_ to be paid at COE.

**4. EARNEST MONEY DEPOSIT (EMD).** EMD to be held in an insured escrow account and held by Escrow Agent of the Buyer's choice and if escrow closes, the earnest money deposit in escrow shall be credited against the Purchase Price. If this Agreement is cancelled by Buyer pursuant to the terms of this Agreement, Buyer becomes entitled to a return of the EMD and Escrow Agent shall immediately refund to Buyer all EMD then in escrow.

**5. FINANCING:** Funds to purchase property shall be:

\_\_\_\_\_ CASH. "Cash" is defined as capital from Buyer's personal funds and/or Buyer's investors, partners and/or other unconventional lending sources. This Agreement is NOT contingent on Buyer securing funds to close.

\_\_\_\_\_ Subject to Buyer taking over Seller's existing loan of \$\_\_\_\_\_.

\_\_\_\_\_ Seller Financing with the following terms: \_\_\_\_\_.

\_\_\_\_\_ Traditional Financing contingent on Buyer obtaining the following terms: \_\_\_\_\_.

**6. INSPECTION PERIOD.** Buyer's obligations to close this transaction are subject to the satisfaction of Buyer's investigations and inspections of the Property. Buyer shall have:

\_\_\_\_\_ calendar days from the date of this agreement (the "Inspection Period"), during which time Buyer will have the absolute right to cancel this Agreement for any reason whatsoever at Buyer's sole and absolute discretion. Upon such cancellation, Buyer shall be entitled to a return of all EMD held in escrow. Unless Buyer gives written notice of cancellation before the expiration of the Inspection Period, then Buyer will be deemed to have elected not to cancel this Agreement.

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**7. ACCESS TO PROPERTY.** Between date of Opening herein and COE, Seller grants Buyer and/or Buyer's employees, inspectors, partners, investors, contractors and/or agent(s) access to Property as follows:

\_\_\_\_\_ **VACANT.** If the Property is vacant as of the Opening, Buyer reserves the right to install a lockbox on the Property, which will contain a key to the Property (provided by seller). Seller acknowledges and agrees that the lockbox will permit Buyer access to the Property. Seller acknowledges and agrees that there is a risk in having a lockbox on the Property, and that it is possible an unauthorized person may enter the Property. Buyer is not insuring Seller against theft, loss or vandalism resulting from any unauthorized access.

\_\_\_\_\_ **OCCUPIED.** If the Property is occupied by seller, tenant or otherwise as of the Opening, Seller shall permit Buyer access with 24-hour notice.

**8. TENANT OCCUPIED.** If Property is currently in use as a rental property, Tenant shall:

\_\_\_\_\_ Vacate Property on or before COE.

\_\_\_\_\_ Continue occupying property according to applicable and current lease agreement. Seller shall deliver the following to Buyer within five days after Opening: (a) current leases of the Property; (b) a certified rent roll (which Seller shall update at least five days before COE); (c) evidence of security deposits on hand, if any.

**9. ESCROW AGENT.** Seller and Buyer hereby employ \_\_\_\_\_, Phone \_\_\_\_\_ (the "Escrow Agent"); to act as escrow agent for this transaction. This Agreement constitutes the escrow instructions to Escrow Agent. If required by real estate governance in state of \_\_\_\_\_, Escrow Agent, is hereby authorized and instructed to prepare and execute on behalf of Buyer and Seller an Affidavit of Property Value, using the Purchase Price for the established value of the Property.

**10. CLOSE OF ESCROW.** The closing date shall occur on or about \_\_\_\_\_, (the "COE"). COE shall occur when exclusive physical possession is given to Buyer and the deed is recorded at the appropriate county recorder's office. Buyer and Seller shall comply with all terms and conditions of this Agreement, execute and deliver to Escrow Agent all closing documents and perform all other acts necessary for COE to occur. Buyer shall have the right to approve the property's title status before COE. Title to the Property shall be conveyed to Buyer at COE by a General Warranty Deed or equivalent warranty deed used in the local jurisdiction with standard owner's title insurance policy. Buyer shall take title as determined by Buyer before COE.

**11. ESCROW AND CLOSING FEES.** Closing Fees due at COE with the exception of delinquent property taxes, mortgage liens, mechanics liens, IRS liens, judgements and/or any liens, to be paid as follows:

\_\_\_\_\_ Buyer and Seller shall each pay their respective Escrow and Closing Fees according to the usual and customary practice in state of \_\_\_\_\_.

\_\_\_\_\_ Buyer and Seller agree to split evenly all Escrow and Closing Fees.

\_\_\_\_\_ Buyer shall pay all Escrow and Closing Fees.

\_\_\_\_\_ Seller shall pay all Escrow and Closing Fees.

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**12. PRORATIONS.** Real property taxes payable by Seller will be prorated to COE based upon the latest tax information available. The amount of any assessment, other than homeowner's association assessments, that is a lien as of COE shall be paid in full by Seller.

**13. PROPERTY TURNOVER.** Seller will provide Buyer with the keys to the Property on day of COE.

**14. DEBRIS/PERSONAL BELONGINGS.** At COE, Seller shall deliver the Property to Buyer:

\_\_\_\_ WITH debris and/or personal belongings that are currently present in the property and Buyer to assume all responsibility for trash-out, removal and clean-up of said debris/belongings.

\_\_\_\_ WITHOUT debris and/or personal belongings. All debris and/or personal belongs to be removed from the interior/exterior of the Property. In the event the Property is not left in a neat and clean condition, Buyer will have clean-up completed at Seller's expense which costs, at Buyer's option, may be deducted from the Purchase Price. Seller's obligation to pay Buyer shall survive the cancellation of this Agreement or COE. Any items remaining in the Property as of COE will be considered trash and removed by the Buyer.

**15. APPLIANCES.** At COE, all working appliances currently present in the property shall:

\_\_\_\_ NOT be included in the sale, herein.

\_\_\_\_ INCLUDED in the sale, herein with the exception of \_\_\_\_\_.

**16. ADDITIONAL PERSONAL PROPERTY.** The following personal property to be included in the sale herein: if any: \_\_\_\_\_.

**17. MARKETING.** If permissible and in accordance to real estate governance in the state of \_\_\_\_\_, Seller authorizes and permits Buyer to advertise the Property for rent/sale and/or advertise this Agreement for sale (as a principal to this agreement).

**18. SELLER'S DELIVERIES.** Seller shall deliver the following to Buyer within five days after Opening: (a) a written five-year insurance claims history regarding the Property (or a claims history for the length of time Seller has owned the Property if less than five years) from Seller's Insurance company; (b) any other disclosures to be made by Seller pursuant to applicable law;

**19. EQUITY RELEASE.** Seller acknowledges that the purchase price may be less than market value and voluntarily agreed to sell Property to Buyer for convenience, to save time and/or money, lack of funds to renovate, and/or any other personal reasons and herein releases and waives any/all claims against existing or future equity arising from Property. Buyer has not made Seller any representations or promises as to the value of property in its "as is" current condition.

**20. PROFIT DISCLOSURE.** Seller acknowledges that Buyer is an investor and is purchasing the Property with the intent to make a profit by either renting, fixing and flipping, re-selling and/or assigning the Agreement.

**21. ASSIGNMENT DISCLOSURE.** Seller acknowledges that Buyer may Assign his/her interest in the purchase of Property to a third-party "End-Buyer," who shall be any party selected at any time by Buyer prior to COE and affirmed with a separate written Assignment of Agreement executed by Buyer and End-Buyer. Seller acknowledges that Buyer will collect a fee from End-Buyer that is separate from the Agreement and does not change any of Buyer or Seller's rights or obligations under this Agreement.

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**22. AGENCY DISCLOSURE.** Seller acknowledges that Buyer:

\_\_\_\_\_ DOES NOT hold an active real estate license with the state of \_\_\_\_\_.

\_\_\_\_\_ DOES hold an active real estate license with the state of \_\_\_\_\_.

Seller acknowledges that seller has NOT been represented by Buyer or by any representative of Buyer with respect to the Purchase and Sale of the Property. Seller agrees and understands that the Buyer that the Buyer's Representatives are NOT acting as Seller's Broker or Agent in the transaction and have been acting solely for Buyer's own benefit as a principal to this Agreement. Seller agrees to hold Buyer free from any/all liability regarding the property and transaction arising from any claim of agency.

**23. REMEDIES.** If Seller fails to comply with any provision of this Agreement, Buyer shall deliver a notice to Seller specifying the non-compliance and if the non-compliance is not cured within three days after delivery of Buyer's notice to Seller, such failure shall be a breach of Agreement, entitling Buyer to pursue any and all remedies available to Buyer under this Agreement or at law or in equity, including, without limitation, an action for specific performance. In the event Buyer is forced to institute legal action to enforce this Agreement, Seller will be held responsible for and hereby agrees to pay all legal fees and costs of said action. Seller shall pay all attorneys' fees and costs incurred by Buyer as they come due and Seller irrevocably assigns all unpaid Purchase Price funds held in escrow to the benefit of Buyer and for the immediate payment of Buyer's attorneys' fees and costs. Seller hereby instructs the escrow company to pay out of such unpaid Purchase Price funds for any/all of Buyer's attorney's fees and costs as they are incurred.

**24. STATEMENT REGARDING LEAD BASED PAINT:** The parties acknowledge that dwelling units constructed prior to 1978 are likely to contain lead-based paint which could create a health hazard. In the event that the real property which is the subject of this Agreement consists of or contains a residential unit built prior to 1978, the parties agree that each party has received, reviewed, signed and annexed hereto a completed Disclosure and acknowledgment Form regarding Lead-Based Paint as required by federal HUD/EPA disclosure regulations.

**25. REPRESENTATIONS BY SELLER.** Seller represents and warrants to Buyer as follows:

A). This Agreement and each of the documents and agreements to be delivered by Seller at COE constitute legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

B). Neither the execution of this Agreement nor the performance by Seller of its obligations under this Agreement will result in any breach or violation of (1) to Seller's actual knowledge, the terms of any law, rule, ordinance, or regulation; or (2) any decree, judgment or order to which Seller is a party now in effect from any court or governmental body; and (3) there are no consents, waivers, authorizations or approvals from any third party necessary to be obtained by Seller In order to carry out the transactions contemplated by this Agreement.

C). The execution and delivery of this Agreement and performance by Seller of its obligations under this Agreement will not result in the creation of any new, or the acceleration of any existing, lien, charge, or encumbrance upon the Property.

D). As of Opening, Seller has not entered into any other Agreement or contract to sell the Property.

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E). Seller has disclosed to Buyer all material latent defects and any information concerning the Premises known to Seller.

F). Seller has no actual knowledge and has received no notice that the Property is not in compliance with all applicable laws governing the use and operation thereof, nor, to Seller's actual knowledge, does there exist any facts or circumstances on the Property which with notice or the passage of time would constitute such a violation. Each of the representations and warranties of Seller contained in this Section constitutes a material part of the consideration to Buyer and Buyer is relying on the correctness and completeness of these representations and warranties in entering into this transaction. Each of the representations and warranties is true and accurate as of the date of execution of this Agreement by Seller, will be true and accurate as of COE and will survive COE.

**26. OTHER AGREEMENTS.** Seller shall not enter into any Agreement to sell the Property with any other party. To protect the Buyer's equitable interest in the Property, Seller acknowledges that Buyer may elect to execute and record an Affidavit and Memorandum of this Agreement in the Official Records of the County for the purpose of providing notice of the rights of Buyer to purchase the Property. Should seller participate in another agreement which would interfere with this Agreement, Seller will be responsible for any and all costs and losses to Buyer. If Buyer is unable to perform under the terms of this Agreement, the Affidavit and Memorandum is null and void and unenforceable.

**27. INDEMNITY AND RELEASE OF CLAIMS.** Seller will indemnify Buyer in connection with defending any claim or action against Seller or Buyer. Seller shall defend, indemnify, save and hold Buyer harmless for and against any and all Claims: (a) directly or indirectly relating in any way to the Property and accruing prior to COE; and (b) arising as a result of the breach by Seller of any of Seller's obligation under this Agreement or under any other agreement or document delivered by Seller in accordance with this Agreement, or as a result of the inaccuracy of any representation or warranty made by Seller in this Agreement or in any other agreement or document delivered by Seller pursuant to this Agreement or in connection with the transactions contemplated by this Agreement. "Claims" means any and all obligations, debts, covenants, conditions, representations, costs, and liabilities and any and all demands, causes of action, and claims, of every type, kind, nature or character, direct or indirect, known or unknown, absolute or contingent, determined or speculative, at law, in equity or otherwise, including attorneys' fees and litigation and court costs.

## **28. MISCELLANEOUS.**

**A. Time.** Time is of the essence of this Agreement. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. \_\_\_\_\_ (state) time on the last day of the applicable time period provided for in this Agreement. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

**B. Notices.** All notices and requests must be in writing. They may be delivered either (a) personally; (b) by certified mail; (c) by fax; or (d) electronically. Notices or requests will be deemed received: (i) when accepted or rejected, if delivered personally, (ii) two days after being mailed, if mailed by certified mail; (c) when a fax confirmation is received, if faxed; or (d) when the receiving party has responded by email confirming receipt (email auto responses do not count).

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**C. Necessary Documents and Acts.** Seller and Buyer each agree to sign such other documents and perform such acts as may be reasonably necessary or appropriate to consummate this transaction in accordance with the terms of this Agreement.

**D. Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by Buyer, Seller and Escrow Agent.

**E. IRS and FIRPTA Reporting.** Seller agrees to comply with IRS reporting requirements. If applicable, Seller agrees to complete, sign and deliver to Escrow Agent a certificate indicating whether Seller is a foreign person or a non-resident alien pursuant to the Foreign Investment In Real Property Tax Act.

**F. Construing the Agreement.** Each of the parties to this Agreement acknowledges that such party has had the benefit of independent counsel with regard to this Agreement and that this Agreement has been prepared as a result of the joint efforts of all parties and their respective counsel. Accordingly, all parties agree that the provisions of this Agreement shall not be construed or interpreted for or against any party to this Agreement based upon authorship or any other factor but shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties to this Agreement.

**G. Partial Invalidity.** If any portion of this Agreement is determined to be unenforceable, such portion of this Agreement shall be stricken from and construed for all purposes not to constitute a part of this Agreement, and the remaining portion of this Agreement shall remain in full force and effect and shall, for all purposes, constitute the entire Agreement.

**H. Counterparts.** This Agreement may be signed electronically and in counterparts, each together making it a binding agreement.

**I. Survival.** The following obligations of the parties will survive COE or cancellation of this Agreement, whether contained in this Agreement or in any agreement, instrument, or other document given by a party in connection with the transactions contemplated by this Agreement: (a) any and all obligations of the parties that are to be performed following COE; (b) all Indemnity obligations of the parties; (c) any and all warranties or representations of the parties; and (d) any other obligation with respect to which it is expressly provided that it will survive COE or cancellation of this Agreement.

**J. Waivers.** No waiver or any provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver.

**K. Attorneys' Fees.** If either party should prevail in any litigation, arbitration or other legal proceeding instituted by or against the other related to this Agreement, the prevailing party shall receive from the non-prevailing party all costs and reasonable attorneys' fees incurred in such proceeding, including costs on appeal.

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**L. Cooperation.** Seller shall cooperate fully with Buyer in obtaining any necessary governmental approvals to the transfer of any item of property being sold to Buyer pursuant to this Agreement.

**M. Binding Effect.** The provisions of this Agreement are binding upon and shall inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

**N. Right to Counsel.** Seller represents and agrees that Seller fully understands Seller's right to discuss all aspects of this Agreement with an attorney, that Seller has carefully read and fully understands all of the provisions of this Agreement that Seller freely and voluntarily entered into this Agreement and that Seller has read this document in its entirety and fully understands the meaning, intent and consequences of this Agreement. This representation will survive this Agreement's termination.

**O. Governing Law/Jurisdiction.** This Agreement shall be governed by and construed and enforced under the laws of the state of \_\_\_\_\_ whose courts shall have jurisdiction over any legal proceedings or actions arising out of this Agreement. \_\_\_\_\_ County, in the state of \_\_\_\_\_ shall be the place of venue of any such proceeding or action.

**P. Acceptance.** This agreement shall remain in full force and effect until \_\_\_\_\_ o'clock local time on \_\_\_\_\_ (date). If at this time the Seller has not executed and delivered a fully executed original agreement, the contract will become of no force and effect.

**29. ANY OTHER TERMS AND CONDITIONS (If None Write None):**

SELLER(S):

Signature

Date

Signature

Date

\_\_\_\_\_ (Print Name)

\_\_\_\_\_ (Print Name)

BUYER(S):

Signature

Date

Signature

Date

\_\_\_\_\_ (Print Name)

\_\_\_\_\_ (Print Name)

BUYER INITIAL(S) \_\_\_\_\_

SELLER INITIAL(S) \_\_\_\_\_