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IDAHO REALTOR

FORMS UPDATE



# Process



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- **13,146** Total Membership
- **12,787** Total REALTOR Members
- **70** Comments last year
- **36** Total Forms
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- **19** Committee Members (w/staff)
- **2** Forms Providers\*
- **1** website to submit comments for forms





# Update

**RE - 52**



**ADDENDUM # \_\_\_\_\_** (All addendums shall be numbered sequentially.)  
**RE-52 PROPERTY SALE CONTINGENCY ADDENDUM**

JANUARY 2023  
EDITION



THIS IS A LEGALLY BINDING CONTRACT, READ THE ENTIRE DOCUMENT, INCLUDING ANY ATTACHMENTS.  
IF YOU HAVE ANY QUESTIONS, **CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT** BEFORE SIGNING.

1 Today's Date: \_\_\_\_\_

2  
3 This is an addendum to the Purchase and Sale Agreement Dated: \_\_\_\_\_ ID # \_\_\_\_\_

4  
5 **ADDRESS:** \_\_\_\_\_

6  
7 **BUYER(S):** \_\_\_\_\_

8  
9 **SELLER(S):** \_\_\_\_\_

10  
11 The undersigned parties who have entered into an agreement (hereafter "Agreement") to purchase, transfer, exchange, or lease the real  
12 property referenced above (hereafter Seller's Property), stipulate that said Agreement is contingent upon BUYER selling, closing and  
13 transferring title on another property owned by BUYER (hereafter "Buyer's Property") and that the following terms and conditions related to  
14 Buyer's Property are material and import aspects of that contingency and if those terms or conditions change SELLER or BUYER shall have  
15 the right to terminate the Agreement as provided herein.

16  
17 **1. BUYER'S PROPERTY:** The street address of Buyer's Property is: \_\_\_\_\_  
18 City \_\_\_\_\_ State \_\_\_\_\_

19  
20 **2. LISTING STATUS:** Buyer's Property is currently:  
21 ☐ Not listed for sale, but BUYER anticipates listing for sale ☐ within \_\_\_\_\_ business days of acceptance of this offer ☐ other:  
22 \_\_\_\_\_

23  
24 ☐ Listed for sale with a list date of: \_\_\_\_\_ and a current list price of \$ \_\_\_\_\_  
25  
26

27 **3. LISTING BROKERAGE:** Buyer's Property is or will be listed with the following brokerage: \_\_\_\_\_  
28 and assigned to the following: Agent Name: \_\_\_\_\_ Agent Contact Phone: \_\_\_\_\_  
29 Email: \_\_\_\_\_  
30

31 BUYER grants permission for the broker or agent listed above and SLLER's agent to communicate and discuss the characteristics of,  
32 list status, and any other information related to Buyer's Property including but not limited to the specific details of any offers or  
33 contracts for sale.  
34

35 **4. CONTRACT STATUS: Buyer's Property is:**  
36

37 (A) ☐ Not currently under contract but shall be under contract no later than \_\_\_\_\_ calendar days (three [3] if left blank) from final  
38 acceptance of the Agreement. In the event Buyer's Property is not under contract by the date established herein then the  
39 Agreement shall terminate, and BUYER's Earnest Money shall be returned to BUYER. In the event Buyer's Property goes under  
40 contract, the BUYER shall within one [1] Business Day after, provide SELLER an addendum stating the information described in  
41 subsection (B) below. Within two [2] Business Days of receipt of BUYER's addendum SELLER shall either sign the addendum  
42 making it an integral part of the Agreement or SELLER may terminate the Agreement and BUYER's Earnest Money shall be  
43 returned to BUYER.  
44

45 (B) ☐ Currently under contract with a prospective purchaser with the following contract terms:

- 46 ☐ Contract price: \_\_\_\_\_  
47 ☐ Closing date: \_\_\_\_\_  
48 ☐ Pending contingencies: \_\_\_\_\_  
49 ☐ none  
50 ☐ inspection/feasibility contingencies  
51 ☐ financing contingencies  
52 ☐ appraisal contingencies  
53 ☐ title inspection contingencies  
54 ☐ has a home sale contingency  
55 ☐ other \_\_\_\_\_  
56

**BUYER'S** Initials (\_\_\_\_)(\_\_\_\_) Date \_\_\_\_\_

**SELLER'S** Initials (\_\_\_\_)(\_\_\_\_) Date \_\_\_\_\_

(C) Upon request, BUYER shall provide SELLER with a copy of the sales contract relating to BUYER's Property within \_\_\_\_\_ Business Days (two [2] if left blank.)

**5. NOTIFICATION TO SELLER OF CHANGE IN CIRCUMSTANCES:** BUYER shall notify SELLER within one [1] Business Day after the occurrence of any of the following circumstances: If Buyer's Property goes off the market, fails to close as scheduled, has a pending contract terminate or if any of the material terms of a pending contract change. BUYER shall notify SELLER immediately in the event BUYER is made aware of a fact which establishes a reasonable belief that a proposed purchaser of Buyer's Property is not able to or does not intend to complete that purchaser's obligations under the applicable real estate contract. ☐ Buyer shall also notify SELLER within one [1] Business Day after the occurrence of the following additional circumstances:

**6. TERMINATION DUE TO CHANGE IN CIRCUMSTANCES.** Upon the occurrence of any circumstance identified in the preceding section 1) SELLER or BUYER may terminate the Agreement pertaining to Seller's Property and BUYER's Earnest Money shall be returned to BUYER OR 2) the parties may waive the right to terminate through a separate addendum executed by SELLER and BUYER; if new deadlines or circumstances are established in said addendum BUYER shall have the duty to notify SELLER as if those new terms were originally stated herein.

**7. REMOVAL UPON CLOSING.** The contingency stated herein shall be satisfied and removed simultaneously upon the closing and transfer of title to Buyer's Property.

**8. OTHER TERMS AND/OR CONDITIONS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RE - 53**



## RE-53 HOLD HARMLESS AGREEMENT

JANUARY 2023  
EDITION

THIS IS A LEGALLY BINDING CONTRACT, READ THE ENTIRE DOCUMENT, INCLUDING ANY ATTACHMENTS.  
IF YOU HAVE ANY QUESTIONS, **CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT** BEFORE SIGNING.



Today's Date: \_\_\_\_\_

**AGREEMENT DATED:** \_\_\_\_\_ **ID #** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_ (hereafter the "Property")

**BUYER(S):** \_\_\_\_\_

**SELLER(S):** \_\_\_\_\_

The parties state above who have entered into an agreement to purchase, transfer, exchange, or lease the Property (hereafter the "Agreement") agree as follows:

**1. GRANT OF ACCESS:** Due to BUYER'S request SELLER hereby grants permission to the BUYER and/or BUYER'S contractors to access the ☐ interior ☐ exterior of the Property prior to the closing of this transaction for the purpose(s) indicated herein. BUYER ☐ is ☐ is not, required to personally accompany BUYER'S contractors while they are on the Property.

**2. TERM:** Access shall be allowed starting on the date of \_\_\_\_\_ at the time of \_\_\_\_\_ ☐ A.M. ☐ P.M. and last through 5:00 P.M. on the specific date of \_\_\_\_\_, however SELLER reserves the right to revoke access at any time through notice to BUYER, at which time BUYER and BUYERS contractors shall immediately depart from the Property.

**3. PURPOSE:** The access granted herein is for the purpose(s) of:

☐ Completing exterior painting to the property.

☐ Replacing carpet or flooring.

☐ General cleaning and/or carpet cleaning.

☐ Completing the following lender required repairs: \_\_\_\_\_

☐ Other \_\_\_\_\_

- 32 **4. PAYMENT:** BUYER agrees to pay for all work performed on the Property and to fully compensate all laborers, subcontractors,  
33 financiers, materialmen and others as required to keep the Property free and clear of liens at all times. In the event a lien is recorded  
34 against the Property BUYER shall pay all reasonable costs and attorney's fees associated with removal of said lien by SELLER.  
35 No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of  
36 SELLER. **BUYER understands that all repairs and/or improvements made to the property become part of the property and in**  
37 **the event the underlying purchase and sale transaction fails to close the SELLER will receive the benefit of the**  
38 **improvements and BUYER will not be entitled to a refund or any compensation from the SELLER.**  
39
- 40 **5. STANDARD OF WORK:** BUYER shall ensure that all work performed on the Property is performed in a workmanlike manner, meets  
41 industry standards and shall ensure that all work is performed in compliance with all applicable local, state and federal regulations.  
42
- 43 **6. ACCESS TO PROPERTY NON-EXCLUSIVE.** The grant of access herein is non-exclusive and shall in no way diminish SELLER and/or  
44 SELLER'S representatives right to access the Property.  
45
- 46 **7. BUYER'S ASSUMPTION OF LIABILITY:** BUYER hereby accepts and assumes all liability for damage to the Property, and for any  
47 work performed thereon. BUYER agrees to indemnify, hold harmless and release the SELLER from any liability, injury, expense, or  
48 any claim whatsoever that may result from the permission granted herein or from BUYER'S contractors accessing the Property.  
49
- 50 **8. RELEASE OF BROKERS:** BUYER and SELLER further agree to release all brokers and their associates from any claims, actions,  
51 damages and demands arising out of this agreement. This release shall survive the consummation or termination of the Agreement.

**BUYER'S** Initials (\_\_\_\_)(\_\_\_\_) Date \_\_\_\_\_

**SELLER'S** Initials (\_\_\_\_)(\_\_\_\_) Date \_\_\_\_\_

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52 **9. DEFAULT.** A breach of this agreement constitutes a breach under the purchase and sale agreement between SELLER and BUYER for  
53 the purchase of the Property, and a default under that purchase and sale agreement shall immediately revoke the access granted under  
54 this agreement. Any damages resulting from a breach of this agreement or the permission granted hereunder may be recovered out of  
55 the earnest money tendered by BUYER in any underlying purchase and sale agreement.

56  
57 **10. TIME.** Time is of the essence in this Agreement.

58  
59 **11. ATTORNEY'S FEES:** If either party initiates or defends any legal action or proceedings which are in any way related to this agreement,  
60 the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs  
61 and fees on appeal.

62  
63 **12. LEAD PAINT DISCLOSURE and OBLIGATION:** As designated in the purchase sale agreement the Property may or may not be defined  
64 as "Target Housing" and may contain lead-based paint or lead-based paint hazards. BUYER hereby acknowledges that BUYER has  
65 been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From Lead in Your Home", and  
66 BUYER acknowledges there is a potential for the presence of lead-based paint hazards in said Property. Additionally, if any structure  
67 was built before 1978 and is a residential home, apartment, or child-occupied facility such as a school or day-care center, federal law  
68 requires contractors that disturb lead-based paint in that structure to provide the owner with a "Renovate Right" pamphlet. The contractor  
69 shall be certified and follow specific work practices to prevent lead contamination. BUYER assumes all responsibility for testing for lead  
70 paint, hiring a certified contractor and ensuring that all work is performed in compliance with all applicable local, state and federal  
71 regulations.

72  
73 **13. MOLD DISCLAIMER:** BUYER is hereby advised that mold and/or other microorganisms may exist in or on the Property. BUYER  
74 acknowledges and agrees to accept all liability and risk for any matters that may result from the disturbance of any mold and/or other  
75 microorganisms; and to hold SELLER and any Broker or agent representing any party harmless from any such liability.

76  
77 **14. OTHER TERMS AND/OR CONDITIONS:** \_\_\_\_\_  
78 \_\_\_\_\_  
79 \_\_\_\_\_

**RE - 54**



# RE-54 NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT

JANUARY 2023  
EDITION  
Page 1 of 3

THIS IS A LEGALLY BINDING CONTRACT, READ THE ENTIRE DOCUMENT, INCLUDING ANY ATTACHMENTS.  
IF YOU HAVE ANY QUESTIONS, **CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT** BEFORE SIGNING.



1 This NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT is entered into the date stated below by and between:

2  
3 **DISCLOSING PARTY:** \_\_\_\_\_

4  
5 **RECEIVING PARTY:** \_\_\_\_\_

6  
7 **PROPERTY ADDRESS OR DESCRIPTION:** \_\_\_\_\_

8  
9 The parties stated above who have entered into, or are contemplating entering into an agreement to purchase, transfer, exchange or lease  
10 the real property referenced below, and/or the operations conducted thereon, (hereafter referred to as "the Transaction") believe it would be  
11 beneficial to review, exchange, provide and/or otherwise have access to various Information and/or Documentation, as those terms are  
12 defined below, pertaining to the property and/or Transaction; yet the parties also desire to maintain and protect the confidential nature of the  
13 Information and Documentation and ensure it is not circulated beyond the parties hereto; therefore the parties in reliance of the mutual  
14 promises contained herein hereby covenant and agree as follows:

15  
16 The term **Information** as used herein shall mean knowledge or data provided by one party to the other, whether provided directly or indirectly  
17 through an agent, orally or documented, or obtained through site visits, inspections, meetings, conversation, or correspondence. Information  
18 may be provided contemporaneously herewith or after the execution of this agreement. Information shall include but not necessarily be limited  
19 to knowledge and data of a proprietary and/or confidential nature. Information shall specifically include, but is not limited to, (a) rental income  
20 and data, (b) tenant identification, (c) lease terms (d) gross or net profit or loss figures, (e) trade secrets, (f) business processes and methods  
21 of operation, (g) goodwill (h) intellectual property, (i) financial information, (j) services, (k) service costs, prices, profits and sales, (l) new  
22 business ideas, (m) business strategies and plans, (n) product and service plans, (o) marketing plans and studies, (p) forecasts, (q) budgets,  
23 (r) projections, (s) computer programs, (t) databases and the information contained therein, (u) computer access codes and similar  
24 information, (v) software ideas, (w) know-how, technologies, concepts and designs, (x) research projects and all information connected with  
25 research and development efforts, (y) records, (z) business relationships, methods and recommendations, (aa) existing or prospective  
26 member, client, customer, vendor and supplier information (including, but not limited to, identities, needs, transaction histories, volumes,  
27 characteristics, agreements, prices, identities of individual contacts, and spending preferences or habits), (bb) training manuals and similar  
28 materials, (cc) competitive analyses, (dd) contracts with other parties, and (ee) other similar information of a sensitive nature.

29  
30 The term **Documentation** as used herein shall mean any memorialization, summary, assembly, or evidence of Information whether in paper,  
31 electronic, or other medium.

32  
33 **1. PROTECTION:** The receiving party will regard and preserve as confidential all Information and Documentation provided and shall employ,  
34 at a minimum, the same standards, and procedures for protecting the Information and Documentation as the receiving party uses with the  
35 party's own confidential Information and Documentation.

37 **2. USE:** The various Information and Documentation being furnished by the providing party is solely for the receiving party's review in  
38 connection with its consideration of the Transaction. The receiving party will use the Information and Documentation solely in connection with  
39 the Transaction and for no other purpose whatsoever. The receiving party shall not copy, reproduce, reprint, or duplicate the Information and  
40 Documentation provided and shall only provide the same to those with a need to know as it relates to the receiving party's contemplation of  
41 the Transaction.

42  
43 **3. WARRANTY:** The providing party warrants that it has used good faith and reasonable diligence in the collection, documentation and  
44 provision of the Information and Documentation. The receiving party is using the Information and Documentation and relying on any  
45 information therein or conclusions derived therefrom at its own risk.

46  
47 **4. RETURN OR DESTRUCTION.** In the event that the Transaction does not close or come to fruition, or upon the written request of the  
48 party providing the Information and Documentation the receiving party will, within twenty four (24) hours return or destroy all Information and  
49 Documentation in its possession, including but not limited to Information and Documentation in electronic form. Upon request the providing  
50 party shall be entitled to written confirmation that the receiving party has fully complied with its return or destruction obligations.

51  
52 **5. NON-SOLICITATION OF TENANTS OR CUSTOMERS.** ☐ \_\_\_\_\_. If checked and initialed, the receiving party agrees that for a period of  
53 eighteen (18) months from the date of this agreement, it will not solicit, divert, take away, or attempt to solicit, divert, or take away, any of the  
54 current tenants or customers, either for itself or on behalf of any other person or entity engaged in the business of the providing party.  
55

**DISCLOSING PARTY** Initials (\_\_\_\_)(\_\_\_\_) Date \_\_\_\_\_ **RECEIVING PARTY** Initials (\_\_\_\_)(\_\_\_\_) Date \_\_\_\_\_

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56 **6. NON-SOLICITATION OF EMPLOYEES.** ☐ \_\_\_\_\_. If checked and initialed, the receiving party agrees during a period of eighteen (18)  
57 months from the date of this agreement it will not solicit, recruit, or hire any other current employee of the Company, either for itself or on  
58 behalf of any other person or entity.

59  
60 **7. SURVIVAL.** In the event the Transaction fails to close and/or the purchase sale agreements are terminated or withdrawn; the covenants  
61 and agreements contained herein, unless otherwise specifically indicated, shall be perpetual and survive the negotiations related to the  
62 Transaction.

63  
64 **8. OTHER TERMS AND/OR CONDITIONS:** This agreement is made subject to the following special terms, considerations and/or  
65 contingencies which must be satisfied prior to closing \_\_\_\_\_  
66 \_\_\_\_\_  
67 \_\_\_\_\_  
68 \_\_\_\_\_  
69 \_\_\_\_\_  
70 \_\_\_\_\_  
71 \_\_\_\_\_

72 **9. REMEDY FOR BREACH:** It is agreed that it would be difficult to measure damages from any breach of this agreement therefore, all  
73 parties acknowledge that the remedy at law for any breach of any of the covenants and agreements contained in this agreement will be  
74 inadequate, and thus either party shall be entitled to immediate injunctive relief for the enforcement of this agreement in addition to receiving  
75 such other compensation for damages as a court of competent jurisdiction may award.

76  
77 **10. ATTORNEY'S FEES:** If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected  
78 with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees,  
79 including such costs and fees on appeal.

80  
81 **11. BINDING AGREEMENT:** This agreement shall be binding upon and shall inure to the benefit of each party's respective heirs, personal  
82 representatives, successors, and assigns.

83  
84 **12. COUNTERPARTS:** This agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature  
85 of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and  
86 all identical copies shall together constitute one and the same instrument.

87  
88 **13. TRANSMISSION OF DOCUMENTS:** Facsimile or electronic transmission of any signed original document, and retransmission of any  
89 signed facsimile or electronic transmission shall be the same as delivery of an original.

90  
91 **14. SEVERABILITY:** In the case that any one or more of the provisions contained in this agreement, or any application thereof, shall be  
92 invalid, illegal, or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be  
93 affected or impaired thereby.

94  
95 **15. APPLICABLE LAW:** This agreement shall be governed by and interpreted in accordance with the laws of the state of Idaho. Any action  
96 necessary to enforce this agreement shall be brought in the state of Idaho in any County having legal jurisdiction over the parties.

97  
98 **16. ENTIRE AGREEMENT:** This agreement represents the entire agreement with respect to the Information and Documentation between  
99 the parties. All prior or contemporaneous negotiations, agreements, or understandings, whether oral or written, are merged into this  
100 agreement. This agreement may only be modified in writing executed by all parties hereto.

101  
102 **17. AUTHORITY.** If a party hereto is a corporation, trust, estate or other entity, the person executing this agreement on its behalf warrants to  
103 the other party they have the authority to do so and to bind the entity.  
104  
105  
106  
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115

**RE - 18**



ADDENDUM # \_\_\_\_\_ (All addendums shall be  
numbered sequentially.)

JANUARY 2023  
EDITION

## RE-18 BACK-UP OFFER ADDENDUM



THIS IS A LEGALLY BINDING CONTRACT, READ THE ENTIRE DOCUMENT, INCLUDING ANY  
ATTACHMENTS.

IF YOU HAVE ANY QUESTIONS, **CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT**  
BEFORE SIGNING.

**3. NOTICE:** If the Offer in First Position fails to close, or if SELLER obtains knowledge that the Offer in First Position has been terminated, SELLER shall give written notice to BACK-UP BUYER within \_\_\_\_\_ business days (two [2] if left blank) of obtaining knowledge that the Offer in First Position will not close. All parties agree and acknowledge that upon delivery of the notice stated herein the parties will immediately be placed in a binding contract to purchase and sell the Property, regardless of BACK-UP BUYER'S consent or acknowledgement of the notice.

**5. EARNEST MONEY:** Earnest Money is/will be:

**Evidenced by:**

- ☐ Cash
- ☐ Personal Check
- ☐ Cashier's Check
- ☐ Wire/Electronic Transfer
- ☐ Note
- ☐ See Section 9

**Held By:**

- ☐ Responsible Broker
- ☐ Closing Company
- ☐ See Section 9

**Delivered:**

- ☐ With Offer
- ☐ Within \_\_\_\_\_ business days (three [3] if left blank) of acceptance.
- ☐ Within \_\_\_\_\_ business days (three [3] if left blank) of notification to first position.
- ☐ See Section 9

**Deposited:**

- ☐ Upon Receipt and Acceptance
- ☐ Upon Receipt Regardless of Acceptance
- ☐ See Section 9

**8. TIMING:** The timing of the parties' performance obligations under this Agreement, including time periods for inspection contingencies, covenants and other obligations shall not commence until SELLER delivers the written notice referred to in paragraph 3 above. This section shall not apply to the Expiration section above or any timing related to Earnest Money.

**RE - 21**



# RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT

JANUARY 2023  
EDITION

THIS IS A LEGALLY BINDING CONTRACT, READ THE ENTIRE DOCUMENT, INCLUDING ANY ATTACHMENTS.  
IF YOU HAVE ANY QUESTIONS, **CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.**

**NO WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF HABITABILITY, AGREEMENTS OR REPRESENTATIONS NOT EXPRESSLY SET FORTH HEREIN SHALL BE BINDING UPON EITHER PARTY.**



**4. SATISFACTION AND/OR REMOVAL OF ALL CONTRACT CONTINGENCIES:** Unless specifically stated below all contingencies in this Agreement and in any counter offers, addendums or amendments are required to be satisfied, removed or exercised no later than \_\_\_\_ business days (seven [7] if left blank) prior to the stated closing date or any extension thereof. Failure of either BUYER or SELLER to exercise any contingency by this deadline shall constitute an unconditional waiver of said contingency. Unless this Agreement is properly terminated under a specific provision of this Agreement prior to the contingency deadline stated above then all parties shall conclusively be deemed to have elected to proceed with the transaction and all Earnest Money shall become nonrefundable except upon an instance of SELLER's default. In the event any contingency has been waived or a contingency deadline has expired and thereafter closing is extended or rescheduled to occur on a later date, said extension shall not reinstate the waived or expired contingency without a mutually executed written agreement containing language specifically reinstating the same. This contingency deadline shall not apply to the following contingency(ies):



PROPERTY ADDRESS: \_\_\_\_\_ ID#: \_\_\_\_\_

299 **20.OCCUPANCY:** BUYER ☐ does ☐ does not intend to occupy PROPERTY as BUYER'S primary residence.

300  
301 **21. SECTION 1031 TAX DEFERRED EXCHANGE:** BUYER ☐ Does ☐ Does Not intend to do a 1031 Tax Deferred Exchange (N/A if  
302 left blank). Each party shall cooperate with the other Party in effectuating an exchange under IRS Section 1031; provided however, that the other Party's  
303 cooperation shall be conditioned on the following: (a) the exchange shall be at no additional liability and/or cost to the other Party; (b) the exchange shall not  
304 delay Settlement or Closing; and (c) the other Party shall not be required to acquire title to any proposed exchange properties to accommodate an exchange.  
305 The exchanging party shall indemnify, defend and hold the other Party harmless from and against all claims, demands, costs and expenses which that Party  
306 may sustain as a result of the actual or attempted 1031 exchange.

307  
308 **22. RISK OF LOSS OR NEGLECT:** Prior to closing of this sale, all risk of loss shall remain with SELLER. In addition, should the PROPERTY be  
309 materially damaged by fire, neglect, or other destructive cause prior to closing, this agreement shall be voidable at the option of the BUYER, and  
310 if voided, BUYER'S Earnest Money shall be returned to BUYER.

311

368 **33. DEFAULT:** If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages  
369 or (2) pursuing any other lawful right and/or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand  
370 upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER'S Broker on behalf  
371 of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, appraisal, credit report fees, inspection  
372 fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER'S Broker, provided that  
373 the amount to be paid to SELLER'S Broker shall not exceed the Broker's agreed-to commission. SELLER and BUYER specifically acknowledge and agree  
374 that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER'S sole and exclusive remedy, and such shall not be  
375 considered a penalty or forfeiture. However, in the event the parties mutually agree in writing that **any** Earnest Money shall become non-refundable, said  
376 agreement shall not be considered an election of remedies by SELLER and the non-refundable Earnest Money shall not constitute liquidated damages; nor  
377 shall it act as a waiver of other remedies, all of which shall be available to SELLER; it may however be used to offset SELLER'S damages. If SELLER elects  
378 to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related  
379 to the transaction, including, without limitation, the costs of brokerage fee, title insurance, escrow fees, appraisal, credit report fees, inspection fees and  
380 attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter. If SELLER defaults, having approved said sale and fails  
381 to consummate the same as herein agreed, BUYER'S Earnest Money deposit, **including but not limited to Earnest Money that has become non-refundable**,  
382 shall be returned to BUYER and SELLER shall pay for the costs of title insurance, escrow fees, appraisals, credit report fees, inspection fees, brokerage fees  
383 and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

**40. CONDITION OF PROPERTY UPON CLOSING:** Upon closing BUYER agrees BUYER is purchasing the PROPERTY in as-is-condition with all faults and with no further repairs required, subject only to the representations and warranties stated herein, in any deed, or otherwise agreed upon by the parties in writing. BUYER will assume all obligations with respect to the PROPERTY. Prior to closing SELLER shall ensure all personal property not specifically transferred under this Agreement is removed from the PROPERTY and that the PROPERTY is free of debris. SELLER shall have no right to abandon personal property by leaving the same on the PROPERTY. In the event any personal property remains on the PROPERTY after closing the same shall be deemed to have no value and may be disposed of, sold, or acquired by BUYER without notice or compensation to SELLER; BUYER shall have a cause of action against SELLER for reasonable costs and expenses for the removal of same; and SELLER shall indemnify BUYER for claims from third parties related to the same. BUYER and SELLER intend for the provisions of this section to survive closing and not merge with any subsequently executed deed as it is a collateral stipulation.



# Questions