



AGREEMENT TO BUY AND SELL REAL ESTATE ASSUMPTION OF MORTGAGE

1. **PARTIES:** This legally binding Agreement into on _____, 20____
between, Buyer(s), _____, (hereinafter called "**BUYER**"), and
Seller(s), _____, (hereinafter called "**SELLER**"). The property
shall be deeded in the name(s) of _____

2. **PROPERTY TO BE SOLD:** Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following
described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____

Address _____

Tax Map # _____ City _____ Zip _____

County of _____, State of South Carolina.

Seller represents that the property is connected to [] public sewer system or to [] septic tank or to [] public water or to [] well system or to [] other _____

No personal property will convey as a part of this sale, except as described: (attach addendum if necessary) _____

3. **PURCHASE PRICE:** shall be [] exactly [] approximately _____ Dollars, (\$ _____),
Payable as follows:

- (a) Buyer shall pay ([] exact if price is approximate/[] approximate if price is exact) down payment of \$ _____, on or before closing by cash, certified check, or cashier's check.
- (b) Buyer shall accept a first mortgage loan in the principal amount (\$500 variance allowed) of \$ _____.

Payments payable to _____ Account No. _____

Monthly installments of \$ _____ including principal, interest and any escrow deposits, if applicable. Payment subject to adjustment because of increase in taxes or insurance or interest escalation. Interest accruing in arrears: [] to be prorated [] not to be prorated to date of closing.

Seller to make the payment due _____, 20____, without further adjustment, unless stated otherwise in this portion of the Agreement. Buyer is to make the payment due _____, 20____, without further adjustment, unless stated otherwise in this portion of the Agreement.

- (c) Mortgage payment and interest rate to be transferred to the Buyer is: (check one)
[] Presently _____% Fixed for Term of Loan.
[] Presently _____% Adjustable, Variable or Graduated.
(Buyer should check with lending institution for complete mortgage information.)

- (d) The purchase of the property shall be the: (check one)
[] Assumption of the Mortgage (with release of liability).
[] Assignment of the Property Subject to the Mortgage (without release of liability).

If purchase is Subject to Mortgage, Seller hereby acknowledges that Seller will have a financial liability to the mortgage lender after the closing of this transaction. This liability may affect the Seller's future ability to borrow money.

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4. **ASSUMPTION INFORMATION:**

Mortgage Company: _____
Address: _____
Loan No.: _____ Phone No.: _____

- Buyer agrees to accept the existing mortgage with a principal balance in an approximate amount of \$_____. Should the principal balance be more or less, it is agreed by both parties that the total equity will be adjusted accordingly.
- The Buyer is purchasing the Seller's equity for the specific amount of \$_____ and accepting the mortgage.
- Seller agrees to maintain the mortgage payments, including escrow funds, in a current status until the sale is consummated. This Agreement is contingent upon Mortgagee permitting mortgage to be accepted. Cost of transferring mortgage, recording fees and attorney fees to be paid by _____.
- The escrow account for Taxes and Insurance will be current at time of closing and assigned to the Buyer **without cost**.
- The escrow account for Taxes and Insurance will be prorated to date of closing. Escrow Account Balance to be current. Buyer shall **reimburse Seller** for sum of escrow balance.
- Escrow account is to be current at the time of closing. It is agreed by both parties to make a payment adjustment to either party accordingly. The hazard insurance policy may then be assigned to Buyer with without costs, UPON APPROVAL BY THE INSURANCE COMPANY. If Buyer elects to provide a new insurance policy, Seller shall have the right to cancel the insurance policy and receive any unearned premium from Seller's insurance policy.

5. **SPECIAL VA/FHA TERMS:** If this Agreement is subject to Buyer obtaining VA or FHA loan the following shall apply:
- (a) The Seller will not be obligated to give possession of the herein described property to the Buyer until such time as the Buyer's loan has been approved by the VA or FHA, and the title to the property conveyed to the Buyer and the deed has been delivered.
 - (b) The Buyer will not be charged with any special assessments or improvements bonds, including those payable in the future for improvements included in plans and specifications or for subdivision improvements commenced or completed on the day of closing, such as sidewalks, curbs, sewers, or other utility installments.
 - (c) Notwithstanding any other provisions of this Agreement, the Buyer will be charged only such closing costs and/or prepaid items as have been approved by the VA and/or FHA.

It is expressly agreed that, notwithstanding any other provisions of this Agreement, the Buyer shall not be obligated to complete the purchase of the property herein described or to incur any penalty by forfeiture of earnest money deposits unless a written statement issued by the Federal Housing Authority or Veterans Administration setting forth the appraised value or certification of reasonable value of the property, excluding closing costs, for mortgage insurance purposes not less than \$_____. The Buyer shall, however, have the privilege and option of proceeding with the consummation of this Agreement without regard to the amount of the appraised valuation made by the Federal Housing Authority or Veterans Administration. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure or guarantee. HUD and VA do not warrant the value or the condition of the property. The Buyer should satisfy himself/herself that the price and condition of the property are acceptable.

6. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:
- (a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
 - (b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: _____

7. **CLOSING DATE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before _____, 20_____, not later than 9:00 p.m. **Time is of the essence.** Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

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8. **POSSESSION:** Possession of said property will be given to Buyer on the day of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

9. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed _____ consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. **Time is of the essence.**

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan [] will [] will not be issued at closing. If applicable, the warranty premium will be paid at closing by the [] Buyer or [] Seller not to exceed \$ _____.

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at _____ o'clock ____M on _____, 20____ unless accepted or countered by Seller in written form prior to such time. **Time is of the essence.**

12. **EARNEST MONEY:** This offer is accompanied by an earnest money deposit of \$_____. Buyer and Seller authorize _____, as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by [] Cash, [] Check, or [] Other. Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE BROKER HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

13. **INSURANCE:** Hazard insurance to be canceled and new policy furnished by Buyer at closing, unless stipulated in this Agreement.

14. **MORTGAGE APPROVAL:** If approval of Buyer by the mortgagee, insurer, or guarantor is required, this sale is subject to said approval, and in the event Buyer is disapproved or if the Buyer is unable to obtain any required aforementioned secondary financing for a cause that cannot be reasonably cured, either Buyer or Seller may terminate this Agreement and both shall execute a release of contract, and Buyer shall pay any appraisal and/or credit report charges, survey or any other charges associated with obtaining the loan. Escrow Agent shall then refund earnest money to the Buyer. Buyer shall endeavor in good faith to obtain approval to accept Seller's loan and when requested by lender, guarantor, or insurer, shall supply all necessary information and sign all customary assumption documents.

15. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax proration pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

16. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

17. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

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18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender, at Buyer's option shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 20), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

20. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

21. **CONDITION OF PROPERTY:**

(A) **Seller's Property Condition Disclosure Statement:** (check one)

Buyer and Seller agree that Seller will **not** complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et.seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understand and agree that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section [27-50-70](#) of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances prior to the day of closing or possession. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified within _____ consecutive days after both parties have signed this Agreement. **Time is of the essence.** If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, The Buyer The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before _____, 20____. **Time is of the essence.** If Buyer fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph.

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The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.

If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) **Repairs:** The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, and the dwelling structurally sound and wood infestation treatment, if any, required by section (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) **Residential Dwellings Built before 1978:** (check one of the following)

This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on _____, 20____. **(Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information).** This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) **Megan's Law:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information. The Buyer understands that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) **Disclaimer:** The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller. Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

22 **COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at Buyer's Seller's expense.

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23. **APPRAISED VALUE:** (check one)

This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price.

This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

24. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty or warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

25. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

26. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on the reverse, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of gender shall include all.

27. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

28. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) _____

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THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

BUYER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

LISTING AGENT AND COMPANY _____

SELLING AGENT AND COMPANY _____

ESCROW AGENT ACKNOWLEDGMENT _____

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