

## NOVATION AND INDEMNIFICATION AGREEMENT

This Novation and Indemnification Agreement is dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ (hereinafter referred to as "Seller"), and \_\_\_\_\_ (hereinafter referred to as "Buyer"):

WHEREAS, Seller and Buyer entered into an Agreement of Sale dated \_\_\_\_\_ (the "Agreement of Sale"), for the sale of Seller's real estate at \_\_\_\_\_ (the "Property"), for a purchase price of \$ \_\_\_\_\_; and

WHEREAS, the parties have agreed that Buyer, as equitable owner, may market the property for sale to a third-party purchaser, and, in the event Buyer identifies a third-party purchaser, novate the Agreement of Sale in favor of a new agreement with the third-party purchaser, terminating the Agreement of Sale and contracting to transfer record title to the Property directly to the third-party purchaser; and

WHEREAS, Buyer has successfully marketed the Property to \_\_\_\_\_ (the "Third-Party Purchaser"), having proposed a substitute Agreement of Sale, with related addenda and other documents, to be entered into between the Seller and the Third-Party Purchaser (together, the "Third-Party Agreement of Sale"), to replace the Agreement of Sale, which shall be terminated; and

WHEREAS, the parties hereto intend to conditionally terminate the Agreement of Sale between the Buyer and Seller under the terms and conditions herein set forth so as to structure the transfer of the Property directly to the Third-Party Purchaser (who shall replace Buyer as the ultimate purchaser of the Property) under the Third-Party Agreement of Sale, with substituted obligations of the parties as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein set forth, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. **Seller to Execute Third-Party Agreement of Sale.** Contemporaneously with the execution of this Novation and Indemnity Agreement, Seller will execute the Third-Party Agreement of Sale and all addendum related thereto.
2. **Conditional Termination of Agreement of Sale.** The Agreement of Sale between the Seller and Buyer are hereby conditionally terminated in accordance with the terms hereof, effective immediately upon the execution of the Third-Party Agreement of Sale by the Seller and the Third-Party Purchaser. Seller agrees that all monies deposited by Buyer under the terms and conditions of the Agreement of Sale and held by Seller or any third party as escrow agent, shall be refunded to the Buyer immediately upon the closing of the purchase by the Third-Party Purchaser. The deposit paid by the Third-Party Purchaser under the Third-Party Agreement of Sale shall be paid to the closing agent and applied to the purchase price payable under the Third-Party Agreement of Sale.
3. **Renovation and Repair Obligations to Third-Party Purchaser.** The parties agree that Buyer will now serve as the Seller's consultant for the Property, and Buyer agrees that it will advance and be responsible for the costs of any required inspections, and for the costs of any and all renovations, replacements and repairs required to be made to the Property under the terms of the Third-Party Agreement of Sale or any addendum thereto, and for any appliances or services to be provided to the Third-Party Purchaser under the terms of the Third-Party Agreement of Sale or any addendum thereto, and that it will indemnify and hold Seller harmless from and against any and all such obligations. Seller shall have no responsibility or liability to perform or pay for such renovations.
4. **Additional Indemnifications.** Buyer agrees to indemnify and hold Seller harmless from and against the following, and agrees that the terms of this Section shall survive settlement:
  - a. any and all damages, injuries, losses, claims, suits, actions or the like arising out of or relating to Buyer's pre-settlement possession of the Property, including all utilities (except water and sewer) charged to the Property during the period of Buyer's pre-settlement possession. Buyer shall not cause or suffer any mechanics liens to be filed against the Property as a result of any of its aforesaid work, and if any such mechanics lien is filed against the Property, Buyer shall immediately and at its sole cost discharge the same and shall indemnify and save Seller and the

Property harmless from any such mechanics lien. If damage is caused to the Property during Buyer's period of pre-settlement access, except for damage caused by Seller or Seller's invitees, Buyer shall be liable for the cost of the repair for such damage.

- b. any and all duties, obligations, liabilities, claims, suits, damages, or the like arising out of or relating to Seller's obligations to repair or renovate the Property under the Third-Party Agreement of Sale;
  - c. all Seller's assistance, closing cost assistance or the like payable or creditable to Purchaser under the Third Party Agreement of Sale, and all realtor or broker commissions or fees payable with respect to the sale of the Property to the Third-Party Purchaser; and
  - d. all realty transfer taxes assessed in conjunction with the sale of the Property to the Third-Party Purchaser to the extent they exceed \$\_\_\_\_\_, which shall be paid directly by Buyer.
5. **Compensation Payable to Buyer.** Upon closing under the Third-Party Agreement of Sale, Seller shall retain from the net proceeds of the sale the sum of \$\_\_\_\_\_, plus pro-rated assessed taxes and other pro-rated assessments (which proration shall be made as of the date of closing), less \$\_\_\_\_\_ in transfer tax that would have been payable had the Agreement of Sale not been terminated, less any payoffs for mortgages or liens, less any unpaid assessments, taxes, or unpaid utilities, less any realtor's or broker's commission (if any), less Seller's attorneys' fees (if any), less the cost of deed preparation and notarization, and less a title release processing fee to be credited to Buyer in the amount of \$\_\_\_\_\_. The Seller shall pay or release the balance of the net proceeds immediately to the Buyer in readily available funds as compensation for the consulting services provided to Seller hereunder.
6. **Entire Agreement.** This writing shall constitute the entire understanding of the parties with respect to the subject matter hereof. All prior understandings, written or oral, shall be deemed to be merged herewith. This Agreement may be executed in counterparts, each of which shall be deemed to be original, but one and the same document. Signatures transmitted by facsimile or electronically shall be enforceable the same as originals.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SELLER:

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By:

SELLER:

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By:

BUYER:

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By:

BUYER:

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By: