



EXCHANGE AGREEMENT
Other than One-to-Four Residential Units

Prepared by: Agent _____
Broker _____

Phone _____
Email _____

NOTE: This form is used by an agent when preparing an offer to enter into a §1031 transaction involving the exchange of properties other than one-to-four residential units.

DATE: _____, 20_____, at _____, California.
Items left blank or unchecked are not applicable.

FACTS:

1. The First Party, _____
will deliver the **First Property**, located in the City of _____,
County of _____, State of _____,
referred to as _____.
- 1.1 The equity valuation for the property is \$ _____
- 1.2 The loans of record presently encumbering the property total \$ _____
 - a. A first loan of \$ _____, payable \$ _____ monthly,
including _____% interest ARM, due _____, 20_____.
 - b. A second loan of \$ _____, payable \$ _____ monthly,
including _____% interest ARM, due _____, 20_____.
- 1.3 The market value of the First Property is \$ _____
- 1.4 The market value includes delivery of personal property referred to as: _____

2. The Second Party, _____
will deliver the **Second Property**, located in the City of _____,
County of _____, State of _____,
referred to as _____.
- 2.1 The equity valuation for the property is \$ _____
- 2.2 The loans of record presently encumbering the property total \$ _____
 - a. A first loan of \$ _____, payable \$ _____ monthly,
including _____% interest ARM, due _____, 20_____.
 - b. A second loan of \$ _____, payable \$ _____ monthly,
including _____% interest ARM, due _____, 20_____.
- 2.3 The market value of the Second Property is \$ _____
- 2.4 The market value includes delivery of personal property referred to as: _____

3. TERMS OF EXCHANGE:

- 3.1 The First Party to acquire the Second Property on the following terms:
 - a. Transfer the First Property with an equity valuation in the amount of \$ _____
 - b. Payment of cash, as an adjustment for the First Party's receipt of a larger equity
in the Second Property, in the amount of \$ _____
 - c. Payment of additional cash, to fund the payoff by the Second Party of the loans
of record on the Second Property, in the amount of \$ _____
 - d. Take title subject to, or Assume, the loans of record encumbering
the Second Property in the amount of \$ _____
 - e. Execute a note in favor of the Second Party in the amount of \$ _____
Secured by a trust deed on the Second Property, junior to the loans of record,
payable \$ _____ monthly, or more, beginning one month after close
of escrow and including interest at _____% from closing, due _____ years after
closing. This note to include terms and conditions set out in §3.3.
 - f. Deliver additional property with an equity value in the amount of \$ _____
referred to as _____,
encumbered by a loan in the amount of \$ _____, payable
_____.
 - g. Receipt of consideration from the Second Party as provided
in §3.2b, §3.2e and §3.2f as compensation for First Party conveying a
larger equity, for an offset of \$ _____
 - h. **TOTAL CONSIDERATION** given the Second Party as the market value paid
by the First Party for the Second Property is the amount of \$ _____

i. Obtain a first, or second, trust deed loan to be secured by the Second Property in the amount of \$_____, payable approximately \$_____ monthly, including interest not to exceed _____%, ARM, type _____, with a due date of _____ years or more.

3.2 The Second Part to acquire the First Property on the following terms:

- a. Transfer the Second Property with an equity valuation in the amount of..... \$ _____
- b. Payment of cash, as an adjustment for the Second Party's receipt of a larger equity in the First Property, in the amount of \$ _____
- c. Payment of additional cash, to fund the payoff by the First Party of the loans of record on the First Property, in the amount of \$ _____
- d. Take title subject to, or Assume, the loans of record encumbering the First Property in the amount of..... \$ _____
- e. Execute a note in favor of the First Party in the amount of..... \$ _____
Secured by a trust deed on the First Property, junior to the loans of record, payable \$_____ monthly, or more, beginning one month after close of escrow and including interest at _____% from closing, due _____ years after closing. This note to include terms and conditions set out in §3.3.
- f. Deliver additional property with an equity value in the amount of..... \$ _____
referred to as _____,
encumbered by a loan in the amount of \$_____, payable _____.
- g. Receipt of consideration from the First Party as provided in §3.2b, §3.2e and §3.2f as compensation for Second Party conveying a larger equity, for an offset of..... \$ _____
- h. **TOTAL CONSIDERATION** given the First Party as the market value paid by the Second Party for the First Property is the amount of \$ _____
- i. Obtain a first, or second, trust deed loan to be secured by the First Property in the amount of \$_____, payable approximately \$_____ monthly, including interest not to exceed _____%, ARM, type _____, with a due date of _____ years or more.

3.3 The terms and conditions of any note and trust deed executed by one party in favor of the other under sections §3.1e or §3.2e include:

- a. The Grantor/Payee's carryback disclosure statement attached as an addendum to the agreement. [See **ft** Form 300]
- b. Provisions to be provided by the Grantor/Payee for due-on-sale, prepayment penalty, late charges, _____.
- c. The Grantee/Payor to provide a Request for Notice of Default and Notice of Delinquency to senior encumbrances. [See **ft** Form 412]
- d. The Grantee/Payor to hand the Grantor/Payee a completed credit application on acceptance. [See **ft** Form 302]
- e. Within _____ days of receipt of the Grantor/Payee's credit application, the Grantor/Payee may terminate the agreement based on a reasonable disapproval of the Grantor/Payee's creditworthiness. [See **ft** Form 183]
- f. The Grantor/Payee may terminate the agreement on failure of agreed terms for priority financing. [See **ft** Form 183]
- g. As additional security, the Grantee/Payor to execute a security agreement and file a UCC-1 financing statement on any personal property the Grantee/Payor acquires under this agreement by Bill of Sale.

4. ACCEPTANCE AND PERFORMANCE:

- 4.1 This offer is deemed to be revoked unless accepted in writing within _____ days after date, and the acceptance is personally delivered or faxed to the First Party or the First Party's Broker within the period.
- 4.2 After acceptance, Brokers are authorized to extend any performance date up to one month.
- 4.3 On the failure of either party to obtain or assume financing as agreed by the date scheduled for closing, that party may terminate the agreement.
- 4.4 Any termination of the agreement shall be by written Notice of Cancellation timely delivered to the other party, the other party's broker or Escrow with instructions to Escrow to return all instruments and funds to the parties depositing them. [See **ft** Form 183]
- 4.5 Both parties reserve their rights to assign and agree to cooperate in effecting an Internal Revenue Code §1031 exchange prior to close of escrow on either party's written notice. [See **ft** Forms 172-2 or 173-2]

4.6 If either party breaches this agreement, that party's monetary liability to the other party is limited to \$ _____.

5. DUE DILIGENCE CONTINGENCIES:

5.1 Prior to accepting delivery of the First Property, the Second Party may, within _____ days after receipt or occurrence of any of the following checked items, terminate this exchange agreement based on the Second Party's reasonable disapproval of the checked item.

- a. Income and expense records, leases, property management and other service contracts, permits or licenses affecting the operation of the property, which documents the First Party will make available to the Second Party on acceptance.
- b. A Rental Income Rent Roll itemizing, by unit, the tenant's name, rent amount, rent due date, delinquencies, deposits, rental period and expiration and any rental incentives, bonuses or discounts signed by the First Party and handed to the Second Party on acceptance. [See **ft** Form 325]
- c. Seller's Natural Hazard Disclosure Statement to be signed by the First Party and handed to the Second Party on acceptance. [See **ft** Form 314]
- d. A Seller's Condition of Property Disclosure — Transfer Disclosure Statement (TDS) to be signed by the First Party and the First Party's Broker and handed to the Second Party on acceptance. [See **ft** Form 304] Solar Shade Control Notices sent or received by Seller to be handed to Buyer on acceptance.
- e. Itemized inventory of the personal property included in the sale to be handed to the Second Party on acceptance.
- f. Inspection of the property by the Second Party, his agent or consultants within _____ days after acceptance for value and condition sufficient to justify the purchase price.
- g. Preliminary title report for the policy of title insurance, which report the First Party will cause escrow to hand the Second Party as soon as reasonably possible after acceptance.
- h. An estoppel certificate executed by each tenant affirming the terms of their occupancy, which certifies the First Party will hand the Second Party prior to seven days before closing. [See **ft** Form 598]
- i. Criminal activity and security statement prepared by the First Party and setting forth recent criminal activity on or about the First Property relevant to the security of persons and their belongings on the property and any security arrangements undertaken or which should be undertaken in response.
- j. Submission of the exchange agreement, escrow instructions and any other documentation related to this transaction to the Second Party's attorney or accountant within _____ days after acceptance for their further approval of this transaction as qualifying, in its entirety or partially, as an IRC §1031 tax exempt transaction reportable by the Second Party.
- k. See attached Due Diligence Contingencies Addendum for additional conditions. [See **ft** Form 279]

5.2 Prior to accepting delivery of the Second Property, the First Party may, within _____ days after receipt or occurrence of any of the following checked items, terminate this exchange agreement based on the First Party's reasonable disapproval of the checked item.

- a. Income and expense records, leases, property management and other service contracts, permits or licenses affecting the operation of the property, which documents the Second Party will make available to the First Party on acceptance.
- b. A Rental Income Rent Roll itemizing, by unit, the tenant's name, rent amount, rent due date, delinquencies, deposits, rental period and expiration and any rental incentives, bonuses or discounts, signed by the Second Party and handed to the First Party on acceptance. [See **ft** Form 325]
- c. Seller's Natural Hazard Disclosure Statement to be signed by the Second Party and handed to the First Party on acceptance. [See **ft** Form 314]
- d. A Seller's Condition of Property Disclosure — Transfer Disclosure Statement (TDS) to be signed by the Second Party and the Second Party's Broker and handed to the First Party on acceptance. [See **ft** Form 304] Solar Shade Control Notices sent or received by Seller to be handed to Buyer on acceptance.
- e. Itemized inventory of the personal property included in the sale to be handed to the First Party on acceptance.
- f. Inspection of the property by the First Party, his agent or consultants within _____ days after acceptance for value and condition sufficient to justify the purchase price.
- g. Preliminary title report for the policy of title insurance, which report the **Second Party** will cause escrow to hand the First Party as soon as reasonably possible after acceptance.
- h. An estoppel certificate executed by each tenant affirming the terms of their occupancy, which certifies the Second Party will hand the First Party prior to seven days before closing. [See **ft** Form 598]

- i. Criminal activity and security statement prepared by the Second Party and setting forth recent criminal activity on or about the Second Property relevant to the security of persons and their belongings on the property and any security arrangements undertaken or which should be undertaken in response.
- j. Submission of the exchange agreement, escrow instructions and any other documentation related to this transaction to the First Party's attorney or accountant within _____ days after acceptance for their further approval of this transaction as qualifying, in its entirety or partially, as an IRC §1031 tax exempt transaction reportable by the First Party.
- k. See attached Due Diligence Contingencies Addendum for additional conditions. [See ft Form 279]

6. PROPERTY CONDITIONS ON CLOSING:

Prior to closing, each party with regard to the property they are conveying, will comply with or furnish the other party with the following items:

- 6.1 A structural pest control report and clearance.
- 6.2 A one-year property warranty policy.
Insurer _____
Coverage _____
- 6.3 A certificate of occupancy, or other clearance or retrofitting, required by local ordinance for the transfer of possession or title.
- 6.4 Smoke detector(s) and water heater bracing in compliance with the law.
- 6.5 Maintain the property in good condition until possession is delivered.
- 6.6 Fixtures and fittings attached to the property include but are not limited to: window shades, blinds, light fixtures, plumbing fixtures, curtain rods, wall-to-wall carpeting, draperies, hardware, antennas, air coolers and conditioners, trees, shrubs, mailboxes and other similar items.
- 6.7 New agreements and modifications of existing agreements to rent space or to service, alter or equip the property will not be entered into without the other party's prior written consent, which will not be unreasonably withheld.
- 6.8 _____

7. CLOSING CONDITIONS:

- 7.1 This transaction to be escrowed with _____.
Parties to deliver instructions to Escrow as soon as reasonably possible after acceptance.
 - a. Escrow holder is authorized and instructed to act on the provisions of this agreement as the mutual escrow instructions of the parties and to draft any additional instructions necessary to close this transaction. [See ft Form 401]
 - b. Escrow instructions, prepared and signed by the parties, are attached and to be handed to Escrow on acceptance. [See ft Form 401]
- 7.2 Escrow to be handed all instruments needed to close escrow on or before _____, 20_____, or within _____ days after acceptance. Parties to hand Escrow all documents required by the title insurer, lenders or other third parties to this transaction prior to seven days before the date scheduled for closing.
 - a. Each party to pay its customary escrow charges. [See ft Forms 310 and 311]
- 7.3 Title to be vested in Grantee or Assignee free of encumbrances other than covenants, conditions and restrictions, reservations and easements of record and liens as set forth herein.
- 7.4 Each Grantee's interest in title to all real estate conveyed to be insured by _____ under a CLTA, or ALTA, form policy of the title insurance.
 - a. Endorsements _____
 - b. Title insurance premium to be paid by Grantor.
- 7.5 Taxes, assessments, insurance premiums, rents, interest and other expenses to be prorated to close of escrow, unless otherwise provided.
- 7.6 Any difference in the principal amounts remaining due on loans taken over or assumed as stated in this agreement and as disclosed by beneficiary's statements is to be adjusted into: cash, carryback note, or market value.
- 7.7 Each party to assign to the other party all existing rental and lease agreements on the property they convey. [See ft Form 595]
 - a. Each party assigning rental and lease agreements to the other party is to notify each tenant of the change of ownership on or before close of escrow. [See ft Form 554]
- 7.8 Bill of sale to be executed by Grantor for any personal property being transferred by Grantor.
 - a. A UCC-3 request for the conditions of title to the personal property transferred by bill of sale to be obtained by escrow and approved by the party taking title.
- 7.9 Grantees to furnish a new fire insurance policy on the property acquired.
- 7.10 Possession of the property and keys/access codes to be delivered on the close of escrow.
- 7.11 If one party is unable to convey marketable title as agreed or if the improvements on the property are materially damaged prior to closing, the other party may terminate the agreement. The party unable to convey or owning the damaged property to pay all reasonable escrow cancellation charges. [See ft Form 183]

8. BROKERAGE FEES:

- 8.1 First Party to pay \$ _____ on closing to _____.
- 8.2 Second Party to pay \$ _____ on closing to _____.
- 8.3 On wrongful prevention of the change of ownership by either party, preventing party to then pay the brokerage fees.
- 8.4 The brokerage fees due may be shared by the Brokers.
- 8.5 Brokers may report the transaction, pricing and terms to brokerage trade associations and listing services for dissemination and use by their participants.
- 8.6 First Party and Second Party acknowledge receipt of the Agency Law Disclosure. [See **ft** Form 305]

9. Attached is the Notice of Your Supplemental Property Tax Bill [See **ft** Form 317]

10. Before any party to this agreement files an action on a dispute arising out of this agreement which remains unresolved after 30 days of informal negotiations, the parties agree to enter into non-binding mediation administered by a neutral dispute resolution organization and undertake a good faith effort during mediation to settle the dispute.

11. _____

First Party's Broker: _____
 Broker's CalBRE #: _____
 First Party's Agent: _____
 Agent's CalBRE #: _____

Second Party's Broker: _____
 Broker's CalBRE #: _____
 Second Party's Agent: _____
 Agent's CalBRE #: _____

Signature: _____
 Is the agent of: First Party exclusively.
 Both Parties.

Signature: _____
 Is the agent of: Second Party exclusively.
 Both Parties.

Address: _____

Address: _____

Phone: _____ Cell: _____

Phone: _____ Cell: _____

Email: _____

Email: _____

I agree to the terms stated above.

See attached Signature Page Addendum. [**ft** Form 251]

Date: _____, 20____

First Party: _____

Signature: _____

First Party: _____

Signature: _____

I agree to the terms stated above.

See attached Signature Page Addendum. [**ft** Form 251]

Date: _____, 20____

Second Party: _____

Signature: _____

Second Party: _____

Signature: _____

REJECTION OF EXCHANGE OFFER

The Second Party hereby rejects this offer in its entirety. No counteroffer will be forthcoming.

Date: _____, 20____

Second Party's Name: _____

Signature: _____

Second Party's Name: _____

Signature: _____