

**DECLARATION OF TRUST FOR §1031 PROCEEDS**

Installment Sale

**NOTE:** This form is used by a seller's agent when closing escrow on the seller's carryback sale of property in a §1031 reinvestment plan and the escrow for the seller's acquisition of the replacement property cannot be closed concurrently, to set up a trust to hold the net sales proceeds until needed to fund acquisition of the replacement property.

**DATE:** \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, California.

**FACTS:**

1. This declaration of trust is entered into between
  - 1.1 \_\_\_\_\_, as the Trustor and Beneficiary,
  - 1.2 and \_\_\_\_\_, as the Trustee,
  - 1.3 to create a trust entitled "The \_\_\_\_\_ Trust."
2. This Trust is to perform Trustor's obligations under the terms of a §1031 provision in a purchase agreement dated \_\_\_\_\_, 20\_\_\_\_\_, and escrow instruction No. \_\_\_\_\_ with \_\_\_\_\_, between \_\_\_\_\_, as the Buyer, and \_\_\_\_\_, as the Seller.

**DECLARATION:**

3. Trustor hereby transfers and delivers to Trustee all of the property described in this agreement to constitute, together with any other property that may become subject to this Declaration, the Trust Estate of an express trust to be held, administered and distributed by the Trustee as provided herein.
4. **Trust Estate:**
  - 4.1 The Trust Estate will consist of cash in the amount of \$\_\_\_\_\_, to be delivered to Trustee by Trustor, and a promissory note in the face amount of \$\_\_\_\_\_, executed by Trustor in favor of Trustee and secured by a Deed of Trust on property concurrently conveyed to Trustor by Seller.
5. **Responsibility for Costs:**
  - 5.1 Trustee's fee for establishing the Trust and its management fee thereafter of \$\_\_\_\_\_ per month will be payable out of funds received and held by Trustee.
  - 5.2 In the event Trustee becomes involved in any litigation arising out of this Trust or the transaction between Trustor and Seller, reasonable attorneys fees incurred by the Trustee are recoverable from the Trust Estate.
6. **Powers of the Trustee:**
  - 6.1 General powers of the Trustee: In addition to all other powers and discretions granted to or vested in the Trustee by law or by this Declaration, the Trustee has power with respect to the Trust Estate, or any part of the Trust Estate, to:
    - a. Retain in the Trust any property received by it.
    - b. Convey, exchange or deliver any property received by it as instructed.
    - c. Hypothecate or sell the trust deed note as may be arranged by Seller and use the proceeds as Trust Estate funds.
    - d. Fund the purchase of §1031 replacement property to perform Trustor's obligations under the supplemental escrow instructions for the §1031 treatment dated \_\_\_\_\_, 20\_\_\_\_\_, escrow no. \_\_\_\_\_ with \_\_\_\_\_.
  - 6.2 Special powers of the Trustee:
    - a. Trustee is instructed and directed to use the Trust Estate to fund Seller's acquisition of §1031 replacement property(ies) selected by Seller. Seller's selection and request for funding is to be in writing directed to the Trustee.
    - b. Any remaining money in the Trust Estate after payment of expenses and funding of Seller's acquisition of replacement property(ies) to be delivered to Seller in complete and full performance of Trustor's obligations under the §1031 provision between Trustor and Seller.

- c. During the existence of the Trust, and prior to the funding by the Trust of the purchase of §1031 property, the Trustee will have the authority, in their sole discretion, to invest prudently in the name of the Trust, any sums constituting part or all of the Trust Estate into federally insured savings accounts or certificates of deposit or other like quality interest earning investments.

**7. Termination of the Trust:**

- 7.1 When the Trust Estate is disbursed by the Trustee to fund acquisition of §1031 property, the Trust will terminate. On termination, the Trustee is to deliver to Seller any remaining assets and money held in the Trust Estate.

**8. Income of the Trust:**

- 8.1 The Trustee is to pay or apply all of the Trust Estate, including any interest earned thereon, toward the performance of powers of the Trustee.

**9. Trust is Irrevocable:**

- 9.1 This Trust is irrevocable pursuant to California Probate Code §15400 and may not be amended or modified in any way.

**10. Spendthrift Provisions:**

- 10.1 No Beneficiary of this Trust will have any right, power or authority to alienate, encumber or hypothecate their interest in the principal or income of this Trust in any manner, nor will such interest of any Beneficiary be subject to claims of their creditors or liable to attachment, execution or other process of law.

**11. Successor Trustee:**

- 11.1 If the Original Trustee becomes unable or unwilling to act as Trustee, then \_\_\_\_\_ will become Trustee of this Trust, will succeed to all title of the Trustee to the Trust Estate and to all powers, rights, discretion, obligations, and immunities of the Trustee under this Declaration.

**12. Law for Construction of the Trust:**

- 12.1 The Trust provided for in this Declaration will be governed by the laws of the State of California.

See attached Signature Page Addendum. [RPI Form 251]

**EXECUTED ON** \_\_\_\_\_, at \_\_\_\_\_, California.

Trustor: \_\_\_\_\_ Trustee: \_\_\_\_\_

Trustor: \_\_\_\_\_ Trustee: \_\_\_\_\_