
CHAPTER 4F
EXCHANGE RELATED CONVEYANCE DOCUMENTS
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CHAPTER 4F**EXCHANGE RELATED CONVEYANCE DOCUMENTS****By Manuel (“Mike”) Garcia, Esq.,****Law Offices of Manuel D. Garcia, LLC, a Limited Liability Law Company**

I. Background Information:**A. Introduction:**

A conveyance of real property has income tax and/or gift tax consequences for the Grantor, as owner of the real property. A sale or other disposition of real property is generally a taxable event requiring the owner to pay an income tax on any gain recognized on the disposition, unless the owner can qualify for an exception to the general rule under a specific provision of the Internal Revenue Code of 1986, as amended (hereinafter sometimes referred to as the “Code” or “I.R.C.”).

Section 1031 of the Code is one of many exceptions to the general tax rule. Code Section 1031(a)(1) provides that “[n]o gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment.” In a properly executed exchange, if the taxpayer receives money or other (nonqualifying) property in the exchange, the taxpayer does not lose all of the benefits of Code Section 1031(a), but taxpayer’s gain is recognized to the extent of the sum of money and the fair market value of the other (nonqualifying) property received. Code § 1031(b). This recognized amount is commonly referred to as “boot”.

B. Historical Development in Structuring I.R.C. §1031 Exchanges:

The benefits of I.R.C. § 1031 go back to 1921 when the United States Congress enacted the precursor to I.R.C. § 1031(a)(1). In 1921, Congress had in mind “two parties” swapping property. (See Exhibit “A” for an illustrative diagram of the “two party” exchange.)

Since it is very difficult to find two parties that own the exact properties that the other desires, it was not long before lawyers began re-structuring purchase-and-sale transactions to qualify by positioning the buyer to “swap” property with a taxpayer as follows: buyer would use his cash to purchase the desired property from an unrelated third party-owner and then “swap” this newly acquired property with the taxpayer. The Internal Revenue Service (“IRS”) was obviously displeased with such re-structuring, but it failed in its efforts to disallow properly documented transactions that came to be known as “three-party” exchanges (because they involved three separate parties instead of only two). (See Exhibit “B” for an illustrative diagram of the “three party” exchange with a purchase escrow separate from the exchange escrow.)

These “three-party” exchanges have some obvious inherent limitations created by buyers’ reluctance to get involved with the complexities of having to acquire yet another property for the sole purpose of “swapping” the replacement property with the taxpayer for the desired property. Therefore, these “three-party” exchanges are generally available only in a sellers’ market where

buyers are willing to accommodate sellers' requirements, but not in a buyers' market where sellers are unable to dictate a re-structuring of the normal purchase-and-sale transaction. Because of the difficulties inherent with consummating an exchange with someone who just wants to buy or sell real property, lawyers developed the "four-party" exchange to position the parties for a "swap" transaction.

In a "four-party" exchange, basically, a strawman (commonly referred to as the "facilitator", "accommodator", "intermediary" or "qualified intermediary") is brought into the transaction for a fee to acquire the taxpayer's property, sell the property to the interested buyer, use the proceeds from the sale to purchase the replacement property, and transfer the replacement property to the taxpayer to complete the swap. (See Exhibit "C" for an illustrative diagram of the "four party" exchange with a sale escrow, a purchase escrow, and an exchange escrow.) The first court decision involving a "four-party" exchange was Mercantile Trust Co. v. Commissioner, 32 B.T.A. 82 (1935), where the court ruled favorably for the taxpayer because the facilitator (in this case, the title company) was not acting as the taxpayer's agent. This case illustrates not only the mechanics of effectuating the necessary transfers, but also the importance of handling the various deeds and the purchase money in escrow carefully and correctly.

Prior to 1979, before the United States Court of Appeals for the Ninth Circuit decided T. J. Starker v. Commissioner, 602 F.2d 1341 (9th Cir. 1979), aff'g and rev'g 432 F. Supp 864 (D. Or. 1977), an I.R.C. § 1031 exchange was basically an "event." Even four-party exchanges were structured to occur simultaneously so that an Exchanger received the Replacement Property at the same time that he or she disposed of the Relinquished Property. The Starker case marked the first time that a taxpayer's lawyer conceptualized the I.R.C. § 1031 exchange as a "process," rather than an "event," and the appellate court's decision legitimized this new concept of an I.R.C. § 1031 exchange as a "process."

Starker's lawyer structured the exchange transaction so that the transfer of the Relinquished Property occurred in year one, but the identification and subsequent receipt of multiple properties occurred over a two-year period. The whole exchange transaction covered three separate tax years. These exchanges became known as "Starker," "delayed" or "deferred" exchanges. Congress subsequently imposed limitations on this exchange "process" in 1984 when it enacted I.R.C. § 1031(a)(3), requiring taxpayer (i) to identify the Replacement Property within forty-five days of disposing of the Relinquished Property and (ii) to receive the Replacement Property within the earlier of 180 days or the due date for filing Exchanger's tax return for the year of the disposition.

By 1991, the IRS formally acknowledged the legitimacy of these "four-party" "Starker", "delayed" or "deferred" exchanges and issued regulations that gave taxpayers, among other things, a "safe harbor" roadmap to the proper structuring of exchanges through the use of a strawman (defined in the 1991 regulations as a "Qualified Intermediary") that is unrelated to the taxpayer. These 1991 taxpayer-friendly regulations simplified the structuring of I.R.C. § 1031 exchanges. The 1991 regulations eliminated tax advisors' structuring concerns over "agency" or "constructive receipt" issues and established the "four-party exchange" as the easiest and most dependable method for restructuring a purchase-and-sale transaction to convert it into an

“exchange”. Moreover, these regulations gave rise to a new industry of exchange companies providing facilitator services as “Qualified Intermediaries”.

Once the exchange transaction was clearly established as a “process”, tax lawyers began to look at the steps involved in the process and began structuring exchange transactions to reverse the steps with the goal of ensuring that the Taxpayer-Exchanger could acquire a specific Replacement Property at the time that it found a buyer for its Relinquished Property and was ready to dispose of the Relinquished Property. Just as in the prior historical development of the different types of exchanges, the tax attorney desired to create a new structure that would allow the Taxpayer-Exchanger to “swap” real estate as intended by Congress when it passed the precursor of I. R. C. § 1031 in 1921.

One such structure was to have a strawman purchase the Replacement Property with borrowed funds provided directly or indirectly by the Taxpayer-Exchanger so that the strawman could own and hold the property until the Taxpayer-Exchanger could find a buyer for the Relinquished Property. This structure began to be called a “Reverse Exchange” or “Reverse Starker Exchange” by people within the real estate industry probably because of the passing reference in the 1991 regulations and the fact that the “purchase” of the Replacement Property (although made by someone other than the Taxpayer-Exchanger or its agent) occurred prior to the “sale” of the Relinquished Property. Please note, however, that this descriptive name is actually a misnomer because the Replacement Property was NOT actually acquired by the Taxpayer-Exchanger (but simply “parked” with a cooperating strawman) until such time that a buyer was found for the Relinquished Property and Taxpayer-Exchanger was ready to dispose of the Relinquished Property in exchange for the Replacement Property. This “parking” arrangement was designed to position the Taxpayer-Exchanger to “swap” its Relinquished Property for the “parked” Replacement Property at the appropriate time (when the buyer of the Relinquished Property was ready to close escrow). Provided that the tax lawyer carefully drafted the documents (e.g., conveyance document, lease, promissory notes, 1st and 2nd mortgages) to ensure that the “substance” of the strawman’s beneficial ownership of the Replacement Property and its loan arrangement was respected and that the strawman was not acting as the “agent” of the Taxpayer-Exchanger, then the tax lawyer structuring a particular “Reverse Exchange” under carefully delineated circumstances could comply with the ethical rules and standards of his or her profession¹ and prepare to defend such exchange structures as qualifying for the benefits of I.R.C. §1031 for a Taxpayer-Exchanger who understood the limitations of the structure and was willing to take the tax risk involved in an IRS challenge.

On October 2, 2000, these creative tax lawyers were vindicated when the IRS issued Revenue Procedure 2000-37 providing a “safe harbor” roadmap under which the IRS would not challenge the legitimacy of the strawman’s beneficial ownership of property and other tax concerns in a carefully crafted “Reverse Starker Exchange” as long as certain limiting conditions were met. Therefore, most Reverse Exchanges structured today would follow the safe harbor roadmap of Rev. Proc. 2000-37, 2000-2 C.B. 308, as modified by Rev. Proc. 2004-51, 2004-2

¹ See ABA Opinion 85-342 reprinted in 39 *Tax Lawyer* 237 (1976) and also found at ABA Website www.abanet.org, click to Legal & Professional Resources, then Ethics Resources (establishing a “realistic possibility of success” standard for lawyers giving I.R.C. § 1031 tax advice). See Treasury Circular 230, *Practice Before the Internal Revenue Service*, 31 C.F.R. § 10.34.

C.B. 294, and utilize the “qualified exchange accommodation arrangement” required under this IRS Revenue Procedure.

C. Correcting Two Widespread Misconceptions in the Real Estate Industry:

1. **A § 1031 Exchange is NOT an “Event”**. Today there is a pervasive misunderstanding within the real estate industry that an I.R.C. § 1031 exchange is an “event” similar to an escrow closing. This misunderstanding creates unnecessary problems. For example, it leads many people, including escrow officers, to simply order an “exchange agreement” at the eleventh hour, similar to ordering a conveyance document, as if the “exchange process” started and ended with the first leg of an escrow closing. It is important to realize that since the 1979 Ninth Circuit Court’s decision in the Starker case, an I.R.C. § 1031 exchange was no longer an “event”, like the recording of a conveyance document, but a “process”. The best practice would dictate that a taxpayer not commence the process unless the taxpayer has identified and relied upon one competent tax practitioner to (i) take responsibility for the I.R.C. § 1031 tax advice and (ii) oversee the entire “process”.

2. **Exchange Documents should be prepared and/or controlled by Taxpayer’s Tax Advisor**. Separate and apart from the conveyance documents, exchange documents historically were drafted by lawyers who were representing and advising the taxpayer/Exchanger on I.R.C. § 1031 and structuring the exchange in accordance with their preferred design. However, the taxpayer friendly regulations issued by the IRS in 1991 gave rise to a new industry of exchange companies providing facilitator services as “Qualified Intermediaries” (hereinafter sometimes referred to as “QIs”). In this post-1991 facilitator industry, lawyers representing the exchange company (rather than the taxpayer) began drafting the exchange documents for use by the exchange company in servicing taxpayers as facilitators.

Today there is a pervasive misunderstanding within the real estate industry that the exchange companies or QIs that provide taxpayer with exchange documents are actually giving I.R.C. § 1031 tax advice and “taking care” of all matters related to the taxpayer’s exchange. In reality, most (if not all) of these exchange company drafted exchange documents specifically disclaim the exchange company’s responsibility for any tax advice and urge taxpayer to consult with an attorney. The problem is that very few taxpayers actually read their exchange agreements before signing and the exchange companies, by refusing to modify their exchange agreements and/or their internal procedures for handling the various steps in the exchange process, effectively discourage the active involvement of competent tax practitioners desiring to take responsibility for the I.R.C. § 1031 tax advice during the entire exchange “process”.

The author has observed over the years that, unfortunately, a large number of exchanges are completed by taxpayers relying on exchange companies for the exchange agreement and I.R.C. § 1031 tax advice while the exchange companies (despite the disclaimer language in the exchange agreements) effectively discouraged the active involvement of tax practitioners by refusing to modify their exchange agreements and/or their internal procedures for handling the various steps in the exchange process. The author has also observed that taxpayers’ real estate brokers failed to inform such taxpayers of the need to get I.R.C. § 1031 tax advice throughout the entire exchange process because the brokers themselves failed to understand the limited role of

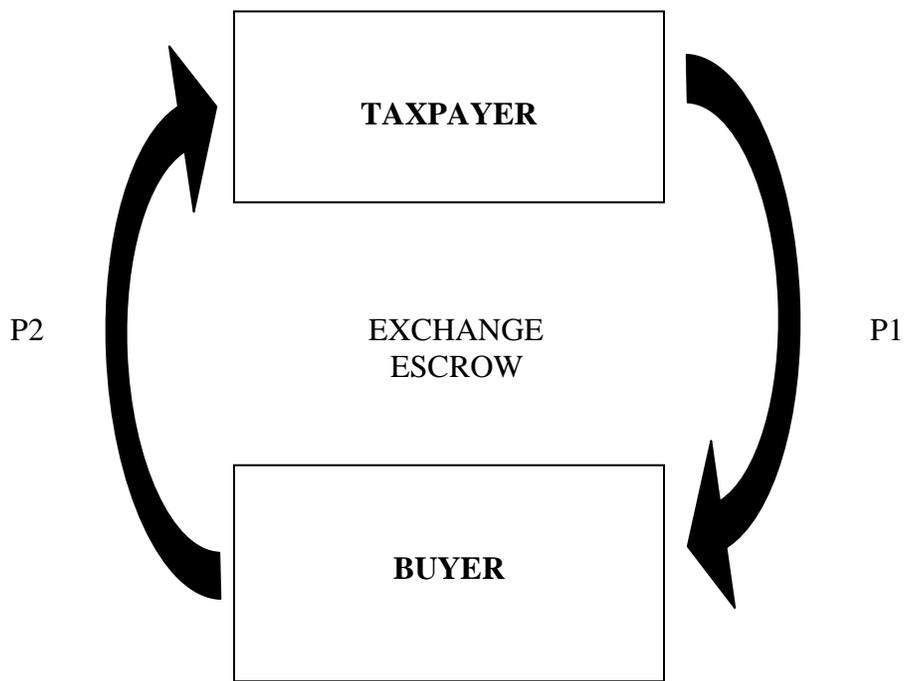
exchange companies or QIs in the whole exchange process. However, the author is hopeful that over time the real estate industry itself will correct this trend and exchange companies acting as QIs will either (i) take responsibility for giving taxpayer-Exchanger I.R.C. § 1031 tax advice throughout the entire exchange process or (ii) encourage the active involvement of Exchanger's I.R.C. § 1031 tax advisor to oversee the entire process by agreeing to modify their exchange agreements and their internal procedures for handling the various steps in the exchange process in accordance with the Exchanger's I.R.C. § 1031 tax advisor's recommendations.²

D. Exhibits: Illustrative Schematics of Exchange Transactions.

² For a more extensive background discussion on I.R.C. § 1031 exchanges and the faulty business model prevalent in the industry, see the author's article: Mike Garcia, "1031 Exchanges: The Need For Consumer Protection", HSBA Journal, July 2006.

Exhibit A

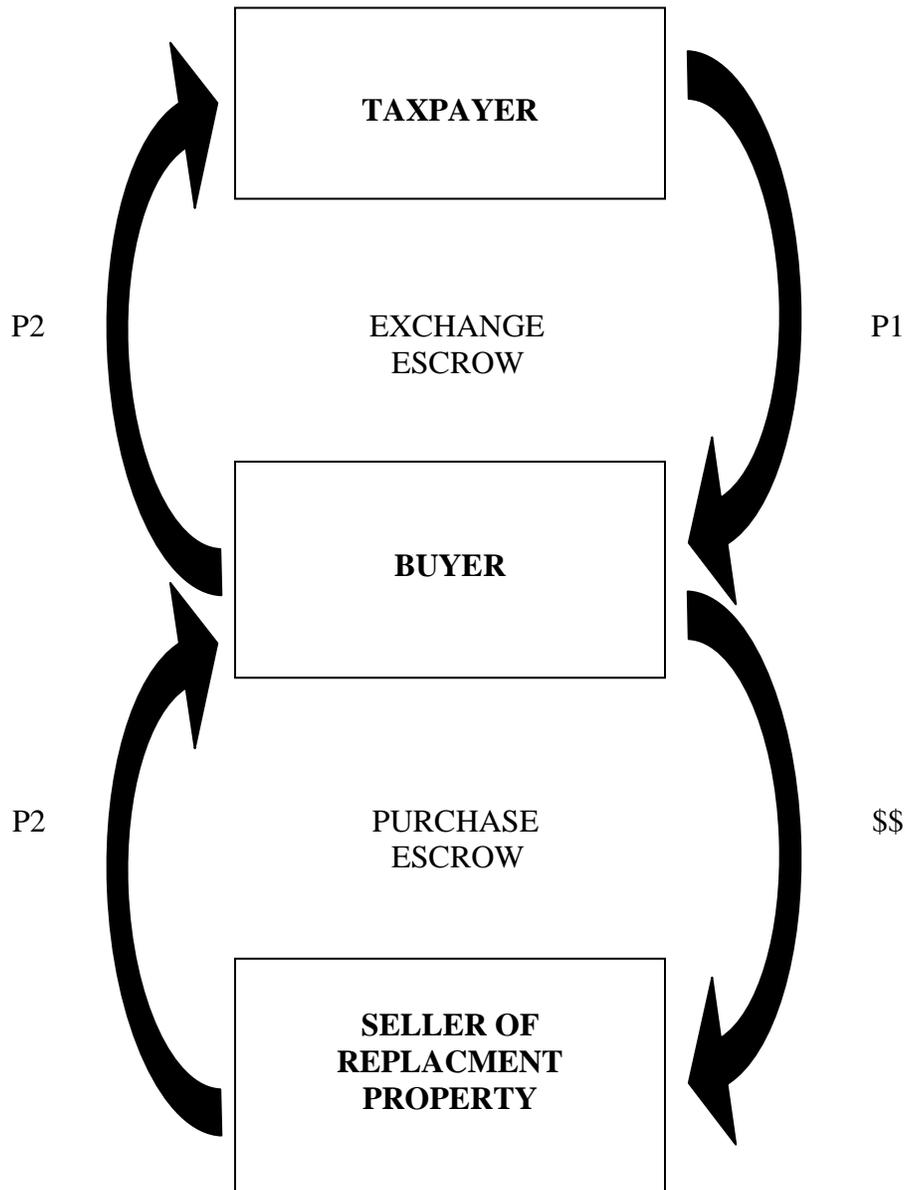
TWO-PARTY EXCHANGE



P1 = Relinquished Property
P2 = Replacement Property

Exhibit B

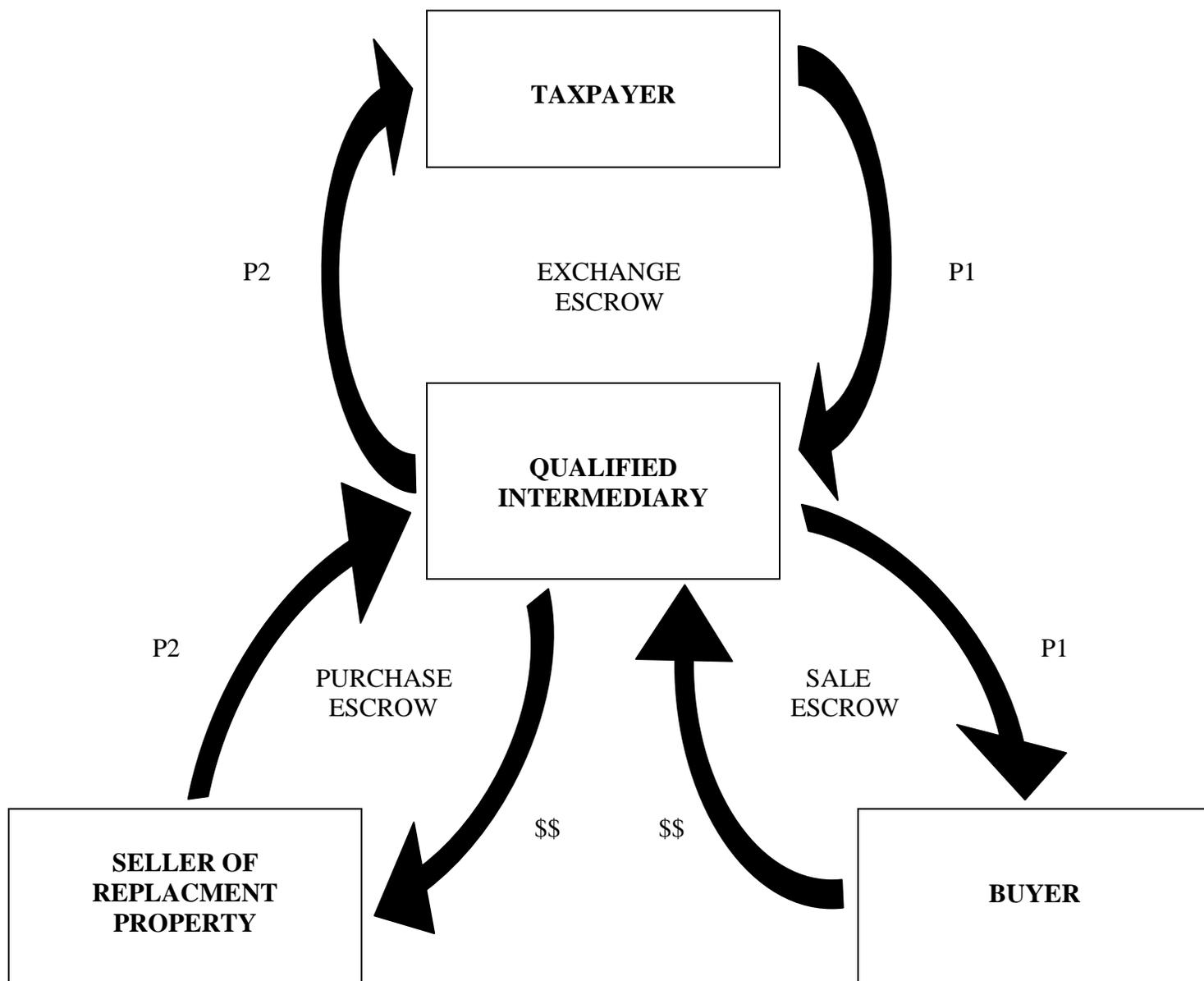
THREE-PARTY EXCHANGE



P1 = Relinquished Property
P2 = Replacement Property
\$\$ = Cash

Exhibit C

FOUR-PARTY EXCHANGE



P1 = Relinquished Property
P2 = Replacement Property
\$\$ = Cash

II. Preparing Conveyance Documents Connected with an I.R.C. §1031 Exchange.

A. No Specific Tax Requirement. The tax laws do not create any special rules for the drafting of conveyance documents in order to qualify for the benefits of I.R.C. § 1031. The various components of a Deed and an Assignment of Lease described in other sections of this conveyance manual are still operative. However, if taxpayer is involved in an I.R.C. § 1031 exchange, it is important to draft the conveyance document to place it squarely within the context of the I.R.C. § 1031 exchange. The IRS is by nature suspicious of a taxpayer's efforts to qualify a transaction as non-taxable, so it is important to have documents that illustrate clearly the various legal steps in the "exchange process" taken by taxpayer in a timely manner to place the disposition of real property into an exchange context that qualifies for the benefits of I.R.C. §1031. Since the conveyance document is designed to be recorded in either Land Court or the Bureau of Conveyances, it is an ideal document for use by taxpayer to evidence that the particular transfer was made in a timely manner pursuant to a prearranged plan for the exchange of real properties intended to qualify taxpayer for the benefits of I.R.C. § 1031.

B. Prepare Conveyance Document According to Tax Structure of Exchange. One should prepare the conveyance document in accordance with the tax structure designed by taxpayer-Exchanger's I.R.C. § 1031 tax advisor. An I.R.C. § 1031 exchange may be a "two party", "three party" or "four party" exchange. Furthermore, an I.R.C. § 1031 tax advisor utilizing the most popular "four party" exchange structure has the responsibility of determining whether to have the Relinquished Property and Replacement Property conveyed to the Qualified Intermediary (hereinafter referred to as the "QI") or to skip the QI altogether in the chain of title and have the property conveyed directly to the ultimate recipient. Since the drafter of the conveyance document will have no idea at all about the I.R.C. § 1031 tax advisor's overall plan for implementing the exchange "process", it is important that the drafter of the conveyance document to receive clear instructions from the escrow company as to (i) whether to draft the operative conveyance document using direct deeding or sequential deeding and, (ii) in the case of sequential deeding, whether or not to include appropriate "consent to assignment" language in the conveyance document from the original property owner to the QI or its wholly owned limited liability company as described below.

1. Direct Deeding. Today, the use of direct deeding to bypass the QI in the chain of title is by far the most popular conveyance method utilized by I.R.C. § 1031 tax advisors because (i) the IRS has accepted its use within a properly structured "four party" exchange qualifying under the "safe harbor" provision of the 1991 exchange regulations and (ii) it eliminates the additional Hawaii conveyance tax that would otherwise apply in recording the two deeds in sequence. With direct deeding, it is important that such conveyance document contain direct deeding language to evidence that the conveyance was made pursuant to a specific exchange agreement. For example, in the 1st leg escrow to transfer the Relinquished Property directly from taxpayer-Exchanger to the "buyer" of the property (in lieu of a conveyance from Exchanger to the QI pursuant to the Exchange Agreement and a second conveyance from the QI to the Buyer pursuant to the sales contract as assigned to the QI), the conveyance document should contain direct deeding language as follows:

"The property described herein is being conveyed by [Grantor or Assignor] directly to [Grantee or Assignee] in connection with an exchange under Section 1031

of the Internal Revenue Code of 1986, as amended, pursuant to the unrecorded Exchange Agreement dated as of _____, 20 __ by and between [Grantor or Assignor] and [name of Exchange Company]."

Similarly for the 2nd leg escrow to transfer the Replacement Property directly from the “seller” of the property to the taxpayer-Exchanger (in lieu of a conveyance from seller to the QI pursuant to the sales contract as assigned to the QI and a second conveyance from the QI to Exchanger pursuant to the Exchange Agreement), the conveyance document should contain direct deeding language as follows:

"The property described herein is being conveyed by [Grantor or Assignor] directly to [Grantee or Assignee] in connection with an exchange under Section 1031 of the Internal Revenue Code of 1986, as amended, pursuant to the unrecorded Exchange Agreement dated as of _____, 20 __ by and between [Grantee or Assignee] and [name of Exchange Company]."

Please note that it is important to go beyond a “generic” reference to an I.R.C. § 1031 exchange agreement. By identifying the parties to the specific exchange agreement and the date of the operative exchange agreement, the direct deeding language serves to evidence that the conveyance document was signed and delivered by the Grantor or the Assignor pursuant to a specific exchange agreement that was in existence prior to the disposition of the real property.

2. Sequential Deeding. An I.R.C. § 1031 tax advisor may decide, for various legitimate reasons, to have the QI take title to the Relinquished Property and/or the Replacement Property. In these situations, it is important to note that QIs generally fall into two separate categories with respect to the manner in which it would agree to participate with the taxpayer-Exchanger. Some QIs will agree to take title to the property, but they will convey the property with only limited warranties of title, rather than the full warranties of title that is more common in conveyance documents for the transfer of residential real property in the State of Hawaii. Other QIs will refuse to take title to the property altogether, but may agree to organize a wholly owned single member Hawaii limited liability company to take title to the property. A drafter of the conveyance document should be aware of the special situation to be dealt with in each of these two situations as described below.

Furthermore, Since the drafter of the conveyance document will have no idea at all about the I.R.C. § 1031 tax advisor’s overall plan for implementing the exchange “process”, it is important that the drafter of the conveyance document receive clear instructions from the escrow company as to whether or not to include any “consent to assignment” language in the conveyance document from the original property owner to the QI or its wholly owned limited liability company whenever sequential deeding is utilized by the I.R.C. § 1031 tax advisor.

a. Qualified Intermediary signing only a “Limited Warranty” Deed. In situations where the QI is willing to sign only a limited warranty deed, the grantee will not get the full benefit of the original property owner’s full warranties of title unless (i) the QI also assigns to the grantee all of the warranties of title it received from the original property owner under the previous conveyance document and (ii) the original property

owner provides its consent to the anticipated assignment of its warranties of title by the QI. Therefore, in these situations, the drafter of the conveyance document from the original property owner to the QI should include appropriate language to acknowledge his or her intent to benefit the grantee and “consent” to the anticipated assignment of the warranties of title by the QI to the subsequent titleholder (*i.e.*, to buyer in the 1st leg exchange escrow and to taxpayer-Exchanger in the 2nd leg exchange escrow). The subsequent conveyance document to be signed by the QI should contain only limited warranties of title and it should also include the QI’s assignment of warranties to the subsequent titleholder (*i.e.*, to buyer in the 1st leg exchange escrow and to taxpayer-Exchanger in the 2nd leg exchange escrow) of all the warranties of title it received from the original property owner in the previous conveyance document.

b. Qualified Intermediary taking title through its wholly owned LLC.
In situations where the QI is willing to take title to property only through the use of a newly organized wholly owned limited liability company, the newly organized limited liability company taking title to the subject property will have no assets other than the subject property and related mortgages. Therefore, it may be important to the grantee to get the full benefit of its bargain with the original property owner by obtaining the original owner’s full warranties of title as explained in II.B.2.a. above.

Furthermore, the I.R.C. § 1031 tax advisor may decide (for various legitimate reasons such as implementing a “reverse exchange” or incorporating a liability limiting LLC holding arrangement into the Exchanger’s holding structure) to have the QI transfer to the taxpayer-Exchanger the interest in the limited liability company rather than title to the underlying real property. Since the drafter of the conveyance document will have no idea at all about the I.R.C. § 1031 tax advisor’s overall plan for implementing the exchange “process”, it is important that the drafter of the conveyance document receive clear instructions from the escrow company as to whether or not to include any “consent to assignment” language in the conveyance document from the original property owner to the QI’s wholly owned limited liability company whenever sequential deed is utilized by the I.R.C. § 1031 tax advisor.

III. THE “TWO PARTY” EXCHANGE: FORM OF CONVEYANCE DOCUMENTS USED IN “TWO PARTY” SWAP (TAXPAYER-EXCHANGER IS EXCHANGING RELINQUISHED PROPERTY DIRECTLY WITH THE OWNER OF REPLACEMENT PROPERTY).

A. DEEDING OF RELINQUISHED PROPERTY IN EXCHANGE FOR REPLACEMENT PROPERTY.

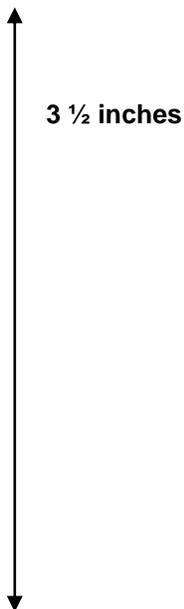
This document is used when Grantor is exchanging the property being conveyed directly with the Owner of the Replacement Property.

1. COMMENTS

- a. Note that a “two party” exchange is a very unusual occurrence, but it is the paradigm of the swapping or exchange transaction that Congress had in mind in 1921 when it enacted the precursor to I.R.C. §1031.
- b. Instead of drafting one exchange deed with cross conveyances of properties described in Exhibits A & B, a more convenient (and less confusing) approach is to draft two separate deeds, each reciting the consideration of real property received in exchange for the conveyance of the property that is the subject of the particular deed.
- c. Note that the property received in consideration for the conveyance (i.e., the Replacement Property) is identified enough to allow verification of Grantee’s previous ownership of the property.
- d. This deed for the Relinquished Property should be used in conjunction with the deed for the Replacement Property.

2. FORM: DEED OF RELINQUISHED PROPERTY (IN EXCHANGE FOR REPLACEMENT PROPERTY)

[Top of Page]



Return by Mail () Pickup () To:



Tax Map Key No.: (____) _____

Total Pages _____

EXCHANGE WARRANTY DEED

THIS DEED, made this _____ day of _____, 20____, by ABBEY ABBOT, unmarried, whose address is _____, hereinafter called the "Grantor", and ZACK ZELLER and ZELLA ZELLER, husband and wife, whose address is _____, hereinafter called the "Grantee",

WITNESSETH:

For and in consideration of the real property located at Kinau Street, Honolulu, Hawaii and other good and valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, in fee simple, forever all of that certain real property, situated on the Island of Oahu, City and County

of Honolulu, State of Hawaii, and more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy herein set forth, forever.

AND, in consideration of the premises, the Grantor does hereby covenant with the Grantee that the Grantor is seized of the property herein described in fee simple; that said property is free and clear of and from all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid, and except as may be specifically set forth herein; that the Grantor has good right to sell and convey said property, as aforesaid; and, that the Grantor will **WARRANT AND DEFEND** the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

The conveyance herein set forth and the warranties of the Grantor concerning the same are expressly declared to be in favor of the Grantee, as TENANTS BY THE ENTIRETY, their assigns, and the survivor of the Grantee and his or her heirs, personal representatives, and assigns.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place of thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

IN WITNESS WHEREOF, the undersigned executed these presents as of the day and year first above written.

Abbey Abbot

("Grantor")

[ADD ACKNOWLEDGEMENT – SEE CHAPTER 3.V.]

B. DEEDING OF REPLACEMENT PROPERTY IN EXCHANGE FOR RELINQUISHED PROPERTY

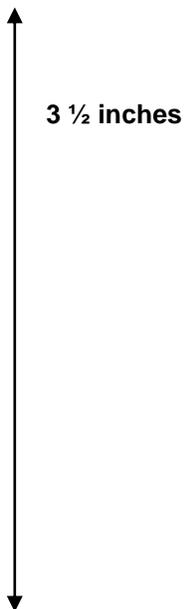
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1. COMMENTS

- a. Note that a “two party” exchange is a very unusual occurrence, but it is the paradigm of the swapping or exchange transaction that Congress had in mind in 1921 when it enacted the precursor to I.R.C. §1031.
- b. Instead of drafting one exchange deed with cross conveyances of properties described in Exhibits A & B, a more convenient (and less confusing) approach is to draft two separate deeds, each reciting the consideration of real property received in exchange for the conveyance of the property that is the subject of the particular deed.
- c. Note that the property received in consideration for the conveyance (i.e., the Relinquished Property) is identified enough to allow verification of Grantee’s previous ownership of the property.
- d. This deed for the Replacement property should be used in conjunction with the deed for the Relinquished Property.

2. FORM: DEED OF REPLACEMENT PROPERTY (IN EXCHANGE FOR RELINQUISHED PROPERTY)

[Top of Page]



Return by Mail () Pickup () To:



Tax Map Key No.: (____) _____

Total Pages _____

EXCHANGE WARRANTY DEED

THIS DEED, made this _____ day of _____, 20____, by ZACK ZELLER and ZELLA ZELLER, husband and wife, whose address is _____, hereinafter called the "Grantor", and ABBEY ABBOT, unmarried, whose address is _____, hereinafter called the "Grantee",

W I T N E S S E T H:

For and in consideration of the real property located at Kalaniana'ole Street, Honolulu, Hawaii and other good and valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, in fee simple, forever all of that certain real property, situated on the Island of Oahu, City and County of Honolulu, State of Hawaii, and more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy herein set forth, forever.

AND, in consideration of the premises, the Grantor does hereby covenant with the Grantee that the Grantor is seized of the property herein described in fee simple; that said property is free and clear of and from all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid, and except as may be specifically set forth herein; that the Grantor has good right to sell and convey said property, as aforesaid; and, that the Grantor will **WARRANT AND DEFEND** the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

This conveyance and the warranties of the Grantor are expressly declared to be in favor of the Grantee, her heirs, devisees, personal representatives and assigns.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place of thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

IN WITNESS WHEREOF, the undersigned executed these presents as of the day and year first above written.

Zack Zeller

Zella Zeller

("Grantor")

[ADD ACKNOWLEDGEMENT – SEE CHAPTER 3.V.]

IV. THE “FOUR PARTY” EXCHANGE: FORM OF CONVEYANCE DOCUMENTS USED IN 1ST LEG EXCHANGE ESCROW (TAXPAYER-EXCHANGER IS GRANTOR/ASSIGNOR).

A. DIRECT DEEDING OF RELINQUISHED PROPERTY (GRANTOR’S EXCHANGE)

This document is used when Grantor is exchanging the property being conveyed and a direct conveyance is ordered.

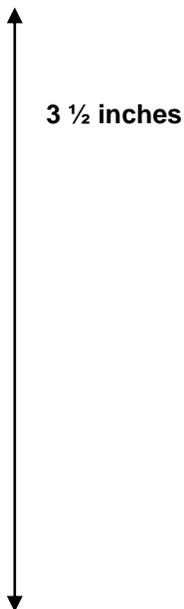
1. COMMENTS

- a. Note that the deed contains “direct deeding” language to evidence and memorialize the fact that the taxpayer-Exchanger transferred the property directly to the subsequent buyer of the relinquished property in lieu of a conveyance from Exchanger to Qualified Intermediary (hereinafter referred to as the “QI”) pursuant to the Exchange Agreement and a second conveyance from the QI to the Buyer pursuant to the Purchase Contract as assigned to the QI.
- b. Note that the “direct deeding” language goes beyond a “generic” reference to an I.R.C. § 1031 exchange agreement. By identifying the parties to the specific exchange agreement and the date of the operative exchange agreement, the direct deeding language serves to evidence that the conveyance document was signed and delivered by the Grantor pursuant to a specific exchange agreement that was in existence prior to the disposition of the property.
- c. If this form is used, the conveyancer should obtain a copy of the exchange agreement from escrow so that the title, date and parties can be properly identified. If a direct conveyance is ordered, conveyancer should find a provision for the assignment of the Purchase Contract in the exchange agreement or in a separate document included in the documents from escrow to justify the direct conveyance.
- d. RECITAL OF CONSIDERATION: Some I.R.C. § 1031 tax advisors prefer to have the deed recite that the consideration was paid to the QI rather than the Grantor because in the 1st leg exchange escrow, the QI in a “four party” exchange actually receives the funds from the buyer and provides the Taxpayer-Grantor only with the promise (as made in the exchange agreement) that it will transfer real property to the Grantor in the future. Such recitals are clearly helpful to the Taxpayer-Exchanger. However, the author chose to utilize the more generic recital of consideration in the sample document in order to make as few revisions as possible to the form of the conveyance document that conveyancer would otherwise be using BUT FOR the Grantor’s participation in an I.R.C. § 1031 exchange. Also, please note that such recital of consideration would not be entirely accurate because it recites the consideration paid to the QI but it is silent on the actual consideration received by the Grantor, which was the QI’s promise to transfer real property to Grantor in exchange for the subject property.

- e. Although the Deed can be prepared without the Grantee's signature, the author recommends the inclusion of Grantee's signature whenever possible to evidence Grantee's recognition of the QI's involvement in the transaction through the "direct deeding" language in the Deed.

2. FORM: DIRECT DEED OF RELINQUISHED PROPERTY (GRANTOR'S DEFERRED EXCHANGE)

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WARRANTY DEED

THIS DEED, made this _____ day of _____, 20____, by JOHN DOE TAXPAYER, husband of Jane Doe Taxpayer, whose address is _____, hereinafter called the "Grantor", and JACK BUYER and JILL BUYER, husband and wife, whose address is _____, hereinafter called the "Grantee",

W I T N E S S E T H:

For and in consideration of TEN DOLLARS, and other good and valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, in fee simple, forever all of that certain real property, situated on the Island of Oahu, City and County of Honolulu, State of Hawaii, and more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy herein set forth, forever.

AND, in consideration of the premises, the Grantor does hereby covenant with the Grantee that the Grantor is seized of the property herein described in fee simple; that said property is free and clear of and from all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid, and except as may be specifically set forth herein; that the Grantor has good right to sell and convey said property, as aforesaid; and, that the Grantor will **WARRANT AND DEFEND** the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

The property described herein is being conveyed by Grantor directly to Grantee in connection with an exchange under Section 1031 of the Internal Revenue Code of 1986, as amended, pursuant to the unrecorded Exchange Agreement dated as of _____, 20__ by and between Grantor and Helpful Exchange, Inc., a Hawaii corporation.

The conveyance herein set forth and the warranties of the Grantor concerning the same are expressly declared to be in favor of the Grantee, as TENANTS BY THE ENTIRETY, their assigns, and the survivor of the Grantee and his or her heirs, personal representatives, and assigns.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place of thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

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IN WITNESS WHEREOF, the undersigned executed these presents as of the day and year first above written.

John Doe Taxpayer

("Grantor")

Jack Buyer

Jill Buyer

("Grantee")

[ADD ACKNOWLEDGEMENT – SEE CHAPTER 3.V.]

B. DIRECT ASSIGNMENT OF LEASE OF RELINQUISHED PROPERTY (ASSIGNOR'S EXCHANGE)

This document is used when Assignor is exchanging the leasehold property being conveyed and a direct conveyance is ordered.

1. COMMENTS

- a. Note that the document contains “direct deeding” language to evidence and memorialize the fact that the taxpayer-Exchanger transferred the property directly to the subsequent buyer of the relinquished property in lieu of a conveyance from Exchanger to Qualified Intermediary (hereinafter referred to as the “QI”) pursuant to the Exchange Agreement and a second conveyance from the QI to the Buyer pursuant to the Purchase Contract as assigned to the QI.
- b. Note that the “direct deeding” language goes beyond a “generic” reference to an I.R.C. § 1031 exchange agreement. By identifying the parties to the specific exchange agreement and the date of the operative exchange agreement, the direct deeding language serves to evidence that the conveyance document was signed and delivered by the Assignor pursuant to a specific exchange agreement that was in existence prior to the disposition of the leasehold property.
- c. If this form is used, the conveyancer should obtain a copy of the exchange agreement from escrow so that the title, date and parties can be properly identified. If a direct conveyance is ordered, conveyancer should find a provision for the assignment of the Purchase Contract in the exchange agreement or in a separate document included in the documents from escrow to justify the direct conveyance.
- d. **RECITAL OF CONSIDERATION:** Some I.R.C. § 1031 tax advisors prefer to have the assignment document recite that Assignee’s consideration was paid to the QI rather than the Grantor because in the 1st leg exchange escrow, the QI in a “four party” exchange actually receives the funds from the buyer and provides the Taxpayer-Grantor only with the promise (as made in the exchange agreement) that it will transfer real property to Assignor in the future. Such recitals are clearly helpful to the Taxpayer-Exchanger. However, the author chose to utilize the more generic recital of consideration in the sample document in order to make as few revisions as possible to the form of the conveyance document that conveyancer would otherwise be using BUT FOR the Grantor’s participation in an I.R.C. § 1031 exchange. Also, please note that such recital of consideration would not be entirely accurate because it recites the consideration paid to the QI but it is silent on the actual consideration received by Assignor, which was the QI’s promise to transfer real property to Assignor in exchange for the subject property.

2. FORM: DIRECT ASSIGNMENT OF LEASE OF RELINQUISHED PROPERTY (ASSIGNOR'S DEFERRED EXCHANGE)

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ASSIGNMENT OF LEASE

THIS ASSIGNMENT by and between JACKIE TAX PAYER, unmarried, of Honolulu, Hawaii, hereinafter called the "Assignor", and BILLY PUR CHASER, unmarried, whose address is 5400 Buyer Street, Honolulu, Hawaii 96813, hereinafter called the "Assignee".

WITNESSETH:

That the Assignor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid to the Assignor by the Assignee, receipt whereof is hereby acknowledged, and of the covenants and agreements of the Assignee hereinafter contained and on the part of the Assignee to be faithfully kept and performed, does hereby sell, assign, transfer, set over and deliver unto the Assignee all of the leasehold estate and interest created by that certain Lease more fully described in Exhibit "A" (hereinafter called the "Lease"), attached hereto and made a part hereof by reference, subject to the encumbrances noted herein.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith unto the Assignee, as tenant in severalty, and Assignee's heirs, personal representatives and assigns, for and during the full unexpired term of the Lease, subject to any encumbrances hereinabove or hereinafter mentioned.

SUBJECT, HOWEVER, to the payment of the rents reserved by the Lease and subject also to the observance and performance by the Assignee of all of the covenants and conditions contained in the Lease, which, according to the terms and provisions thereof, are or ought to be observed and performed by the Lessee therein named.

AND the Assignor, in consideration of the premises, does hereby covenant and agree to and with the Assignee that the Assignor is the lawful owner of the leasehold estate and interest created under the Lease; that the Lease is in full force and effect and not in default; that the leasehold estate and interest are free and clear of and from all encumbrances other than those hereinabove or hereinafter mentioned, and real property taxes not yet by law required to be paid; that the Assignor has good right to sell and assign the leasehold estate and interest; that the Assignor will WARRANT AND DEFEND the title to the leasehold estate and interest created by the Lease unto the Assignee against the lawful claims and demands of all persons except as mentioned hereinabove or hereinafter.

AND the Assignee, in consideration of the premises, does hereby promise, covenant and agree to and with the Assignor, and to and with the Lessor under the Lease, that the Assignee will pay the rents thereby reserved as and when the same become due and payable pursuant to the provisions of the Lease and will also faithfully observe and perform all of the covenants and conditions contained in the Lease which are or ought to be observed and performed by the Lessee therein named, and will at all times hereafter indemnify and save the Assignor harmless from and against the nonpayment of the rents and the nonobservance of the covenants and conditions contained in the Lease.

The Lease described herein is being assigned by Assignor directly to Assignee in connection with an exchange under Section 1031 of the Internal Revenue Code of 1986, as amended, pursuant to the unrecorded Exchange Agreement dated as of _____, 20____ by and between Assignor and Reliable Exchange, Inc., a Hawaii corporation.

IT IS MUTUALLY AGREED that the terms "Assignor", "Assignee", "Lessor" and "Lessee" as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, or corporations, and their and each of their respective successors in interest, heirs, personal representatives and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more assignors or by two or more assignees, all covenants of such parties shall be and for all purposes deemed to be joint and several.

IN WITNESS WHEREOF, the Assignor and Assignee have executed these presents on this _____ day of _____, 20____.

JACKIE TAX PAYER

Assignor

BILLY PUR CHASER

Assignee

[ADD ACKNOWLEDGEMENT – SEE CHAPTER 3.V.]

C. SEQUENTIAL DEEDING: TWO DEEDS WOULD BE REQUIRED TO CLOSE THE 1ST LEG EXCHANGE ESCROW:

1. WARRANTY DEED FROM TAXPAYER-EXCHANGER TO QI (GRANTOR'S EXCHANGE)

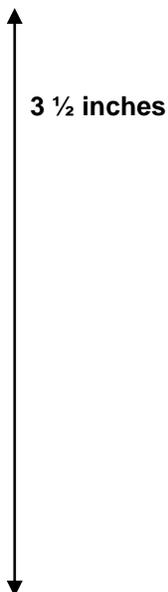
This document is used when the Grantor is conveying the relinquished property to the Qualified Intermediary (hereinafter referred to as the "QI") pursuant to its exchange agreement with the QI, so that the QI may subsequently convey the relinquished property to the buyer of the property pursuant to the original Purchase Contract that must be assigned to the QI prior to escrow closing.

A. COMMENTS

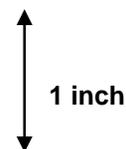
- (1) The conveyance to the QI should be a standard full warranty conveyance unless a Limited Warranty Deed is provided for in the Purchase Contract.
- (2) Many QIs will agree to take title to the relinquished property, but they will convey the property to the buyer with only limited warranties of title (rather than the full warranties of title they may receive from the Taxpayer-Exchanger). Therefore, in order to provide the buyer with the full warranties of title that may have been promised in the Purchase Contract, this first deed should include appropriate language from the Grantor to acknowledge its intent to benefit the buyer and to consent to the anticipated assignment of the warranties of title that will be included in the subsequent limited liability deed from the QI to the buyer. Nonetheless, since the conveyancer is not the I.R.C. § 1031 tax advisor to the Grantor, it would be best to raise the issue with escrow and obtain specific instructions from escrow on (i) whether the I.R.C. § 1031 tax advisor is requesting direct deeding or sequential deeding and (ii) whether the acknowledgement and consent language for the subsequent assignment of the warranties of title should be inserted in the Warranty Deed.
- (3) **RECITAL OF CONSIDERATION:** Some I.R.C. § 1031 tax advisors prefer to have the deed recite that the consideration paid by the QI-Grantee to the Grantor was not cash but the promise to convey real property to the Grantor made by the Grantee to Grantor under the exchange agreement dated _____ between the Grantor and Grantee. Such modification more clearly and accurately describes the consideration received by Grantor at the time of the conveyance to Grantee-QI because in the 1st leg exchange escrow, the QI in a "four party" exchange actually receives the funds from the buyer and provides the Taxpayer-Grantor only with the promise (as made in the exchange agreement) that it will transfer real property to the Taxpayer-Grantor in the future. Such recitals are clearly helpful to the Taxpayer-Exchanger. However, the author chose to utilize the more generic recital of consideration in the sample document in order to make as few revisions as possible to the form of the conveyance document that conveyancer would otherwise be using BUT FOR the Grantor's participation in an I.R.C. § 1031 exchange.

b. Form: Warranty Deed From Taxpayer-Exchanger to the QI (Grantor's Exchange)

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WARRANTY DEED

THIS DEED, made this _____ day of _____, 20____, by JOHN DOE TAXPAYER, husband of Jane Doe Taxpayer, whose address is _____, hereinafter called the "Grantor", in favor of HELPFUL EXCHANGE, INC., a Hawaii corporation, whose address is _____, hereinafter called the "Grantee",

W I T N E S S E T H:

For and in consideration of TEN DOLLARS, and other good and valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, in fee simple, forever all of that certain real property, situated on the Island of Oahu, City and County of Honolulu, State of Hawaii, and more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy herein set forth, forever.

AND, in consideration of the premises, the Grantor does hereby covenant with the Grantee that the Grantor is seized of the property herein described in fee simple; that said property is free and clear of and from all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid, and except as may be specifically set forth herein; that the Grantor has good right to sell and convey said property, as aforesaid; and, that the Grantor will **WARRANT AND DEFEND** the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

The Grantor, for himself and his heirs, personal representatives, successors and assigns, hereby expressly acknowledges that Grantee will convey the Property to PURCHASING CORPORATION, a Hawaii corporation (the "Buyer") by way of a limited warranty deed and that the foregoing warranties, representations and obligations to defend made by the Grantor herein are made for the benefit of the Grantee herein and the Buyer. Grantor expressly consents to the Grantee's assignment to the Buyer, and the Buyer's successors and assigns, of the Grantee's rights under said warranties, representations and obligations to defend.

This conveyance and the warranties of the Grantor are expressly declared to be in favor of the Grantee, its successors and assigns.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place of thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

IN WITNESS WHEREOF, the undersigned executed these presents as of the day and year first above written.

John Doe Taxpayer

("Grantor")

[ADD ACKNOWLEDGEMENT – SEE CHAPTER 3.V.]

2. LIMITED WARRANTY DEED FROM QI TO BUYER (GRANTOR'S EXCHANGE)

This document is used in sequential deedding when the Grantor is exchanging the property being conveyed, and the property has first been conveyed to the Qualified Intermediary.

A. COMMENTS

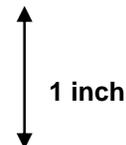
- (1) Review Comments in IV.C.1. above concerning the conveyance document utilized to transfer title to the QI (which probably includes the standard full warranty conveyance unless a Limited Warranty Deed was provided for in the Purchase Contract).
- (2) Many QIs will agree to take title to the relinquished property, but they will convey the property to the buyer with only limited warranties of title (rather than the full warranties of title they may receive from the Taxpayer-Exchanger). Therefore, in order to provide the buyer with the full warranties of title that may have been promised in the Purchase Contract, this second deed should include appropriate assignment of warranties language. Nonetheless, since the conveyancer is not the I.R.C. § 1031 tax advisor to the Grantor, it would be best to raise the issue with escrow and obtain specific instructions from escrow on (i) whether the I.R.C. § 1031 tax advisor is requesting direct deedding or sequential deedding and (ii) whether the assignment of warranties should be inserted in the limited warranty deed.

B. FORM: LIMITED WARRANTY DEED FROM QI TO BUYER (GRANTOR EXCHANGE)

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LIMITED WARRANTY DEED AND ASSIGNMENT OF WARRANTIES

THIS DEED, made this _____ day of _____, 20____, by HELPFUL EXCHANGE, INC., a Hawaii corporation, whose address is _____, hereinafter called the "Grantor", in favor of PURCHASING CORPORATION, a Hawaii corporation, whose address is _____, hereinafter called the "Grantee",

W I T N E S S E T H:

For and in consideration of TEN DOLLARS, and other good and valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, in fee simple, forever all of that certain real property, situated on the Island of Oahu, City and County of Honolulu, State of Hawaii, and more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy herein set forth, forever.

AND, in consideration of the premises, the Grantor does hereby covenant and agree with the Grantee that the Grantor has good right to sell and convey the property herein described and that the Grantor has not heretofore done, committed or willingly suffered to be done or committed any act or thing whatsoever whereby the title and estate hereby conveyed, or any part thereof, are or shall be charged or encumbered, except as aforesaid.

AND, for valuable consideration, the receipt of which is acknowledged, Grantor does hereby assign, convey and transfer to Grantee, without warranty, each and every warranty and obligation to defend as are contained in and given by JOHN DOE TAXPAYER, as grantor, to the Grantor herein, as grantee, in that certain Warranty Deed covering the property described in Exhibit A attached hereto, dated ____, 20__, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. _____.

This conveyance and the warranties of the Grantor are expressly declared to be in favor of the Grantee, its successors and assigns.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place of thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

IN WITNESS WHEREOF, the undersigned executed these presents as of the day and year first above written.

HELPFUL EXCHANGE, INC.

By: _____

Its

("Grantor")

[ADD ACKNOWLEDGEMENT – SEE CHAPTER 3.V.]

V. THE “FOUR PARTY” EXCHANGE: FORM OF CONVEYANCE DOCUMENTS USED IN 2ND LEG EXCHANGE ESCROW (EXCHANGER IS GRANTEE/ASSIGNEE).

A. DIRECT DEEDING OF REPLACEMENT PROPERTY (GRANTEE’S EXCHANGE)

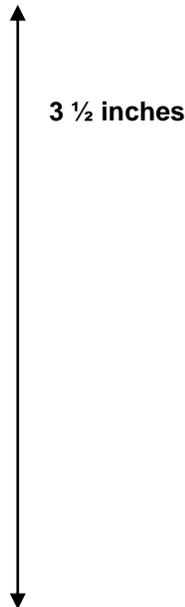
This document is used when Grantee is now acquiring the Replacement Property in the 2nd leg exchange escrow pursuant to his I.R.C. § 1031 exchange and a direct conveyance is ordered.

1. COMMENTS

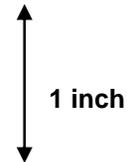
- a. Note that the deed contains “direct deeding” language to evidence and memorialize the fact that the seller of the Replacement Property transferred the property directly to the Taxpayer-Exchanger in lieu of a conveyance from Seller to Qualified Intermediary (hereinafter referred to as the “QI”) pursuant to the Purchase Contract as assigned to the QI and a second conveyance from the Qualified Intermediary to the Taxpayer-Exchanger pursuant to the Exchange Agreement.
- b. Note that the “direct deeding” language goes beyond a “generic” reference to an I.R.C. § 1031 exchange agreement. By identifying the parties to the specific exchange agreement and the date of the operative exchange agreement, the direct deeding language serves to evidence that the conveyance document was signed and delivered by the Grantor pursuant to a specific exchange agreement of the Grantee that was utilized when the Grantee previously transferred its Relinquished Property in the 1st leg exchange escrow.
- c. If this form is used, the conveyancer should obtain a copy of the exchange agreement from escrow so that the title, date and parties can be properly identified. If a direct conveyance is ordered, conveyancer should find a separate document for the assignment of the Purchase Contract included in the documents from escrow to justify the direct conveyance.
- d. RECITAL OF CONSIDERATION: Some I.R.C. § 1031 tax advisors prefer to have the deed recite that the consideration was paid by the QI rather than the Grantee because in the 2nd leg exchange escrow, the QI in a “four party” exchange is normally in possession of the exchange funds from the 1st leg exchange escrow and paying such funds to the Grantor. Such recitals are clearly helpful to the Taxpayer-Exchanger. However, the author chose to utilize the more generic recital of consideration in the sample document in order to make as few revisions as possible to the form of the conveyance document that conveyancer would otherwise be using BUT FOR the Grantee’s participation in an I.R.C. § 1031 exchange. Also, please note that such recital of consideration would not be entirely accurate because the QI’s funds are usually inadequate and the Grantee usually provides additional funds (through its own financing arrangement) to pay the Seller the balance of the purchase price under the Purchase Contract.

2. FORM: DIRECT DEED OF REPLACEMENT PROPERTY (GRANTEE'S DEFERRED EXCHANGE)

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WARRANTY DEED

THIS DEED, made this _____ day of _____, 20____, by PETER SELLER, unmarried, whose address is _____, hereinafter called the "Grantor", and JOHN DOE TAXPAYER, husband of Jane Doe Taxpayer, whose address is _____, hereinafter called the "Grantee",

W I T N E S S E T H:

For and in consideration of TEN DOLLARS, and other good and valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, in fee simple, forever all of that certain real property, situated on the Island of Oahu, City and County of Honolulu, State of Hawaii, and more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy herein set forth, forever.

AND, in consideration of the premises, the Grantor does hereby covenant with the Grantee that the Grantor is seized of the property herein described in fee simple; that said property is free and clear of and from all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid, and except as may be specifically set forth herein; that the Grantor has good right to sell and convey said property, as aforesaid; and, that the Grantor will **WARRANT AND DEFEND** the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

The property described herein is being conveyed by Grantor directly to Grantee in connection with an exchange under Section 1031 of the Internal Revenue Code of 1986, as amended, pursuant to the unrecorded Exchange Agreement dated as of _____, 20__ by and between Grantee and Helpful Exchange, Inc., a Hawaii corporation.

This conveyance and the warranties of the Grantor are expressly declared to be in favor of the Grantee, his heirs, devisees, personal representatives and assigns.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place of thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the undersigned executed these presents as of the day and year first above written.

Peter Seller
("Grantor")

John Doe Taxpayer
("Grantee")

[ADD ACKNOWLEDGEMENT – SEE CHAPTER 3.V.]

B. DIRECT ASSIGNMENT OF LEASE OF REPLACEMENT PROPERTY (ASSIGNEE'S EXCHANGE)

This document is used when Assignee is now acquiring the leasehold Replacement Property in the 2nd leg exchange escrow pursuant to his or her I.R.C. § 1031 exchange and a direct conveyance is ordered.

1. COMMENTS

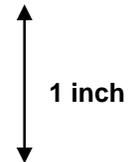
- a. Note that the document contains “direct deeding” language to evidence and memorialize the fact that the Seller transferred the property directly to the Taxpayer-Exchanger in lieu of a conveyance from Seller to QI pursuant to the Purchase Contract as assigned to QI and a second conveyance from QI to Taxpayer-Exchanger pursuant to the Exchange Agreement.
- b. Note that the “direct deeding” language goes beyond a “generic” reference to an I.R.C. § 1031 exchange agreement. By identifying the parties to the specific exchange agreement and the date of the operative exchange agreement, the direct deeding language serves to evidence that the conveyance document was signed and delivered by the Assignor pursuant to a specific exchange agreement of the Assignee that was operative at the time Assignee previously transferred its Relinquished Property in the 1st leg exchange escrow.
- c. If this form is used, the conveyancer should obtain a copy of the exchange agreement from escrow so that the title, date and parties can be properly identified. If a direct conveyance is ordered, conveyancer should find a separate document for the assignment of the Purchase Contract (from Taxpayer-Exchanger to the QI) included in the documents from escrow to justify the direct conveyance.
- d. **RECITAL OF CONSIDERATION:** Some I.R.C. § 1031 tax advisors prefer to have the deed recite that the consideration was paid by the QI rather than the Assignee because in the 2nd leg exchange escrow, the QI in a “four party” exchange is normally in possession of the exchange funds from the 1st leg exchange escrow and paying such funds to the Assignor. Such recitals are clearly helpful to the Taxpayer-Exchanger. However, the author chose to utilize the more generic recital of consideration in the sample document in order to make as few revisions as possible to the form of the conveyance document that conveyancer would otherwise be using BUT FOR the Assignee’s participation in an I.R.C. § 1031 exchange. Also, please note that such recital of consideration would not be entirely accurate because the QI’s funds are usually inadequate and the Assignee usually provides additional funds (through its own financing arrangement) to pay the Seller-Assignor the balance of the purchase price under the Purchase Contract.

2. FORM: DIRECT ASSIGNMENT OF LEASE OF REPLACEMENT PROPERTY (ASSIGNEE'S DEFERRED EXCHANGE)

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ASSIGNMENT OF LEASE

THIS ASSIGNMENT by and between PETER SELLER, unmarried, of Honolulu, Hawaii, hereinafter called the "Assignor", and JACKIE TAX PAYER, unmarried, whose address is 5200 Swap Place, Honolulu, Hawaii 96813, hereinafter called the "Assignee".

W I T N E S S E T H:

That the Assignor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid to the Assignor by the Assignee, receipt whereof is hereby acknowledged, and of the covenants and agreements of the Assignee hereinafter contained and on the part of the Assignee to be faithfully kept and performed, does hereby sell, assign, transfer, set over and deliver unto the Assignee all of the leasehold estate and interest created by that certain Lease more fully described in Exhibit "A" (hereinafter called the "Lease"), attached hereto and made a part hereof by reference, subject to the encumbrances noted herein.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith unto the Assignee, as tenant in severalty, and Assignee's heirs, personal representatives and assigns, for and during the full unexpired term of the Lease, subject to any encumbrances hereinabove or hereinafter mentioned.

SUBJECT, HOWEVER, to the payment of the rents reserved by the Lease and subject also to the observance and performance by the Assignee of all of the covenants and conditions contained in the Lease, which, according to the terms and provisions thereof, are or ought to be observed and performed by the Lessee therein named.

AND the Assignor, in consideration of the premises, does hereby covenant and agree to and with the Assignee that the Assignor is the lawful owner of the leasehold estate and interest created under the Lease; that the Lease is in full force and effect and not in default; that the leasehold estate and interest are free and clear of and from all encumbrances other than those hereinabove or hereinafter mentioned, and real property taxes not yet by law required to be paid; that the Assignor has good right to sell and assign the leasehold estate and interest; that the Assignor will WARRANT AND DEFEND the title to the leasehold estate and interest created by the Lease unto the Assignee against the lawful claims and demands of all persons except as mentioned hereinabove or hereinafter.

AND the Assignee, in consideration of the premises, does hereby promise, covenant and agree to and with the Assignor, and to and with the Lessor under the Lease, that the Assignee will pay the rents thereby reserved as and when the same become due and payable pursuant to the provisions of the Lease and will also faithfully observe and perform all of the covenants and conditions contained in the Lease which are or ought to be observed and performed by the Lessee therein named, and will at all times hereafter indemnify and save the Assignor harmless from and against the nonpayment of the rents and the nonobservance of the covenants and conditions contained in the Lease.

The Lease described herein is being assigned by Assignor directly to Assignee in connection with an exchange under Section 1031 of the Internal Revenue Code of 1986, as amended, pursuant to the unrecorded Exchange Agreement dated as of _____, 20____ by and between Assignee and Reliable Exchange, Inc., a Hawaii corporation.

IT IS MUTUALLY AGREED that the terms "Assignor", "Assignee", "Lessor" and "Lessee" as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, or corporations, and their and each of their respective successors in interest, heirs, personal representatives and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more assignors or by two or more assignees, all covenants of such parties shall be and for all purposes deemed to be joint and several.

IN WITNESS WHEREOF, the Assignor and Assignee have executed these presents on this _____ day of _____, 20____.

PETER SELLER

Assignor

JACKIE TAX PAYER

Assignee

[ADD ACKNOWLEDGEMENT – SEE CHAPTER 3.V.]

C. SEQUENTIAL DEEDING: TWO DEEDS WOULD BE REQUIRED TO CLOSE THE 2ND LEG EXCHANGE ESCROW:

1. WARRANTY DEED FROM SELLER TO QI (GRANTEE'S EXCHANGE)

This document is used as the first deed in sequential deedding. This document is used when the Grantor is conveying the replacement property to the Qualified Intermediary (hereinafter referred to as the "QI") pursuant to the Purchase Contract assigned to the QI by Taxpayer-Exchanger, so that the QI may subsequently convey the replacement property to the Taxpayer-Exchanger pursuant to the Exchange Agreement.

A. COMMENTS

- (1) The conveyance to the QI should be a standard full warranty conveyance unless a Limited Warranty Deed is provided for in the Purchase Contract.

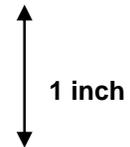
- (3) Many QIs will agree to take title to the replacement property, but they will convey the property to the Taxpayer-Exchanger with only limited warranties of title (rather than the full warranties of title they may receive from the Seller). Therefore, in order to provide the Taxpayer-Exchanger with the full warranties of title that may have been promised in the Purchase Contract, this first deed should include appropriate language from the Grantor to acknowledge his intent to benefit the Taxpayer-Exchanger and to consent to the anticipated assignment of the warranties of title to Taxpayer-Exchanger. Nonetheless, since the conveyancer is not the I.R.C. § 1031 tax advisor to the Taxpayer-Exchanger, it would be best to raise the issue with escrow and obtain specific instructions from escrow on (i) whether the I.R.C. § 1031 tax advisor is requesting direct deedding or sequential deedding and (ii) whether the acknowledgement and consent language for the subsequent assignment of the warranties of title should be inserted in the Warranty Deed.

b. Form: Warranty Deed From Seller to the QI (Grantee's Exchange)

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WARRANTY DEED

THIS DEED, made this _____ day of _____, 20____, by PETER SELLER, unmarried, whose address is _____, hereinafter called the "Grantor", in favor of HELPFUL EXCHANGE, INC., a Hawaii corporation, whose address is _____, hereinafter called the "Grantee",

WITNESSETH:

For and in consideration of TEN DOLLARS, and other good and valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, in fee simple, forever all of that certain real property, situated on the Island of Oahu, City and County of Honolulu, State of Hawaii, and more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy herein set forth, forever.

AND, in consideration of the premises, the Grantor does hereby covenant with the Grantee that the Grantor is seized of the property herein described in fee simple; that said property is free and clear of and from all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid, and except as may be specifically set forth herein; that the Grantor has good right to sell and convey said property, as aforesaid; and, that the Grantor will **WARRANT AND DEFEND** the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

The Grantor, for himself and his heirs, personal representatives, successors and assigns, hereby expressly acknowledges that Grantee will convey the Property to JOHN DOE TAXPAYER, husband of Jane Doe Taxpayer (the "Exchanger") in connection with an exchange under Section 1031 of the Internal Revenue Code of 1986, as amended, by way of a limited warranty deed and that the foregoing warranties, representations and obligations to defend made by the Grantor herein are made for the benefit of the Grantee herein and the Exchanger. Grantor expressly consents to the Grantee's assignment to the Exchanger, and the Exchanger's successors and assigns, of the Grantee's rights under said warranties, representations and obligations to defend.

This conveyance and the warranties of the Grantor are expressly declared to be in favor of the Grantee, its successors and assigns.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place of thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

IN WITNESS WHEREOF, the undersigned executed these presents as of the day and year first above written.

Peter Seller

("Grantor")

[ADD ACKNOWLEDGEMENT – SEE CHAPTER 3.V.]

2. LIMITED WARRANTY DEED FROM QI TO TAXPAYER-EXCHANGER (GRANTEE'S EXCHANGE)

This document is used as the second deed in sequential deeding. This document is used when the Qualified Intermediary (hereinafter referred to as the "QI") is conveying the replacement property to the Taxpayer-Exchanger pursuant to its Exchange Agreement immediately after receiving title to the replacement property from the Seller pursuant to the Purchase Contract assigned to the QI by Taxpayer-Exchanger.

A. COMMENTS

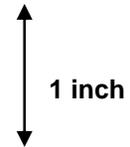
- (1) Review Comments in V.B above concerning the conveyance document utilized to transfer title to the QI (which probably includes the standard full warranty conveyance unless a Limited Warranty Deed was provided for in the Purchase Contract).
- (2) Many QIs will agree to take title to the replacement property, but they will convey the property to the Taxpayer-Exchanger with only limited warranties of title (rather than the full warranties of title they may receive from the Seller). Therefore, in order to provide the Taxpayer-Exchanger with the full warranties of title that may have been promised in the Purchase Contract, this second deed should include appropriate assignment of warranties language. Nonetheless, since the conveyancer is not the I.R.C. § 1031 tax advisor to the Grantee, it would be best to raise the issue with escrow and obtain specific instructions from escrow on (i) whether the I.R.C. § 1031 tax advisor is requesting direct deeding or sequential deeding and (ii) whether the assignment of warranties should be inserted in the limited warranty deed.
- (3) RECITAL OF CONSIDERATION: Some I.R.C. § 1031 tax advisors prefer to have the deed recite that the consideration received by Grantor was the previous transfer of the relinquished property (rather than cash) because in the 2nd leg exchange escrow, the QI in a "four party" exchange has already received the relinquished property at the 1st leg exchange escrow closing. Such recitals are clearly helpful to the Taxpayer-Exchanger. However, the author chose to utilize the more generic recital of consideration in the sample document in order to make as few revisions as possible to the form of the conveyance document that conveyancer would otherwise be using BUT FOR the Assignee's participation in an I.R.C. § 1031 exchange.

B. FORM: LIMITED WARRANTY DEED FROM QI TO TAXPAYER-EXCHANGER (GRANTEE'S EXCHANGE)

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LIMITED WARRANTY DEED AND ASSIGNMENT OF WARRANTIES

THIS DEED, made this _____ day of _____, 20____, by HELPFUL EXCHANGE, INC., a Hawaii corporation, whose address is _____, hereinafter called the "Grantor", in favor of JOHN DOE TAXPAYER, husband of Jane Doe Taxpayer, whose address is _____, hereinafter called the "Grantee",

WITNESSETH:

For and in consideration of TEN DOLLARS, and other good and valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, in fee simple, forever all of that certain real property, situated on the Island of Oahu, City and County of Honolulu, State of Hawaii, and more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy herein set forth, forever.

AND, in consideration of the premises, the Grantor does hereby covenant and agree with the Grantee that the Grantor has good right to sell and convey the property herein described and that the Grantor has not heretofore done, committed or willingly suffered to be done or committed any act or thing whatsoever whereby the title and estate hereby conveyed, or any part thereof, are or shall be charged or encumbered, except as aforesaid.

AND, for valuable consideration, the receipt of which is acknowledged, Grantor does hereby assign, convey and transfer to Grantee, without warranty, each and every warranty and obligation to defend as are contained in and given by PETER SELLER, as grantor, to the Grantor herein, as grantee, in that certain Warranty Deed covering the property described in Exhibit A attached hereto, dated _____, 20__, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. _____.

This conveyance and the warranties of the Grantor are expressly declared to be in favor of the Grantee, his heirs, devisees, personal representatives and assigns.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place of thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

IN WITNESS WHEREOF, the undersigned executed these presents as of the day and year first above written.

HELPFUL EXCHANGE, INC.

By: _____

Its

("Grantor")

[ADD ACKNOWLEDGEMENT - SEE CHAPTER 3.V.]