

CONTINGENT PROFIT AGREEMENT

This Contingent Profit Agreement (the "**Agreement**") is made as of _____, _____ (the "**Effective Date**") between *Named Church* (the "**Lender**") and _____ and _____ ("**Borrower**").

RECITALS

A. Borrower is acquiring the residential real property known as [*insert street address and city*], *Name of State*, and legally described on **Exhibit A** attached hereto (the "**Property**").

B. Borrower is paying a portion of the purchase price for the Property with a loan (the "**Loan**") made by Lender to Borrower in the original principal amount of \$_____. The Loan is evidenced by a promissory note dated as of the Effective Date made by Borrower in favor of Lender (the "**Note**") and secured by a deed of trust in favor of Lender encumbering the Property (the "**Deed of Trust**"). The Note, Deed of Trust and all other documents evidencing securing or otherwise related to the Loan, as they may be amended from time to time, are collectively called the "**Loan Documents**".

C. Borrower acknowledges that Lender has made the Loan on favorable terms because of Borrower's employment with Lender. As an additional incentive for making the Loan, Lender desires to participate in the profit resulting from the sale or refinancing of the Property in certain circumstances. Borrower is willing to provide this profit participation to Lender under the terms and conditions of this Agreement.

Therefore, Lender and Borrower agree as follows:

1. **Profit Participation.**

1.1. **Definitions.**

(a) **Capital Improvement Costs.** The actual cost of any capital improvements Borrower has made to the Property as of a Triggering Event Date (defined below) which have added value to the Property.

(b) **Exempt Transfers.** Either (1) Borrower's transfer of the Property into a revocable trust which is an exempt transfer under *Name of State* Revenue and Taxation Code Section 62(d), or (2) any interspousal transfer (as defined in *Name of State* Revenue and Taxation Code Section 63) or transfer between parents and any of their children (as defined in *Name of State* Revenue and Taxation Code Section 63.1).

(c) **Fair Market Value.** The value of the Property as of a Triggering Event Date determined by mutual agreement or by Appraisal under Section 1.3 below.

(d) **Net Proceeds.** The total consideration of whatever nature Borrower receives from the sale or refinancing of the Property, including any portion of the sale price represented by a loan or loans, exchange property, or other forms of non-cash consideration, less the (1) Transaction Costs (as defined below), (2) Capital Improvement Costs, and (3) Original Purchase Price.

(e) **Original Purchase Price.** The original purchase price Borrower paid for the Property.

(f) **Outstanding Balance.** The outstanding principal balance of the Note as of a Triggering Event Date.

(g) **Profit Participation.** Subject to the limitation in Section 1.2(b) below, either (1) _____% [*insert % of Property loan to value*] of the amount by which the Net Proceeds exceed the Outstanding Balance if the Triggering Event is an arms length sale or refinancing of the Property during the Loan term, or (2) _____% [*insert % of Property loan to value*] of the amount by which the Fair Market Value exceeds the Original Purchase Price if the Triggering Event is not an arms length sale or refinancing of the Property during the term of the Loan (as reasonably determined by Lender) or is a result of the Loan becoming due and payable in full at maturity or as a result of acceleration.

(h) **Transaction Costs.** The (1) sale or refinancing costs actually paid by Borrower in connection with a Triggering Event which is an arms length sale or refinancing of the Property during the Loan term to the extent such expenses are reasonable and customary in such a transaction or (2) Lender's estimate of the reasonable and customary expenses which a comparable seller would incur in an arms length sales transaction.

(i) **Triggering Event and Triggering Event Date.** The sale or refinancing of the Property during the term of this Agreement either voluntarily by Borrower or involuntarily as a result of the Loan becoming due and payable in full at maturity or as a result of acceleration; provided, however, that any Exempt Transfer shall not be a Triggering Event. The "Triggering Event Date" is the effective date of a Triggering Event.

1.2. **Payment Obligation.**

(a) **Payment.** Subject to the limitation in Section 1.2(b), Borrower shall pay the Profit Participation to Lender upon the transfer of title to the Property to the purchaser or to Lender in a sales transaction or the recordation of the new deed of trust in favor of the new lender in a refinancing transaction, as applicable. The Profit Participation payment is made to Lender as an incentive fee for making the Loan, and is in addition to, and not in substitution of, any payments due by Borrower to Lender under the Note, the other Loan Documents or otherwise. The parties recognize that the Profit Participation is contingent and uncertain in nature. Both the payment and amount, if

any of the Profit Participation, if any, are dependent on the occurrence of events outside Lender's control.

(b) **Rate Limitation.** The actual Profit Participation to be paid shall be the lesser of (1) the Profit Participation amount calculated as provided in Section 1.1(f) above, or (2) the maximum amount permitted under *Name of State* usury law (to the extent applicable).

1.3. **Determination of Fair Market Value.**

(a) **By Agreement.** Lender and Borrower shall have 15 days after the Profit Participation described in 1.1(f)(2) is due and payable under Section 1.2 to agree on the Fair Market Value. If the parties don't reach such an agreement within that 15-day period, the Fair Market Value shall be determined by Appraisal under Section 1.3(b).

(b) **Appraisal Procedure.** Within twenty (20) days after the Profit Participation is due and payable under Section 1.2, Lender shall furnish Borrower with a list of 3 or more independent, qualified appraisers. Borrower may select any one of the listed appraisers to conduct the appraisal. If Borrower fails to designate and retain the appraiser within 3 business days after the appraiser list was provided to Borrower, Lender shall select and retain such appraiser within 5 business days thereafter. The selected appraiser shall conduct the appraisal in the following manner (the "**Appraisal**"):

(1) The selected appraiser shall be instructed to conduct an appraisal of the Fair Market Value of the Property, and to deliver a written copy thereof to both Lender and Borrower no later than a date specified by Borrower, which date must be not later than 30 days after the appraiser's selection. Borrower and Lender may each submit information to the appraiser which that party deems relevant to the appraisal and shall deliver copies of such information to each other. All such information shall be delivered to the appraiser within 10 days after the appraiser is retained. Each party may provide comments to the appraiser on the information delivered by the other party but such comments shall be delivered no later than fifteen (15) days after the appraiser is selected. The appraiser shall consider any such information submitted which he deems relevant and reliable. The appraiser need not perform the appraisal pursuant to MAI standards and procedures, but rather shall be instructed to use all reasonable information at his disposal, in summary fashion, to render his best reasonable judgment of the Fair Market Value (in a stated dollar amount, and not in an indefinite range) of the Property, all within the specified time for completion of his work.

(2) Borrower and Lender shall each bear one-half the cost of the Appraisal.

2. **Cross Collateralized.** Payment and performance of Borrower's obligations under this Agreement are fully cross collateralized with Borrower's payment and performance obligations under the Note and the other Loan Documents, and are

therefore secured by the Deed of Trust and any other Loan Document which is a security instrument.

3. **Default.**

3.1. **Events of Default.** Each of the following constitutes an “Event of Default” under this Agreement:

(a) Borrower fails to make any Loan payment when due under the Note or any other Loan Document, and such failure continues for 5 days after the due date.

(b) Borrower fails to pay the Profit Participation or any other amount when due under this Agreement, and such failure continues for 5 days after the due date.

(c) Borrower fails to make any other payment when due of any other obligation of Borrower to Lender during the term of this Agreement, and such failure continues for 5 days after the due date.

(d) Borrower fails to perform any other obligation under any of the Loan Documents or this Agreement, and such failure continues beyond the cure period applicable to that obligation, if any.

3.2. **Acceleration and Default Interest.** The occurrence of an Event of Default is a Triggering Event which shall cause the Profit Participation described in Section 1.1(f)(2) and any other amount due hereunder to become immediately due and payable. All such amounts shall bear interest at 10% per annum from the Triggering Event Date to the date such amount is paid in full.

4. **Due on Transfer.** If Borrower (a) sells, conveys or further encumbers the Property, or any part thereof, or any interest therein; or (b) is divested of its title or any interest therein in any way, whether voluntarily or involuntarily, without Lender’s prior written consent, Lender may, at its option, declare the non-approved transfer an Event of Default.

5. **Creditor/Debtor Relationship.** The relationship between Lender and Borrower is solely that of creditor and debtor. Nothing in this Agreement or any of the Loan Documents shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership between Lender and Borrower. Lender shall not be responsible or liable for the debts, losses, obligations or duties of Borrower concerning the Property or otherwise. All obligations to pay real property taxes or other taxes, assessments, insurance premiums, and all other fees and charges arising from the occupancy, use, ownership, maintenance or operation of the Property and to perform all agreements and contracts relating to the Property are Borrower’s sole responsibility. Borrower, at all times consistent with the terms of this Agreement and the Loan Documents, is free to determine and follow Borrower’s own policies and practices in the conduct of its activities on the Property. Borrower shall indemnify and hold Lender

Lender: *Named Church*
(Insert Church Address)
(Insert City, Name of State, ZIP
Code)
Attention: Controller

All notices shall be deemed given or made when personally delivered to the person to whose attention notices are to be addressed or three days after deposited in the United States Mail, return receipt requested and postage prepaid. Either party may, by notice given at any time or from time to time, require that subsequent notices be given a different address.

7.6. **Attorneys' Fees.** If either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder or under any other document delivered by Borrower to Lender pursuant to the Loan, the prevailing party shall be entitled to recover from the other party its costs of suit and reasonable attorneys' fees which shall be fixed by the court.

Borrower and Lender have executed this Agreement to be effective as of the Effective Date.

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Nothing herein shall be considered legal advice. You are encouraged to seek legal advice from an attorney licensed to practice in your jurisdiction before using this form.