

## AGREEMENT TO PURCHASE REAL ESTATE

This Agreement to Purchase Real Estate ("Agreement") is made effective as of the \_\_\_\_ the day of \_\_\_\_, 2018 (the "Effective Date"), by and between **THIRD WAVE HOUSING, LLC**, a North Carolina limited liability company, with a mailing address of 463 ½ Carolina Circle, Winston-Salem, NC 27104 ("Purchaser") and **CHATHAM COUNTY**, a body politic and corporate of the State of North Carolina, with a mailing address of P.O. Box 1809, Pittsboro, NC 27312 ("Seller"). Purchaser may assign its interest to another related entity prior to closing. This is to confirm that Seller has chosen Buyer pursuant Seller's Requests for Proposals to redevelop the property into affordable housing (the "RFP").

### ARTICLE 1. PROPERTY

On the terms set forth herein, Purchaser agrees to purchase from Seller, and Seller agrees to sell to Purchaser, that approximate 2.36+/- acre parcel of real property known as PIN #8761 05 00 0000 which is located at 502 West Third Street in Siler City, Chatham County, North Carolina, together with all improvements thereon and appurtenances thereto (the "Property") as shown in Exhibit A, attached. The exact legal description and acreage of the Property shall be determined by the survey described in Article 3, below. Purchaser agrees to develop and operate not less than 34 units of multi-family housing to provide affordable housing to persons of low or moderate income and to construct and operate ancillary facilities on the Property to support the foregoing purpose pursuant to the 2018 Low-Income Housing Tax Credit Qualified Allocation Plan for the State of North Carolina (the "Development").

### ARTICLE 2. PURCHASE PRICE AND EARNEST MONEY

The consideration for the sale of the Property is Purchaser's agreement to provide housing for persons of low or moderate income, there is no monetary consideration for the purchase. (the "Purchase Price") according to the terms and conditions set forth herein. Within five (5) business days of the Effective Date, Purchaser shall deposit the sum of ONE HUNDRED AND 00/100 DOLLARS as an earnest money deposit and closing costs (the "Earnest Money"). The Earnest Money shall be held in an escrow account of THE BROCKMANN LAW FIRM, P.C., as escrow agent (the "Escrow Agent"), and disbursed in accordance with the terms and conditions of this Agreement. Within five (5) business days following the earlier of (i) receipt by Purchaser of a final allocation of sufficient low-income housing tax credits from the North Carolina Housing Finance Agency, or (ii) September 15, 2018 (whichever applies is to be the "Tax Credit Allocation Date"), Purchaser shall deposit the sum of ONE HUNDRED AND 00/100 DOLLARS as an earnest money deposit which shall be applied to the closing costs. Upon satisfaction of all of the conditions precedent set forth in Article 3, below, the Earnest Money shall be non-refundable when paid but applied to the closing cost. In the event the Purchaser desires to extend the date of closing, the Purchaser shall have three (3) options to extend the date of closing for sixty (60) days each by depositing an additional sum of ONE HUNDRED AND 00/100 DOLLARS in each instance as an additional earnest money deposit which shall be non-refundable when paid but applied to the closing costs.

### ARTICLE 3. CONDITIONS PRECEDENT

A. Purchaser shall have until September 15, 2018 to complete the following due diligence in regard to the Property to its satisfaction in its sole discretion:

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1. Purchaser's receipt, review and approval of: (a) utility will-serve letters confirming that all necessary utilities are available in sufficient capacity to service the Development; (b) an engineering report indicating that the soil condition, quality, density and bearing capacity are suitable for the Development; (c) a construction company's estimate of costs to construct the Development based on other due diligence findings, and (d) except as otherwise set forth herein, a zoning letter or report confirming the zoning for the Property will allow Purchaser to develop and operate the Development, and that either (i) no conditional use permit, variance or any other land use permit or approval is necessary for the Development or (ii) any conditional use permit, variance or other land use permits or approvals necessary for the Development have been obtained.

2. Purchaser's determination, that any associated impact fees, utility hook-up or tap-in fees, or any other associated development and/or construction related fees imposed by any applicable governmental authority are acceptable to Purchaser.

3. Purchaser's receipt, review and approval of: (a) a standard commitment for title insurance from a title insurer approved by Purchaser; (b) an environmental report; (c) a boundary survey; and (d) a flood plain certification and a wetland delineation report indicating that the presence of perennial and/or intermittent streams (and their associated buffers), wetlands and/or floodplains will not impede the development or operation of the Development; and (e) the cost for any offsite facilities required for the development and operation of the Development.

4. Purchaser's receipt of all necessary and customary permits from any and all applicable governmental authorities in order for Purchaser to develop and operate the Development, including those for all necessary utilities, access, building construction, site construction and off-site improvements (such as road widening easements and permits from applicable departments of transportation).

5. Purchaser's receipt of a binding allocation of low-income housing tax credits for the Development from the North Carolina Housing Finance Agency.

In the event any condition precedent in this Article 3A is not satisfied by the date specified in this Article 3A, Purchaser shall have the right to terminate the Agreement upon notice to Seller and receive a refund of any refundable Earnest Money, and neither party shall have any further rights or obligations under the Agreement whatsoever.

B. The obligations of Purchaser hereunder are in all respects conditioned upon and subject to the Property being zoned to allow Seller to complete Development without requiring any rezoning. In the event that the Purchaser is unable to successfully rezone the Property, Purchaser may terminate this Agreement and receive a full refund of its Earnest Money. If the Property is rezoned but is not purchased by Purchaser, Purchaser shall have no duty to restore the Property to its former zoning. Seller understands that the Purchaser intends to apply for rezoning of the Property as described above, and Seller consents to Purchaser's efforts in that connection. Purchaser shall be solely responsible for the cost of the rezoning efforts applicable to the Property, and Seller agrees to cooperate fully with Purchaser's efforts and to execute and deliver such petitions, applications, consents and other authorizations as Purchaser may reasonably require.

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#### ARTICLE 4. CLOSING

Closing shall occur on or before March 31, 2019 at the office of Purchaser's attorney or such other venue mutually agreed upon by Purchaser and Seller; provided, however, that Purchaser shall have the right to schedule a closing any time prior thereto on fifteen (15) days' notice to Seller. Seller shall deliver at closing: (a) limited warranty deed containing such mutually agreeable covenants and conditions as are necessary to meet the requirements of this Agreement and Seller's RFP with respect to the Henry Siler School for affordable housing for a period of not less than twenty (20) years, conveying the Property to Purchaser (or its designee) subject to those exceptions approved by Purchaser; (b) all easements necessary for the development and operation of the Development; (c) lien affidavit acceptable to the title insurer; and (d) such other customary documents, instruments, certifications and confirmations as may be reasonably required to fully effect and consummate the transactions contemplated hereby. Seller agrees it will remove all personal property (the "Personal Property") from the Property prior to five (5) business days before closing. Personal Property shall be defined any inventory, equipment, vehicles and/or trash present at the Property. In addition, in the event needed by Purchaser in order to obtain survey coverage in regard to the title policy for the Property, Seller shall deliver such reasonably required documents with respect to the legal description of the Property contained on the ALTA survey described in Article 3, above. Purchaser shall deliver at closing such documents, instruments, certifications and confirmations as may be reasonably required to fully effect and consummate the transaction contemplated hereby. At all times until closing, Seller shall maintain the legal title to the Property free and clear of any and all defects, liens, and encumbrances of every kind and nature placed thereon by Seller (other than deeds of trust that will be released at closing). Purchaser and Seller shall prorate all taxes, income, expenses and costs (if any) related to the Property as of the date of closing. Seller shall pay for the preparation of the deed to the Property, and the North Carolina Real Estate Transfer Tax applicable to the transfer of the Property (if any). Purchaser shall be responsible for the title insurance premium, and the cost of recording the limited warranty deed and any other instruments to be recorded under the terms of this Agreement with respect to the Property. Except as may otherwise be stated herein, each party shall bear its own expense or expenses, including its own attorney fees.

#### ARTICLE 5. DEFAULTS AND REMEDIES

In the event the sale of the Property is not closed pursuant to this Agreement due to a default hereunder by Seller or failure of performance hereunder by Seller, then Purchaser shall give Seller written notice specifying Seller's default or failure of performance, and Seller shall have fifteen (15) business days to cure the default or failure of performance. In the event that Seller fails to cure Seller's default or failure of performance within the fifteen (15) day period, then the Earnest Money shall be immediately refunded and returned to Purchaser and, in addition, Purchaser may enforce and exercise its rights and remedies available at law or in equity, including without limitation an action for specific performance of this Agreement. In the event the sale of the Property is not closed pursuant to this Agreement due to a default hereunder by Purchaser or failure of performance by Purchaser, then Seller shall give Purchaser written notice specifying Purchaser's default or failure of performance, and Purchaser shall have fifteen (15) business days to cure the default or failure of performance. In the event that Purchaser fails to cure Purchaser's default or failure of performance within the fifteen (15) day period, then the Earnest Money shall be immediately forfeited by Purchaser, and retained by Seller as and for liquidated damages, and as Seller's sole and exclusive remedy; and thence the parties shall have no further rights, duties or obligations hereunder.

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## ARTICLE 6. MISCELLANEOUS

- A. Access. Within thirty (30) days of the Effective Date, as a courtesy only, and without any representation or warranty, Seller shall deliver to Purchaser true, correct and complete copies of any title policies, commitments, surveys, plans and specifications, environmental reports or any other documents related to the Property, or any part thereof, which are in Seller's possession or which are readily available to Seller. Seller will allow Purchaser and its agents continuing access at reasonable times to the Property, for the purpose of conducting inspections; provided, however, and notwithstanding the foregoing, Purchaser and its agents shall not have the right to conduct any invasive testing (e.g. borings, drilling, soil/water sampling, etc.) on the Property, including, without limitation, any so-called "Phase II" environmental testing without first obtaining Seller's written consent (and providing Seller at least seventy-two (72) hours' prior written notice), which consent may be withheld in Seller's sole discretion and shall be subject to reasonable terms and conditions established by Seller. In the event Purchaser fails to obtain Seller's written consent prior to any invasive testing, Purchaser shall be fully responsible and liable for all costs of remediation, including, but not limited to, costs for disposal of materials that may be discovered during any invasive testing. Seller shall have the right to have a representative present during any inspections of the Property. Purchaser shall pay all expenses incurred or caused to be incurred by Purchaser in connection with any inspections and/or testing, including, without limitation, all expenses incurred to comply with applicable laws. Following any such investigations or inspections contemplated by this Agreement, Purchaser shall, at Purchaser's expense, promptly restore the Property to its condition prior to such inspection or investigation, and Purchaser shall defend, indemnify and hold harmless each Seller from all costs or expense of every type and description (including reasonable attorney's fees) arising out of any personal injury or property damage caused by any agent, servant, employee or contractor of Purchaser during any such investigation or inspection.
- B. Notices. Any notice, request, demand, instruction or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered personally or sent by United States registered or certified mail, return receipt requested, postage prepaid, or by overnight express courier, postage prepaid and addressed to the parties at their respective addresses set forth above,, and the same shall be effective upon receipt if delivered personally or five (5) business days after deposit in the mails if mailed. A party may change its address for receipt of notices by service of a notice of such change in accordance herewith.
- C. Attorney's Fees. In the event either party hereto brings against any other party an action at law or other proceeding permitted under the terms of this Agreement in order to enforce or interpret any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement or by reason of any breach or default hereunder or thereunder, the party prevailing in any such action or proceeding shall be paid all costs, including reasonable attorneys' fees.
- D. Binding Agreement. This Agreement shall be binding on and shall inure to the benefit of the parties named herein and to their respective personal representatives, successors and permitted assigns. This Agreement shall be construed and interpreted according to the laws of the State of North Carolina. This



Agreement constitutes the entire undertaking between the parties hereto, and supersedes any and all prior agreements, arrangements and understanding between the parties. This Agreement may be amended only by a written agreement executed by all of the parties hereto.

E. Memorandum of Agreement. Seller hereby authorizes Purchaser to memorialize this Agreement or any portion thereof in the register of deeds where the Property is located and agrees to promptly execute any documentation reasonably required by Purchaser to effectuate the same.

F. Seller Representation. Seller warrants to Purchaser as to the following:

1. Seller has the right, power and authority to enter into this contract and to sell the Property in accordance with the terms hereof, and Seller has granted no option to any other person or entity to purchase the Property.
2. The Seller is not involved in any bankruptcy, reorganization or insolvency proceeding.
3. There are no parties in possession of the Property or are entitled to possession thereof other than Seller.
4. All taxes, assessments, water charges and sewer charges affecting the Property are current and have been fully paid as billed.
5. Seller has not received notice of and/or is aware of any suits, judgments or violations of any zoning, building, fire, health, pollution, environmental protection or waste ordinance, code, law or regulations related to the Property.
6. Seller has made no inspection of the Property with respect to underground storage tanks, drums and/or any other environmental conditions at the Property, but is not aware of any such conditions on the property. Purchaser should exercise its rights of inspection hereunder to determine the environmental condition of the Property.

Seller agrees to notify Purchaser within 5 business days if any of the above items change prior to closing.

G. Condition of Property. The Property is being conveyed "As Is, Where Is", as set forth below and which language shall be reflected in the deed. Purchaser acknowledges that, except as expressly set forth in this Agreement, Seller has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether expressed or implied, oral or written, of, as to, concerning, or with respect to (i) the value, nature quality or condition of the Property, including, without limitation, the water, soil and geology, (ii) the suitability of the Property for any and all activities and uses which may be conducted thereon, (iii) the compliance of or by the Property with any laws, rules, ordinances or regulations of any applicable governmental authority or body, or (iv) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property specifically, but not in limitation of the foregoing, Purchaser further acknowledges that except as set forth in this Agreement, Seller has not made, does not make and specifically negates and disclaims any representation or warranties regarding compliance of the Property with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including without limitation, those pertaining to solid waste, as defined by the U.S. Environmental Protection Agency Regulations at C.F.R., Part 261, or the disposal or existence, in or on the Property, of any hazardous substances, as defined by the Comprehensive Environment Response Compensation and Liability Act of 1980, as amended, and the regulations promulgated thereunder. Purchaser shall rely solely on its own investigation of the Property and not on any information provided or to be provided by Seller, its agents or contractors prior to or after the execution of this Agreement. Except as set forth in this Agreement, Seller shall not be liable or bound in any manner by any verbal or written statements, representations or information pertaining to the Property or the operation thereof, furnished by any party purporting to act on behalf of Seller whether made prior to or after the execution of this Agreement.

Seller \_\_\_\_\_ / Purchaser ROA

H. Brokers and Commissions. Purchaser and Seller represent and warrant to each other that neither has dealt with a broker, agent or other person in connection with this transaction other than Sean Dowell with Dowell Commercial Reality, as Purchaser's agent. Purchaser's Agent shall be compensated solely by Purchaser and Seller shall have no obligation or other responsibilities with respect to the same. In addition, Seller and Purchaser shall each indemnify the other against, and shall hold each other harmless from, any and all suits, claims, demands, judgments, damages, costs or expenses of or for any fees or commissions which are the responsibility of the indemnifying party, and shall pay all costs of defending any action or lawsuit brought to recover any fees or commissions incurred by the other, including reasonable attorneys' fees.

I. Additional Undertakings. As part of the RFP, Seller has agreed to:

1. Reimburse Purchaser for its costs directly related to the NCHFA tax credit application in an amount not to exceed \$15,000;
2. Provide financing for the Development in an amount not to exceed \$120,000 in the form of a soft mortgage, subject to terms mutually agreeable between Purchaser and Seller.

As part of the RFP, Purchase has agreed to:

1. Keep the building's exterior walls as much as possible dependent on NCHFA's requirements. For example, windows will need to be replaced with new, and the 1970s addition (northeast section) will need to be demolished, but it is the Purchaser's intent to preserve the brick exterior and roof lines.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Seller:

CHATHAM COUNTY, a body politic and corporate of the State of North Carolina

By: \_\_\_\_\_  
Renee F. Paschal

Title: County Manager

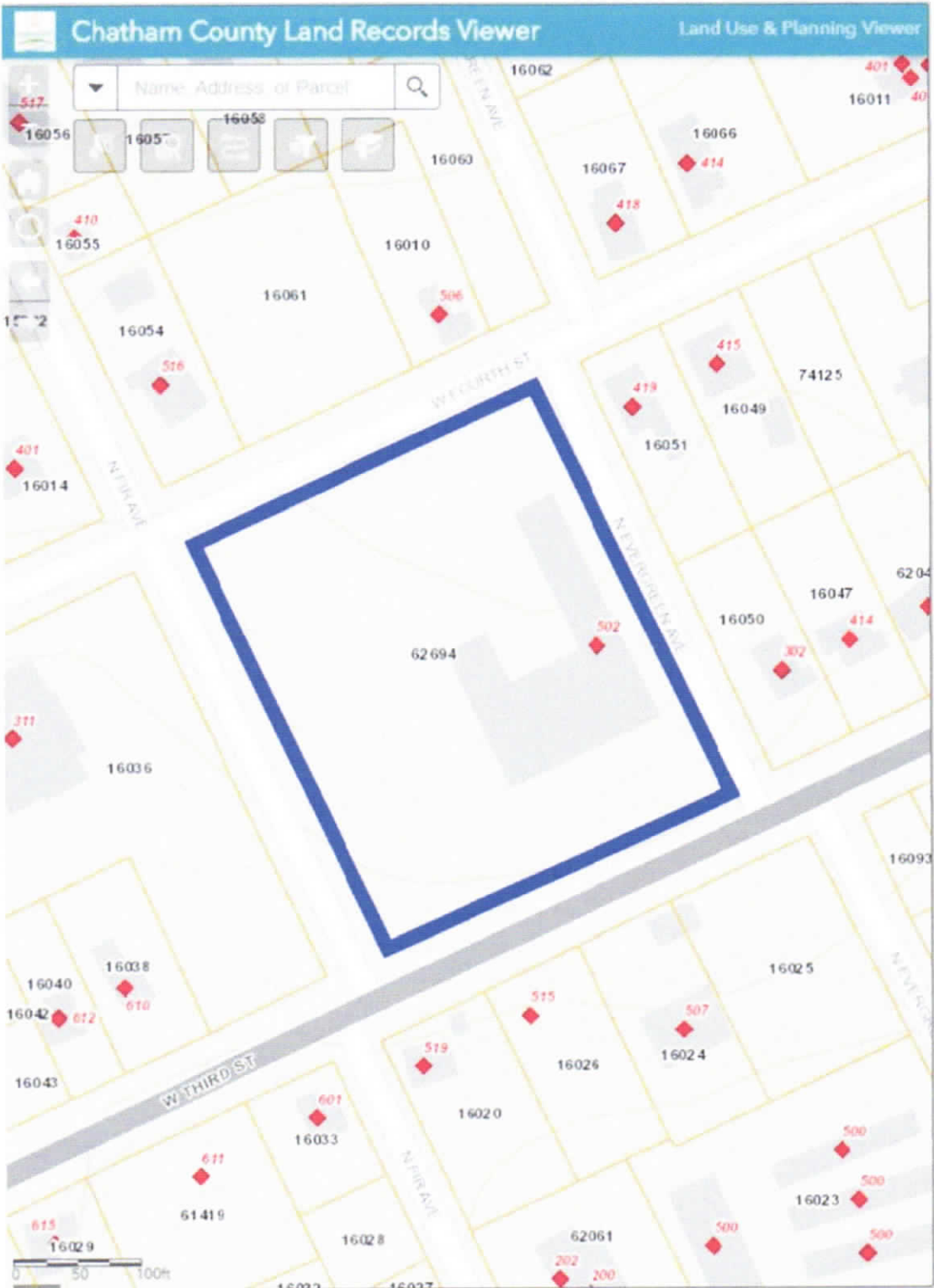
Purchaser:

THIRD WAVE HOUSING, LLC,  
a North Carolina limited liability company

By: \_\_\_\_\_  
Richard C. Angino, Member

Seller \_\_\_\_\_ / Purchaser RCA

Exhibit A - Parcel



Seller \_\_\_\_\_ / Purchaser REA



## NOTICE OF REAL PROPERTY ACQUISITION

This Pre-Contract Agreement (Agreement) is for the property located at the following address:

PIN # 8761 05 00 000

502 West Third Street

in Siler City, Chatham county, NC between the following parties:  
City County

Buyer: Third Wave Housing, LLC

Address: 463 1/2 Carolina Circle  
Winston Salem, NC 27104

Seller: Chatham County

Address: PO Box 1809  
Pittsboro, NC 27312

### Agreement Conditions

The Buyer is seeking federal funds through the State of North Carolina's HOME Investment Partnership Program to acquire property owned by the Seller to construct a multifamily rental project (Project). In accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended, and all rules and/or regulations implemented or promulgated thereunder, the Seller is hereby notified that:

#### Voluntary Sale

1. This sale is voluntary. The Buyer does not have the power of eminent domain and cannot acquire the property if negotiations fail to result in an agreement.
2. Because this is a voluntary transaction, the Buyer will be unable to acquire the property offered for sale if negotiations fail to result in an agreement.
3. The Buyer will inform the Seller of the property's estimated fair market value prior to acquisition.
4. While federal funds will be used in the acquisition of the Seller's property, the Seller WILL NOT be entitled to any relocation benefits.
5. Any tenant legally occupying the property is eligible to receive relocation assistance and benefits as identified in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

#### Timely Notices

1. The Seller authorizes the Buyer, the funding agency, or a designated representative to provide to each resident (if any) notices required by HUD's instructions found in HUD Handbook 1378.
2. The Seller authorizes the Buyer, the funding agency, or a designated representative to provide or permit to be provided a notice of denial to any person who wishes to apply to become a tenant. Before signing a lease and commencing occupancy, the person must be informed of the following:
  - A. If the Project is funded, the person may be displaced; and,
  - B. The person would not qualify as a "displaced person" as a result of the Project and would therefore not be eligible to receive relocation assistance or benefits.

#### Recordkeeping

1. The Seller agrees to provide the Buyer, the funding agency, or a designated representative the name and address of each resident (if any).
2. The Seller authorizes the Buyer, the funding agency, or a designated representative to survey each resident (if any) to determine relocation costs and housing needs.

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Seller \_\_\_\_\_ / Purchaser RCA

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