

SOUTH DAKOTA REAL ESTATE PURCHASE AGREEMENT

This RESIDENTIAL PURCHASE AGREEMENT (“Agreement”) is entered into as of the _____ day of _____, 20 _____, (“Effective Date”) by and between _____ (“Seller”) located at _____

_____ [address of Seller] and _____ (“Buyer”) located at _____

_____ [address of Buyer]. Each Seller and Buyer may be referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

WHEREAS Seller owns the Property, as defined below, and Seller desires to sell the Property under the terms and conditions set forth in this Agreement, and

WHEREAS Buyer desires to purchase the Property offered for sale by Seller under the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises and for other good and valuable consideration exchanged by the Parties as set forth in this Agreement, the Parties, intending to be legally bound, hereby mutually agree as follows:

PROPERTY. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller (“Transaction”), all of Seller’s right, title and interest in the real property located at _____

_____ and the legal description _____ (“Property”).

PERSONAL PROPERTY. The sale includes all of Seller’s rights, title and interest, if any, to all real estate, buildings, improvements, appurtenances, and fixtures (except as described below). Fixtures shall include all things that are embedded in the land or attached to any buildings and cannot be removed without damage to the Property.

A. In addition, the following items shall be included in the sale: _____

B. The following fixtures and items are excluded from the sale: _____

C. In addition to the real property, the Seller shall include the following personal property: _____

PURCHASE PRICE AND TERMS. The Buyer agrees to purchase the Property by payment of \$ _____ ("Purchase Price") as follows:

ALL CASH OFFER. No loan or financing of any kind is required in order to purchase the Property. Buyer shall provide Seller written third (3rd) party documentation verifying sufficient funds to close no later than _____, 20 _____, at _____ AM PM. Seller shall have _____ business days after the receipt of such documentation to notify Buyer, in writing, if the verification of funds is not acceptable. If Buyer fails to provide such documentation, or if Seller finds such verification of funds is not acceptable, Seller may terminate this Agreement. Failure of Seller to provide Buyer written notice of objection to such verification shall be considered acceptance of verification of funds.

BANK FINANCING. The Buyer's ability to purchase the Property is contingent upon the Buyer's ability to obtain financing under the following conditions:

- Conventional Loan
- FHA Loan (Attach Required Addendums)
- VA Loan (Attach Required Addendums)
- Other: _____

A. In addition, Buyer agrees, within a reasonable time, to make a good faith loan application with a credible financial institution.

B. If Buyer does not reveal a fact of contingency to the lender and this purchase does not record because of such nondisclosure after the initial application, the Buyer shall be in default.

C. On or before _____, 20 _____ Buyer will provide Seller a letter from a credible financial institution verifying a satisfactory credit report, source of down payment, acceptable income, availability of funds to close,

and that the loan approval is is not contingent on the lease, sale, or recording of another property.

- D. In the event the Buyer fails to produce the aforementioned letter or other acceptable verification by _____, 20 _____ this Agreement may be terminated at the election of Seller with written notice provided to Buyer within _____ days from the date.
- E. Buyer must obtain Seller's approval, in writing, to any change to the letter described above regarding the financial institution, type of financing, or allocation of closing costs.
- F. Buyer agrees to pay all fees and satisfy all conditions, in a timely manner, required by the financial institution for processing the loan application.
- G. Buyer agrees the interest rate offered by a lender or the availability of any financing program is not a contingency of this Agreement, so long as Buyer qualifies for the financing herein agreed. The availability of any financing program may change at any time.
- H. Any licensed real estate agent hired by either Party is not responsible for representations or guarantees as to the availability of any loans, project or property approval or interest rates.

SELLER FINANCING. Seller agrees to provide financing to the Buyer under the following terms and conditions:

- A. Loan Amount \$ _____
- B. Down Payment \$ _____
- C. Interest Rate (per annum) _____%
- D. Term _____ Months Years
- E. Buyer shall be required to produce documentation, as required by Seller, verifying Buyer's ability to purchase according to the Purchase Price and the terms of the Seller Financing. Therefore, such Seller Financing is contingent upon Seller's approval of the requested documentation to be provided on or before _____, 20 _____. Seller shall have until _____, 20 _____ to approve Buyer's documentation. In the event Buyer fails to obtain Seller's approval, this Agreement shall be terminated with any amounts previously paid under this Agreement

refunded within _____ business days.

SALE OF ANOTHER PROPERTY. Buyer's obligations under this Agreement are contingent upon Buyer's sale and closing of Buyer's property located at: _____

EARNEST MONEY. After acceptance by all Parties, the Buyer agrees to make a payment in the amount of \$ _____ ("Earnest Money") as consideration no later than _____, 20 _____ at _____ AM PM. The Earnest Money shall be applied to the Purchase Price at Closing and subject to Buyer's ability to perform under the terms of this Agreement. Any Earnest Money accepted is is not required to be placed in a separate trust or escrow account in accordance with State law.

DISCLOSURES. Seller shall provide Buyer with all disclosures, including signed disclosure forms, as required by federal, state and local law. Seller shall disclose to Buyer in writing any defects in the Property known to Seller that materially affect the value or quiet enjoyment of the Property. Buyer's obligations under this Agreement are contingent upon Buyer's review and approval of all required Seller disclosures and reports, including any preliminary title report. It is acknowledged by the Parties that:

- There are no attached addendums or disclosures to this Agreement.
- The following addendums or disclosures are attached to this Agreement:
 - Lead-Based Paint Disclosure Form
 - Other: _____
 - Other: _____
 - Other: _____

SELLER REPRESENTATIONS AND WARRANTIES. Seller represents and warrants that:

- A. Seller is the sole owner of record of the Property and has full right, power and authority to sell, convey and transfer the Property.
- B. Seller will convey to Buyer a good and marketable title to the Property by providing to Buyer a valid general warranty deed.

- C. The Property and the present use of the Property are not in violation of any governmental rules, codes, permits, regulations or limitations, and represents that nothing will be done or allowed to be done on or about the Property between the signing of this Agreement and the date of the Closing which will result in any such violation.
- D. Seller is not a “foreign person” as defined in Section 1445(f) of the Internal Revenue Code of 1986, as amended.
- E. Any and all mortgage liens on the Property will have been released on the date of the Closing.
- F. Seller has no knowledge of the existence of any municipal lien and/or assessment.
- G. Seller has neither knowledge nor notice of any pending public agency hearings or appeals affecting the Property and will promptly notify Buyer if Seller receives notice or learns of any such hearings between the signing of this Agreement and the date of the Closing.
- H. Seller is not a “debtor” in a proceeding presently in any bankruptcy court.
- I. Seller shall maintain the current insurance policy on the Property until the Closing.
- J. Seller will notify Buyer immediately of any matters that may impact the Property, including, but not limited to, attachments, liens, and any notice zoning matters.
- K. Any material alterations, additions or improvements to the Property have been made pursuant to and in accordance with the necessary and required filings, permits, authorizations and/or consents.
- L. Other: _____

INSPECTION. Buyer’s obligations under this Agreement are contingent upon Buyer’s inspection of the Property. Buyer may use any inspectors of Buyer’s choice at Buyer’s expense. Seller shall cooperate in making the Property reasonably available for Buyer’s inspection. If Buyer is not, in good faith, satisfied with the condition of the Property after

any inspection thereof, Buyer shall deliver to Seller a written request that Seller fix or remedy any unsatisfactory conditions. If Buyer and Seller are unable to reach an agreement regarding fixing or remedying the unsatisfactory conditions no later than _____, 20 _____, Buyer shall have the right to terminate this Agreement and be refunded any amounts previously paid under this Agreement.

SURVEY. Buyer may obtain a survey of the Property before the Closing to assure that there are no defects, encroachments, overlaps, boundary line or acreage disputes, or other such matters, that would be disclosed by a survey ("Survey Problems"). The cost of the survey shall be paid by the Buyer. Buyer shall notify Seller of any Survey Problems which shall be deemed to be a defect in the title to the Property no later than _____ business days prior to the Closing. Seller shall be required to remedy such defects within _____ business days and prior to the Closing. If Seller does not or cannot remedy any such defect, Buyer shall have the right to terminate this Agreement and be refunded any amounts previously paid under this Agreement.

MINERAL RIGHTS. It is agreed and understood that all rights under the soil, including but not limited to water, gas, oil, and mineral rights shall be transferred by the Seller to the Buyer at Closing.

TITLE. Seller shall convey title to the Property by warranty deed or equivalent. The Property may be subject to restrictions contained on the plat, deed, covenants, conditions, and restrictions, or other documents noted in a Title Search Report. Upon execution of this Agreement by the Parties, Seller will, at the shared expense of both Buyer and Seller, order a Title Search Report and have delivered to the Buyer.

Upon receipt of the Title Search Report, the Buyer shall have _____ business days to notify the Seller, in writing, of any matters disclosed in the report which are unacceptable to the Buyer. The Buyer's failure to timely object to the report shall constitute an acceptance of the Title Search Report.

If any objections are made by Buyer regarding the Title Search Report, mortgage loan

inspection, or other information that discloses a material defect, the Seller shall have _____ business days from the date the objections were received to correct said matters. If Seller does not remedy any defect discovered by the Title Search Report, the Buyer shall have the right to terminate this Agreement and be refunded any amounts previously paid under this Agreement.

TITLE INSURANCE. As a condition to the Closing, Buyer shall obtain, at Buyer's Seller's expense, a title insurance policy ("Title Policy") by a title insurance company ("Title Company") selected by Buyer Seller which is authorized to do business in the State of South Dakota, subject only to:

- A. Any and all restrictions, limitations, regulations, ordinances and/or laws imposed by any governmental authority and any and all other provisions of any governmental restrictions, limitations, regulations, ordinances and/or public laws.
- B. Any liens for real property taxes or assessments created or attaching between the date of the Title Policy and the date the deed or instrument of transfer is recorded.
- C. Any material defect, lien or encumbrance created, suffered, assumed or known by the Buyer.
- D. Any rights of eminent domain.
- E. Any claim under bankruptcy or other creditor's rights laws that the transfer is a fraudulent conveyance.
- F. Other: _____

SELLER'S INDEMNIFICATION. Except as otherwise stated in this Agreement, after recording, the Buyer shall accept the Property AS IS, WHERE IS, with all defects latent or otherwise. Neither Seller nor their licensed real estate agent(s) or any other agent(s) of the Seller, shall be bound to any representation or warranty of any kind relating in any way to the Property or its condition, quality or quantity, except as specifically set forth in this Agreement or any property disclosure, which contains representations of the Seller only, and which is based upon the best of the Seller's personal knowledge.

APPRAISAL. Buyer's performance under this Agreement:

- Shall not be contingent upon the appraisal of the Property being equal to or greater than the agreed-upon Purchase Price.
- Shall be contingent upon the appraisal of the Property being equal to or greater than the agreed-upon Purchase Price. If the Property does not appraise to at least the amount of the Purchase Price, or if the appraisal discovers lender-required repairs, the Parties shall have _____ business days to re-negotiate this Agreement ("Negotiation Period"). In such an event the Parties cannot come to an agreement during the Negotiation Period, the Buyer shall have the right to terminate this Agreement and be refunded any amounts previously paid under this Agreement.

REQUIRED DOCUMENTS. Prior to the Closing, the Parties agree to authorize all necessary documents, in good faith, in order to record the transaction under the conditions required by the recorder, title company, lender, or any other public or private entity.

CLOSING. Buyer and Seller agree that before the recording can take place, funds provided shall be in one of the following forms: cash, bank electronic transfer, cashier's check, money order, certified check, other: _____ or any above combination that permits the Seller to convert the deposit to cash no later than the next business day. This transaction shall be closed on _____, 20 _____ at _____ AM PM or earlier at the office of a title company to be agreed upon by the Parties ("Closing"). Any extension of the Closing must be agreed upon in writing by Buyer and Seller. Real estate taxes, rents, dues, fees, and expenses relating to the Property for the year in which the sale is closed shall be prorated as of the Closing. Taxes due for prior years shall be paid by Seller.

CLOSING COSTS. The costs attributed to the Closing of the Property shall be the responsibility of Buyer Seller both Parties. The fees and costs related to the Closing shall include any costs by the title company that is in standard procedure with

conducting the sale of a property.

SELLER CLOSING COSTS. On or before the Closing, Seller shall pay:

Half of any escrow or closing fees

All escrow or closing fees

Other: _____

BUYER CLOSING COSTS. On or before the Closing, Buyer shall pay:

Half of any escrow or closing fees

All escrow or closing fees

Other: _____

SELLER CLOSING DELIVERABLES. At the Closing, Seller shall deliver to Buyer the following:

- A. A general warranty deed conveying to Buyer title to the Property, duly executed and acknowledged by Seller.
- B. A certificate from Seller certifying that Seller's representations and warranties in this Agreement are true and correct as of the date of the Closing.
- C. Such affidavit or other evidence as the Title Company shall reasonably require for its title insurance policy.
- D. All keys to doors and mailboxes, codes to any locks and owner's manuals for appliances and fixtures.
- E. Any other documents, certificates, notices, affidavit or statements required by this Agreement, the Title Company, the escrow agent (if any) or law to complete the Transaction.
- F. All real property taxes and adjustments which are delinquent shall be paid at the Closing out of funds due to Seller. Any non-delinquent real property taxes and adjustments, if any, shall be apportioned pro rata on an accrual basis.
- G. Other: _____

BUYER CLOSING DELIVERABLES. At the Closing, Buyer shall deliver to Seller the following:

- A. The full amount of the balance of the Purchase Price, as adjusted by any pro-rations or credits.

- B. Such affidavit or other evidence as the Title Company shall reasonably require for its title insurance policy.
- C. Any other documents, certificates, notices or statements required by this Agreement, the Title Company, the escrow agent (if any) or law to complete the Transaction.
- D. Other: _____

TERMINATION. In the event this Agreement is terminated, as provided in this Agreement, absent of default, the Buyer shall be refunded any amounts previously paid, in full, within _____ business days, with all parties being relieved of their obligations as set forth herein.

RISK OF LOSS. Seller assumes the risk of loss or damage by fire, natural disaster or other casualties to the Property until the Closing. In the event that all or a portion of the Property is destroyed or otherwise materially damaged prior to the Closing, the Buyer shall have the option to complete the Transaction and receive any insurance proceeds payable or terminate this Agreement and be refunded any amounts previously paid under this Agreement.

POSSESSION OF THE PROPERTY. Seller shall deliver exclusive possession of the Property to the Buyer on _____, 20 _____.

BUYER'S LIEN. All sums paid on account of this Agreement and the reasonable expenses related to the examination of the title are hereby made a lien upon the Property, but such lien shall not continue after default by Buyer hereunder.

SEX OFFENDERS. Section 2250 of Title 18, United States Code, makes it a federal offense for sex offenders required to register pursuant to the Sex Offender Registration and Notification Act (SORNA), to knowingly fail to register or update a registration as required. State convicted sex offenders may also be prosecuted under this statute if the sex offender knowingly fails to register or update a registration as required, and engages in interstate travel, foreign travel, or enters, leaves, or resides on an Indian

reservation.

A sex offender who fails to properly register may face fines and up to ten (10) years in prison. Furthermore, if a sex offender knowingly fails to update or register as required and commits a violent federal crime, he or she may face up to thirty (30) years in prison under this statute. The Buyer may seek more information online by visiting <https://www.nsopw.gov/>.

DEFAULT. In the event Buyer defaults, Buyer shall forfeit the Deposit to Seller as liquidated damages, which shall be the sole and exclusive remedy available to Seller. In the event Seller defaults, the Deposit shall be refunded to Buyer, and Buyer may sue for all remedies available at law or in equity.

ACCEPTANCE OF DEED. The delivery and acceptance of the deed herein described shall be deemed to constitute full compliance with all the terms, conditions, covenants and representations contained herein, or made in connection with the Transaction, except as may herein be expressly provided and except for the warranties of title.

BANKRUPTCY. In the event a bankruptcy petition is filed naming Seller as a debtor under any Bankruptcy Code, between the signing of this Agreement and the Closing, then this Agreement shall be terminated and the Buyer shall be entitled to a refund of any and all sums paid under this Agreement.

TIME. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter and they may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement.

ATTORNEY'S FEES. Except as otherwise expressly provided in this Agreement, in the event of any litigation brought in law or equity to enforce any material provision of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs from the other Party.

GOVERNING LAW. The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, not including its conflicts of law provisions.

DISPUTE RESOLUTION. Buyer and Seller agree to mediate any dispute or claim arising out of this Agreement, or in any resulting transaction, before resorting to arbitration or court action.

- A. If a dispute arises, between or among the Parties, and it is not resolved prior to or after recording, the Parties shall first proceed in good faith to submit the matter to mediation. Costs related to mediation shall be mutually shared between or among the Parties. Unless otherwise agreed in mediation, the Parties retain their rights to proceed to arbitration or litigation.
- B. The Parties agree that any dispute or claim in law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitrator is required to be a retired judge or an attorney with residential real estate law experience unless the Parties mutually agree to a different arbitrator. Under arbitration, the Parties shall have the right to discovery in accordance with state law. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this Agreement to arbitrate shall be governed by the Federal Arbitration Act.
- C. The following matters shall be excluded from mediation and arbitration:
 - a. A judicial or non-judicial foreclosure or other action or proceeding to enforce a deed, mortgage or installment land sale contract as defined in accordance with State law.
 - b. An unlawful detainer action, forcible entry and detainer, eviction action, or equivalent.
 - c. The filing or enforcement of a mechanic's lien.
 - d. Any matter that is within the jurisdiction of probate, small claims or bankruptcy court.
- D. The filing of court action to enable the recording of a notice of pending action, for

the order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver or violation of the mediation and arbitration provisions of this Agreement.

NOTICES. Any notice or other communication presented or made to any Party under this Agreement shall be in writing and delivered by hand, sent by overnight courier service or sent by certified or registered mail, return receipt requested, to the following addresses:

Buyer: _____

Seller: _____

ASSIGNMENT. This Agreement and Buyer's rights under this Agreement may not be assigned by Buyer without the express written consent of Seller.

AMENDMENT. This Agreement may be amended or modified only by a written agreement signed by all the Parties.

WAIVER. No Party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly and in writing. A waiver by any Party of a breach or violation of any provision of this Agreement shall not constitute a waiver of any other subsequent breach or violation.

TERMS AND CONDITIONS OF OFFER. This is an offer to purchase the Property in accordance with the above-stated terms and conditions of this Agreement. If at least one, but not all, of the Parties, initial such pages, a counteroffer is required until an agreement is reached. The Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of acceptance. This Agreement and any supplement, addendum or modification, including any copy, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

OFFER EXPIRATION. This offer to purchase the Property as outlined in this Agreement shall be deemed revoked and the Buyer shall be refunded any amounts previously paid unless this Agreement is signed by the Seller and a copy of this Agreement is personally given to the Buyer by _____, 20 _____, at _____ AM PM.

ACCEPTANCE. Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Therefore, by the Seller's authorization below, Seller accepts the above offer and agrees to sell the Property on the above terms and conditions and agrees to the agency relationships in accordance with any agreements made with a licensed real estate agent. The Seller has read and acknowledges receipt of a copy of this Agreement and authorizes a licensed real estate agent to deliver a signed copy to the Buyer. Delivery may be in any of the following hand delivery, email under the condition that the party transmitting the email receives electronic confirmation that the email was received to the intended recipient, or by facsimile to the other party or the other party's licensee, but only if the transmitting fax machine prints a confirmation that the transmission was successful.

LICENSED REAL ESTATE AGENT. If Buyer or Seller has hired the services of a licensed real estate agent to perform representation on their behalf, the real estate agent shall be entitled to payment for their services as outlined in their separate written agreement.

BINDING EFFECT. This Agreement shall be for the benefit of, and be binding upon, the Parties, their heirs, successors, legal representatives, and assigns, which, therefore, constitute the entire Agreement between the Parties. No modification of this Agreement shall be binding unless signed by both Buyer and Seller.

COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same document.

SEVERABILITY. If any provision of this Agreement is held to be invalid, illegal or

unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable parts had not been included in this Agreement.

ENTIRE AGREEMENT. This Agreement together with any attached addendums or disclosures shall supersede any and all other prior understandings and agreements, either oral or in writing, between the parties with respect to the subject matter hereof and shall constitute the sole and only agreements between the parties with respect to the said Property. All prior negotiations and agreements between the parties with respect to the Property hereof are merged into this Agreement. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any Party or by anyone acting on behalf of any Party, which are not embodied in this Agreement and that any agreement, statement or promise that is not contained in this Agreement shall not be valid or binding or of any force or effect.

ADDITIONAL TERMS AND CONDITIONS. _____

IN WITNESS WHEREOF, the Parties hereto, individually or by their duly authorized representatives, have executed this Agreement as of the Effective Date.

SELLER'S SIGNATURE

PRINTED NAME

DATE

BUYER'S SIGNATURE

SELLER'S SIGNATURE

PRINTED NAME

DATE

BUYER'S SIGNATURE

PRINTED NAME

DATE

AGENT'S SIGNATURE

PRINTED NAME

DATE

PRINTED NAME

DATE

AGENT'S SIGNATURE

PRINTED NAME

DATE