

**SOUTH DAKOTA REAL ESTATE PURCHASE AND SALE AGREEMENT**

Residential Property

**Section 1. The Parties.** This Real Estate Purchase and Sale Agreement (this “Agreement”) is made and entered into as of \_\_\_\_\_ (“Effective Date”), and is by and between: \_\_\_\_\_, with a mailing address of \_\_\_\_\_ (“Buyer”), and \_\_\_\_\_, with a mailing address of \_\_\_\_\_ (“Seller”). Buyer and Seller are collectively referred to herein as the “Parties.”

**Section 2. Legal Description.** The real property has a mailing address of \_\_\_\_\_.

The real property is:

- Single family home
- Condominium unit
- Apartment unit
- Townhouse unit
- Duplex
- Triplex
- Other: \_\_\_\_\_

Tax Parcel Information (sometimes referred to as the Parcel ID or Tax Map & Lot): \_\_\_\_\_

Legal Description (if available): \_\_\_\_\_

**Section 3. Personal Property.** In addition to the real property described in Section II, the following personal property is included in the sale: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The real property and personal property (if any) are collectively referred to herein as the “Property”.

**Section 4. Fixtures and Appliances.** With the exception of the exclusion items listed below, the Parties agree that all fixtures located on or in the Property, including but not limited to windows, screens, shades, blinds, heating systems, HVAC components, air conditioners, pumps, electrical fixtures, and any other equipment or furniture that is fixed in position, shall be included in the sale of the Property.

The following exclusion items are fixtures that will not convey to Buyer: \_\_\_\_\_



---

---

---

The following appliances are included in the sale of the Property and shall convey to Buyer at Closing:

---

---

---

**Section 5.** On or before the close of business on \_\_\_\_\_, Buyer shall deposit with Escrow Agent an earnest money deposit in the amount of \$\_\_\_\_\_ (the “Deposit”). The Deposit be applied as a credit in full to the Purchase Price at Closing. The Deposit need not be placed in a separate trust or escrow account, unless otherwise required under State law.

**Section 5A. Purchase Price and Terms.** The purchase price for the Property (“Purchase Price”) shall be \$\_\_\_\_\_.

**Section 6. Buyer’s Contingencies.**

- Buyer’s purchase of the Property is contingent upon Buyer obtaining financing for the Property.
- Buyer’s purchase of the Property is not contingent upon the Buyer’s ability to obtain financing.
- Buyer’s purchase of the Property is contingent upon the Buyer’s sale of another property.
- Buyer’s purchase of the Property is not contingent upon the Buyer’s sale of another property.

**Section 7. Loan Application.**

a.) If Buyer is obtaining financing to acquire the Property, Buyer shall, within a reasonable time following execution of this Agreement, make a good faith loan application with a credible financial institution or other agency or entity, as the case may be, for the purpose of obtaining the necessary loan to acquire the Property.

b.) Buyer shall disclose and provide to its proposed lender all necessary and appropriate information as may be required in order for Buyer to obtain the necessary financing for this transaction. If Buyer fails to provide such information as may reasonably be required by lender and such failure results in the inability of lender to fund the loan, such failure on the part of Buyer shall constitute a default by Buyer under this Agreement.

c.) On or before \_\_\_\_\_, Buyer shall provide Seller with a letter from Buyer’s lender verifying Buyer’s source of down payment and the availability of funds to close. In the event Buyer fails to produce the foregoing letter or other acceptable verification by such date, this Agreement may be terminated at the election of the Seller, by written notice provided to the Buyer within five (5)



business days of such date. In such event, the Deposit shall be refunded to Buyer, unless Buyer is in default under this Agreement.

d.) Buyer shall pay all fees and costs and shall timely satisfy all Lender conditions and requirements in connection with Buyer's loan application.

**Section 8. Buyer's Due Diligence.** Prior to Closing, Buyer shall have the right to perform due diligence at the property, including without limitation commissioning an appraisal of the Property, a survey, and a property condition assessment. 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, appraisal and property condition assessment shall be paid by the Buyer. Not later than \_\_\_\_\_, Buyer shall notify Seller of any Survey Problems, and any such Survey Problem which shall prevent the issuance of title clear of any encroachment shall be deemed a defect in the title to the Property. Seller shall be required to remedy any such defects within \_\_\_\_\_ days prior to the Closing.

If Seller is unwilling or unable to remedy any such defects, Buyer shall have the right to cancel this Agreement, in which event Buyer shall receive a full refund of the Deposit.

**Section 9. Title.** Seller shall convey title to the property by Warranty Deed (or equivalent instrument under applicable law). The Property may be subject to restrictions contained on the plat, deed, covenants, conditions, and restrictions, or other documents noted in a Title Report. Upon execution of this Agreement by the Parties, Seller will order a Title Report with respect to the Property and shall ensure that same is delivered to Buyer.

Upon receipt of the Title Report, the Buyer shall have \_\_\_\_\_ business days to notify the Seller, in writing, of any matters disclosed in the Title Report which is unacceptable to Buyer. Buyer's failure to timely object to the Title Report shall constitute acceptance of the Title Report and all matters disclosed therein.

If any objections are made by Buyer regarding the Title 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 Report on or before such deadline, Buyer shall have the right to cancel this Agreement, in which event the Deposit shall be returned to Buyer.

After Closing, Buyer shall receive an owner's policy of title insurance, insuring marketable title in the Property to Buyer in the amount of the Purchase Price, free and clear of the objections and all other title exceptions agreed to be removed as part of this transaction. The cost for the owner's policy of title insurance shall be borne by Buyer. Other costs of escrow agent shall be shared equally between Buyer and Seller.

**Section 10. Property Condition.** From the Effective Date of this Agreement through the Closing, Seller shall maintain the Property in its current condition, ordinary wear and tear excepted. Buyer recognizes that the Seller, along with any licensed real estate agent(s) involved in this transaction, makes no claims, representations or warranties as to the validity of any property disclosure information provided by a third party such as a property inspector, appraiser or surveyor. Buyer (itself or through agents hired by Buyer) shall perform its own inspections, tests, due diligence and investigations to verify any information with respect to the Property. Upon request by Seller and at no cost to Seller, Buyer shall provide Seller with copies of any such property condition reports or inspections, or shall cause such third-party vendor(s) to provide Seller with a copy of same.



Buyer shall commission a property inspection, which inspection shall occur on or before \_\_\_\_\_ (which date is subject to extension if required by the inspector).

After all inspections are completed, Buyer shall have until \_\_\_\_\_ to present to Seller any identified defects or damage as revealed in such property inspection (“Repair Items”). Buyer and Seller shall have \_\_\_\_\_ business days to reach an agreement with respect to the Repair Items, which agreement may include, based upon mutual agreement, a change in the Purchase Price, a credit at Closing, or an obligation (including deadline) to repair same. If the Parties are unable to reach an agreement as to the Repair Items by such deadline, this Agreement shall automatically terminate, and the full amount of the Deposit shall be returned to Buyer.

If Buyer fails to have the Property inspected or does not provide Seller with written notice of the new disclosures on the Property in accordance with this Agreement, Buyer hereby accepts the Property in its current condition and as described in any disclosure forms provided by Seller.

**Section 11. Appraisal.** Buyer's obligations under this Agreement shall be contingent upon the commissioning of an appraisal of the Property and such appraisal revealing that the fair market value of the Property equals or exceeds the 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 the Purchase Price under this Agreement (“Negotiation Period”). In the event the Parties are unable to reach an agreement during the Negotiation Period, this Agreement shall automatically terminate, and the full amount of the Deposit shall be returned to Buyer.

**Section 12. Closing Costs.** Buyer and Seller shall share equally in the following closing costs of the transaction: escrow agent’s fees, recording fees, and any other costs of the title company that are customarily shared by a buyer and seller in the jurisdiction in which the Property is located. Buyer shall be responsible for the cost of the owner’s policy of title insurance and the cost of any loan policy in favor of Buyer’s lender.

**Section 13. Closing Date.** The closing hereunder (the “Closing”) shall occur on \_\_\_\_\_, or on such other date as is mutually agreed by the parties, and shall occur in the office of the Escrow Agent, or such other location as mutually determined by the parties.

**Section 14. Funds at Closing.** On or prior to the scheduled Closing date, Buyer shall ensure that all funds necessary for the Closing are provided to Escrow Agent. 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 date of Closing. Taxes due for prior years shall be paid by Seller.

**Section 15. Mineral Rights.** All rights under the soil, including but not limited to water, gas, oil, and mineral rights (collectively, “Mineral Rights”) shall be transferred by the Seller to the Buyer at Closing.

**Section 16. Damage or Destruction.** In the event improvements on the Property are materially damaged or destroyed prior to Closing, Buyer shall have the right to terminate this Agreement, in which event Buyer shall receive a full refund of the Deposit.

**Section 17. Seller’s Indemnification.** Except as otherwise stated in this Agreement, Buyer shall acquire the Property on an AS IS, WHERE IS basis, with all defects, latent or otherwise. Neither Seller nor any agents shall be bound to implied warranty of any kind or nature, whether as to habitability, fitness for a particular purpose or otherwise relating in any way to the Property or its condition, quality or size, except as expressly set forth in this Agreement or any Seller property disclosure document. Seller shall and does hereby agree to indemnify and hold Buyer harmless for any damages resulting from any materially inaccurate or misleading express representation or warranty of Seller hereunder or under a Seller property disclosure document.



**Section 18. Required Documents.** Both before and after the Closing, the Parties shall provide such further assurances to one another, and shall execute and deliver such additional documents and instruments as may be necessary or reasonably appropriate, in order to effectuate the purposes of this Agreement and the transactions contemplated hereby.

**Section 19. Termination.** Except in the case of a default by Buyer hereunder, in the event this Agreement is terminated pursuant to a provision herein, the Deposit shall be returned in full to Buyer, and both parties shall be relieved of any further obligations hereunder.

**Section 20. Sex Offenders.** Under federal law, it is an offense for sex offenders required to register pursuant to the Sex Offender Registration and Notification Act, 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/>.

**Section 21. Time.** Time is of the essence with respect to each date and deadline set forth herein. This Agreement contains the entire agreements between Buyer and Seller with respect to the purchase and sale of the Property. Any prior or contemporaneous agreements which are not contained herein, whether oral or in writing, are deemed superseded and of no force or effect. Any amendment hereto shall be in writing and signed by both parties.

**Section 22. Buyer's Default.** The Parties acknowledge that Seller's actual damages hereunder in the event of a Buyer default would be difficult or impossible to calculate, and, accordingly, Seller's sole remedy hereunder in the event of a Buyer default shall be limited to liquidated damages in the amount of the Deposit. The Parties agree that the amount of the liquidated damages herein provided is a reasonable estimate of such Seller damages.

**Section 23. Seller's Default.** In the event Seller defaults hereunder, Buyer may pursue specific performance, or Buyer may elect to treat this Agreement as cancelled, in which case the Deposit shall be returned to Buyer and Buyer may recover in damages the amount Buyer incurred in reliance on this Agreement.

**Section 24. Earnest Money Dispute.** Notwithstanding any termination of this Agreement, the Parties agree that in the event of any controversy regarding the release of the Deposit, the matter shall be submitted to mediation as provided in this Agreement.

**Section 25. Dispute Resolution.** Buyer and Seller agree to mediate any dispute or claim arising out of this Agreement, before resorting to arbitration or court action.

a.) Mediation. 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.) Arbitration. 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 justice, or an attorney with at least five (5) years of 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.) Exclusions. The following matters shall be excluded from the mediation and arbitration: (i) 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; (ii) an unlawful detainer action, forcible entry detainer, eviction action, or equivalent; (iii) the filing or enforcement of any mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver or violation of the mediation and arbitration provisions of this Section.

**Section 26. Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State in which the Property is located.

**Section 27. 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. 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.

**Section 28. Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

**Section 29. Business Days.** Business days shall be defined as all days of the year excluding Saturdays, Sundays, and any federal or State holidays.

**Section 30. Severability.** If any term or provision of this Agreement is found to be invalid or unenforceable, only that particular provision or part, and not the entire Agreement, will be inoperative.

**Section 31. Offer Expiration.** This offer to purchase the Property as outlined in this Agreement shall be deemed revoked and the Deposit shall be returned to Buyer unless this Agreement is signed by Seller and a copy of this Agreement is delivered Buyer on or before 5 pm, Buyer's time, on \_\_\_\_\_.

**Section 32. 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, he/she/they accepts the above offer and agrees to sell the Property on the above terms and conditions set forth herein. Seller has read and acknowledges receipt of a copy of this Agreement and authorizes any licensed real estate agent(s) to deliver a signed copy to the Buyer.

Delivery may be in any of the following: (i) hand delivery; (ii) email under the condition that the party transmitting the email receives electronic confirmation that the email was received to the intended recipient; or (iii) overnight courier.

**Section 33. Possession After Closing.** Buyer shall obtain possession and occupancy of the Property at Closing. The Property shall be delivered at Closing free and clear of all tenants and occupants, and shall be free and clear of all debris, trash, vehicles, and all personal property (other than any personal property being acquired by Buyer hereunder). The Property shall be delivered at Closing in the same condition in which it existed as of the Effective Date, nominal wear and tear excepted.

**Section 34. Walk-Through.** Buyer shall have the right to schedule with Seller and perform a walk-through of the Property within the 48-hour period prior to the Closing, to assure itself that the Property is in the condition required under this Agreement. In the event the Property is damaged in a condition not



permitted by this Agreement, Buyer shall have the right to require an extension of the Closing, and in such event Seller shall repair the damage promptly, and thereafter the parties shall promptly proceed towards the Closing.

**Section 35. Licensed Real Estate Agent(s).** If Buyer or Seller have hired the services of a licensed real estate agent or agents to perform representation on their respective behalf, such agent shall be entitled to payment for their services as outlined in their separate written agreements, if any.

**Section 36. Swimming Pool.**

- The Property includes a swimming pool or spa
- The Property does not include a swimming pool or spa

In accordance with applicable law, if the Property includes a swimming pool or spa, the required disclosures and/or safety notices are attached to this Agreement.

**Section 37. Lead-based Paint Disclosures.**

- The Property was constructed prior to 1978
- The Property was constructed in 1978 or later.

If the Property was constructed prior to 1978, the parties shall execute the attached Lead-Based Paint Disclosure Form.

**Section 38. Property Disclosure Statement.**

The Property Disclosure Statement is attached to this Agreement and has been completed by the Seller, disclosing any facts materially affecting the value of the property which are not readily observable and are not known to the Buyer. Seller acknowledges Seller's duty to disclose same to Buyer.



**IN WITNESS WHEREOF, the undersigned execute this Agreement as of the dates indicated.**

**Seller's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Print Name** \_\_\_\_\_

**Seller's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Print Name** \_\_\_\_\_

**Buyer's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Print Name** \_\_\_\_\_

**Buyer's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Print Name** \_\_\_\_\_





## DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND/OR HAZARDS

*Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.*

### **Seller's Disclosure**

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) \_\_\_\_ - Known lead-based paint and/or lead-based paint hazards are present in the housing (explain):

\_\_\_\_\_.

(ii) \_\_\_\_ - Seller has no knowledge of lead-based paint and/or lead-based paint hazards

(b) Records and reports available to the Seller (check (i) or (ii) below):

(i) \_\_\_\_ - Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below):

\_\_\_\_\_.

(ii) \_\_\_\_ - Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

### **Purchaser's Acknowledgment (initial)**

(c) \_\_\_\_ - Purchaser has received copies of all information listed above.

(d) \_\_\_\_ - Purchaser has received the pamphlet "Protect Your Family from Lead in Your Home".



(e) Purchaser has (check (i) or (ii) below):

(i) \_\_\_\_ - Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii) \_\_\_\_ - Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**Agent's Acknowledgment** (initial)

(f) \_\_\_\_ - Agent has informed the Seller of the Seller's obligation under 42 U.S.C 4852d and is aware of his/her responsibility to ensure compliance.

**Certification of Accuracy**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.



**LEAD-BASED PAINT DISCLOSURE SIGNATURE PAGE**

**Buyer's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

Print Name: \_\_\_\_\_

**Buyer's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

Print Name: \_\_\_\_\_

**Seller's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

Print Name: \_\_\_\_\_

**Seller's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

Print Name: \_\_\_\_\_

**Agent's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

Print Name: \_\_\_\_\_

**Agent's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

Print Name: \_\_\_\_\_

