

# REAL ESTATE PURCHASE AGREEMENT

## (South Dakota)

### **Background**

- A. This is an agreement ('The Agreement') for the purchase of real property according to the terms set out below.
- B. The Buyer, the Seller and the Property are as set out in Schedule 1 of this Agreement.
- C. Collectively, the Buyer and Seller will be referred to as 'The Parties'.
- D. The Agreement Date and Execution Date are set out in Schedule 1 of this Agreement.

**IN CONSIDERATION OF** and as a condition of the Seller selling the Property and the Buyer purchasing the Property and other valuable consideration, the receipt and sufficiency of which consideration is acknowledged here, the Parties to this Agreement agree as follows:

### **Property**

- 1. The Property is situated at the Property Address in Schedule 1 of this Agreement and the legal description of the Property is set out in that schedule, which includes fixtures and improvements located on the property and all rights, privileges and appurtenances associated with it, including but not limited to permits, easements, and cooperative and association memberships (the "Property").
- 2. The Seller agrees to sell and convey to the Buyer and the Buyer agrees to purchase from the Seller the Property.

### **Purchase Price**

- 3. The Purchase Price and Payment Schedule for the Property is set out in Schedule 1.

### **Financing Terms**

- 4. The terms of any Third Party Financing Agreement or Addendum are incorporated into this Agreement by reference.
- 5. This Agreement is not subject to the Buyer being approved for financing and does not involve FHA or VA financing.

### **Earnest Money**

- 6. The Buyer will deposit a sum equal to the Earnest Money Amount specified in Schedule 1 with the Escrow Agent specified in that Schedule.
- 7. The deposit will be made on or before the Date of Escrow Deposit. Failure to deposit the earnest money as provided in this clause will result in the Buyer being in default under this Agreement.

### **Title Policy**

- 8. At the Buyer's expense, the Seller will furnish to the Buyer an owner's policy of title insurance (the "Title Policy") from the "Title Company" named in Schedule 1 in an amount of the Purchase Price dated as of the date that the sale of the Property becomes final and the

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Buyer takes possession (the "Closing Date"), which insures and indemnifies the Buyer against loss as stipulated under the provisions of the Title Policy, subject to the following exceptions (collectively the "Title Exceptions") which includes: building and zoning ordinances; standard utility easements; standard riparian matters; common restrictive covenants relating to platted subdivision; oil, gas and mineral rights; taxes, mortgages or deeds of trust and assessments which the Buyer will be assuming; discrepancies in regards to shortages in area or boundary lines; and liens created as part of the financing for the Buyer.

### **Commitment**

9. At the Seller's sole cost, the Seller will furnish or cause to be furnished to the Buyer a commitment for title insurance (the "Commitment") and copies of restrictive covenants and documents evidencing exceptions in the Commitment (the "Exception Documents") other than the standard printed exceptions. The Seller hereby authorizes the Title Company to deliver the Commitment and Exception Documents to the Buyer's address provided in this Agreement.

### **Property Survey**

10. Prior to the Closing Date and at the Buyer's sole cost, the Seller will furnish a new survey to the Buyer and the said survey must be made by a registered professional land surveyor acceptable to the Buyer, Title Company and any lender.

### **Objections and Cure**

11. The Buyer may submit a written objection, within 10 days after the Buyer receives the Commitment, and Exception Documents, in relation to any defects, exceptions or encumbrances to title which makes the title unmarketable, excluding the Title Exceptions.
12. With the exception of the requirements in the Commitment which are not waived, if the Buyer fails to provide a written objection within the allowed time, it will constitute as a waiver on the part of the Buyer to object. Any timely objections by either the Buyer or any third- party lender must be cured by the Seller, at the Seller's expense, prior to closing and the Closing Date will be delayed as necessary. If the objections are not cured, this Agreement will terminate and the earnest money will be refunded to the Buyer within ten days unless the Buyer has waived the objections in writing and elected to close the sale and accept the title with the existing defect.

### **Real Property Disclosure**

13. SELLER'S DISCLOSURE: The Seller does not know of any material facts that would affect the value of the Property, except those observable by the Buyer or any known to the Seller which are disclosed in this Agreement and the attached addenda.
14. STATUTORY/VOLUNTARY DISCLOSURES: The Seller is responsible to furnish the Buyer with the following disclosures and items as soon as practicable before the signing of this Agreement:
  - a. Lead-Based Paint Disclosure and a copy of the pamphlet titled "Protect Your Family From Lead in Your Home" from the EPA.
15. LEAD WARNING STATEMENT AND DISCLOSURE: Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such

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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.

The Seller will disclose all known lead hazards in the attached lead disclosure as well as furnish to the Buyer a copy of the pamphlet titled "Protect Your Family From Lead in Your Home" from the EPA and any available report on lead in relation to the Property. The Buyer at its sole cost, will be given at least ten days to inspect the Property in relation to lead hazards. This ten day period may be lengthened, shortened, or waived by mutual written consent of the Parties.

16. COUNTY DISCLOSURE: The Seller is responsible for satisfying any local disclosure requirements prior to the signing of this Agreement. Please consult the local county department in which the Property is situated and/or a local real estate attorney to ensure compliance has been met.

#### **Property Access and Inspection**

17. The Buyer may, at its sole cost, select inspectors and pest controllers licensed to practice within the State of Jurisdiction or any lawful agent authorized to make inspections to inspect the Property. The Buyer will deliver to the Seller a written notice of any defects in addition to a copy of the inspection report within ten days after the inspection. At all reasonable times, the Seller is to permit the Buyer or its agents access to the Property for the purpose of inspection and will pay for turning on existing utilities.

#### **Property Condition**

18. The Buyer accepts the Property in its current state and condition without any further work, repairs, treatments or improvements.

#### **Warranties**

19. The Seller makes no express warranties aside from those expressly described in this Agreement or the attached addenda. Upon closing, the Seller agrees to assign all manufacturer warranties that are assignable to the Buyer.

#### **Lender Required Repairs**

20. Neither the Seller nor the Buyer is obligated to pay for any lender required repairs or remediations, unless both Parties agreed in writing. If repairs will exceed five percent, the lender has the sole option to terminate the agreement. If the Parties cannot come to an agreement for the lender required repairs or remediations, this Agreement will terminate and the earnest money will be refunded to the Buyer within ten days of the receipt of the written notice.

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### **Completion of Repairs and Improvements**

21. The Seller will complete all agreed work, repairs, treatments, and improvements (the "Work") prior to the Closing Date unless both Parties agree otherwise in writing. The Work to be completed must be done by individuals who are licensed to perform such tasks and all required permits and regulations must be obtained and observed. Any transferable warranties received by the Seller for completed Work will be transferred to the Buyer at closing. If the Seller fails to complete the Work prior to the Closing Date, the Buyer may elect to complete the said Work and the Buyer will be entitled to claim reimbursement for the Work from the Seller upon closing.

### **Closing**

22. The Closing Date is specified in Schedule 1. In the absence of legal excuse, the failure to close the sale on the Closing Date by either Party will enable the non-defaulting party to pursue any remedies on default provided in this Agreement.
23. Upon closing, the Seller will execute and deliver to the Buyer a general warranty deed which has title to the Property and shows no further exceptions to title of the Property except the Title Exceptions, and furnish a current tax statement which shows no delinquent taxes on the Property.
24. The Buyer will pay the Purchase Price in good funds acceptable to the Escrow Agent.
25. Any notices, statements, certificates, affidavits, releases, loan documents and other documents required by this Agreement, by the Commitment or by law which is necessary for the closing of the sale or the issuance of the Title Policy must be promptly executed and delivered by the Seller and the Buyer.
26. All covenants, representations and warranties in this Agreement will survive closing and may be enforced.

### **Possession**

27. Possession of the Property in its current or required state, ordinary wear and tear excepted, will be delivered by the Seller to the Buyer upon proper funding at closing. A tenancy at sufferance relationship will be created between the Parties where there is no authorized written lease agreement and either the Buyer has possession prior to closing or the Seller has possession after closing. The Parties should consult their respective insurance agent and are responsible to ensure adequate coverage exists upon the transfer of ownership and possession.

### **Settlement and Other Expenses**

28. Unless both Parties otherwise agree in writing, the following expenses payable by the Seller (the "Seller's Expenses") must be paid at or prior to closing:
- a. All existing liens; prepayment penalties; recording fees; lender, tax statements or certificates; preparation of deed; half of escrow fee; and all expenses payable by the Seller under this Agreement must be released or discharged accordingly.
29. The following expenses payable by the Buyer (the "Buyer's Expenses") must be paid at or prior to closing:

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- a. Loan origination, discount, buy-down, and commitment fees.
  - b. All expenses related or incident to any loan, including but not limited to, appraisal fees, application fees, credit reports, loan documents preparation fees, recording fees on notes and mortgages or deeds of trust; as well as recording fees on the deed; financing statements; inspection fees; half of escrow fees; all prepaid items including flood and hazard insurance premiums; documentary stamp tax; title policy; and all other expenses payable by the Buyer, necessary to perform the Buyer's obligation under this Agreement must be released or discharged accordingly.
30. Any Private Mortgage Insurance Premium (the "PMI"), the VA Loan Funding Fee, or the FHA Mortgage Insurance Premium (the "MIP") as required by the lender, must be paid by the Buyer. However, the Buyer may not pay charges and fees expressly prohibited by FHA and VA financing or other governmental loan program regulations.
31. If any expense to be paid by either Party exceeds the amount expressly stated in this Agreement, the Party responsible for the said exceeding amount may terminate this Agreement unless the other Party agrees to pay the excess amount.

### **Prorations**

32. The following items will be prorated and adjusted as property as of the Closing Date: any taxes due for the current year, association fees, maintenance fees, assessments, dues, heating tank fuel, utility charges and rents of the Property. If the tax rate for the current year is unknown, the Parties will use the rate from the previous year plus five percent at closing. If the tax rate for the previous year is also unknown, the Escrow Agent will estimate an amount to prorate, holdback sufficient funds and adjust the prorated amount when the new tax statements become available. The Buyer will be obligated to pay the share of the prorated taxes for the current year if the taxes are not paid at or prior to the closing.

### **Risk of Loss**

33. The Seller will bear all risk of loss to the Property or its improvements, which includes, but is not limited to, physical damage or destruction to the Property, or loss caused by eminent domain, until the Closing Date. If at any point after the Effective Date but prior to closing, any part of the Property is damaged or destroyed, the Seller will restore the Property to its previous condition as soon as possible before the Closing Date, reasonable delays excepted. If the Seller fails to restore the Property due to unforeseeable factors beyond the control of the Seller, the Buyer may elect one of the following:
- a. the Agreement will terminate and the earnest money will be refunded to the Buyer within ten days;
  - b. the Closing Date will be extended as necessary to accommodate the performance of restoration; or
  - c. at closing, the Property in its damaged state will be accepted and all insurance proceeds will be assigned from the Seller to the Buyer and the Buyer will receive an amount equal to the deductible under the Seller's insurance policy.
34. The Seller's obligations under clause 33 are independent of any obligations of the Seller found under the heading Property Condition.

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### **Remedies on Default**

35. The Buyer will be in default if the Buyer fails to comply with the provisions of this Agreement, upon which, the Seller may:
- seek specific performance; or
  - seek other relief as may be provided by law; or
  - seek a combination of any or all of the above remedies; or
  - treat all earnest money as forfeited and the said money be deemed as liquidated damages and the sole remedy for the Seller.
36. If the Seller, due to factors beyond the control of the Seller, fails to make any non-casualty repairs or deliver the Commitment or survey as required, the Buyer may:
- extend the performance time and the Closing Date as necessary; or
  - terminate this Agreement and the earnest money will be refunded to the Buyer within ten days as the sole remedy.
37. The Seller will be in default if the Seller fails to comply with the provisions of this Agreement, upon which, the Buyer may:
- seek specific performance; or
  - seek such other relief as may be provided by law; or
  - a combination of any or all of the above remedies; or
  - treat this Agreement as terminated and receive the earnest money within ten days of cancellation.

### **Escrow**

38. The Seller and the Buyer agree that the Escrow Agent is not:
- a party to this Agreement and will not assume any liabilities incurred as a result of the performance or non-performance of either the Buyer or the Seller, and that no liability will be incurred unless the Escrow Agent is grossly negligent or willfully breaches the terms of this Agreement;
  - liable for the loss of earnest money as a result of the failure of any financial institution in which the earnest money has been deposited unless the said institution is acting as an Escrow Agent; and
  - liable for interest on the earnest money.
39. Upon closing, the earnest money will be applied in the following order with the excess refunded back to the Buyer:
- any cash down payment; and
  - Buyer's Expenses.
40. At all relevant times during the course of this Agreement, the Escrow Agent is required to notify the other Party prior to the releasing of any funds to the Party who is requesting the funds.
41. The notice of the Escrow Agent to either Party will be deemed effective upon its deposit to any US Postal Service offices or mailboxes with receipt requested, provided that the notice contains adequate postage and the correct mailing address of the Party contained in this Agreement is inscribed on the notice. The notice of objection to the demand of earnest

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money will be deemed effective upon receipt by the Escrow Agent.

### **Seller Representations**

42. The Seller represents and warrants that there will be no liens, assessments, or security interests from third parties against the Property which will not be satisfied out of the sales proceeds. The Seller makes no representation aside from those expressly provided in this Agreement. If the representations of the Seller are untrue upon the Closing Date, the Buyer may terminate this Agreement and the earnest money will be refunded within ten days.

### **Federal Tax Requirements**

43. The Buyer is responsible for withholding from the sales proceeds ten percent of the gross Purchase Price in compliance with applicable tax law and submit the said amount to the Internal Revenue Service in conjunction with the relevant tax forms if the Seller falls under the definition of a "foreign person" within applicable law. The primary grounds for exemption is if the Seller furnishes an affidavit to the Buyer stating that either:
- a. the Seller is not a "foreign person" within applicable law along with the Seller's United States taxpayer identification number; or
  - b. if the Purchase Price does not exceed \$300,000.00 and the Property will be used as the Buyer's residence.

### **Notices**

44. All notices pursuant to this Agreement must be written and signed by the respective Party or its agent and all such correspondence will be effective upon it being mailed with return receipt requested, or hand-delivered to the addresses set out for each Party in Schedule 1.

### **Third Party Financing Condition Addendum**

45. In the event that a Third Party Financing Program has been entered into by the Buyer, the Buyer undertakes to provide the Seller with all relevant information concerning this Financing Program and to answer all questions reasonably put to them by the Seller regarding the same.

### **Assignability**

46. The Buyer may not assign this Agreement without the Seller's written consent. This Agreement is binding on the respective heirs, executors, administrators, successors, personal representatives and assigns, as the case may be, of the Seller and the Buyer.

### **Effective Date**

47. The effective date of this agreement is the Execution Date set out in Schedule 1 of this Agreement.

### **Governing Law**

48. The Parties agree this Agreement will be construed under the laws of State of Jurisdiction set out in Schedule 1, without regard to the jurisdiction in which any action or special proceeding may be instituted.

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49. In the event that a State of Jurisdiction is not specified in Schedule 1, the State of Jurisdiction will be the State in which the Property stands.

### **Spousal Interests**

50. The spouse of each married Seller consents to this real estate transaction, and will sign and deliver such deeds and other documents as may reasonably be requested by the Title Company to evidence such consent and to effect the transfer to the Buyer of any dower, homestead, elective share, community property or any other rights which that spouse may have in or to the Property.

### **Severability**

51. If there is a conflict between any provision of this Agreement and the applicable legislation of the State of Jurisdiction (the "Act"), the Act will prevail and such provisions of the Agreement will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Agreement.
52. If any terms or provision of this Agreement are determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected and each unaffected term and provision of this Agreement will be valid and be enforceable to the fullest extent permitted by law.

### **Agreement of Parties**

53. This document constitutes the entire agreement of the Parties and it may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreement. The provisions contained in this Agreement cannot be changed except by the signed and delivered written consent of both Parties.

### **Consult an Attorney**

54. The Seller and the Buyer should consult an attorney before this Agreement is executed if any aspect of the Agreement is not understood. The Seller and the Buyer agree each will notify the other of the contact information for the respective attorney, if any, responsible for this real estate transaction.

### **General Provisions**

55. This Agreement may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.
56. All monetary amounts in this Agreement refer to US dollars, and all payments required to be paid under this Agreement will be paid in US dollars unless the Parties agree otherwise in writing.
57. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender mean and include the feminine gender and vice versa. Words importing persons include firms and corporations and vice versa.
58. Time is of the essence in this Agreement. Every calendar day except Saturday, Sunday or U.S. national holidays will be deemed a business day and all relevant time periods in this Agreement will be calculated in business days. Performance will be due the next business day if any deadline

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falls on a Saturday, Sunday or a national holiday. A business day ends at five p.m. local time in the time zone in which the Property is situated.

**Schedule 1**

<b>Agreement Date</b>	
<b>Execution Date</b>	
<b>Buyer Name</b>	
<b>Buyer Address (if left blank, assumed to be the Property Address)</b>	
<b>Buyer Phone No.</b>	
<b>Buyer Email Address.</b>	
<b>Seller Name</b>	
<b>Seller Address (This should be the Seller's new address for correspondence purposes)</b>	
<b>Seller Phone No.</b>	
<b>Seller Email Address</b>	
<b>Property Address</b>	
<b>Property Legal Description</b>	
<b>Purchase Price for Property (in USD)</b>	\$

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<b>Payment Schedule for the Property (if not enough space, attach payment schedule as Exhibit A)</b>	
<b>Earnest Money Amount (USD)</b>	\$
<b>Details of Escrow Agent</b>	
<b>Date of Escrow Deposit</b>	
<b>Title Company Details</b>	
<b>State of Jurisdiction</b>	South Dakota
<b>Closing Date</b>	

**IN WITNESS WHEREOF** the Parties have duly affixed their signatures under hand and seal on the Agreement Date as specified in Schedule 1.

\_\_\_\_\_  
**Landlord**

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**Tenant**

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Witness**

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