

State of South Dakota

SOUTH DAKOTA REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (this "Agreement") is entered into as of the ____ day of _____, 20____ by and among/between:

Seller: _____, a/an (Check one) individual corporation limited liability company partnership limited partnership limited liability partnership a trust located at _____ [Address] ("Seller") and

Buyer: _____, a/an (Check one) individual corporation limited liability company partnership limited partnership limited liability partnership a trust located at _____ [Address] ("Buyer").

Each Seller and Buyer may be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

1. Property. Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller (the "Transaction"), all of Seller's right, title and interest in the real property located at _____ [Property address], and the legal description: _____ (the "Property").

2. Personal Property.

(A) The sale includes all of Seller's right, title and interest 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. In addition, the following items shall be included in the sale: _____

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

3. Purchase Price. The purchase price for the Property is \$_____ (the "Purchase Price") payable by Buyer as follows:

(A) Earnest Money Deposit. \$_____ (the "Deposit"), due upon the signing of this Agreement, the receipt of which is hereby acknowledged, to be held in escrow pursuant to this Agreement. The Deposit shall be applied to the Purchase Price at the Closing.

(B) Closing Balance. The remainder of the Purchase Price is due upon the delivery of the general warranty deed at the Closing. This amount is subject to change based on adjustments made pursuant to this Agreement.



Unless otherwise stated in the Agreement, all payments shall be made in proceeds that are immediately available to Seller by one of the following methods:

- Official bank check
- Wire transfer
- Certified check
- Other: _____

4. Disclosures. Seller shall provide Buyer with all disclosures, and signed disclosure forms, as required by law, including: _____

Seller shall also disclose to Buyer in writing any defects in the Property known to Seller that materially affects 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.

5. Assumption of Loan. (Check one)

- Buyer shall assume Seller's existing mortgage (the "Mortgage") owed to _____ [Financial institution], dated _____, 20____, having a present balance of \$_____. Buyer agrees to assume and pay the Mortgage in accordance with its terms for all payments due after the Closing. All fees associated with the transfer of the Mortgage shall be paid by (Check one) Seller Buyer.
- Buyer shall NOT assume Seller's existing mortgage.

6. Financing Contingency. (Check one)

- Purchase is NOT contingent upon Buyer's ability to obtain a mortgage.
- Purchase is contingent upon Buyer's ability to obtain a mortgage. Buyer's obligations under this Agreement are contingent upon Buyer's ability to obtain a firm commitment for a mortgage loan within (Check one) _____ days after the execution of this Agreement a reasonable period of time:

Terms of Mortgage (Check one)

- Upon commercially reasonable terms.
- Upon terms acceptable to Buyer in Buyer's sole discretion.
- In the amount of \$_____, which is at least _____ years with an interest rate not exceeding _____%.



If Buyer is unable to obtain such commitment within the time specified herein, Buyer must notify Seller, and this Agreement shall be terminated and all amounts paid shall be returned to Buyer. (Buyer's obligations under this Agreement are also contingent upon an appraisal on the Property equaling or exceeding the Purchase Price.)

7. Sale of Another Property Contingency. (Check one)

Buyer's obligations under this Agreement are NOT contingent upon Buyer's sale and closing of Buyer's property.

Buyer's obligations under this Agreement are contingent upon Buyer's sale and closing of Buyer's property located at _____.

8. 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 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.

(Check all that apply)

Seller is not a "foreign person" as defined in Section 1445(f) of the Internal Revenue Code of 1986, as amended.

Any and all mortgage liens on the Property will have been released on the date of the Closing.

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.

Seller is not a "debtor" in a proceeding presently in any bankruptcy court.

Seller has no knowledge of the existence of any municipal lien and/or assessment.

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.

Seller shall maintain the current insurance policy on the property until the Closing.

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.

Other: _____



9. 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 (on or before _____, 20____), Buyer shall have the right to terminate this Agreement and be refunded any amounts previously paid under this Agreement.

10. Title Insurance. As a condition to the Closing, Buyer shall obtain, at (Check one) Seller's Buyer's expense, a title insurance policy (the "Title Policy") by a title insurance company selected by (Check one) Seller Buyer which is authorized to do business in _____ [State of property] (the "Title Company"), subject only to: (Check all that apply)

- 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.
- Any material defect, lien or encumbrance created, suffered, assumed or known by the Buyer.
- 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.
- Any rights of eminent domain.
- Any claim under bankruptcy or other creditor's rights laws that the transfer is a fraudulent conveyance.

Promptly after the date hereof, Buyer shall order a preliminary title report from the Title Company. Within _____ days of receiving the report, Buyer shall forward a copy of the report to Seller and shall notify Seller of any objections to title in the report or otherwise known to Buyer. Seller shall have _____ days after receipt of Buyer's objections to correct or address the objections. If Seller fails to correct or address the objections within the specified time period, Buyer shall have the right to terminate this Agreement and be refunded any amounts previously paid under this Agreement.

11. Closing. The closing of the Transaction (the "Closing") shall occur on _____, 20____ and shall take place at _____ [Address], unless otherwise agreed upon by mutual consent of the Parties. Buyer has the right to make a final inspection of the Property prior to the Closing.

12. 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 affidavits 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, affidavits or statements required by this Agreement, the Title Company, the escrow agent (if any) or law to complete the Transaction.

(Check all that apply)

A certificate from Seller certifying that Seller is not a foreign person.

Other: _____

13. 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 affidavits 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: _____

14. Seller Closing Costs. On or before the Closing, Seller shall pay: (Check one) One half of any escrow or closing fees. All escrow or closing fees. (Check all that apply)

All transfer taxes and conveyance fees.

All costs of releasing any mortgage, financing statement, or other debt security.

All costs of removing, remedying or curing any contingencies.

All costs related to the preparation of the deed.

Any broker commissions or fees.

Any property gains tax, as required by federal or state law.

Other: _____

15. Buyer Closing Costs. On or before the Closing, Buyer shall pay: (Check one) One half of any escrow or closing fees. All escrow or closing fees. (Check all that apply)

All transfer taxes and conveyance fees.

All costs or expenses related to obtaining financing, including origination or commitment fees and the lender's title insurance policy.

All costs related to the recording of the deed.



- All other costs and expenses associated with this Agreement, unless otherwise agreed to by the Parties.
- Other: _____

16. Delayed Closing. (Check one)

- The Closing may be extended an additional _____ days if Buyer's lender requires additional documentation or information. The delay in the Closing will not be the fault of Buyer.
- The Closing may NOT be delayed.

17. Risk of Loss. Seller assumes the risk of loss or damage by fire, natural disaster or other casualty 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, Buyer shall have the option (a) to complete the Transaction and receive any insurance proceeds payable or (b) to terminate this Agreement and be refunded any amounts previously paid under this Agreement.

18. Possession of the Property. Seller shall deliver exclusive possession of the Property on _____, 20____.

19. Assumption of Leases. (Check one)

- The Property is NOT currently being leased.
- The Property is currently subject to the following lease or rental agreements (the "Leases"): _____

In accordance with the required disclosures under this Agreement, Seller shall provide Buyer with copies of all lease or rental agreements. Seller represents and warrants that (a) the Transaction does not violate the terms of the Leases and (b) Seller will notify existing tenants under the Leases of the change in ownership prior to the Closing. At the Closing, Seller shall deliver to Buyer an Assignment and Assumption of Lease Agreement for each Lease, as well as all security deposits and advanced payments related to the Leases.

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

21. Condition of Property. Buyer acknowledges that Buyer is purchasing the Property "AS IS" in the condition that it is in at Buyer's final inspection. Seller agrees that the Property shall be in the same condition on the date of the Closing as of the date that Buyer's final inspection is completed.



22. Sex Offender Registry Notice. Pursuant to law, information about specified registered sex offenders is made available to the public. Buyer understands and agrees that they are solely responsible for obtaining any and all information contained in the state or national sex offender registry for the area surrounding the Property, which can be obtained online or from the local sheriff's department or other appropriate law enforcement officials. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and zip code in which he or she resides.

23. Real Estate Taxes. 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.

24. 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.

25. 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.

26. 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 Buyer shall be entitled to a refund of any and all sums paid under this Agreement.

27. 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.

28. Governing Law. The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of _____, not including its conflicts of law provisions.

29. Disputes. Any dispute arising from this Agreement shall be resolved through: (Check one)

- Court litigation. Disputes shall be resolved in the courts of the State of _____.
- If either Party brings legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover from the other Party its expenses (including reasonable attorneys' fees and costs) incurred in connection with the action and any appeal.
- Binding arbitration. Binding arbitration shall be conducted in accordance with the rules of the American Arbitration Association.



Mediation.

Mediation, then binding arbitration. If the dispute cannot be resolved through mediation, then the dispute will be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association

30. Notices. Any notice or other communication given 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 address stated above or to another address as that Party may subsequently designate by notice and shall be deemed given on the date of delivery.

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

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

33. 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. 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.

34. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, heirs, executors, administrators, successors and permitted assigns.

35. 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.

36. 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.

37. Headings. The section headings herein are for reference purposes only and shall not otherwise affect the meaning, construction or interpretation of any provision in this Agreement.

38. Entire Agreement. This Agreement contains the entire understanding between the Parties and supersedes and cancels all prior agreements of the Parties, whether oral or written, with respect to the subject matter.



39. Miscellaneous. _____

IN WITNESS WHEREOF, the Parties hereto, individually or by their duly authorized representatives, have executed this Agreement as of the first date written above.

Seller Signature

Seller Full Name

Seller's Representative/Trustee Signature

Seller's Representative/Trustee Name and Title

Buyer Signature

Buyer Full Name

Buyer's Representative/Trustee Signature

Buyer's Representative/Trustee Name and Title



Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

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 in the housing.

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

(i) ___ Seller has provided the lessee 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.

Buyer's Acknowledgment (initial)

(c) _____ Buyer has received copies of all information listed above.

(d) _____ Buyer has received the pamphlet Protect Your Family from Lead in Your Home.

Agent's Acknowledgment (initial)

(e) _____ Agent has informed Seller of Seller's obligations 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.

| | | |
|-------------------------------------|------------------------------------|------------------------------------|
| _____ Signature of Seller | _____ Signature of Buyer | _____ Signature of Agent |
| _____ Date Signed | _____ Date Signed | _____ Date Signed |

