

NEW CONSTRUCTION PURCHASE AGREEMENT

For use in North Dakota only

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1 Date: \_\_\_\_\_ MLS#: \_\_\_\_\_ Page 1 of \_\_\_\_\_ (including addenda)

2 This agreement made and entered into by and between \_\_\_\_\_, Seller,  
3 also known as "Builder", and \_\_\_\_\_, also known as "Buyer".

4 **TERMS AND CONDITIONS:** Subject to terms and conditions of this Agreement, Builder agrees to sell and convey to Buyer,  
5 and Buyer agrees to purchase the property at: Street Address \_\_\_\_\_

6 City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Legally described as \_\_\_\_\_  
7 \_\_\_\_\_ . The price shall be  
8 \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ )

9 for the real property as improved by construction and the personal property, if any, chosen by Buyer and provided by Builder. Buyer  
10 agrees to pay \$ \_\_\_\_\_ Earnest Money by  check  cash  note upon acceptance of this Purchase Agreement  
11 by all parties  to be deposited in a trust account of \_\_\_\_\_ (Broker), or  to be released  
12 to Builder. Additional Earnest Money of \$ \_\_\_\_\_, to be deposited and/or released as follows:  
13 \_\_\_\_\_ .

14 All Earnest Money is part payment for the purchase of property described above. All Earnest Money released to Builder is non-  
15 refundable, except as noted above. Buyer agrees to  pay in cash  finance remaining balance. Financing, if any, will be:  
16  Conventional  FHA  VA  Contract for Deed  other in accordance with accompanying addendum.  
17 Construction financing shall be the responsibility of the  Builder  Buyer. If construction financing is the responsibility of  
18 the Buyer, progress payments shall be made by the Buyer to the Builder for work completed as follows: \_\_\_\_\_  
19 \_\_\_\_\_ .

20 This Purchase Agreement  is (see attached addendum)  is not subject to a Contingency Addendum for the sale of the Buyer's  
21 property. The closing of Buyer's property, if any, may still affect Buyer's ability to obtain financing, if financing is applicable.

22 **COMPLETION, CLOSING, POSSESSION:** The new home will be constructed and ready for occupancy on \_\_\_\_\_  
23 which shall be the date of closing, subject to delays in the progress of construction due to strikes, lockouts, fire, unusual delay in  
24 transportation, unavoidable casualties, inclement weather or any cause beyond Builder's control in the completion of the new  
25 home. Builder shall deliver possession of the property immediately following closing unless otherwise specified. If for any other  
26 reason closing is delayed by Buyer or Builder, either party shall have the option of assessing costs as follows:  
27 \_\_\_\_\_ .

28 **Builder agrees to remove all debris and all personal property not included herein from the property by possession date.**

29 **FINAL INSPECTIONS:** The Builder will obtain a Certificate of Occupancy prior to closing. The Buyer has a right to walk through the  
30 property prior to closing with the Builder or Builder's representative and to hire, at Buyer's expense, an independent inspector. Buyer  
31  elects (see addendum)  declines to have a property inspection performed at Buyer's expense. The Buyer agrees to pay for  
32 final inspection(s) as required by the Lender or Appraiser. Any additional inspections necessary because of delays by the Builder will be paid  
33 for by the Builder. Additional inspections required due to changes requested by the Buyer will be paid for by the Buyer.

34 **LABOR AND MATERIALS:** Builder agrees to furnish labor and materials for the construction of a home in substantial  
35 conformance with plans and specifications furnished by  Builder  Buyer  Other \_\_\_\_\_,  
36 a copy of which is attached or is to be approved in writing by the Buyer prior to the start of construction.

37 **CHANGES IN SPECIFICATIONS:** Any significant changes in the plans and specifications must be approved in writing by both  
38 parties, citing by change order any increase or decrease in the purchase price caused by such change. Unless otherwise agreed in  
39 writing, any such increase or decrease shall be reflected as an adjustment in cash at  execution of the change order  closing.

40 **COVENANTS, CONDITIONS, RESTRICTIONS:** Builder  has  has not delivered copies of all covenants, conditions, and  
41 restrictions pertaining to the property. If "has", Buyer acknowledges receipt and acceptance of said documents. If "has not", offer is  
42 contingent upon Buyer's receipt and acceptance of said documents.

43 **INITIAL: BUYER** \_\_\_\_\_ **DATE** \_\_\_\_\_ **BUILDER** \_\_\_\_\_ **DATE** \_\_\_\_\_

44 ADDRESS: \_\_\_\_\_

45 REAL ESTATE TAXES (general, drain, and maintenance fees): Based upon  gross  discounted estimated taxes for the  
46 year 20\_\_\_\_\_ from the Assessor to be paid as follows: At closing, Builder to pay  prorated to the day of \_\_\_\_\_  
47  all  none of the real estate taxes based on the year specified above. In the event the closing date is changed, the real estate taxes paid, if  
48 prorated to closing, shall be adjusted to the new closing date.

49 SPECIAL ASSESSMENTS SHALL BE PAID AS FOLLOWS:  
50 ANNUAL INSTALLMENTS:  There are none.  Buyer shall assume  Builder shall pay on the date of closing  
51  Buyer and Builder shall prorate as of \_\_\_\_\_, all installments of special assessments due  
52 and payable for the year of closing.  
53 UNCERTIFIED (balance unpaid + interest):  There are none.  Buyer shall assume approximately \$ \_\_\_\_\_,  
54 as of the date of contract.  Builder shall pay the uncertified special assessments on the date of closing in the amount of  
55 \$ \_\_\_\_\_ plus interest.  
56 WORK IN PROGRESS/PENDING/PROPOSED:  There are none.  Buyer shall assume approximately \$ \_\_\_\_\_.  
57  Builder shall pay on the date of closing special assessments in progress, pending and/or proposed as of the date of contract  
58 up to \$ \_\_\_\_\_.

59 TAX AND SPECIAL ASSESSMENTS NOTICE: As of the date of this Purchase Agreement, Builder  has  has not received a  
60 notice regarding any new improvement project from any assessing authorities, the costs of which project may be assessed against the  
61 property. Buyer is aware there may be new public improvement projects, the costs of which may be assessed against the property. Builder  
62 agrees to immediately notify Buyer of any such notice received between the date of this Agreement and the date of closing. Builder and  
63 Buyer may then agree in writing, on or before the date of closing, to the payment terms of the notified assessments. In the absence of such an  
64 agreement, parties will agree to immediately sign a Cancellation of Purchase Agreement directing all earnest money paid hereunder to be  
65 refunded to Buyer. Following closing, Buyer shall pay all real estate taxes and any unpaid special assessments payable therewith and  
66 thereafter, for which payment is not otherwise provided. It is understood future general taxes and special assessments are only estimates.  
67 Buyer is aware that there may be a tax abatement on this property which may affect the tax proration.  
68 No representations have been made concerning the amount of subsequent real estate taxes or special assessments.

69 OTHER FEES (e.g. mailbox fees) shall be paid as follows: \_\_\_\_\_.

70 PRO-RATA ADJUSTMENTS: Homeowner association dues, rents, and all charges for water, sewer, electricity, propane,  
71 oil and natural gas shall be prorated between the parties as of \_\_\_\_\_.

72 Seller warrants the property is directly connected to:  city sewer  city water  rural water  well  none.  
73 SUBSURFACE SEWAGE TREATMENT SYSTEM: Seller  does  does not know of a subsurface sewage treatment  
74 system on or serving the property. (If does, see Subsurface Sewage Treatment System Disclosure Statement.)  
75  Buyer  Seller agrees to provide, if required by this Purchase Agreement, governing authority, and/or lender, a licensed  
76 inspector’s subsurface sewage treatment system report or notice indicating if the system complies with applicable regulations. A  
77 valid certificate of compliance for the system may satisfy this obligation. Seller is not obligated to upgrade, repair or replace the  
78 subsurface sewage treatment system unless otherwise agreed to in this Purchase Agreement.  
79 PRIVATE WELL: Seller  does  does not know of a well on or serving the property. (If does, and well is located on the  
80 property, see Well Disclosure Statement.)  
81  Buyer  Seller agrees to provide a water quality test if required by this Purchase Agreement, governing authority, and/or lender.  
82 This Purchase Agreement  is (attach)  is not subject to a Subsurface Sewage Treatment System and Well Inspection  
83 Contingency Addendum.

84 DEED/MARKETABLE TITLE: Upon performance by Buyer, Builder shall deliver a  Warranty deed  other deed  
85 joined in by spouse, if any, conveying marketable title, subject to: (a) building and zoning laws, ordinances, state and federal  
86 regulations; (b) restrictions relating to use or improvement of the property; (c) reservation of any mineral rights by the state; (d)  
87 utility and drainage easements which do not interfere with existing improvements; (e) other \_\_\_\_\_.

88 INITIAL: BUYER \_\_\_\_\_ DATE \_\_\_\_\_ BUILDER \_\_\_\_\_ DATE \_\_\_\_\_

89 ADDRESS: \_\_\_\_\_

90 **NOTICE OF AGENCY REPRESENTATION: This notice does not satisfy statutory Agency Disclosure requirements.**

91 \_\_\_\_\_ is  Buyer's Agent  Seller's Agent  Dual Agent  
 92 Selling Licensee -----check one-----

93 \_\_\_\_\_  
 94 Selling Brokerage

95 \_\_\_\_\_ is  Seller's Agent  Buyer's Agent  Dual Agent  
 96 Listing Licensee -----check one-----

97 \_\_\_\_\_  
 98 Listing Brokerage

99 **DUAL AGENCY REPRESENTATION:**  
100  Dual Agency representation **does not** apply in this transaction. **Cross out Lines 101-118.**

101  Dual Agency representation **does** apply in this transaction.

102 Broker represents both Seller and Buyer of the property involved in this transaction, which creates dual agency. This means that  
 103 Broker and its salespersons owe fiduciary duties to both Seller and Buyer. Because the parties may have conflicting interests,  
 104 Broker and its salespersons are prohibited from advocating exclusively for either party. Broker cannot act as a Dual Agent in this  
 105 transaction without the consent of both Seller and Buyer.

106 Seller and Buyer acknowledge that:

107 (1) confidential information communicated to Broker which regards price, terms, or motivation to buy or sell will remain  
 108 confidential unless Seller or Buyer instructs Broker in writing to disclose this information. Other information will be  
 109 shared;

110 (2) Broker and its salespersons will not represent the interest of either party to the detriment of the other; and  
 111 (3) within the limits of dual agency, Broker and the salespersons will work diligently to facilitate the mechanics of the  
 112 sale.

113 With the knowledge and understanding of the explanation above, Seller and Buyer authorize and instruct Broker and its  
 114 salespersons to act as dual agents in this transaction.

115 \_\_\_\_\_ Date \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_  
 116 Buyer

117 \_\_\_\_\_ Date \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_  
 118 Buyer

119 **APPOINTED AGENCY:** Appointed Agency  **does**  **does not** apply. If Broker has adopted appointed agency policy, dual  
 120 agency may not apply. However, an appointed agent who singularly represents both Seller and Buyer in the same transaction is  
 121 considered to be a disclosed dual agent owing fiduciary duties to both parties and must get permission from both parties to act.  
 122 Lines 100-117 would apply if dual agency exists.

123 **BUILDER WARRANTIES:**

124 (a) buildings are, or will be, constructed entirely within the boundary lines of the property;

125 (b) there is a right of access to the property from a public right of way;

126 (c) Builder has not received any notice from any governmental authority as to violation of law, ordinance, or regulation for a  
 127 condition that remains uncorrected;

128 (d) prior to closing, payment in full will have been made for all labor, materials, machinery, fixtures, or tools furnished  
 129 within the 90 days immediately preceding the closing in connection with construction, alteration, or repair of any structure  
 130 on, or improvement to, the property;

131 (e) if property is subject to restrictive covenants, Builder has not received any notice from any person or authority as to a  
 132 breach of the covenants which remains uncorrected. Any notices received by Builder will be provided to Buyer immediately.

133 All warranties in Lines 123-131 shall survive the delivery of the deed or contract for deed.

134 **INITIAL: BUYER** \_\_\_\_\_ **DATE** \_\_\_\_\_ **BUILDER** \_\_\_\_\_ **DATE** \_\_\_\_\_

136 ADDRESS: \_\_\_\_\_

137 **NOTICE AND OPPORTUNITY TO REPAIR:** North Dakota law requires that Builder provide a “Notice and Opportunity to  
138 Repair” to Buyer at the time of closing (N.D. Cent. Code § 43-07-26). This notice requires that Buyer must give Builder written  
139 notice of any defect within six months of discovery to give Builder an opportunity to correct the defect if it is under warranty.

140 **SOLE WARRANTY:** Seller provides a limited warranty that the constructed improvements to the property will be free from  
141 defects in workmanship and materials for a period of one (1) year from the date of closing.

142 **LIENS:** Liens filed within ninety (90) days of completion of work on the property maintain priority. Liens may be filed after that  
143 90-day period.

144 **TITLE AND EXAMINATION:** Builder, at Builder’s expense, shall furnish an abstract of title, or a registered property abstract,  
145 certified to date to include proper searches covering bankruptcies, state and federal judgments and liens, and levied and pending  
146 special assessments. If, after examination, Builder’s title is not insurable or free of defects and cannot be made so within sixty  
147 days after notice containing a written statement of defects is delivered to Builder, then said earnest money shall be refunded to  
148 Buyer, and Buyer and Builder agree to sign a Cancellation of Purchase Agreement. However, Buyer may waive defects and elect  
149 to purchase. BUYER, AT HIS OR HER OPTION, AGREES TO ACCEPT AN OWNER’S TITLE POLICY IN THE FULL  
150 AMOUNT OF THE PURCHASE PRICE IN LIEU OF AN ABSTRACT OF TITLE IF THE PROPERTY IS SUBJECT TO A  
151 MASTER ABSTRACT OR IF NO ABSTRACT OF TITLE IS IN BUILDER’S POSSESSION OR CONTROL. If Buyer is to  
152 receive such policy, Builder shall pay the entire premium for such policy if no lender’s policy is obtained, and only the additional  
153 cost of obtaining a simultaneously issued owner’s policy if a lender’s policy is obtained. Buyer shall pay the premium for the  
154 lender’s policy.

155 **SUBDIVISION OF LAND:** If this sale constitutes or requires a subdivision of land owned by Builder, Builder shall pay all  
156 subdivision expenses and obtain all necessary governmental approvals. Builder warrants the legal description of the real property  
157 to be conveyed has been or will be approved for recording as of the date of closing.

158 **SUBCONTRACTORS AND/OR MATERIAL SUPPLIERS:** Builder reserves the right to select and supervise all  
159 subcontractors performing work under this Agreement. All subcontractor billings and payments shall be handled by the Builder.  
160 Buyer agrees not to interfere with or issue instructions to work forces, nor to contract for additional work with contractors or  
161 subcontractors except with Builder’s written permission, if permission is granted.

162 **INSURANCE:** Builder agrees to carry public liability, builder’s risk, fire and extended coverage during construction. Buyer  
163 agrees to obtain insurance coverage satisfactory to their lender upon closing.

164 **RISK OF LOSS:** If there is any loss or damage to the property between the date hereof and the date of closing for any reason,  
165 including fire, vandalism, flood, earthquake, or act of God, the risk of loss shall be on the Builder. If the property is destroyed or  
166 substantially damaged before the closing date, this Purchase Agreement shall become null and void, at Buyer’s option and all  
167 monies paid hereunder shall be refunded to Buyer. Buyer and Builder agree to sign a Cancellation of Purchase Agreement.

168 **ENVIRONMENTAL CONCERNS:** To the best of Builder’s knowledge, there are no hazardous substances or underground  
169 storage tanks unless otherwise noted in Purchase Agreement. Builder gives Buyer the right to have the property tested for radon  
170 gas, mold, or any other environmental concerns at Buyer’s expense. Environmental inspections will be specifically defined on a  
171 separate addendum to this Purchase Agreement.

172 **IMPORTANT HEALTH NOTICE:** Some of the building materials used in this home (or these building materials) emit  
173 formaldehyde. Eye, nose, and throat irritation, headache, nausea and a variety of asthma-like symptoms, including shortness of  
174 breath, have been reported as a result of formaldehyde exposure. Elderly persons and young children, as well as anyone with a  
175 history of asthma, allergies or lung problems, may be at a greater risk. Research is continuing on the possible long-term effects of  
176 exposure to formaldehyde.  
177 Reduced ventilation may allow formaldehyde and other contaminants to accumulate in the indoor air. High indoor temperatures  
178 and humidity raise formaldehyde levels. When a home is to be located in areas subject to extreme summer temperatures, an air-  
179 conditioning system can be used to control indoor temperature levels. Other means of controlled mechanical ventilation can be  
180 used to reduce levels of formaldehyde and other indoor air contaminants. If you have any questions regarding the health effects of  
181 formaldehyde, consult your doctor or local health department.

182 **INITIAL: BUYER** \_\_\_\_\_ **DATE** \_\_\_\_\_ **BUILDER** \_\_\_\_\_ **DATE** \_\_\_\_\_

183 ADDRESS: \_\_\_\_\_

184 **SELLER’S RADON DISCLOSURE STATEMENT FOR EXISTING NEW CONSTRUCTION**

185 *Radon Warning Statement: Homes in the area may have radon gas levels that exceed EPA standards. If you have concerns about*  
186 *radon, you may want to consider having the property inspected before entering into a contract to purchase or making the*  
187 *inspection a condition of your purchase. For additional information, visit the EPA website: [www.epa.gov/radon](http://www.epa.gov/radon)*

188 Has the property been tested for radon?  Yes explain  No

189 Are you aware of any radon concentrations in the property?  Yes explain  No

190 *If yes, attach the most current records and reports pertaining to radon concentrations, mitigation or remediation. If a*  
191 *mitigation system has been installed, include the system description and documents.*

192 **SELLER’S RADON DISCLOSURE STATEMENT FOR NEW CONSTRUCTION TO BE BUILT**

193 During the construction process there are various options to mitigate the risk of exposure to radon gas from entering the home.  
194 Radon-resistant construction combines common building techniques and materials to seal entry points and route the gases  
195 outdoors, helping to prevent radon from entering the home. If buyer has concerns regarding radon gas, buyer should consult the  
196 builder.

197 **ARBITRATION:** Optional and voluntary residential real property arbitration may be an option if a dispute arises out of this real  
198 estate transaction. This option must be agreed to by all parties. If you are interested in this option, information may be obtained  
199 from licensee.

200 **ACCEPTANCE:** Buyer understands and agrees that this Purchase Agreement is subject to acceptance by Builder in writing. To  
201 be binding, this Purchase Agreement must be fully executed by both parties and a copy must be delivered. Buyer authorizes  
202 notification to the RMLS and members of the Fargo-Moorhead Area Association of REALTORS® as to the price and terms of  
203 sale, upon closing.

204 **DEFAULT:** If Buyer defaults in any of the agreements herein, Builder may terminate this Purchase Agreement and payments  
205 made hereunder may be retained by Builder to apply to damages (which Buyer agrees equals or exceeds that amount). This  
206 provision shall not deprive either Buyer or Builder of the right to recover damages for a breach of this Agreement or of the right of  
207 specific performance of this Agreement, provided this Purchase Agreement is not terminated, and further provided, as to specific  
208 performance, such action is commenced within six months after such right of action arises.

209 **TIME OF ESSENCE:** Time is of the essence in this Purchase Agreement. This means that all deadlines are intended to be strict  
210 and absolute.

211 **BUILDER HEREBY FURTHER WARRANTS THE PROPERTY AS FOLLOWS:** \_\_\_\_\_

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213 \_\_\_\_\_

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220 \_\_\_\_\_

221 **INITIAL: BUYER** \_\_\_\_\_ **DATE** \_\_\_\_\_ **BUILDER** \_\_\_\_\_ **DATE** \_\_\_\_\_

222 ADDRESS: \_\_\_\_\_

223 FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"): As a general rule, 26 U.S. Code § 1445  
224 (hereinafter "FIRPTA") requires a transferee (Buyer) of a United States real property interest to withhold a tax from the proceeds  
225 of any disposition of the real property interest if the transferor (Seller) is a foreign person (any person other than a United States  
226 person), unless an exception to the FIRPTA withholding requirements applies. Exemptions from the general rule are set forth in  
227 the FIRPTA. **Due to the complexity of the FIRPTA, both the Buyer and the Seller are advised to seek appropriate legal and  
228 tax advice regarding FIRPTA compliance, since failure to adhere to the FIRPTA withholding rules could result in legal  
229 liability to both the Buyer and Seller and their agents or qualified substitutes.**

230 Seller hereby represents and warrants that Seller  is  is not a foreign person, as defined by the FIRPTA. This representation  
231 of the Seller shall survive closing. Seller's agents and Buyer's agents, and any qualified substitute, as those terms are defined by  
232 the FIRPTA, may rely upon this representation.

233 If the Seller represents that it is a foreign person, the Buyer may be subject to income tax withholding requirements, and the Buyer  
234 could be personally liable for failing to withhold a tax from the proceeds of the real estate disposition, if none of the enumerated  
235 exemptions to the FIRPTA apply to the transaction. If the Seller represents that it is a foreign person, but that one of the  
236 exemptions to the FIRPTA apply, Buyer may require Seller to provide specific documentation as prescribed by the FIRPTA to  
237 verify, under penalty of perjury, that one of the exemptions to the FIRPTA withholding requirements applies to the transaction. If  
238 the Seller represents that it is not a foreign person, the Buyer, or its agents or qualified substitutes, may require the Seller to  
239 provide specific documentation as prescribed by the FIRPTA to verify, under penalty of perjury, that the Seller is not a foreign  
240 person. On or before closing, the Buyer and Seller agree to complete, execute and deliver any affidavit, instrument, or statement  
241 which may reasonably be required to comply with FIRPTA requirements.

242 OTHER TERMS: \_\_\_\_\_

243 \_\_\_\_\_

244 \_\_\_\_\_

245 \_\_\_\_\_

246 ENTIRE AGREEMENT: This Purchase Agreement, any accompanying exhibits, and any addenda or amendments signed by the  
247 parties shall constitute the entire agreement between Builder and Buyer and supercedes all other written or oral agreements  
248 between Builder and Buyer. This Purchase Agreement can be modified only in writing signed by Builder and Buyer. All  
249 monetary sums are deemed to be United States currency for purposes of this agreement. Buyer or Builder may be required to pay  
250 certain closing costs which may effectively reduce the proceeds from the sale or increase the cash outlay at closing.

251 A copy of this Agreement may be delivered in person or electronically to Seller, Buyer or their Agents.

252 BUYER: I/We agree to purchase the property for the price and on the terms and conditions as set forth above. I/We have  
253 reviewed all pages of this Purchase Agreement.

254 \_\_\_\_\_  
255 Buyer Signature Date Buyer Signature Date  
256 \_\_\_\_\_  
257 Buyer Printed Name Buyer Printed Name

258 BUILDER: I/We the owner(s) of the property accept this Agreement and authorize the Listing Broker to withdraw said property  
259 from the market, unless instructed otherwise in writing. I/We have reviewed all pages of this Purchase Agreement.

260  If checked, this Purchase Agreement is subject to a Counteroffer.

261 \_\_\_\_\_  
262 Builder Signature Date Builder Signature Date  
263 \_\_\_\_\_  
264 Builder Printed Name/Title Builder Printed Name/Title

265 FINAL ACCEPTANCE DATE: \_\_\_\_\_

266 This is a legally binding contract between Buyer(s) and Seller(s). If you desire legal or tax advice, consult an appropriate professional.