



NEW MEXICO ASSOCIATION OF REALTORS®

PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2020

PART I – BROKER DUTIES DISCLOSURE



Per New Mexico law, Brokers are required to perform a specific set of applicable Broker Duties. Prior to the time the Broker generates or presents any written documents that has the potential to become an express written agreement, he/she must disclose such duties and obtain written acknowledgement that the Broker has made such disclosures.

SECTION A: **All Brokers in this transaction owe the following broker duties to *ALL* buyers and sellers in this transaction, even if the broker is not representing the buyer or the seller in the transaction:**

1. Honesty and reasonable care and ethical and professional conduct;
2. Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico Real Estate License Law and the Real Estate Commission rules and other applicable local, state, and federal laws and regulations;
3. Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or tenant;
4. Written disclosure of any potential conflict of interest or any other written agreement that the broker has in the transaction, including, but not limited to:
 - A. Any written brokerage relationship the Broker has with any other parties to the transaction or;
 - B. Any material interest/relationship of a business, personal or family nature that the broker has in the transaction; or
 - C. Any written agreement the Broker has with a Transaction Coordinator who will be providing services related to the transaction.
5. Written disclosure of any adverse material facts actually known by the broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.

SECTION B: **In addition to the above duties, Broker(s) owes the following Broker Duties to the buyer(s) and/or seller(s) in this transaction to whom the Broker(s) is/are directly providing real estate services, regardless of the scope and nature of those services.**

1. Unless otherwise agreed to in writing by the party, assistance to the party in completing the transaction including:
 - A. timely presentation of and response to all written offers or counteroffers; and
 - B. active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction;
2. Acknowledgement by the broker that there may be matters related to the transaction that are outside the broker's knowledge or expertise and that the broker will suggest that the party seek expert advice on these matters;
3. Advise to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the brokerage or presented to the party and that has the potential to become an express written agreement;
4. Prompt accounting for all money or property received by the broker;
5. Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;
6. Written disclosure of brokerage relationship option available in New Mexico:
 - A. **Exclusive agency:** an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interest of the person in real estate transaction;
 - B. **Dual agency:** an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as facilitator in real estate transaction rather than as an exclusive agent for either party;
 - C. **Transaction Broker:** The non-fiduciary relationship created by law, wherein a brokerage provides real estate services without entering into an agency relationship.
7. Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller shall not disclose the following to the buyer in a transaction:
 - A. that the seller has previously indicated he/she will accept a sales price less than the asking or listed price;
 - B. that the seller will agree to financing terms other than those offered;
 - C. the seller's motivation for selling/leasing; or
 - D. any other information the seller has requested in writing remain confidential, unless disclosure is required by law;
8. Unless otherwise authorized in writing, a broker who is directly providing real estate service to a buyer shall not disclose the following to the seller in the transaction:
 - A. that the buyer has previously indicated he/she will pay a price greater than the price submitted in a written offer;
 - B. the buyer's motivation for buying; or
 - C. any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.

BUYER(S) AND SELLER(S): PLEASE ACKNOWLEDGE RECEIPT BY INITIALING BELOW.



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PART II – OTHER REQUIRED DISCLOSURES



Broker shall update these and all other required disclosures as needed.

BUYER'S BROKER DISCLOSURES:

1. **Brokerage Relationship.** _____ (“Buyer’s Broker”) is working with the Buyer as a:
 - ☐ Transaction Broker ☐ with ☐ without a written Buyer Broker Agreement.
 - ☐ Agent with a written Buyer Broker Agreement with Agency Addendum.
 - ☐ Transaction Broker without a written Buyer Broker Agreement, but with a Compensation Agreement.
2. **In-House Transaction: Buyer and Seller’s Consent to Dual Representation, NO Dual Agency created.**
 - ☐ Buyer’s Broker is licensed under the same Qualifying Broker as Seller’s Broker.
 - ☐ Buyer’s Broker is also Seller’s Broker for the property in this Transaction. Broker has a written listing agreement with Seller as ☐ Transaction Broker ☐ Agent.
 - ☐ Brokerage is representing both Buyer and Seller.
3. ☐ **Dual Agency:** Brokerage is representing both Buyer and Seller by means of written agency agreements with each of them and Designated Agency has not been chosen by the Qualifying Broker; Designated Agency is a policy that discloses to a client that the broker representing him/her as an agent is the client’s only representative in the brokerage. When Designated Agency is not chosen, Dual Agency is created. Prior to writing or presenting this offer, Broker must obtain written consent from the parties to act as a Dual Agent (NMAR Form 1301, Agency Agreement – Dual).
4. **Additional Disclosures:** If applicable, check box below. Where noted (♦), attach NMAR Form 2100 or other disclosure.
 - ☐ Buyer’s Broker has an **OWNERSHIP INTEREST IN PROPERTY**
 - ☐ Buyer’s Broker has **OTHER WRITTEN AGREEMENTS IN THE TRANSACTION ♦**
 - ☐ Buyer’s Broker has a **CONFLICT OF INTEREST** or **MATERIAL INTEREST** (business, personal or family) ♦
 - ☐ Buyer’s Broker knows of **ADVERSE MATERIAL FACTS** about the Property and/or Transaction ♦
 - ☐ Buyer’s Broker has engaged a **LICENSED TRANSACTION COORDINATOR (“TC”)** to provide services related to the transaction: **BROKER DUTIES:** Licensed TCs who have no interaction with the Broker’s Customer or Client and/or other parties or brokers involved in the transaction, owe Broker Duties 1-5 in Section A on Cover Page I. Licensed TCs who work directly with the Broker’s Customer or Client and/or other parties or brokers in the transaction, owe Broker Duties 1-5 of Section A on Cover Page I and 5, 7 and 8 of Section B on Cover Page I. Licensed TCs: _____.

SELLER'S BROKER DISCLOSURES:

1. **Brokerage Relationship.** _____ (“Seller’s Broker”) is working with the Seller as a:
 - ☐ Transaction Broker with a written Listing Agreement.
 - ☐ Agent with a written Listing Agreement with Agency Addendum.
 - ☐ Transaction Broker without a written Listing Agreement, but with a Compensation Agreement.
2. **Additional Disclosures:** If applicable, check box below. Where noted (♦), attach NMAR Form 2100 or other disclosure.
 - ☐ Seller’s Broker has an **OWNERSHIP INTEREST IN PROPERTY**
 - ☐ Seller’s Broker has **OTHER WRITTEN AGREEMENTS IN THE TRANSACTION ♦**
 - ☐ Seller’s Broker has a **CONFLICT OF INTEREST** or **MATERIAL INTEREST** (business, personal or family) ♦
 - ☐ Seller’s Broker knows of **ADVERSE MATERIAL FACTS** about the Property and/or Transaction; ♦
 - ☐ Seller’s Broker has engaged a **LICENSED TRANSACTION COORDINATOR (“TC”)** to provide services related to the transaction: **BROKER DUTIES:** Licensed TCs who have no interaction with the Broker’s Customer or Client and/or other parties or brokers involved in the transaction, owe Broker Duties 1-5 in Section A on Cover Page I. Licensed TCs who work directly with the Broker’s Customer or Client and/or other parties or brokers in the transaction, owe Broker Duties 1-5 of Section A on Cover Page I and 5, 7 and 8 of Section B on Cover Page I. Licensed TCs: _____.

- ☐ Buyer is a New Mexico Real Estate Broker
- ☐ Buyer is a party to another Buyer-Broker Agreement

- ☐ Seller is a New Mexico Real Estate Broker

BUYER

SELLER

Buyer Signature _____ Date _____ Time _____

Seller Signature _____ Date _____ Time _____

Buyer Signature _____ Date _____ Time _____
 NMAR Form 2104 (2020 MAR) Cover Page II

Seller Signature _____ Date _____ Time _____
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THE FOLLOWING IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
BROKERS ARE NOT PARTIES TO THIS PURCHASE AGREEMENT.


BUYER'S BROKER(S)

 Buyer's Broker Name		Buyer's Broker's NMREC License No.	
If different, Buyer's Broker's Qualifying Broker's Name		Buyer's Broker's Qualifying Broker's NMREC License No.	
Buyer's Brokerage Firm	Office Phone	Fax	
Buyer's Brokerage Address	City	State	Zip Code
Email Address		Cell Number	
<div>Broker <input type="checkbox"/> is <input type="checkbox"/> is not a REALTOR®</div>			

 Buyer's Broker Name		Buyer's Broker's NMREC License No.	
If different, Buyer's Broker's Qualifying Broker's Name		Buyer's Broker's Qualifying Broker's NMREC License No.	
Buyer's Brokerage Firm	Office Phone	Fax	
Buyer's Brokerage Address	City	State	Zip Code
Email Address		Cell Number	
<div>Broker <input type="checkbox"/> is <input type="checkbox"/> is not a REALTOR®</div>			

SELLER'S BROKER

 Seller's Broker Name		Seller's Broker's NMREC License No.	
If different, Seller's Broker's Qualifying Broker's Name		Seller's Broker's Qualifying Broker's NMREC License No.	
Seller's Brokerage Firm	Office Phone	Fax	
Seller's Brokerage Address	City	State	Zip Code
Email Address		Cell Number	
<div>Broker <input type="checkbox"/> is <input type="checkbox"/> is not a REALTOR®</div>			

 Seller's Broker Name		Seller's Broker's NMREC License No.	
If different, Seller's Broker's Qualifying Broker's Name		Seller's Broker's Qualifying Broker's NMREC License No.	
Seller's Brokerage Firm	Office Phone	Fax	
Seller's Brokerage Address	City	State	Zip Code
Email Address		Cell Number	
<div>Broker <input type="checkbox"/> is <input type="checkbox"/> is not a REALTOR®</div>			



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OFFER DATE: _____

1. **PARTIES AND AGREEMENT.** _____ (“Buyer”) agrees to buy from Seller and _____ (“Seller”) agrees to sell and convey to Buyer, in accordance with terms of this Purchase Agreement (“Agreement”), the Property described in Para. 6 with Settlement/Signing Date on _____ (See Para. 10(A) below).

2. **PURCHASE PRICE.** \$ _____

A. **APPROXIMATE CASH DOWN PAYMENT** ☐ to be determined by lender and/or buyer **OR** \$ _____

B. **AMOUNT OF THE LOAN(S)** ☐ to be determined by lender and/or buyer **OR** \$ _____

3. **OFF MARKET.** Unless otherwise agreed to in writing, as of Date of Acceptance, Seller shall take the Property “Off the Market”, which means Seller shall not accept any other offer to sell the Property, **except a Back-Up Offer**. Notwithstanding the foregoing, if the Property was marketed through the MLS, the listing is subject to MLS Rules.

4. **TIME OFF MARKET (TOM) FEE.** This Para. 4 to be used **ONLY IF** Buyer **will be compensating** Seller for taking the Property Off the Market in order to allow Buyer the opportunity to review Seller’s Property Disclosure per Para. 20(I) and conduct inspections per Para. 23 (Collectively, “TOM Fee Inspections”), and if applicable, to resolve any objections Buyer may have to the TOM Fee Inspections. As compensation, Buyer shall deliver to Seller \$ _____ (“TOM Fee”), in the form of ☒ Check ☐ Cash ☐ Other _____, no later than _____ days from Date of Acceptance. In the event of Closing, the TOM Fee, **SHALL NOT** be refunded to Buyer or applied to Purchase Price, down payment, and/or closing costs. In the event of termination of this Agreement, Seller shall retain the entirety of the TOM Fee. Buyer’s failure to timely deliver the TOM Fee shall be considered a default of this Agreement. See NMAR Form 2104(A) TOM Fee Information Sheet and 2104(B) Receipt for TOM Fee.

5. **EARNEST MONEY.** Buyer shall deliver \$ _____ Earnest Money in the form of ☐ Check ☐ Cash ☐ Note ☐ Wire Transfer of Funds ☐ Other to _____, no later than _____ days from ☐ **Date of Acceptance** **OR** ☐ **if Buyer has no objections to TOM Fee Inspections, the Objection Deadline in Para. 23(F)(ii) or if Buyer has objections to TOM Fee Inspections, the date the parties reach Resolution** **OR** ☐ **OTHER** _____. As permitted by lender, Earnest Money shall be applied to Purchase Price, down payment, and/or closing costs upon Funding Date. If the lender prohibits the credit of any portion of the Earnest Money towards the Purchase Price, down payment and/or closing costs, the Earnest Money or applicable portion thereof shall be refunded to Buyer after closing. Buyer’s failure to timely deliver the Earnest Money Fee shall be considered a default of this Agreement.

6. **PROPERTY.**

A. **DESCRIPTION.**

Address _____ City _____ State/Zip _____

Legal Description _____

or see metes and bounds or other legal description attached as Exhibit _____, _____ County(ies), New Mexico. An incomplete or inaccurate legal description of the Property shall not render this Agreement invalid; the legal description shall be completed or corrected to meet the requirements of the Title Company issuing the title policy. Gross Receipts Tax (GRT) Location Code: _____ (To be completed by Broker).

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B. TYPE: ☐ Site built ☐ Manufactured housing ☐ Modular ☐ Off-site built ☐ Other: _____
(See NMAR Form 2305 – Information Sheet-Manufactured Housing)

C. OTHER RIGHTS. Seller shall convey to Buyer all existing wind, solar, water and mineral rights (“Other Rights”) appurtenant to the Property. Seller makes NO warranties as to the existence of Other Rights. **TO SELLER:** If Seller is retaining any/all Other Rights, Seller should NOT sign this offer and should consult qualified legal counsel. **TO BUYER:** Other Rights previously severed from the Property and owned by third persons would not convey to Buyer by way of this Agreement. Buyer should consult with qualified legal counsel to determine what Other Rights, IF ANY, Buyer is acquiring, to understand how non-conveyance of Other Rights may affect Buyer, and to ensure Other Rights that will convey are properly transferred at closing.

D. FIXTURES, APPLIANCES AND PERSONAL PROPERTY. Items not otherwise addressed below are governed by the definitions of “Fixture” and “Personal Property” in Para. 34.

i. FIXTURES. Unless otherwise excluded herein, the Property shall include all Fixtures, free of all liens, including, but not limited to, the below Fixtures **if such Fixtures exist on the Property at the time Buyer submits his offer.**

- | | | |
|-----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| • Attached fireplace grate(s) & screen(s) | • Dishwasher(s) | • Security System(s) – ALL components (if owned by Seller) |
| • Attached floor covering(s) | • Fire Alarm(s) (if owned by Seller) | • Smoke Alarm(s) (if owned by Seller) |
| • Attached mirror(s) | • Garbage disposal(s) | • Solar Power System(s)/Panels (if leased by Seller, lien may exist) |
| • Attached outdoor lighting & fountain(s) | • Garage door opener(s) | • Sprinkler(s)/irrigation equipment |
| • Attached pot rack(s) | • Heating system(s) | • Storm window(s) & door(s) |
| • Attached window covering(s) & rod(s) (NOT including curtains, unless otherwise indicated below) | • Landscaping | • TV antenna(s) & satellite dish(es) |
| • Awning(s) | • Light fixture(s) | • Ventilating & air conditioning system(s) |
| • Built in/attached speaker(s) & subwoofer(s) | • Mailbox(es) | • Water conditioning/filtration /water softener/purification system(s) (if owned by Seller) |
| • Built-in Murphy bed(s) (INCLUDING mattress) | • Outdoor plant(s) & tree(s) (other than those in moveable containers) | • TV Wall Mounts (NOT including TVs, unless otherwise indicated below) |
| • Central vacuum, to include all hoses & attachments | • Oven(s) | |
| | • Pellet, wood-burning or gas stove(s) | |
| | • Range(s) | |
| | • Window/door screen(s) | |
| | • Ceiling fan(s) | |

ii. PERSONAL PROPERTY. The following existing Personal Property, if checked, shall remain with the Property, shall be the actual Personal Property that is present as of the date Buyer submits his offer, shall not be considered part of the premises and shall be transferred with no monetary value, free and clear of all liens and encumbrances. **PERSONAL PROPERTY LISTED IN THE MLS LISTING IS NOT INCLUDED IN THIS PURCHASE AGREEMENT UNLESS INCORPORATED BELOW.**

- | | | |
|-------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> All window covering(s) | <input type="checkbox"/> Freestanding Range(s) | <input type="checkbox"/> Storage Shed(s) |
| <input type="checkbox"/> Audio component(s) | <input type="checkbox"/> Microwave(s) | <input type="checkbox"/> TV(s) |
| <input type="checkbox"/> Decorative mirror(s) above bath vanities | <input type="checkbox"/> Pool & spa equipment including any mechanical or other cleaning system(s) | <input type="checkbox"/> Unattached fireplace grate(s) & screen(s) |
| <input type="checkbox"/> Dryer(s) | <input type="checkbox"/> Refrigerator(s) | <input type="checkbox"/> Unattached outdoor fountain(s) & equipment |
| <input type="checkbox"/> Washer(s) | <input type="checkbox"/> Satellite receiver(s) with access cards (if owned by Seller and if transferable) | <input type="checkbox"/> Unattached outdoor lighting |
| <input type="checkbox"/> Garage door remote(s) | | <input type="checkbox"/> Hot Tub(s) |
| <input type="checkbox"/> Freezer(s) | | |

Other: _____

iii. EXCLUSIONS. The following items are excluded from the sale: _____



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7. FINANCED OR CASH PURCHASE.

IMPORTANT NOTICE TO SELLER: BROKER IS NOT RESPONSIBLE FOR VERIFYING AUTHENTICITY/ VERACITY OF PRE-QUALIFICATION OR PROOF-OF-FUNDS LETTERS OR FOR DETERMINING BUYER'S CREDITWORTHINESS. _____ **Seller(s) Initials**

A. ☐ **LOANS.** This Agreement is contingent upon Buyer's ability to obtain a loan(s) in the amount stated above in Para. 2(B) of the following type: ☐ Conventional ☐ FHA ☐ VA ☐ NMMFA ☐ Other: _____

- i. Buyer ☐ has made written application for a loan, or ☐ shall make written application for a loan no later than _____ **days** after the Date of Acceptance.
- ii. Buyer shall provide Seller with a Pre-Qualification Letter from a lender no later than _____ **days** after the Date of Acceptance. **PRE-QUALIFICATION LETTER MUST STIPULATE THE FOLLOWING:**
 - a. That a written loan application has been made;
 - b. That a credit report has been obtained and reviewed by a lender;
 - c. That a preliminary loan commitment has been secured from the same lender;
 - d. That financing equal to the loan amount provided in Para. 2(B) of this Agreement is available to complete the transaction by the Settlement/Signing Date subject to contingencies provided for in this Agreement and underwriting approval.

Buyer's failure to deliver a Pre-Qualification Letter to Seller within the timeframe stipulated shall be considered a default of this Agreement.

- iii. If Buyer changes lender after delivery of the Pre-Qualification Letter, Buyer shall notify Seller and provide a new Pre-Qualification Letter to Seller within **two (2) days** of changing lender. This new Pre-Qualification Letter must include the same stipulations as the original Pre-Qualification Letter. Buyer's failure to deliver a new Pre-Qualification Letter within **two (2) days** of changing lender shall be considered a default of this Agreement.
- iv. Buyer shall cooperate and act in good faith in obtaining final approval for the loan as outlined in the Pre-Qualification Letter. If after issuing the Pre-Qualification letter, lender makes changes to the loan conditions and/or the loan program that adversely affect Buyer's ability to obtain the loan, increase Seller's costs or delay closing, Buyer shall have the obligation to notify Seller in writing within **two (2) days** of such occurrence and to include a copy of the lender requirement(s) with the notification. Within **three (3) days** of receipt of Buyer's notification, Seller shall notify Buyer in writing: (a) of Seller's approval of such changes; or (b) of Seller's decision to terminate the Agreement. If Seller terminates this Agreement, Earnest Money, if delivered, shall be refunded to Buyer. If Seller fails to notify Buyer of Seller's position within **three (3) days** of receipt of Buyer's notification, Seller is deemed to have **rejected** such change and this Agreement shall terminate. Any Earnest Money delivered, shall be refunded to Buyer.
- v. In the event the lender determines Buyer does not qualify for the loan, **unless otherwise indicated below**, Buyer shall deliver to Seller a written rejection letter from the Buyer's lender prior to 11:59 p.m. **three (3) days** before the Settlement/Signing Date OR Buyer shall deliver to Seller a written rejection letter from the Buyer's lender prior to 11:59 p.m. _____ **days** before the Settlement/Signing Date. In the event Buyer does not deliver such rejection letter within the timeframe set forth in this Para. 7(A)(v), Buyer shall forfeit his Earnest Money to Seller. For purposes of this subsection only (Para. 7(A)(v)), days are calculated as calendar days, and there shall be NO extension of time when the deadline falls on a weekend day or a legal holiday. The definition of "days" for all other provisions of this Agreement is set forth in Para. 34.

B. ☐ **SELLER FINANCING.** The approximate balance of \$ _____ shall be financed by Seller and shall be secured by: ☐ Real Estate Contract ☐ Mortgage ☐ Deed of Trust. Terms and conditions of the applicable instrument shall be attached as an addendum. For a Real Estate Contract, attach NMAR Form 2402 - Real Estate Contract Addendum to Purchase Agreement. For a Mortgage or Deed of Trust, Attach NMAR Form 2507 – Addendum to Purchase Agreement – Seller Financing, Mortgage or Deed of Trust.

C. ☐ **CASH PURCHASE:** Buyer shall purchase the subject Property for Cash. No later than _____ **days** after the Date of Acceptance, Buyer shall provide Seller with verification of funds and proof satisfactory to Seller that Buyer has in Buyer's possession or control, the funds necessary to complete the transaction. Failure of Buyer to timely deliver proof of funds shall be considered a default of this Agreement. In the event of Buyer's default, Earnest Money, if delivered, ☐ shall ☐ shall not be refunded to Buyer.



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8. ☐ **BUYER'S SALE, CLOSING AND FUNDING CONTINGENCY.** This Agreement is contingent upon the Closing and Funding of Buyer's property located at _____ on or before _____, subject to any applicable Buyer's Contingency Addendum if attached:

- A. ☐ Buyer represents that Buyer's property is currently under contract for sale. ☐ Check if NMAR Form 2503A, Buyer's Closing and Funding Addendum is attached; OR
- B. ☐ Buyer represents that Buyer's property is NOT yet under contract for sale. ☐ Check if NMAR Form 2503, Buyer's Sale Contingency Addendum is attached.

9. APPRAISAL.

A. **CASH OR SELLER-FINANCED.** Buyer ☐ does ☐ does not require an appraisal. **Buyer(s) Initials** ____ / ____.

If Buyer is requiring an appraisal, the following applies:

- i. Buyer shall select the appraiser;
- ii. ☐ Buyer ☐ Seller shall pay for the appraisal;

B. **APPRAISAL CONTINGENCY.** It is expressly agreed that notwithstanding any other provisions of this Agreement, the Buyer shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of Earnest Money deposits or otherwise if the Purchase Price is greater than the Appraisal. This Appraisal Contingency applies to the following:

- i. All loan programs requiring an appraisal; and
- ii. Cash and seller-financed purchases if the Buyer requires an appraisal as indicated in Para. 9(A).

C. OPTIONS AVAILABLE IN THE EVENT PURCHASE PRICE IS GREATER THAN APPRAISAL.

- i. Buyer may proceed with this Agreement without regard to the amount of the appraised valuation provided Buyer delivers written notice to Seller of such election within **three (3) days** of receipt of said appraised valuation ("3-day Period"). If Buyer fails to notify Seller of his intent to proceed within the 3-day Period, this Agreement shall automatically terminate and Earnest Money, if delivered, shall be refunded to Buyer; OR
- ii. The parties may negotiate a new Purchase Price. If the parties cannot agree to a new Purchase Price within **five (5) days** of Seller's receipt of Buyer's notification of the Appraisal, this Agreement shall automatically terminate and Earnest Money, if delivered, shall be refunded to Buyer; OR
- iii. Buyer may terminate this Agreement. In this event, Earnest Money, if delivered, shall be refunded to Buyer.

10. **CLOSING.** "Closing" is defined as a series of events by which Buyer and Seller satisfy all of their obligations in the Agreement. Closing is not completed until all parties have completed all requirements as stated below, as well as all other obligations under this Agreement. Any amendment of the following dates **MUST BE** in writing and unless otherwise provided for in this Agreement, signed by both parties. The parties further acknowledge that Seller shall not receive the proceeds of sale until the Funding Date Requirements are satisfied.

A. **SETTLEMENT/SIGNING DATE:** _____ (as set forth in Para. 1) On or before the Settlement/Signing date the parties shall complete the following:

- i. Sign and deliver to the responsible closing officer all documents required to complete the transaction and to perform all other closing obligations of this Agreement; AND
- ii. Provide for the delivery of all required funds, exclusive of lender funds, if any, using wired, certified or other "ready" funds acceptable to the closing officer.

B. **FUNDING DATE (Completion of Closing):** _____. On or before the Funding Date the responsible party(ies) shall make all funds available to the title officer for disbursement in accordance with this Agreement. The Funding Date Requirements have been satisfied when:

- i. the title officer has all funds available to disburse as required by this Agreement; and
- ii. the title officer has recorded with the County Clerk all required documents.

Seller shall provide all existing keys, security system/alarm codes, gate openers and garage door openers to Buyer once Funding Date Requirements are satisfied or as otherwise provided for in an Occupancy Agreement.

If the Buyer is obtaining a loan for the purchase of the Property, it is the **Buyer's responsibility** to ensure that Buyer's lender makes available to the closing officer, wired, certified or other "ready" funds with written instructions to disburse funds, on or before the Funding Date. The failure of Buyer's lender to make funds available on or before the Funding Date, shall be deemed a default of this Agreement by the Buyer.



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11. POSSESSION DATE.

- A. Seller shall deliver possession of the Property to Buyer on the Possession Date as set forth below:
- ☐ At time Funding Date Requirements are satisfied
 - ☐ Other: _____
- B. Unless otherwise agreed to in writing, upon Possession Date, or the date the Property is surrendered to Buyer per a Seller Occupancy Agreement, if applicable, Seller shall have all his personal belongings and all debris and garbage removed from the Property. In the event Seller fails to remove his personal property, Buyer shall not be responsible for storage of Seller's personal property, may dispose of Seller's personal property in any manner Buyer deems appropriate, in Buyer's sole discretion, and shall not be liable to Seller for the value of Seller's personal property. In the event Seller fails to remove all debris and garbage from the Property, Seller shall be liable to Buyer for all costs associated with removal of such debris and garbage.
- C. If Possession Date is other than the time the Funding Date Requirements are satisfied, then Buyer and Seller shall execute a separate written agreement outlining the terms agreed to by the parties. (See NMAR Form 2201-Occupancy Agreement – Buyer or NMAR Form 2202 – Occupancy Agreement - Seller)
- D. Seller shall maintain homeowners and liability insurance on Property through Possession Date, unless otherwise provided for in an Occupancy Agreement.

12. ☐ **IRS 1031 TAX-DEFERRED EXCHANGE.** ☐ Buyer ☐ Seller intends to use this Property to accomplish a 1031 Tax-Deferred Exchange. The parties shall cooperate with one another in signing and completing any documents required. The non-exchanging party shall bear no additional expense. Notwithstanding any other provision of this Agreement, in the event of a 1031 Exchange, this Agreement shall be assignable to a Qualified Intermediary.

13. **PRORATIONS.** Seller shall be responsible for disclosing all applicable property specific fees, or lease agreements, private memberships and/or association fees or dues, taxes and contract service agreements, all of which are to be prorated through Settlement/Signing Date. Any equipment rental or contract service agreement (e.g. alarm system, satellite system, propane tank (to include any remaining propane gas therein), private refuse collection, road maintenance, etc.) shall be handled directly between the Buyer and Seller; the title or escrow company shall not be responsible for proration thereof.

14. **ASSESSMENTS.** For all bonds, impact fees and assessments other than Public Improvement District ("PID") assessments (collectively "assessments"), Buyer shall have _____ days after receipt of the title commitment to object in writing to the amounts of such assessments and to terminate this Agreement ("Objection Date"). In the event Buyer submits written objections by the Objection Date, the Earnest Money, if delivered, shall be refunded to the Buyer. If Buyer fails to notify Seller of Buyer's objections by the Objection Date, Buyer shall be deemed to have accepted the amounts of any assessment and shall have waived his right to terminate this Agreement based thereon. In the event Buyer does not object, Buyer shall assume all assessments that are part of or paid with the property tax bill. If other assessments are a lien upon the Property, the current installment shall be prorated through Settlement/Signing Date. Buyer shall assume future installments. Buyer shall pay all future assessments for improvements. **NOTE:** If Property is located in a PID, Seller must provide a Public Improvement District Disclosure to Buyer PRIOR to entering into this Agreement. See Para. 20(B).

15. EXAMINATION OF TITLE; LIENS; DEED.

- A. ☐ BUYER ☐ SELLER shall order a title commitment from _____ (Title Company) within _____ days after the ☐ **Date Of Acceptance** ☐ **Date TOM Fee is Delivered** ☐ **Date Earnest Money is Delivered**. After receipt of the title commitment and all documents referred to therein, Buyer shall have _____ days ("Review Period") to review and object to title exceptions. Exceptions to the title, including the Standard Exceptions, shall be deemed approved unless Buyer delivers written objections to the Seller within the Review Period. If Seller is unwilling or unable to remove such exception(s) before the Settlement/Signing Date, Seller shall provide written notice to Buyer within _____ days after receipt of Buyer's objection and Buyer may choose to close subject to exceptions, remove the exceptions at Buyer's expense or terminate this Agreement. If Buyer terminates this Agreement, Earnest Money, if delivered, shall be refunded to Buyer.



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- B.** Seller shall satisfy any judgments and liens, including but not limited to, all mechanics' and materialmen's liens of record on or before Funding Date and shall indemnify and hold Buyer harmless from any liens filed of record after Settlement/Signing Date and which arise out of any claim related to the providing of materials or services to improve the Property as authorized by Seller or Seller's agents, unless otherwise agreed to in writing.
- C.** Seller shall convey the Property by ☐ General Warranty Deed ☐ Special Warranty Deed ☐ Other Deed (describe) _____ subject only to any matters identified in the title commitment and not objected to by Buyer as provided in Para. 15(A). The legal description contained in the deed shall be the same legal description contained in the title commitment and any survey required under Para. 19.

16. COSTS TO BE PAID. Buyer or Seller, as applicable, shall pay the following marked items: **DO NOT USE SECTION FOR SELLER CONCESSIONS/CREDITS TO BUYER; USE AN ADDENDUM.**

LOAN RELATED COSTS AND FEES*	Buyer	Seller	Not Required	TITLE COMPANY CLOSING COSTS	Buyer	Seller	Not Required
Appraisal Fee				Closing Fee			
Appraisal Re-inspection Fee				Pro-Rata Data Search			
Credit Report				Legal Document Preparation			
Loan Assumption /Transfer				Special Assessment Search			
Origination Charge: up to <input type="checkbox"/> \$ <input type="checkbox"/> %				Buyer Recording Fees			
Points – Buydown				Seller Recording Fees			
Points – Discount				Other:			
Tax Service Fee				Other:			
Flood Zone Certification							
Other:							
Other:				POLICY PREMIUMS			
				Initial Title Commitment			
				Standard Owner’s Policy			
PREPAIDS REQUIRED BY LENDER				Mortgagee’s Policy			
Flood Insurance				Mortgagee’s Policy Endorsements			
Hazard Insurance				Other:			
Interest				Any fees charged by the title company to revise the title commitment, shall be borne by the party who necessitated the revision. In the event a third-party document necessitates the revision (e.g. survey, appraisal, etc.), the parties agree to equally split any fee charged.			
PMI or MIP							
Taxes							
MANUFACTURED HOME COSTS				MISCELLANEOUS			
Foundation Inspection				Survey (Para. 19)			
Foundation Repairs				Impact Fees			
Re-Inspection Fees				Transfer Fees (HOA/COA)			
DMV Title Transfer				Disclosure / Resale Certificate Fee (HOA/COA)**			
Deactivation Fees				Other:			
Other:				Other:			
Other:				Other:			



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17. FIRPTA. The Foreign Investment in Real Property Tax Act of 1980 (“FIRPTA”) requires buyers who purchase real property from foreign sellers to withhold a portion of the amount realized from the sale of the real property for remittance to the Internal Revenue Service (“IRS”). In the event the seller(s) is **NOT** a foreign person, FIRPTA requires the buyer to obtain proof of the seller’s non-foreign status in order to avoid withholding requirements. Exceptions may apply. For more information, refer to NMAR Form 2304 – Information Sheet – FIRPTA & Taxation of Foreign Persons Receiving Rental Income from U.S. Property.

FIRPTA EXCEPTION (most common): **1)** The sales price of the property is not more than \$300,000; **AND 2)** buyer warrants that buyer shall be using the property as buyer’s primary residence (“Exception”).

NOTE: BOTH 1 AND 2 ABOVE MUST APPLY TO QUALIFY AS AN EXCEPTION.

Exception ☐ **does** ☐ **does not apply** _____ **Buyer(s) Initials.**

In the event the above Exception to FIRPTA does not apply, then prior to or at closing, Seller(s) shall provide to Buyer or to a Qualified Substitute (generally, the Title Company) either a Non-Foreign Seller Affidavit(s) **OR** a letter from the IRS indicating Seller(s) is exempt from withholding. In the event Seller(s) fails to do so, Buyer shall have the right to withhold the applicable percentage of the amount realized from the sale of the Property for remittance to the IRS.

18. INSURANCE CONTINGENCY/ APPLICATION.

A. APPLICATION. Buyer shall make application for insurance within _____ **days** after Date of Acceptance of this Agreement. If Buyer fails to make application to the insurance company within the agreed time, this insurance contingency shall be deemed waived.

B. CONTINGENCY. Provided the Contingency Deadline as set forth below in Para. 18(C) is met, this Agreement is conditioned on the following:

- i) Buyer’s ability to obtain a homeowner’s or property insurance quote on the Property at normal and customary premium rates; AND,
- ii) Seller’s claim history having no impact on the Buyer’s insurance in the future.

Buyer understands that an insurance company may cancel or change the terms of a homeowner’s insurance policy/quote for any reason prior to close of escrow or within sixty days after issuance of the homeowner’s policy/quote (which generally occurs at close of escrow).

C. CONTINGENCY DEADLINE. The Insurance Contingency set forth in Para. 18(B) above shall be deemed satisfied, unless within _____ **days** after Date of Acceptance of this Agreement, Buyer delivers written notice to Seller that one or more of the above insurance contingencies cannot be satisfied along with documentation from the insurance provider stating the same. (“Contingency Deadline”). In the event Buyer delivers such notice and documentation to Seller by the Contingency Deadline, the Purchase Agreement shall terminate and the Earnest Money, if delivered, shall be refunded to Buyer.

19. SURVEYS OR IMPROVEMENT LOCATION REPORT (“ILR”). Buyer has the right to have performed the survey or ILR selected below or the right to accept an existing one. Unless otherwise agreed in writing, the party paying for the survey or ILR as indicated in Para. 16 shall select the surveyor and order the survey or ILR. **The party who agrees to pay for the survey or ILR is responsible for doing so, even if the transaction does not close.**

- ☐ Improvement Location Report ☐ Staked Boundary Survey ☐ American Land Title Association Survey (ALTA)
☐ Flood Plain Designation ☐ Other: _____

A. DELIVERY DEADLINE: Survey or ILR shall be delivered to Buyer(s) no later than: _____, _____ or _____ **days** from Date of Acceptance. **NOTE:** Delivery Deadline only applies **IF** Seller is delivering the survey or ILR to Buyer; it does **NOT** apply if Buyer is ordering the survey or ILR.

B. OBJECTION DEADLINE: Objections to be delivered to Seller(s) no later than: _____, _____ or _____ **days** from Date of Acceptance.

C. RESOLUTION DEADLINE: Parties to reach Resolution no later than: _____, _____ or _____ **days** from Date of Acceptance.

D. D. OBJECTION/RESOLUTION/TERMINATION: Para. 23(H) shall further govern Buyer’s right to object to the Survey or ILR performed and resolution of Buyer’s objections.





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21. BUYER'S INVESTIGATION OF SURROUNDING AREA. Buyer warrants that he has thoroughly investigated the neighborhood and the areas surrounding the property, to include, but not be limited to investigation of the following: the existence of registered sex offenders or other persons convicted of crimes that may reside in the area; and the presence of any structures located, businesses operating or activities conducted in the area that, in Buyer's opinion, affects the value and/or desirability of the property. **By entering into this Agreement, Buyer represents he is satisfied with the neighborhood and surrounding areas and agrees that any issue regarding the surrounding area will NOT serve as grounds for termination of this Agreement.** _____ / _____ Buyer(s) Initials

22. SELLER'S DUTY TO DISCLOSE. Seller shall disclose to Buyer any adverse material defects known to him about the Property. However, Seller does **NOT** have an obligation to inspect the Property for the Buyer's benefit or to repair, correct or otherwise cure known defects that are disclosed to Buyer or previously unknown defects that are discovered by Buyer or Buyer's inspectors.

23. INSPECTIONS. The parties are encouraged to employ competent and, where appropriate, licensed professionals to perform all agreed upon inspections of the property. Also See Para. 25.

A. BUYER DUTIES AND RIGHTS.

i. BUYER'S DILIGENCE, ATTENTION AND OBSERVATION. Buyer has the following affirmative duties:

- a) To conduct all due diligence necessary to confirm all material facts relevant to Buyer's purchase;
- b) To assure himself that the Property is exactly what Buyer is intending to purchase;
- c) To become aware of the physical condition of the Property through his own investigation and observation;
- d) To investigate the legal, practical and technical implications of all disclosed, known or discovered facts regarding the Property and;
- e) To thoroughly review all written reports provided by professionals and discuss the results of such reports and inspections with the professionals who created the report and/or conducted the inspection.

ii. RIGHT TO CONDUCT INSPECTIONS. The Buyer is advised to exercise all his rights under and in accordance with this Agreement to investigate the Property. Unless otherwise waived, Buyer(s) may complete any and all inspections of the Property that he deems necessary. These inspections may include, but are not limited to the following: home, electrical, heating/air conditioning, plumbing, roof, structural, lead-based paint (including risk assessment, paint inspection or both), well equipment (pumps, pressure tanks, lines), well potability tests, well water yield tests, pool/spa/hot tub equipment, wood destroying insects, dry rot, radon, mold, square foot measurement, sewer line inspections, septic inspections, ductwork, phase one environmental and soil tests. The Buyer's rights to object to inspections and terminate the Agreement based on inspections are set forth in Para. 23(H). Buyer is advised to thoroughly review those rights and understand the process.

iii. SQUARE FOOTAGE. BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE PREMISES, BOTH THE REAL PROPERTY (LAND) AND IMPROVEMENTS THEREON, IS APPROXIMATE. IF SQUARE FOOTAGE IS A MATERIAL MATTER TO THE BUYER, THE BUYER SHALL INVESTIGATE THE SQUARE FOOTAGE DURING THE INSPECTION PERIOD. _____ Buyer(s) Initials.

B. BUYER'S ENTRY. Seller shall provide reasonable access to Buyer and Buyer's inspectors. Buyer shall return the Property to the condition it was in prior to any entry, test and/or inspection by Buyer. Buyer shall be liable to Seller for any damages that occur to the Property as a result of any inspection conducted by Buyer, his agents, inspectors, contractors and/or employees (collectively "Buyer's Agents") and Buyer agrees to hold Seller harmless, indemnify and defend Seller from any and all claims, liabilities, liens, losses, expenses (including reasonable attorneys' fees and costs), and/or damages arising out of or related to any entry, inspections and/or tests conducted by Buyer or Buyer's Agents. Buyer and Buyer's Agents are NOT permitted on the Property without prior notification to and approval by Seller or Seller's Broker.

C. AVAILABILITY OF UTILITIES FOR INSPECTIONS.

☐ Buyer ☐ Seller shall be responsible for paying any charges required by the utility companies to have utilities turned on for inspection purposes. Notwithstanding the foregoing, Buyer shall not be obligated to pay unpaid utility bills and unless otherwise agreed to in writing, neither party shall be obligated to alter the Property so as to conform with city or county building codes. **IF UTILITIES ARE ON AS OF DATE OF ACCEPTANCE, SELLER SHALL MAINTAIN UTILITIES THROUGH POSSESSION DATE (Para. 11) OR DATE OTHERWISE STATED IN AN OCCUPANCY AGREEMENT.**



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- D. INSPECTOR SELECTION.** Unless otherwise provided for in this agreement, Buyer shall have the right to select all inspectors and order all inspections **EVEN IF** Seller has agreed to pay for the inspection(s).
- E. PAYMENT OF INSPECTIONS.** Buyer shall pay for all inspections except the following, which shall be paid by Seller. _____

The party who has agreed to pay for the inspection **SHALL** do so, even if this transaction does not close.

- F. INSPECTION DEADLINES.** Unless otherwise provided for in this Agreement, the following applies:
- i. **Delivery Deadline:** Inspection reports and/or documents to be delivered to Buyer no later than: _____, _____ or _____ days from Date of Acceptance. **NOTE:** Delivery Deadline only applies **IF** Seller is responsible for delivering a report/document to Buyer; it does **NOT** apply if Buyer is ordering the inspection/document. If Seller is responsible for ordering an inspection/document and does not receive the report/document by the Delivery Deadline, the parties may agree to extend all applicable deadlines or Buyer may elect to terminate this Agreement and receive a refund of any Earnest Money delivered.
 - ii. **Objection Deadline:** Buyer's Objections to be delivered to Seller(s) no later than: _____, _____ or _____ days from Date of Acceptance.
 - iii. **Resolution Deadline:** Parties to reach Resolution no later than: _____, _____ or _____ days from Date of Acceptance.

G. WAIVER OF INSPECTIONS. Buyer to initial if applicable.

_____ Buyer waives ALL inspections unless required by law or Buyer's lender.

_____ Buyer waives ALL inspections.

_____ Buyer waives the following inspections: _____

H. OBJECTIONS/RESOLUTION/TERMINATION. If Buyer has reasonable objections to any issue or condition discovered by Buyer's own observations and/or investigation of the Property or disclosed by any survey or ILR (Para. 19), document (Para. 20), and/or inspection (Para. 23), **then no later than the applicable Objection Deadline**, Buyer may **OBJECT** and request that Seller cure the issue/condition or Buyer may **TERMINATE** this Agreement. Buyer's objections or termination must be in writing. Buyer's failure to timely object or terminate shall be deemed a waiver of Buyer's right to object or terminate and of the applicable contingency. If Buyer is responsible for ordering an inspection, survey or document and fails to do so in time to object or terminate by the Objection Deadline, Buyer's failure to receive the report, survey or document may not be used as rationale for not timely terminating or objecting.

- i. **OBJECTIONS/RESOLUTION** (NMAR Form 5109 – ORW Agreement)
 - a. **Making Objections: To Document/Survey.** If Buyer **OBJECTS** to an item on a document or survey, Buyer shall produce with his objection(s) a copy of the **ENTIRE** document or survey/ILR on which Buyer's objection(s) is based. **To Inspections:** If Buyer **OBJECTS** to an item on an inspection report (Para. 23), Buyer shall produce with his objection(s) **ONLY the SECTION(S)** of the report on which Buyer's objection(s) is based and **AGREES NOT TO SEND** Seller the entire inspection report, unless requested by Seller in writing. **Once Buyer makes objections, Buyer may NOT withdraw his objections for the purpose of terminating this Agreement until Seller has the opportunity to respond. Once Seller responds, Buyer may terminate the Agreement UNLESS Seller has agreed to cure all the Buyer's objections in the manner requested by Buyer. Notwithstanding the foregoing, at any point prior to the Resolution Deadline, Buyer may withdraw any or all of his objections.**
 - b. **Seller's Response:** Seller may agree to cure Buyer's objections as requested, provide an alternative cure for Buyer's objections, or refuse to cure Buyer's objections. **If in Seller's initial response, Seller does not agree to cure ALL of Buyer's objections in the manner requested by Buyer, then Buyer may elect to terminate this Agreement and receive a refund of any Earnest Money delivered.**
 - c. **Repair Completion.** In the event Seller agrees to complete any repairs prior to closing, Seller shall complete the repairs no later than _____ days prior to Settlement/Signing Date.
 - d. **Resolution.** If the parties are unable to reach a Resolution by the Resolution Deadline, then **THIS AGREEMENT SHALL TERMINATE** and Earnest Money, if delivered, shall be refunded to Buyer. Buyer's withdrawal of all unresolved objections prior to the Resolution Deadline constitutes Resolution.
- ii. **TERMINATION.** (NMAR Form 5105 – Termination Agreement). If Buyer elects to **TERMINATE** this Agreement without requesting Seller cure any objections, **Buyer AGREES THAT HE WILL NOT SEND a copy of the document, survey and/or inspection report on which Buyer's Termination Agreement is based unless requested by Seller in writing.** If Buyer timely elects to terminate, Earnest Money, if delivered, shall be refunded to Buyer.



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24. TERMINATION AND DISTRIBUTION OF EARNEST MONEY. If this Agreement terminates in accordance with the terms of this Agreement, the parties shall execute a Termination Agreement (NMAR Form 5105) and in the event Earnest Money has been delivered to a Title Company/Escrow Agent, the parties shall execute an Earnest Money Distribution Form that provides for distribution of the Earnest Money in accordance with the terms of this Agreement.

_____ Buyer(s) Initials. _____ Seller(s) Initials.

25. SERVICE PROVIDER RECOMMENDATIONS. If Broker(s) recommends a builder, contractor, escrow company, title company, pest control service, appraiser, lender, home inspection company or home warranty company or any other person or entity to Seller or Buyer for any purpose, such recommendation shall be independently investigated and evaluated by Seller or Buyer, who hereby acknowledges that any decision to enter into any contractual arrangement with any such person or entity recommended by Broker shall be based solely upon such independent investigation and evaluation.

26. HOME WARRANTY CONTRACT. Buyer is advised to investigate the various home warranty plans available for purchase. The parties acknowledge that different home warranty plans have different coverage options, exclusions, limitations and service fees and most plans exclude pre-existing conditions. Neither the Seller, nor the Broker, is responsible for home warranty coverage or lack thereof. The parties acknowledge that a Home Warranty Service Contract provider may conduct an inspection of the Property but does not always do so.

☐ A Home Warranty Plan shall be ordered by ☐ Buyer ☐ Seller to be issued by _____
at a cost not to exceed \$ _____, to be paid for by ☐ Buyer ☐ Seller.
☐ Buyer declines the purchase of a Home Warranty Plan.

27. DISCLAIMER. The Property is sold in its current condition including, but not limited to, the nature, location, amount, sufficiency or suitability of the following: current or future value; future income to be derived therefrom; current or future production; condition; size; location of utility lines; location of sewer and water lines; availability of utility services or the possibility of extending improvements (paying, sewer, water, utilities, access) to the Property; easements with which the Property is burdened or benefited; lot boundaries; adjacent property zoning; physical and legal access; soil conditions; permits, zoning, or code compliance; lot size or acreage; improvements or square footage of improvements; and water rights. **Broker has not investigated and is not responsible for the forgoing aspects of the Property, among which lot size, acreage, and square footage may have been approximated, but are not warranted as accurate.** Buyer shall have had full and fair opportunity to inspect and judge all aspects of the Property with professional assistance of Buyer's choosing prior to settlement. Buyer and Seller acknowledge that Brokers' only role in this transaction is to provide real estate advice to Broker's respective client and/or customer and real estate information to the parties. For all other advice or information that may affect this transaction, including but not limited to financial and legal advice, the parties shall rely on other professionals.

_____ Buyer(s) Initials. _____ Seller(s) Initials.

28. MAINTENANCE. Until the Possession Date, Seller shall maintain the Property and all aspects thereof including, but not limited to the following: heating; air conditioning; electrical; roofs; solar; septic systems; well and well equipment; gutters and downspouts; sprinklers; plumbing systems, including the water heater; pool and spa systems; appliances; and other mechanical apparatuses. **IF UTILITIES ARE ON AS OF DATE OF ACCEPTANCE, SELLER SHALL MAINTAIN UTILITIES THROUGH POSSESSION DATE (Para. 11) OR DATE OTHERWISE STATED IN AN OCCUPANCY AGREEMENT. IT IS THE BUYER'S RESPONSIBILITY TO ARRANGE TO TRANSFER UTILITIES INTO BUYER'S NAME ON POSSESSION DATE OR DATE OTHERWISE STATED IN AN OCCUPANCY AGREEMENT.** Seller shall deliver the Property, all of the foregoing, and all other aspects thereof to Buyer in the same condition as of the Date of Acceptance, reasonable wear and tear excepted. The following items are specifically excluded from the above: _____

29. PRE-CLOSING WALK-THROUGH. Within _____ days prior to Settlement/Signing Date, Seller shall allow reasonable access to conduct a walk-through of the Property for the purpose of satisfying Buyer that any corrections or repairs agreed to by the Seller have been completed, warranted items are in working condition and the Property is in the same condition as on the Date of Acceptance, reasonable wear and tear excepted. See NMAR Form 5110 - Walk-Through Statement. Notwithstanding the foregoing, if the Property is not in the same condition as Date of Acceptance due to fire or other causality, see Para. 30.



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- 30. RISK OF LOSS.** Prior to Funding Date, Seller shall bear the risk of fire or other casualty. In the event of loss, Seller shall provide Buyer written notification of the loss and indicate if insurance coverage is available for the loss within **3 days** of loss (“Seller’s Notification”). Buyer shall have the following options to be exercised within **3 days** of Seller’s Notification: Buyer may terminate this Agreement and receive a refund of all Earnest Money delivered; or Buyer may elect to delay his decision until he receives written notification from Seller of the amount of insurance proceeds available (“Insurance Notification”). In the event Buyer elects to first receive Insurance Notification, Seller shall work diligently with the insurance company to determine amount of coverage and Buyer shall have **3 days** of receipt of Insurance Notification to: 1) terminate this Agreement and receive a refund of all Earnest Money delivered, or 2) to close and receive an assignment of Seller’s portion of the insurance proceeds at Funding Date. If at any point Buyer fails to timely notify Seller of Buyer’s election, Buyer shall be deemed to have elected to proceed to Closing and receive an assignment of insurance proceeds, if any. The parties agree that the Closing date shall automatically be extended as necessary to allow Buyer to exercise his rights under this Para. 30.
- 31. CONSENT TO THE ELECTRONIC TRANSMISSION OF DOCUMENTS AND TO THE USE OF ELECTRONIC SIGNATURES.** The parties ☐ do ☐ do not consent to conduct any business related to and/or required under this Agreement by electronic means, including, but not limited to the receipt of electronic records and the use of electronic signatures. Subject to applicable law, electronic signatures shall have the same legal validity and effect as original hand-written signatures. Nothing herein prohibits the parties from conducting business by non-electronic means. If a party has consented to receive records electronically and/or to the use of electronic signatures, that party may withdraw consent at any point in the transaction by delivering written notice to the other party.
- 32. ASSIGNMENT.** Buyer ☐ may ☐ may not sell, assign or transfer the Buyer’s rights or obligations under this Agreement, or any interest herein.
- 33. HEIRS AND ASSIGNS.** This Agreement shall apply to, be binding upon and enforceable against and inure to the benefit of the parties hereto and their respective representatives, successors, permitted assigns, heirs and estates.
- 34. DEFINITIONS.** The following terms as used herein shall have the following meanings:
- A. APPRAISAL:** current estimated market value of the Property as determined by a licensed real estate appraiser. If Buyer is obtaining a loan, the term refers to an appraisal conducted by an appraiser approved by the lender.
 - B. BROKER:** includes the Buyer’s and Seller’s brokers.
 - C.** If a specific **DATE** is stated as a deadline in this Agreement, then that date **IS** the **FINAL** day for performance; and if that date falls on a Saturday, Sunday or a legal Holiday, the date **does not** extend to the next business day.
 - D. DATE OF ACCEPTANCE:** date this Agreement is fully executed and delivered.
 - E. DAY(S):** determined on a “calendar day” basis and if the **FINAL** day for performance falls on a Saturday, Sunday or legal Holiday, the time therefore shall be extended to the next business day. Legal Holidays are described as New Year’s Day, Martin Luther King Jr.’s Birthday, President’s Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran’s Day, Thanksgiving Day, and Christmas.
 - F. DELIVER(ED):** personally delivered or by any method where there is evidence of receipt. In the event the parties have agreed to electronic transmission of documents, a facsimile or e-mail transmission of a copy of this or any related document shall constitute delivery of that document. When an item is delivered to the real estate Broker who represents the Buyer or Seller, it is considered delivered to the Buyer or Seller respectively, except if the same Broker represents both Buyer and Seller, in which case, delivery must be made to the Buyer or Seller, as applicable.
 - G. DEADLINES:** any “deadline(s)” can be expressed either as a calendar date or as a number of days.
 - H. ELECTRONIC/ELECTRONIC RECORD:** relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities and includes, but is not limited to, facsimile and e-mail; a record created, generated, sent, communicated, received or stored by electronic means.
 - I. ELECTRONIC SIGNATURE:** an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
 - J. FIXTURE:** an article, which was once Personal Property, but which has now become a part of the Property because the article has been fastened or affixed to the Property. Fastened/affixed means that removal of the article causes damage to the real property, even if such damage is minor and/or can be repaired. If a unit contains components, some of which are Fixtures and some of which are Personal Property, and a Fixture component of the unit relies on one or more Personal Property components to function as it is intended to do so, then **ALL** components together are considered a Fixture and shall remain together, unless otherwise provided herein.



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- K. MASCULINE:** includes the feminine.
- L. PERSONAL PROPERTY:** a moveable article that is NOT affixed/attached to the Property.
- M. RESOLUTION:** a written agreement between the parties regarding how all Buyers' objections shall be resolved.
- N. SINGULAR:** includes the plural.
- O. STANDARD EXCEPTIONS:** those common risks as set forth in the title commitment for which the title insurance policy does NOT provide coverage. These exceptions are matters outside the Title Company's search and special requirements must be met in order to delete them and provide the insured with the additional/extended coverage.
- 35. FLOOD HAZARD ZONE.** If the Property is located in an area, which is designated as a special flood hazard area, Buyer may be required to purchase flood insurance in order to obtain a loan secured by the Property from any federally regulated financial institution or a loan insured or guaranteed by an agency of the U.S. Government.
- 36. MEDIATION.** If a dispute arises between the parties relating to this Agreement, the parties shall submit the dispute to mediation, jointly appoint a mediator and share equally, in the costs of the mediation. If a mediator cannot be agreed upon or mediation is unsuccessful, the parties may enforce their rights under this Agreement in any manner provided by law. See NMAR Form 5118 - Information Sheet - Mediation Information for Clients and Customers.
- 37. EARNEST MONEY DISPUTE.** Generally, title or escrow companies will not release Earnest Money without first receiving either an Earnest Money Distribution Agreement signed by all parties to this Agreement (NMAR Form 5105B) or a judgment from a court. If the parties cannot come to an agreement on the how Earnest Money shall be distributed, Para. 36 (Mediation) shall apply. If the parties cannot reach a resolution through mediation, and proceed to litigation, at the conclusion of litigation the court will issue a judgment apportioning Earnest Money. Also, the title/escrow company holding the Earnest Money has the option of filing an Interpleader Action, which will force Buyer and Seller into litigation. See NMAR Form 2310 – Earnest Money Dispute Information Sheet.
- 38. DEFAULT.** Any default under this Agreement shall be treated as a material default, regardless of whether the party's action or inaction is specifically classified as a default herein. Additionally, time is of the essence and failure of a party to timely make payment, perform or satisfy any other condition of this Agreement shall be considered a material default. Generally, a material default relieves the non-defaulting party from further performance under this Agreement; however, the non-defaulting party may elect *not* to terminate this Agreement. If the non-defaulting party elects to terminate this Agreement, he may also elect to retain the Earnest Money, if delivered, and pursue any additional remedies allowable by law, including specific performance. In the event, the non-defaulting party elects not to terminate this Agreement, the parties remain responsible for all obligations and retain all rights and remedies available under this Agreement.
- 39. ATTORNEY FEES AND COSTS.** Should any aspect of this Agreement result in arbitration or litigation, the prevailing party of such action shall be entitled to an award of reasonable attorneys' fees and court costs.
- 40. FAIR HOUSING.** Buyer and Seller understand that the Fair Housing Act and the New Mexico Human Rights Act prohibit discrimination in the sale or financing of housing on the basis of race, age (this covers protection for people with children under age 18 and pregnant women), color, religion, sex, sexual orientation, gender identity, familial status, spousal affiliation, physical or mental handicap, national origin or ancestry.
- 41. COUNTERPARTS.** This agreement may be executed in one or more counterparts, each of which is deemed to be an original, and all of which shall together constitute one and the same instrument.
- 42. GOVERNING LAW AND VENUE.** This Agreement is to be construed in accordance with and governed by the internal laws of the State of New Mexico without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New Mexico to the rights and duties of the parties. Each party hereby irrevocably consents to the jurisdiction and venue of the state and federal courts located in the county in which the Property or any portion of the Property is located in connection with any claim, action, suit, or proceeding relating to this Agreement and agrees that all suits or proceedings relating to this Agreement shall be brought only in such courts.
- 43. SEVERABILITY.** If any portion of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.
- 44. MULTIPLE BUYERS.** Each Buyer to this Agreement is jointly and severally liable for all obligations under this Agreement. In the event any buyer should be unable to perform under this Agreement (due to death or incapacity) the remaining Buyer(s) shall continue to be obligated under this Agreement.



NEW MEXICO ASSOCIATION OF REALTORS® PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2020

- 45. AUTHORITY OF SIGNORS.** If Buyer or Seller is a corporation, partnership, estate, trust, limited liability company or other entity, the person signing this Agreement on its behalf warrants his authority to do so and to bind the Buyer or Seller for which he is signing.
- 46. BUYER AND SELLER AUTHORIZATIONS.** Unless otherwise instructed in writing, with respect to the real estate transaction that is the subject of this Agreement, Seller and Buyer hereby authorize the following: the Title Company, Lender, Escrow Agent and their representatives to provide a copy of any and all loan estimates, closing disclosures, other settlement statements and title documents to the Seller's and Buyer's respective Brokers; the Title Company to deliver any Title Company generated settlement statement(s), in its entirety (Seller and Buyer's information) to both the Seller and Buyer and their respective Brokers; and his respective Broker to be present for the Closing.
- 47. SURVIVAL OF OBLIGATION.** The following Paragraphs shall survive Closing of the Property: 2, 6(D), 11-14, 16, 23, 24-27, 30, 33, 34, 36-39 and 42.
- 48. FORCE MAJEURE.** Neither party shall be liable for delay or failure to perform any obligation under this Agreement if the delay or failure is caused by any circumstances beyond their reasonable control, including but not limited to, acts of God, war, civil unrest or industrial action.
- 49. ACCEPTANCE, ENTIRE AGREEMENT, AMENDMENTS IN WRITING.** This offer is not considered accepted until fully executed by the Seller and delivered to the Buyer. Once fully executed and delivered, the parties have a legally binding contract. This Agreement, together with the following addenda and any exhibits referred to in this Agreement, contains the entire Agreement of the parties and supersedes all prior agreements or representations with respect to the Property, which are not expressly set forth herein.

THIS AGREEMENT MAY BE MODIFIED ONLY BY WRITTEN AGREEMENT OF THE PARTIES.

- | | |
|---------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| <input type="checkbox"/> Addendum No. _____ (NMAR Form 5101 or 2300) | <input type="checkbox"/> Occupancy Agreement – Buyer/Seller (NMAR Form 2201/2201) |
| <input type="checkbox"/> Buyer's Sale Contingency Addendum (NMAR Form 2503) | <input type="checkbox"/> Real Estate Contract Addendum (NMAR Form 2402) |
| <input type="checkbox"/> Buyer's Closing & Funding Sale Contingency (NMAR Form 2503A) | <input type="checkbox"/> Residential Resale Condominium Addendum (NMAR Form 2302) |
| <input type="checkbox"/> Estimated Property Tax Levy Exhibit _____ | <input type="checkbox"/> Septic System Contingency Addendum (NMAR Form 5120A) |
| <input type="checkbox"/> Lead-Based Paint Addendum (NMAR Form 5112) | <input type="checkbox"/> Mortgage/Deed of Trust Addendum- (NMAR Form 2507) |
| <input type="checkbox"/> Other _____ | <input type="checkbox"/> Other _____ |

- 50. EXPIRATION OF OFFER.** This offer shall expire unless acceptance is delivered in writing to Buyer or Buyer's Broker on or before _____, at _____ ☐ a.m. ☐ p.m. Mountain Time. NOTE: UNTIL SELLER ACCEPTS THIS OFFER AND DELIVERS THE FULLY-EXECUTED AGREEMENT, BUYER MAY WITHDRAW THIS OFFER AT ANY TIME.

⚠ WIRE FRAUD ALERT ⚠

Criminals are hacking email accounts of real estate **brokers**, title companies, settlement attorneys and others, resulting in fraudulent wire instructions being used to divert funds to the account of the criminal. The emails look legitimate, but they are not. Buyer and Seller are advised not to wire any funds without personally speaking with the intended recipient of the wire to confirm the routing number and the account number. Buyer and Seller should not send personal information such as social security numbers, bank account numbers and credit card numbers except through secured email or personal delivery to the intended recipient.

BUYER _____ SELLER _____

ATTENTION BUYERS AND SELLERS:

THE OBLIGATIONS/RESPONSIBILITIES SET FORTH IN THE PURCHASE AGREEMENT ARE THOSE OF THE PARTIES TO THE PURCHASE AGREEMENT AND NOT OF THE BROKERS.



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PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2020**

OFFER BY BUYER

BUYER ACKNOWLEDGES THAT BUYER HAS READ THE ENTIRE PURCHASE AGREEMENT AND UNDERSTANDS THE PROVISIONS THEREOF.

_____ Buyer Signature	_____ If Entity, Title of Signatory	_____ Offer Date	_____ Time
_____ Buyer Name (Print)	_____ If Entity, Name of Signatory		
_____ Buyer Signature	_____ If Entity, Title of Signatory	_____ Offer Date	_____ Time
_____ Buyer Name (Print)	_____ If Entity, Name of Signatory		
_____ Buyer Signature	_____ If Entity, Title of Signatory	_____ Offer Date	_____ Time
_____ Buyer Name	_____ If Entity, Name of Signatory		

SELLER'S RESPONSE

SELLER ACKNOWLEDGES THAT SELLER HAS READ THIS ENTIRE AGREEMENT AND UNDERSTANDS THE PROVISIONS HEREOF. (SELLER SHOULD SELECT ONE):

☐ **SELLER ACCEPTS** this Offer and agrees to sell the Property for the price and on the terms and conditions specified in this Agreement.

SELLER

_____ Seller Signature	_____ If Entity, Title of Signatory	_____ Date	_____ Time
_____ Seller Name (Print)	_____ If Entity, Name of Signatory		
_____ Seller Signature	_____ If Entity, Title of Signatory	_____ Date	_____ Time
_____ Seller Name (Print)	_____ If Entity, Name of Signatory		
_____ Seller Signature	_____ If Entity, Title of Signatory	_____ Date	_____ Time
_____ Seller Name (Print)	_____ If Entity, Name of Signatory		

☐ **SELLER REJECTS & SUBMITS** a Counteroffer (NMAR Form 5102).

☐ **SELLER REJECTS & SUBMITS** a Notification of Multiple Offers (NMAR Form 5103).

IF SELLER IS REJECTING THIS OFFER AND SUBMITTING EITHER A COUNTEROFFER, OR A NOTIFICATION OF MULTIPLE OFFERS, SELLER SHOULD NOT SIGN THIS AGREEMENT, BUT SHOULD INITIAL ALL PAGES. INITIALS: SELLER(S) _____

☐ **SELLER REJECTS THIS OFFER.**

IF SELLER IS REJECTING THIS OFFER, SELLER SHOULD NOT SIGN THIS AGREEMENT AND DOES NOT NEED TO INITIAL ANY/ALL PAGES BUT SHOULD INITIAL BELOW.

INITIAL HERE: SELLER _____