

PURCHASE CONTRACT

THIS CONTRACT is made this _____ day of _____, 20____ between
_____ ("Seller") and
_____ ("Purchaser").

The Seller agrees to sell and the Purchaser agrees to buy the following described real estate ("Property"):

Lot: _____ Subdivision: _____
Section: _____ County: _____
City: _____ State: _____
Lot Frontage (Approx.) _____ Lot Depth (Approx.) _____

OTHERWISE KNOWN AS:

Street Address: _____

THE TERMS OF THIS CONTRACT ARE AS FOLLOWS:

1. *Purchase Price:* For the purchase price, the Purchaser shall pay to the Seller the sum of \$ _____, to be paid as follows:

\$ _____ upon signing of this Contract. The balance of the purchase price shall be paid by a certified check, cashiers check, or check from a local savings & loan or bank at the time of closing and transfer of the title to the Property.

2. *Financing:* Time is of the essence. If financing cannot be secured by Purchaser and the closing transaction completely consummating the sale is not concluded on or before _____, 20____, this Contract may be declared null and void by the Seller. In such event, the money paid to Seller on the signing of this Contract shall be forfeited by Purchaser to Seller.

3. *Closing:* Closing on this transaction, transfer of title, and payment of the purchase price as above provided shall take place within _____ days of the execution of this Contract.

4. *Conveyance:* The Seller shall convey the Property to the Purchaser by General Warranty Deed, title to be clear, free and unencumbered, subject only to restrictions and easements of record, real estate taxes for the year of transfer of title (which taxes shall be prorated as of the date of closing), and subject to the following:

5. *Possession:* Possession of the above Property shall be surrendered by Seller to Purchaser with delivery of the deed.

6. *Fixtures:* The real estate conveyed shall include all fixtures such as screens, vinyl, lighting, heating and plumbing equipment and

BUT SHALL NOT INCLUDE any other personal property not specifically set forth above.

7. *Special Provisions and Contingencies:* _____

8. *Loss or Damage:* The risk of loss or damage to the Property and its improvements shall remain with Seller until delivery of the deed. Upon execution of this Contract, any loss or damage to the Property from fire, windstorm, other hazard or peril usually protected against by standard insurance or extended coverage clause, occurring prior to delivery of deed, shall not solely give Purchaser a right to rescind this Contract but Purchaser shall continue bound by this Contract notwithstanding any such loss or damage.

9. *Right to Cure:* If the Purchaser believes a construction defect exists in the residence, the Purchaser shall comply with the requirements of the conciliation, mediation and arbitration provisions of this Contract, the Limited Warranty, and the provisions of Kentucky's Notice and Opportunity to Repair Act ("NORA"), Kentucky Revised Statutes §§411.250 to 411.266, in the manner set forth below. Under NORA and common law, the Seller is responsible for its acts or omissions or the acts or omissions of its agents, employees or subcontractors, but is not liable for any damages caused by:

- a. Acts or omissions of a person other than the Seller or its agents, employees or subcontractors;
- b. Failure of a person other than the Seller or its agents, employees or subcontractors to take reasonable action to reduce the damages or maintain the residence;

- c. Normal wear, tear or deterioration;
- d. Normal shrinkage, swelling, expansion or settlement; and
- e. Any construction defect disclosed in writing to the Purchaser before purchase of the residence.

To comply with NORA and the dispute resolution provisions in this Contract, the Purchaser and the Seller must take the following steps:

- a. The Purchaser shall describe the claim in writing in reasonable detail delivered to the Seller and shall offer to attempt to resolve the claim by either conciliation (as required under Section 15(a)) or mediation (as required under Section 15(b)); and
- b. Not less than twenty-one (21) days after receipt of that written notice, the Seller shall send a written response to the Purchaser to arrange an inspection, offer to correct the defect or compensate the Purchaser for the defect, or state in writing an intent not to take any remedial action. If the Seller intends to take no remedial action, the Seller shall agree to either resolve the claim through the conciliation process required under Section 15(a) or the mediation process required under Section 15(b). If the Purchaser and the Seller cannot resolve the claim or dispute by conciliation or mediation, as the case may be, then the parties shall arbitrate the dispute or claim as required under Section 15(c).

NORA CONTAINS IMPORTANT REQUIREMENTS YOU, AS PURCHASER, MUST FOLLOW BEFORE YOU MAY FILE A LEGAL PROCEEDING FOR DEFECTIVE CONSTRUCTION AGAINST THE SELLER AS THE SELLER OF YOUR RESIDENCE. YOU MUST DELIVER TO THE SELLER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR SELLER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE SELLER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LEGAL PROCEEDING.

10. *Title Insurance:* Title insurance is designed to indemnify the policy-holder of the insurance for losses caused by defects in title to the Property that are in existence on the date the policy is issued. Title insurance is different from property insurance, which insures Purchaser's improvements from future events of fire or casualty. An owner's policy of title insurance at the time of closing is recommended, though not required. Purchaser is encouraged to inquire about the benefits of title insurance for his or her benefit from an attorney or title insurance agent. Purchaser should also be aware that a lender's policy, which may be required by the Purchaser's lender, does not provide the same level of protection as an owner's policy.

11. *Representations and Limited Warranty:* The Limited Warranty attached and incorporated by reference into this Contract contains the sole Warranty provided by the Seller to the Purchaser. The Limited Warranty shall have no force and effect until the Seller has received full payment of the purchase price stated above, and the Limited Warranty will take effect at the time of closing. In exchange for this Limited Warranty, Purchaser waives any right to incidental or consequential damages with respect to any claim under the Contract or the Limited Warranty.

This Contract and the Limited Warranty contains all of the representations, warranties and promises of the Seller. No agent or representative of the Seller is authorized to make any representation or promise on behalf of the Seller other than those contained in this Contract, and the Seller makes no other warranties, express or implied, including but not limited to the warranties of good workmanship and habitability. Any implied warranties, including an implied warranty of workmanlike construction, an implied warranty of habitability, or an implied warranty of fitness for a particular use, are expressly waived and disclaimed.

12. *Notice, Disclosure and Disclaimer:* The Seller's Notice, Warranty and Disclaimer regarding Mold is attached and incorporated into this Contract by reference.

13. *Radon Gas:* Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Kentucky. Additional information regarding radon and radon testing may be obtained from your county health department. The Seller will not be responsible for any damages caused by radon gas, or by some other agent, that may or may not be associated with defects in construction, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects.

14. *Soil Shrinkage/Expansion:* Seller is not responsible for and does not warrant against damage or defects caused by or resulting from rising or lowering of water tables, expansion or contraction of the soil or other soil conditions. Seller shall have no responsibility to Purchaser nor to any subsequent purchasers of the Property under any circumstances for any damage which occurs or may occur as a result of any shifting or movement of slabs or foundation movement of the Property caused in whole or in part by the quality or type of soil, or earth movement, soil or earth substance or expansion of any kind or by moisture of any kind, or from failure to maintain proper drainage adjacent to the Property or from construction techniques when damage is caused in whole or in part by any of the above described causes or sources, such damage to include, but not be limited to, property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, adverse health effects, or any other effects.

15. *Dispute Resolution:*

- a. *Conciliation:* In the event of any claims, disputes or other matters in question between the parties involving compliance by the Seller with Industry Standards as contained in the Industry Standards Manual published by The Home Builders Association of Northern Kentucky ("HBA"), the parties agree first to try in good faith to settle the dispute through the conciliation process established under the auspices of the HBA.
- b. *Mediation:* In the event of any claims, disputes or other matters in question between the parties with regard to this Contract not otherwise covered under Paragraph 15(a), the parties agree first to try in good faith to settle the dispute by mediation. Any mediation conducted pursuant to this Section shall be conducted, if reasonably possible, by the Better Business Bureau, Cincinnati, Ohio, in accordance with its rules. Demand for mediation shall be filed in writing with the other party to this Contract and with the Better Business Bureau. Any demand for mediation must be made within a reasonable time after the claim,

dispute or other matter in question has arisen. The Purchaser and the Seller agree to use best efforts to reach a mediated settlement and fully cooperate with all requests and suggestions of the Better Business Bureau.

- c. *Arbitration:* Any claim, dispute or other matter in question not resolved by mediation or conciliation shall be decided by arbitration in accordance with Chapter 417 of the Kentucky Revised Code. The arbitration process and hearing must be initiated through the Circuit Court of the County in which the residence is located ("Circuit Court"). Hearings on all mediation and arbitration matters must be held in Northern Kentucky. A demand for arbitration may be made concurrently with a demand for mediation and must be made within a reasonable time after the claim, dispute or other matter in question has arisen.
- d. *Discovery:* The parties shall allow and participate in discovery in accordance with the Kentucky Rules of Civil Procedure for a period of ninety (90) days after the filing of an answer or other responsive pleading. All issues regarding compliance with discovery requests shall be decided by the arbitration panel appointed under the auspices of the Circuit Court.
- e. *Arbitration Award:* The arbitration panel shall have the authority to award any remedy or relief, other than the awarding of punitive damages, that a court of the State of Kentucky could order or grant, including, without limitation, specific performance of any obligation created under this Contract, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process. The arbitration award must be in writing and must specify the factual and legal basis for the arbitration panel's decision. The award rendered by the arbitration panel shall be final upon approval by the Circuit Court, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.
- f. *Fees and Expenses:* The parties shall share equally the expense of the mediation fees, the arbitration fees and filing fees. Each party shall be responsible for all expenses of its experts and witnesses and the preparation and presentation of its proofs. The prevailing party shall be entitled to an award of reasonable attorney fees. In the event that both parties are determined to be at fault, awards for reasonable attorney fees may be equitably allocated by the arbitration panel. The arbitration panel may also determine that no attorney fees are due from either party.
- g. *Additional Parties:* The Seller shall have the right to include (i) the Purchaser as a party in any mediation or arbitration between the Seller and its subcontractors or suppliers and (ii) any subcontractors or suppliers as parties in any mediation or arbitration between the Seller and the Purchaser.

16. *Statute of Limitations:* Notwithstanding anything in this Contract to the contrary, with regard to all acts or failures to act by the parties to this Contract, any statute of limitations governing claims related to such acts or omissions or failures to act shall commence to run and any cause of action accrue upon the last of the following occurrences: (a) the Date of Substantial Completion of the residence located on the Property; (b) the issuance of a Certificate of Occupancy for the residence located on the Property; or (c) the date the Purchaser takes occupancy of the residence located on the Property.

17. *Survival of Terms:* The terms of the Limited Warranty, Seller's Notice, Warranty and Disclaimer, and Sections 9, 11 12, 13, 14 and 15 of this Contract shall not be merged with and shall survive the execution of the Seller's deed and the conveyance of the Property by the Seller to the Purchaser.

18. Upon execution of this Contract, the same shall become binding upon and inure to the benefit of Purchaser and Seller and their respective heirs, personal representatives, successors and assigns.

IN WITNESS, Seller and Purchaser sign this Contract.

Seller _____
Purchaser _____
Purchaser _____

This form approved by the Home Builders Association of Northern Kentucky, Inc. for use by its Registered Builder Members.

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NOTICE, DISCLOSURE AND DISCLAIMER

What Homeowners Should Know About Mold

Mold. Lately, mold has been in the news. Mold is a type of fungus. It occurs naturally in the environment, and it is necessary for the natural decomposition of plant and other organic material. It spreads by means of microscopic spores borne on the wind, and is found everywhere life can be supported. Residential home construction is not, and cannot be, designed to exclude mold spores. If the growing conditions are right, mold can grow in your home. Most homeowners are familiar with mold growth in the form of bread mold, and mold that may grow on the bathroom tile.

In order to grow, mold requires a food source. This might be supplied by items found in the home, such as fabric, carpet or even wallpaper, or by building materials, such as drywall, wood and insulation, to name a few. Also, mold growth requires a temperature climate. The best growth occurs at temperatures between 40° F and 100° F. Finally, mold growth requires moisture. Moisture is the only mold growth factor that can be controlled in a residential setting. By minimizing moisture, a homeowner can reduce or eliminate mold growth.

Moisture in the home can have many causes. Spills, leaks, overflows, condensation, and high humidity are common sources of home moisture. Good housekeeping and home maintenance practices are essential in the effort to prevent or eliminate mold growth. If moisture is allowed to remain on the growth medium, mold can develop within 24 to 48 hours.

Consequences of Mold. All mold is not necessarily harmful, but certain strains of mold have been shown to have adverse health effects in susceptible persons. The most common effects are allergic reactions, including skin irritation, watery eyes, runny nose, coughing, sneezing, congestion, sore throat and headache. Individuals with suppressed immune systems may risk infections. Some experts contend that mold causes serious symptoms and diseases which may even be life threatening. However, experts disagree about the level of mold exposure that may cause health problems, and about the exact nature and extent of the health problems that may be caused by mold. The Center for Disease Control states that a causal link between the presence of toxic mold and serious health conditions has not been proven.

What the Homeowner can do. The homeowner can take positive steps to reduce or eliminate the occurrence of mold growth in the home, and thereby minimize any possible adverse effects that may be caused by mold. These steps include the following:

1. Before bringing items into the home, check for signs of mold. Potted plants (roots and soil), furnishings or stored clothing and bedding material, as well as many other household goods, could already contain mold growth.
2. Regular vacuuming and cleaning will help reduce mold levels. Mild bleach solutions and most tile cleaners are effective in eliminating or preventing mold growth.
3. Keep the humidity in the home low. Vent clothes dryers to the outdoors. Ventilate kitchens and bathrooms by opening the windows, by using exhaust fans, or by running the air conditioning to remove excess moisture in the air, and to facilitate evaporation of water from wet surfaces.
4. Promptly clean up spills, condensation and other sources of moisture. Thoroughly dry any wet surfaces or material. Do not let water pool or stand in your home. Promptly replace any materials that cannot be thoroughly dried, such as drywall or insulation.
5. Inspect for leaks on a regular basis. Look for discolorations or wet spots. Repair any leaks promptly. Inspect condensation pans (refrigerators and air conditioners) for mold growth. Take notice of musty odors, and any visible signs of mold.
6. Should mold develop, thoroughly clean the affected area with a mild solution of bleach. First, test to see if the affected material or surface is color safe. Porous materials, such as fabric, upholstery or carpet should be discarded. Should the mold growth be severe, call on the services of a qualified professional cleaner.

DISCLAIMER AND WAIVER

Whether or not you as a homeowner experience mold growth depends largely on how you manage and maintain your home. Our responsibility as the homebuilder must be limited to things that we can control. As explained in our written Limited Warranty, provided by separate instrument, we will repair or replace defects in our construction (defects defined as a failure to comply with reasonable standards of residential construction) for a period of one (1) year. We, the homebuilder, will not be responsible for any damages caused by mold, or by some other agent, that may be associated with defects in our construction, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects. Any implied warranties, including an implied warranty of workmanlike construction, an implied warranty of habitability, or an implied warranty of fitness for a particular use, are waived and disclaimed.

This notice, disclosure and disclaimer agreement is appended to and made a part of the Purchase Contract. The consideration for this agreement shall be the same consideration as stated in the Purchase Contract. Should any term or provision of this agreement be ruled invalid or unenforceable by a court of competent jurisdiction, the remainder of this agreement shall nonetheless stand in full force and effect.

I acknowledge receipt of the notice, disclosure and disclaimer agreement. I have carefully read and reviewed its terms, and I agree to its provisions.

PURCHASER

DATE

PURCHASER

DATE

SELLER

DATE

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