

REAL ESTATE PURCHASE AND SALES CONTRACTS
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The contract for purchase and sale of real estate is often the largest and most important contract entered into by consumers. As a consequence, much time and attention is devoted to the creation of a comprehensive and balanced contract by the North Carolina Bar Association and the North Carolina Association of REALTORS®. Through a joint committee of these two organizations, a standard form residential sales contract has been disseminated for general use in residential real estate transactions in North Carolina. It is available to members of the Bar Association and the NC REALTORS®, and can be purchased by consumers from various printing companies around the state. That form is known as the *Offer to Purchase and Contract (Standard Form 2-T)*.

The *Offer to Purchase and Contract* is regularly revised by the Bar Association and North Carolina Association of REALTORS® to meet the changing needs of consumers, real estate attorneys, and real estate brokers. Numerous addenda have been created for use in conjunction with the standard form to cover special circumstances or consumer needs. Revisions to the contract and its addenda are typically rolled out effective July 1.

This presentation will focus on the current form (“Revised 7/2007”) and the most commonly used addenda.

Statutory Background

The *Statute of Frauds* requires contracts for the sale of land, or any interest in land, to be in writing. See N.C. Gen. Stat. § 22-2 (“All contracts to sell or convey any lands, tenements or hereditaments, or any interest in or concerning them...shall be void unless said contract, or some memorandum or note thereof, be put in writing and signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized....”). Pursuant to the Statute of Frauds, oral agreements between a buyer and seller are unenforceable as a matter of law. Thus, even if a buyer makes a written offer, and a seller orally agrees to its terms, that seller’s oral agreement cannot be enforced unless it has been reduced to writing and signed by him or her, or by someone authorized to sign for him/her. It is therefore critical to have a written contract between the parties delineating the terms of their agreement.

Who can draft an agreement? The drafting of a sales contract for others is generally construed as an act for which a law license is required. See N.C. Gen. Stat. § 84-2.1. Similarly, the Real Estate License Law prohibits the unauthorized practice of law by real estate brokers, and specifically, drafting legal instruments. N.C. Gen. Stat. § 93A-6(a)(12); 21 N.C. Admin. Code 58A .0111. However, real estate brokers may complete pre-printed form contracts, when an attorney has drafted the form. Likewise, a party to an agreement may draft it, or a provision thereof, without “practicing law.”

Choosing the Appropriate Form

There are two available residential contract forms approved by the Bar and Realtor associations: the ***Offer to Purchase and Contract*** (Standard form 2-T) described above, and a similar ***Offer to Purchase and Contract – Vacant Lot/Land*** (Standard form 12-T). Each comes with a set of ***Guidelines*** for completing the form (Standard forms 2-G and 12-G).

The regular *Offer to Purchase and Contract* (Form 2-T) is designed for use primarily in connection with the sale of existing single-family residences, but not as an option, lease-option, lease-purchase or installment land contract. An attorney should draft these agreements. The vacant lot / land form is by its own terms:

...intended for unimproved real property that Buyer will purchase only for personal use and will not subdivide. It should not be used to sell subdivided property that has not been platted, properly approved and recorded with the register of deeds as of the date of the contract. If Seller is Buyer's builder and the sale involves the construction of a new single family dwelling prior to closing, use the standard Offer to Purchase and Contract (Form 2-T) with the New Construction Addendum (Form 2A3-T).

Numerous **addenda** are also available for use with one or both forms, including:

- *Back-up Contract Addendum, Form 2A1-T* (for use when the property is under contract to another buyer, and a second buyer is given a contractual right to purchase if the first buyer cannot complete the transaction)
- *Contingent Sale Addenda, Form 2A2-T* (for use when the buyer must sell another property before becoming obligated to purchase)
- *New Construction Addendum, Form 2A3-T* (for use when the seller/builder owns the lot and will complete construction of a single-family house/improvements on the property)
- *FHA/VA Financing Addendum, Form 2A4-T*
- *Seller Financing Addendum, Form 2A5-T*
- *Loan Assumption Addendum, Form 2A-6-T*
- *Buyer Possession Before Closing Agreement, Form 2A7-T*
- *Seller Possession After Closing Agreement, Form 2A8-T*
- *Lead-Based Paint or Lead Based Paint-Hazard Addendum, Form 2A9-T* (for use when a residential dwelling was built on the property prior to 1978)
- *Additional Provisions Addendum, Form 2A11-T* (containing provisions relating to expiration of the offer; sewer system; closing of an existing contract; and rental income/investment property)
- *Owners' Association Disclosure and Addendum, Form 2A-12* (for use when the property is covered by a homeowner association)

- *Vacation Rental Addendum, Form 2A-13* (for use when the property is subject to vacation rental agreements covered by the NC Vacation Rental Act, N.C. Gen. Stat. §§ 42A-1 to -36).

The Bar and Realtor Associations also jointly promulgate a **commercial contract** form, the *Agreement for Purchase and Sale of Real Property (Form 580-T)*. Because commercial buyers and sellers often have their own contracts and related documents, the use of the standard commercial form is less pervasive than the residential form, but still common.

General Instructions for Completing the Form

General instructions for completing the standard form *Offer to Purchase and Contract* are set forth on Standard Form 2G, *Guidelines For Completing The Offer To Purchase And Contract*. The “**General Instructions**” from the “Guidelines” provide practical advice to anyone filling in the form:

1. Type this form if possible; otherwise print or write legibly in ink.
2. Fill in all blank spaces. If any space is not used, enter “N/A” or “None” as appropriate.
3. Be precise. Avoid the use of abbreviations, acronyms, jargon, and other terminology that may not be clearly understood.
4. Every change, addition or deletion to an offer or contract must be initialed and should be dated by both Buyer and Seller.
5. If numerous changes are made or if the same item (such as the purchase price) is changed more than once, complete a new contract form to avoid possible confusion or disputes between the parties. If, *after the parties have entered into a valid contract*, you prepare a new form for the parties to sign because the existing contract contains so many changes that it is difficult to read, then do not discard the existing contract. Keep it with the new form.
6. Review with the parties all contract provisions. Advise the parties to consult their attorney if they have any questions about the legal consequences of the contract or any particular provision.

The *Guidelines* go on to provide specific instructions for completing the form, including how to properly complete provisions relating to party names, property description, fixtures, personal property, purchase price, loan conditions, flood issues, other conditions, special assessments, pro-rations and adjustments, expenses, home warranty, residential property disclosure pursuant to G.S. 47E, property inspections, closing, possession, notice and execution, on-site examination, signature lines, earnest money acknowledgment, and agent identity and confirmation of agency relationships.

REVIEW OF SELECTED PROVISIONS IN STANDARD FORM 2-T

As can be seen from the foregoing list of topics addressed in the *Guidelines*, a well-drafted contract form must address a variety of issues related to a typical real estate sales transaction. Below is a discussion on completing selected provisions in the standard form, as well as various contingencies and addenda that may be necessary in certain specialized situations.

Names of Buyer(s) and Seller(s)

An essential element in any contract is the proper identification of the buyers and sellers. The *Offer to Purchase and Contract* should include the name of each buyer and seller and indicate his or her marital status. If the buyers or sellers are a husband and wife, the names of both should be shown (for example, “John A. Doe and Mary Doe, husband and wife,” not “Mr. and Mrs. John A. Doe”).

Real Property Description

The real estate contract must include a description of the **real property** that is sufficiently definite and certain to make the property identifiable from the written legal description alone. The directions in the *Guidelines* on this topic provide:

1. **REAL PROPERTY:** Fill in City, County and Street Address. If any are not applicable, indicate by “None.” CAUTION: A street address alone is generally not an adequate legal description.

Legal Description: Even if the Property has a street address, include a legal description sufficient to identify and distinguish the Property from all other property. An adequate legal description includes any of the following:

- (1) **Reference to a recorded plat (map):** Include the lot #, the block #, name of subdivision, and recording reference for the plat as recorded in the Register of Deeds office and fill in the county (or counties). CAUTION: A reference to a tax map alone is generally not an adequate description.
- (2) **Reference to a recorded deed:** Determine whether the property is all or a portion of the land described in the deed. Check the applicable box. Insert the book # and page # of the Deed Book as recorded in the Register of Deeds office and fill in the county (or counties).
- (3) **Metes and bounds description:** Do not attempt to complete a metes and bounds exhibit. An attorney should be consulted prior to completing the Offer to Purchase and Contract if a metes and bounds description is necessary or if any of the above legal descriptions is not available.

A vague or incomplete description may result in the contract being unenforceable, as in the example below.

Example: Seller entered into a purchase contract with Buyer in which the property was described as: “Located in ... City of Morganton, NC, and more particularly described as follows: Street Address: Industrial Boulevard. Legal Description: Book 235, page 126.” Actually, Seller owned only a portion of the land described in the plat book referred to in the description. Buyer refused to complete the transaction. The North Carolina Court of Appeals held that Buyer did not have to perform: the contract was unenforceable because the property description was patently ambiguous. *Bennett v. Fuller*, 67 N.C. App. 466, 313 S.E.2d 597 (1984).

Although not mandatory, *a formal, legal description as required in deeds or deeds of trust is highly desirable and should be included if available.* The legal description need not be a full metes and bounds description. Reference to a recorded plat or map is sufficient where the referenced description is identical to the real property being conveyed.

Example: A parcel is described in a sales contract as “Lot 42, Block 12, Green Hollow Subdivision, Book 2744, Page 190, Wake County Register of Deeds.” This is an adequate legal description.

Reference to the book and page number of the seller's recorded deed to the property or the parcel identifier number (PIN) is also legally sufficient **if** the seller is selling all of the property described in that deed. Because tax maps are historically less accurate as a source of property descriptions, *reference to a tax map alone may not provide an accurate legal description.*

Personal Property Description

The *Offer to Purchase and Contract* contemplates that items of personal property might be included in the sale. The *Guidelines* read as follows:

- 3. PERSONAL PROPERTY:** List all items of personal property that are to be included in the sale. (EXAMPLES: Curtains, draperies, etc.; free standing appliances such as a refrigerator or range; fireplace tools; window air conditioner; etc.) It is advisable to list any item included in the sale about which some dispute may arise. *NOTE: Care should be taken to ascertain that any personal property **included** in the sale is owned by the Seller and is not merely rented or leased.*

A common area of misunderstanding in residential transactions occurs when the marketing materials or listing information about a property identify certain items of personality that are available with the real estate, but those items are not listed in the

contract. Their omission simply means that they are not part of the agreement and will not convey. In these scenarios, it is usually the buyer who is disappointed not to be receiving an appliance or other item of personal property he expected. However, if that item is in fact personal property, and not a fixture, its omission from the contract means it is not covered. Of course, the easy solution is simply to list in the contract all items of personal property to be sold.

Because it is common practice for owners to sell ocean, lake or mountain vacation homes fully furnished, an adequate description of the personal property included in the sale can avoid misunderstandings and possible litigation after the sale. The North Carolina Court of Appeals has recently held that the buyer can obtain specific performance of a contract for real property that includes personal property. *Curran v. Barefoot*, __ N.C. App. __, 645 S.E.2d 187 (2007). In that case, the buyers were not ready to close on the scheduled closing date, but were ready within a “reasonable time” thereafter. The contract included not only a lake house, but also a variety of personal property including furniture, linens, window treatments, and “all watercraft and accessories.” According to the court,

As a general rule, the remedy for a breach of contract for the sale of personal property is an action at law, where damages are awarded." *Bell v. Concrete Products, Inc.*, 263 N.C. 389, 390, 139 S.E.2d 629, 630 (1965). However, our Supreme Court has stated "there are recognized exceptions." *Trust Co. v. Webb*, 206 N.C. 247, 250, 173 S.E. 598, 600 (1934). "Jurisdiction to enforce specific performance rests, not on the distinction between real and personal property, but on the ground that damages at law will not afford a complete remedy." *Id.* (citing *Paddock v. Davenport*, 107 N.C. 710, 12 S.E. 464 (1890); *Tobacco Association v. Battle*, 187 N.C. 260, 121 S.E. 629 (1924)).

Here, the plain language of the contract, defendant's admissions, and other competent evidence in the record clearly proves defendant intended to convey to plaintiffs a furnished lake house with three watercraft for \$550,000.00. The trial court's judgment ordering specific performance of both the real and personal property provides "a complete remedy" to plaintiffs. *Id.* The trial court did not err as a matter of law by awarding plaintiffs specific performance of a sales contract for the purchase of the real property that included incidental personal property, as a consideration for and part of the conveyance.

Id. at ___, 645 S.E.2d at 193.

In contrast to personal property, which does not convey unless specified in the contract, any **fixtures** will automatically convey unless excluded. Thus, the seller should be sure to exclude any fixture he or she does **not** want to sell. As noted in the *Guidelines*, “It is not necessary to cross out items that are listed in the fixtures clause but are not present on the Property.” As further noted, “Care should be taken to ascertain that any fixtures **included** in the sale are owned by the Seller and are not

merely rented or leased. (EXAMPLE: Water treatment/conditioner equipment; gas tank.)
It is advisable to list any excluded item about which a dispute may arise.”

Purchase Price and Payment Terms; Earnest Money

The offer to purchase and contract must clearly state the amount to be paid for the real estate, the method of payment, and the time of payment. The contract contemplates a variety of possible methods of payment, including lender financing, the buyer’s assumption of the seller’s existing mortgage, or the seller taking back a purchase money mortgage. If no terms are included with regard to method of payment, the contract is presumed to be a “cash” sale. As for the time of payment, this normally will be “at closing” unless the contract specifically states otherwise.

Earnest Money

Earnest money is an amount of money deposited by the prospective buyer with the broker or other escrow agent at the time the offer is made to evidence the buyer’s good faith. While a valid contract may be formed without any earnest money being paid, sellers and their agents normally seek to obtain earnest money when negotiating the sale of property as a demonstration of the seriousness of the buyer’s offer along with his or her financial wherewithal to complete the transaction. Note that in certain circumstances where the buyer defaults, the earnest money serves as liquidated damages. [See *Offer to Purchase and Contract* paragraph 5(c).] Thus, the amount of the earnest money deposit should be a reasonable and sufficient assessment of the seller’s possible loss in the event the buyer cannot consummate the contract.

Earnest money is often held “in trust” by an escrow agent while the transaction is pending. Typically, the escrow agent is one of the brokers in the transaction, but it may be the closing attorney or any other person on whom the parties agree. The escrow agent acts for both the seller and buyer and has fiduciary obligations to both parties with regard to the earnest money. The offer to purchase and contract should clearly state the amount of earnest money and explain the escrow agent’s role with regard to its handling.

Broker Handling Earnest Money

If a broker acts as escrow agent, the broker must deposit the buyer’s earnest money deposit into a *trust or escrow account in an insured North Carolina bank or savings and loan association*. N.C. Gen. Stat. § 93A-6(a)(12). Brokers must deposit cash within three banking days of receipt. 21 NCAC 58A .0107(a). On the other hand, the broker / escrow agent may retain earnest money, checks or negotiable instruments (not cash), pending contract formation. Once a contract is formed, the broker (or firm) named as escrow agent must deposit the earnest money check or instrument into a trust account within three (3) banking days of contract formation.

Disposition of Earnest Money

The *Offer to Purchase and Contract*, paragraph 4(a), contains various provisions regarding the ultimate disposition of the earnest money. According to the contract:

1. *If the seller does not accept the buyer's offer*, the broker must refund all the earnest money to the buyer.
2. *If a contract is formed, but some condition of the contract is not satisfied* (such as the buyer's ability to obtain financing on the terms set forth in Paragraph 5), *or if the seller breaches the contract*, the broker must refund all the earnest money to the buyer.
3. *If the buyer breaches the contract*, the buyer forfeits the earnest money and the broker must pay the earnest money to the seller.
4. *When the sale closes*, the broker is to apply the earnest money toward the sales price, crediting the buyer with the appropriate amount. When an attorney closes the sale, as is the case in most North Carolina transactions, the broker should disburse the earnest money from his or her trust account to the closing attorney, who will then oversee the disbursement of all funds connected with the sale and prepare the closing statement. This transfer of earnest money to the closing attorney may be accomplished "not more than ten days prior to the anticipated settlement date" pursuant to Commission Rule 21 NCAC 58A.0107(h).

Disputed Deposits

It is the broker's responsibility to properly disburse any earnest money s/he holds. However, the broker has a paramount responsibility under the Real Estate License Law and Real Estate Commission rules relating to trust funds. Commission Rule 21 NCAC **58A.0107(g)** states in part:

In the event of a dispute between the seller and buyer or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a licensee, the licensee shall retain said deposit in a trust or escrow account until the licensee has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction....

Thus, where the seller and buyer disagree as to who should receive the earnest money, the broker is prohibited from making an independent decision in the matter, even if it is apparent to the broker who should receive the earnest money under the clear and unambiguous language of the contract. Instead, the broker must hold the earnest money deposit in his or her trust account until the parties either reach a written agreement concerning disbursement or someone obtains a court order stating who is to receive the earnest money deposit.

The Real Estate Commission's mandate that disputed earnest money deposits be held pending agreement of the parties or issuance of a court order, only applies to real estate licensees. Non-broker escrow agents, such as attorneys, are not subject to the Commission's rules. However, the current *Offer to Purchase* attempts to obtain the same result for disputed funds from non-broker escrow agents by stating in Paragraph 4(a) that any "... Escrow Agent, if not a Broker, hereby agrees... to retain said earnest money in the Escrow Agent's trust or escrow account ..." pending agreement of the parties or issuance of a court order. Since the escrow agents are not a party to the contract, whether

an agreement between the buyer and seller within that contract will obligate the escrow agent to handle the money in a particular way remains to be seen.

The Commission's rule requiring brokers to retain disputed deposits in trust only applies when there is a dispute between the **parties**. It does not apply to disputes between the **seller and broker** over forfeited earnest money. Thus, even though most standard listing contracts provide that the seller and broker shall split any forfeited earnest money, if a seller refuses to honor such a listing contract provision, the broker may *not* hold the earnest money in the trust account against the wishes of the seller. Rather, the broker must disburse all the earnest money to the seller and then sue the seller for damages based on the seller's breach of the listing contract.

Alternate Procedures for Broker Escrow Agents Holding Disputed Escrow Funds

Commission Rule 58A .0107(g) recognizes that with the passage of time, a party may abandon any claim to disputed escrow funds. If the funds are abandoned, the broker "...may disburse the money to the other claiming parties according to their written agreement [i.e., the contract] provided that the licensee first makes a reasonable effort to notify the party who has apparently abandoned his or her claim and provides that party with an opportunity to renew his or her claim to the disputed funds." A broker following this procedure must be able to document that he or she notified the parties of his/her intent to disburse the monies and that the abandoning party failed to renew his/her objection within the time provided in the broker's notice.

If both parties persist in their dispute over the funds, but neither initiates legal action to determine entitlement to the funds, the funds might remain in the escrow agent's trust account for years. To resolve this dilemma, N.C. Gen. Stat. § 93A-12 was enacted effective October 1, 2005 to allow clerks of court to conduct special proceedings to determine how the disputed funds should be disbursed. Brokers may provide written notice to all parties of the broker's intent to turn the disputed funds over to the Clerk of Court in the county where the property is located, and give the parties ninety days within which to come to an agreement or file suit. If there still is no resolution after the ninety-day period, and neither party has filed a lawsuit over the funds, the broker may turn the disputed fund over to the Clerk

As both of the foregoing procedures arise from Commission rules and the Real Estate License Law, they are not available to non-broker escrow agents.

Loan Condition

In most residential sales, the buyer must obtain financing for a portion of the purchase price. Under the *Offer to Purchase and Contract*, paragraph 5(a), the contract describes very specific loan terms that the buyer must be able to obtain in order to be bound to the agreement. These include defining the type of loan (e.g. FHA, VA, or conventional), the type of rate (fixed vs. adjustable), the interest rate itself, the principal amount, and the maximum number of points the buyer will be required to pay. If the buyer makes a

good faith effort to obtain the stated financing but is unsuccessful, then the buyer will be relieved of the any obligations under the contract. On the other hand, if the buyer makes little or no effort to obtain satisfactory financing or simply has a change of mind and tries to use the financing condition as a basis for backing out of the transaction, then the buyer will continue to be obligated under the contract and may forfeit the earnest money if the purchase is not completed.

If a contract form is used that does not contain a pre-drafted buyer financing contingency provision, the drafter should be careful to include all details. It is not sufficient to simply say something to the effect that, “The buyer must be able to obtain a \$60,000 loan.” Such a general provision does not protect the buyer's interest since it may force the buyer to either accept a loan with undesirable terms (such as a high interest rate or discount points) or face the possibility of forfeiting the earnest money and being sued for breach of contract. Similarly, if there is *no* provision concerning financing, then the buyer cannot avoid contract performance based on financing terms at all. It is also bad practice to use vague terms like “prevailing rate” or “market rate” to define the maximum interest rate in such a contingency provision, as their meaning is subjective. Likewise, a provision in lieu of Paragraph 5(a) that reads “The buyer must be able to obtain satisfactory financing” or the like is also unacceptable, as it renders the contract illusory inasmuch as the term “satisfactory” is subjective and would enable the buyer to back out of the transaction simply by claiming dissatisfaction with any proposed loan. Obviously, such a provision does not protect the seller's interest.

For an **assumption of the seller's existing loan**, the parties should utilize the “Loan Assumption Addendum,” Standard Form 2A6-T. This form should be completed, properly signed and dated, attached to Standard Form 2-T and listed at Paragraph 20, “Other Provisions and Conditions.” The form describes the seller’s loan, and provides that the buyer’s purchase “is contingent upon Buyer being able to assume the unpaid balance,” along with other necessary details. Proper completion and use of this addendum will protect both the seller and buyer.

New Subparagraphs 5(b) and (c) in the standard *Offer to Purchase* expand on the financing conditions by further defining timeframes within which the buyer must apply for a loan and obtain approval, and specifying the contract termination options for both parties in the event the buyer does not obtain the loan. The revisions attempt to provide a more practical approach for the seller to monitor the buyer’s progress in obtaining a loan and afford a termination procedure for each party in certain situations.

The timetables established in Paragraph 5(b) and (c) reference the “Effective Date” as the date from which certain deadlines begin to run relating to loan application and the termination process when the loan application fails. Paragraph 27 defines the “Effective Date” as the date the contract is “signed by both Buyer and Seller and such signing is communicated to the offering party.....” (To form a binding contract, not only must both parties’ signatures appear on the document, as well as their initials and dates as to any changes, but the **assent** of the party to whom the last offer/counteroffer was made, whether seller or buyer, **must be communicated** to the party who made the last

offer/counteroffer **before** the offer becomes a contract. The method of communicating acceptance may be specified in the offer.)

Subparagraph 5(b) of the *Offer to Purchase* specifies the buyer's obligations to obtain a loan. This new provision calls for the buyer to apply for a loan, authorize an appraisal **and pay any necessary fees** within a stated number of days from the "Effective Date," namely, contract formation, and to promptly furnish proof from the lender to the seller of loan application. If the buyer does not voluntarily provide verification of loan application, the seller may request confirmation of loan application **in writing**. The contract's requirement that the buyer **apply for a loan** within a stated time period and provide the seller proof of **loan application** replaces the former approach of requiring the buyer to obtain a "loan commitment letter" by a specified date. The new approach was adopted because too often loan commitment letters proved unreliable or could not be obtained from the lender. The intent of the paragraph is that the buyer not only completes the loan paperwork, but also pays any necessary fees to enable the lender to begin processing the loan application.

Under the contract, if Buyer fails to provide written confirmation of loan application from the lender to the seller within five days of seller's written request, then Seller may terminate the contract by notifying Buyer in writing of Seller's election, so long as Seller has not received other written evidence of the buyer's loan application (such as confirmation directly from the lender) or Buyer has not waived the loan conditions. If Seller elects to terminate, Seller receives the earnest money deposit "... as liquidated damages and as Seller's **sole and exclusive remedy** for Buyer's failure to close..." except for any claim Seller may have for property damage under new Paragraph 17, despite his/her diligent, good faith efforts.

New **Subparagraph 5(c)** attempts to provide a process whereby Buyer may terminate the contract by providing written notice to Seller that Buyer could not obtain a loan according to the conditions stated in the contract. If Buyer has used good faith efforts, but cannot qualify for a loan on the stated terms, then the *Buyer has a specified number of days after contract acceptance within which to notify Seller in writing that Buyer does not qualify for the loan and is terminating the contract*. Buyer must have fully complied with his or her obligation under Subparagraph 5(b) to pursue loan qualification and approval diligently and in good faith, and to provide all requested documentation to the lender. If the Buyer has not complied with these obligations, then the Seller may be able to successfully challenge Buyer's right to receive his/her earnest money deposit, and his/her failure to perform.

The buyer selects the number of days from the effective date within which the buyer must obtain a loan. *Time is of the essence* as to the time within which the buyer may terminate the contract due to inability to qualify for a loan. *If Buyer does not allow adequate time for loan processing and underwriting, and the deadline passes without action by the buyer, then the buyer loses the right to terminate the contract and avoid performance of the contract based on inability to qualify for a loan*. Buyer has effectively waived the financing conditions if Buyer fails to timely notify Seller of contract termination; Buyer

will be held in breach of contract if s/he subsequently cannot close because s/he cannot obtain financing. Seller is then entitled to receive the earnest money deposit as the Seller's sole and exclusive remedy for Buyer's failure to close.

The primary factual issues when a Buyer wants to terminate the contract under the loan contingency provision are: 1) whether the Buyer used diligent good faith efforts to obtain the loan and 2) whether the Buyer timely gave written notice of termination to Seller. If the answer to both of the foregoing two issues is "Yes," then the earnest money deposit should be refunded to the Buyer. If the answer to either of the foregoing is "No," then the Buyer may not terminate the contract and obtain a refund of the earnest money. The buyer ultimately may not close due to inability to obtain financing on the stated terms, but s/he will forfeit his/her earnest money deposit. Acting "diligently and in good faith" is determined on a case-by-case analysis based on the facts of each situation using an *Ordinary, Reasonable, Prudent Person* standard.

Flood Hazard Disclosure/Condition

The July 1, 2007 version of the *Offer to Purchase and Contract* for the first time incorporates into the body of the contract a flood hazard disclosure and condition which previously was found on the *Additional Provisions Addendum*. Paragraph 6 provides two alternatives: that to the best of the seller's knowledge, the property either *is* or *is not* in a "designated Special Flood Hazard Area." If the property *is* in a designated flood hazard area, then the Buyer is on notice that flood hazard insurance likely will be required, and the buyer cannot withdraw from the contract on that basis. If the second box is checked, indicating that the property is *not* in a special flood hazard area, and it is discovered prior to closing either that any permanent improvement on the property *is* located within a special flood hazard area **or** that the buyer's lender requires the buyer to obtain flood hazard insurance as a condition of the loan, then the buyer has the right to terminate the contract and have his/her earnest money deposit refunded.

Other Conditions

The contract sets out a number of conditions of Buyer's performance in Paragraph 7. The conditions require that:

- (a) The property can be used for a particular purpose, typically, "residential."
- (b) The property not have suffered significant damage between contract and closing;
- (c) The property appraise at or above the purchase price;
- (d) Liens, deeds of trust, and the like are paid off by closing; and
- (e) Title is marketable and insurable.

The **appraisal condition** is new to the contract. It reads,

- (e) The property must appraise at a value equal to or exceeding the purchase price or, at the option of Buyer, this contract may be terminated and all earnest

monies shall be refunded to Buyer, even if the Loan Condition has been waived as provided in paragraph 5.

If this contract is NOT subject to a financing contingency requiring an appraisal, Buyer shall arrange to have the appraisal completed on or before _____.

This provision is intended to allow a buyer who cannot obtain the necessary financing because the property appraises at less than the purchase price to terminate the contract and receive a refund of his/her earnest money deposit. However, the provision is *not* limited just to inability to obtain financing. Rather, it applies *any time* a property fails to appraise for the purchase price, even if the Buyer qualifies for a loan on the terms stated in Paragraph 5, or, alternatively, has waived the right to rely on the financing conditions set forth in Paragraph 5. There is no deadline by which the Buyer must notify the Seller of Buyer's election to terminate the contract based upon a low appraisal, regardless of whether there is a lender. Thus, the contract would likely require notice to be given within a "reasonable time."

Even when it is clear that the property's appraised value is less than the purchase price, there may be instances where a seller disputes the return of the earnest money deposit to the buyer. As a matter of practice, the broker holding the earnest money deposit should notify the seller (preferably in writing) of the broker's intent to refund the monies to the buyer pursuant to the contract terms. If the seller objects to the release of the earnest money deposit, then by the terms of the contract, and the rules of the Commission regulation real estate brokers, the broker (and perhaps *any* escrow agent), must hold the earnest money deposit in his/her trust account pending written agreement of the parties or an order from a court of competent jurisdiction. This is required even when it appears the dispute is without merit. (Brokers also may avail themselves of the special proceeding before the Clerk of Court, but non-broker escrow agents will not have that option. N.C. Gen. Stat. § 93A-12.)

Paragraph 7(e) of the *Offer to Purchase and Contract* requires a conveyance in the form of a general warranty deed free and clear of all encumbrances such as deeds of trust, judgment liens, mechanics' liens, and delinquent taxes. If the property is being sold subject to one or more encumbrances, then those encumbrances should be specified. Frequently there are public utility easements or rights-of-way across residential property, which, while still encumbrances, are excluded from the condition. Likewise, the contract automatically excludes "unviolated restrictive covenants that do not materially affect the value of the Property."

Unless waived in writing, Paragraph 7 conditions and/or warranties survive until closing (and beyond closing in the case of 7(d) concerning cancellation of all deeds of trust, liens and other charges against the property). These Paragraph 7 conditions and warranties continue even after option termination dates have passed, loan contingencies have expired, and repair issues have been negotiated.

Closing Expenses and Pro-rations

Any well drafted real estate sales contract should specify the method of allocating all closing expenses and items prorated at the closing, including real estate taxes, special assessments, personal property taxes, homeowners' association dues (if any), rents (if any), and interest on an assumed mortgage (if applicable) . Paragraph 9 addresses some of these issues as follows:

9. PRORATIONS AND ADJUSTMENTS. Unless otherwise provided, the following items shall be prorated and either adjusted between the parties or paid at Closing: (a) Ad valorem taxes on real property shall be prorated on a calendar year basis through the date of Closing; (b) Ad valorem taxes on personal property for the entire year shall be paid by the Seller unless the personal property is conveyed to the Buyer, in which case, the personal property taxes shall be prorated on a calendar year basis through the date of Closing; (c) All late listing penalties, if any, shall be paid by Seller; (d) Rents, if any, for the Property shall be prorated through the date of Closing; (e) Owners' association dues and other like charges shall be prorated through the date of Closing. Seller represents that the regular owners' association dues, if any, are \$_____ per _____. Unless otherwise agreed, Buyer shall pay any fees required for obtaining account payment information on owners' association dues or assessments for payment or proration and any charge made by the owners' association in connection with the disposition of the Property to Buyer, including any transfer and/or document fee imposed by the owners' association.

Although the foregoing language reflects the customary practice in North Carolina for allocating prorations of taxes, rents and association fees in sales of existing homes, note that the language of the form begins with the words "Unless otherwise provided ...". Therefore, such matters are *fully negotiable* between seller and buyer. In the event the parties negotiate a proration or allocation of cost different from the standard form, it is important that the parties clearly express the negotiated change and modify the applicable language in Paragraph 9 of Standard Form 2-T.

The customary prorations and allocations of costs set forth in Standard Form 2-T can be summarized as follows:

- ! *Real Estate Taxes.* Ad valorem taxes for the current year on real property are prorated on a calendar year basis through the date of the closing. [Paragraph 9(a)]
- ! *Personal Property Taxes.* Ad valorem taxes on the seller's personal property for the entire year are paid by the seller and are *not* prorated, *unless* the personal property is conveyed to the buyer, in which event taxes on that personal property also are prorated on a calendar year basis through the date of closing. [Paragraph 9(b)]
- ! *Late Listing Penalties.* Late tax listing penalties, if any, are paid by the seller. [Paragraph 9(c)]

- ! *Owners' Association Dues.* Homeowners' association dues and charges are prorated through the date of closing. [Paragraph 9(e).] Note, however, that unless otherwise agreed, the buyer is responsible for paying any fees charged by the association to obtain account payment information or to transfer the account into the buyer's name following purchase.
- ! *Rents.* Rents from third parties, if any, are prorated through the date of closing. [Paragraph 9 (d).]
- ! *Loan Assumption (Transfer) Fee and Interest.* Standard Form 2A6-T, the *Loan Assumption Addendum*, should be used whenever the buyer is assuming the seller's existing mortgage. It addresses several important issues, including the principal balance, the amount of the current monthly loan payments, the maximum assumption and discount points which the buyer is willing to pay, and proration as of the date of closing of any unpaid interest or prepaid interest, as applicable.
- ! *Fuel.* The buyer agrees to purchase from the seller any fuel in a tank on the property at the prevailing rate with the cost of measurement, if any, paid by the seller. [Paragraph 12.]
- ! *Other Expenses.* Paragraph 10 of Standard Form 2-T deals with "Expenses" and reads: "Unless otherwise agreed, Buyer shall be responsible for all costs with respect to any loan obtained by Buyer, appraisal, title search, title insurance, recording the deed and for preparation and recording of all instruments required to secure the balance of the purchase price unpaid at Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this agreement, and for excise tax (revenue stamps) required by law. Seller shall pay at closing \$_____ toward any of Buyer's expenses associated with the purchase of the property" Thus, buyer is to pay for all charges associated with obtaining a new loan to finance the purchase (such as loan origination fee, discount points, appraisal fee, and credit report fee), as well as the other costs enumerated in the paragraph, but the Seller may agree to contribute a stated sum towards these costs. The seller should assume that any sum stated will be paid to the buyer, as the provision is comprehensive and can arguably be applied to a wide variety of buyer costs.

Special Assessments

Special assessments against real property imposed either by owner associations or governmental entities are addressed in Paragraph 8 of the current contract form. The seller *warrants* that there are no pending or confirmed special assessments of either government or private associations on the property, except those that are specifically listed. The preprinted paragraph requires the seller to pay any assessments "confirmed" through the time of closing and the buyer takes title subject to and must pay any

“pending” assessments which *were disclosed by Seller*. This language underscores the *warranty* the Seller is giving to the Buyer, presumably making the seller liable to the buyer for the amount of any assessments which were pending at the time of sale, but which the seller failed to disclose in Paragraph 8 of Standard Form 2-T. As ever, the parties may deviate from the preprinted language and allocate payment of any assessment as they agree. The paragraph also attempts to define “confirmed” versus “pending” assessments. *The contract definitions of “pending” and “confirmed” may differ from that of governmental entities* and that the assessment, once finally “confirmed,” typically becomes a lien on the property. For the seller to convey “marketable and insurable title,” it must be paid, unless excepted in Paragraph 8 pursuant to other agreement of the parties.

Condition of the Property; Inspections and Repairs

In a residential real estate transaction, a *Residential Property Disclosure Statement* addressing the condition of the property generally is required. In addition, most modern, residential contract forms, including the *Offer to Purchase and Contract*, contain important language relating to the condition of the property, the buyer's right to inspect the property or have it professionally inspected, and the repair obligations, if any, of the seller.

Property Disclosure

Paragraph 15 of the *Offer to Purchase* refers to the Residential Property Disclosure Act. This Act requires most sellers of residential property to furnish a *Residential Property Disclosure Statement* to the buyer no later than the time the buyer makes an offer to purchase. (There are a number of exemptions in the Act, including transfers pursuant to court order, transfers among co-owners, and transfers of new construction.) On the Statement, the seller may disclose known property defects or make “no representations.” Failure to provide the form gives the buyer a three-day rescission period. The person completing the *Offer to Purchase* should check one of three boxes to indicate that the buyer either did or did not receive the *Residential Property Disclosure Statement* prior to signing the *Offer to Purchase*, or that the property is exempt from the Disclosure Act and state the reason therefore. A fourth box relates to whether the property was built prior to 1978, in which case the lead-based paint hazard disclosure must be given.

Inspection and Repair Issues and Standard Form 2-T

Parties frequently became mired in disputes concerning home inspections and resulting repair issues. See, for example, *Dysart v. Cummings*, __ N.C. App. __, 640 S.E.2d 832 (2007); *Ingersoll v. Smith*, __ N.C. App. __, 647 S.E.2d 141 (2007). These disputes often erupt shortly before the scheduled closing and delay or totally frustrate the closing. Typical issues include whether:

- ! the buyer timely completed any desired inspections;
- ! the buyer gave seller timely notice of any desired repairs;
- ! the requested repairs were covered by the items listed in the inspections clause;

- ! the system the buyer wants repaired is “not performing the function for which intended and in need of immediate repair;” and
- ! whether the seller may make the cheapest possible repair or must instead make the repair to the buyer’s standards.

To address these problems, the North Carolina Association of REALTORS®, in conjunction with the North Carolina Bar Association, modified the *Offer to Purchase* and Contract form to include two mutually exclusive alternatives effective July 1, 2004. The first alternative continued past practice of giving the buyer the option to inspect the property and present a list of eligible repair requests to the seller to either accept or reject (or negotiate further). As before, under Alternative 1, if the seller refuses to make covered repairs, the buyer retains the right either to terminate the contract or to accept the property “as is.” The **new Alternative 2**, introduced July 1, 2004, allows the buyer to pay a specified sum directly to the seller for the **option to terminate the contract for any reason or no reason by a certain date**, including dissatisfaction with the condition of the property or inability to reach an agreement about repairs. If the buyer terminates the contract, the seller retains the option money, but any *earnest money* paid by the buyer is returned to the buyer. If the buyer fails to deliver written notice to the seller by the stated “Option Termination Date,” that he or she is terminating the contract, then the buyer is bound by the contract terms to purchase the property (unless excused due to the failure of other contract conditions set forth in paragraphs 5, 6 and 7). If the transaction closes, the option money is applied to the contract price.

Paragraph 16 - Alternative 1

Paragraph 15, subparagraph (a) sets out a list of systems and other items which must be performing the function for which intended and not in need of immediate repair as a condition of the contract. The covered items enumerated in (a)(i) include *built-in* appliances, electrical, plumbing, and heating and cooling systems, roofs, foundations, chimneys, retaining walls, and the like. Repair of unusual drainage conditions or excessive moisture which adversely affects the structure may legitimately be requested under (a)(ii); friable asbestos and other environmental contamination under (a)(iii). These three categories apply to all “permanent improvements” on the property to the extent that the permanent improvement has features listed in (a)(i) or falls within (a)(ii) or (iii). Any permanent improvement can be excluded by writing it in the blank in Paragraph 16, Alternative 1(a). Thus, for example, if a seller wants to exclude the in-ground pool from any repair request, and/or the storage shed in the back yard, the seller must except those two “permanent improvements” by writing both in the blank in Alternative 1(a).

Subparagraph (b) defines “**Necessary Repairs**” as “... only items covered by subsections (a)(i), (a)(ii), and (a)(iii) above ...” that is, those items expressly listed in the contract. These are (i) repairs to the major systems and components of the property, (ii) drainage or excessive moisture affecting a structure, and (iii) environmental contamination issues. The parties may negotiate a “**Repair Notice Date**,” i.e., the date by which the buyer must provide written notice to the seller of his/her requested repairs.

The repair notice date should be one which gives the buyer sufficient time to conduct all necessary inspections before formulating the repair request to the Seller. In setting this deadline, buyers should consider that they must conduct all inspections, receive and consider the results, obtain estimates of any repair costs, and decide which repairs to request or terminate the contract based on the *Cost of Repair Contingency*, if applicable. Note that time is **not** of the essence as to the Repair Notice Date: if the buyer has been behaving reasonably, s/he may submit a repair request within a reasonable time of the date stated in the first blank in (b). However, all subsequent dates are firm.

Timetables under Alternative 1(b)

Once the Buyer submits his/her Repair Request to the Seller, a series of clocks begin to tick according to a timetable explained in Alternative 1(b). It provides as follows:

- ! Seller must respond to Buyer in writing within a specified number of days of Buyer's written repair request what Seller will or will not do. The amount of time Seller has to respond depends on the number inserted in the second blank in Alternative 1(b). Like all other contract terms, it is negotiable. *Time is of the essence as to Seller's reply date.*
- ! If Seller fails to respond in writing within the stated number of days of Buyer's repair request, *time being of the essence*, then such failure is construed as an election by the Seller not to perform any repairs. The option then shifts to the Buyer to accept the property in its current condition or to terminate the contract. Similarly, if Seller timely responds, but does not agree to make *all legitimate* repair requests, then in addition to the foregoing two options, buyer has a third option of accepting the property with the repairs to which seller has agreed.
- ! Buyer has **5 days, time being of the essence**, "...after receiving the Seller's written response..." to deliver Buyer's *written* decision to the seller as to whether the buyer is proceeding with, or terminating, the contract. If Buyer fails to timely deliver written notice of Buyer's decision, then Buyer will be deemed to have accepted the property in its current condition *or* with such repairs as Seller is willing to perform, if applicable, as indicated in Seller's response to Buyer's written repair request.

This same timetable is also applied to Paragraph (c), "Wood-Destroying Insects," and Paragraph (d), "Radon Inspection," notice and negotiation issues. Seller must reply in writing to buyer's written request within x days, *time being of the essence*, from the initial Repair Notice Date *or* the date on which Buyer actually gave written notice of requested repairs, and Buyer must reply in writing within 5 days, *time being of the essence*, after receiving Seller's response.

A "day" is now defined in a new Paragraph 28, which states:

28. COMPUTATION OF DAYS: Unless otherwise provided, for purposes of this contract, the term "days" shall mean consecutive calendar days, including Saturdays, Sundays, and holidays, whether federal, state, local or religious. For

the purposes of calculating days, the count of “days” shall begin on the day following the day upon which any act or notice as provided in this contract was required to be performed or made.

Thus, for contract purposes, all 365 days (or 366) count for computation purposes without exception. Every day counts, including holidays, weekends, vacations, illness, etc. Day 1 is the first day after a particular act is (or was supposed to be) performed.

Consider the contract timetable in the context of the following example. Assume that the Repair Notice Date is the 15th, but the buyer provides the seller with the written request for repairs on the 12th. Seller must then respond to Buyer on or before the 19th (7 days after the 12th with day 1 being the 13th). Assuming Seller responds on the 19th, Buyer’s 5 day notice period would begin to run on the 20th as day 1. If Seller responded earlier, for example on the 17th, then Buyer’s five day notice period also would conclude earlier, i.e., on the 22nd.

As noted previously, the seller’s failure to timely respond to Buyer’s requested repairs is construed as a refusal by Seller to perform any repairs. Assume in the foregoing example, the buyer gives written notice of requested repairs to the listing agent on the 15th. The seller’s written response to the buyer is due on or before the 22nd. If the seller fails to respond at all or does not respond until the 24th, and the buyer wishes to safely terminate the contract based on Alternative 1, the buyer should give written notice to seller of his/her decision on or before the 27th. Failure to give such notice may bind the buyer to the purchase of the property in its current condition, unless there is some other unsatisfied contractual condition or contingency which allows the buyer to avoid performance of the contract (e.g., loan conditions, appraised value less than purchase price, etc.).

Alternative 1(c): Wood-Destroying Insects

Alternative 1(c) addresses wood-destroying insects. If an active infestation is found treatment, and any necessary repairs arising from damage caused by such insects, both are negotiable issues. The timeframe outlined in paragraph 1(b) as to notice and response periods also applies to wood destroying insect issues. The pest inspection must be completed and the request for repairs made by to the Repair Notice Date.

The seller must notify the buyer in writing within the time period stated in the second blank of paragraph 1(b) whether the seller agrees to perform any required treatment and/or repairs or refuses to treat or repair. If Seller agrees to *all* of Buyer’s legitimate requests, then Buyer remains bound by the contract. If Seller declines to perform some or all of Buyer’s legitimate repair or treatment requests, then the Buyer may terminate the contract within 5 days after Seller’s response is received or was due by delivering written notice to Seller. If Buyer timely terminates, s/he is entitled to a refund of his/her earnest money. If Buyer or Buyer’s Agent fails to timely notify Seller in writing that Buyer elects to terminate, then Buyer will be obligated to purchase the property without any treatment or repairs or only with the treatment or repairs Seller agreed to perform in Seller’s response. Thus, buyers and their agents should be mindful of the contract deadlines.

Alternative 1(d): Radon Inspection

A radon inspection is permitted in Alternative 1, paragraph (d) of the *Offer to Purchase*. The inspection must occur on or before the *Repair Notice Date*; the time limitations set forth in paragraph 1(b) also govern the parties' rights under (d). Thus, if the radon test reveals an unacceptable reading, then the buyer must request remediation on or before the Repair Notice Date with the seller to respond in writing within x days of buyer's notice. If the seller agrees to remediate, the buyer cannot terminate the contract (unless remediation proves unsuccessful). If the seller refuses to remediate, the buyer must notify the seller of the buyer's election to terminate the contract within five (5) days after receiving the seller's refusal.

Under the contract, the radon level must be *less than* 4.0 pico curies per liter of air. Thus, a test result *equal to* 4.0 pico curies will **not** be "deemed satisfactory to the buyer," as the test result must be 3.999 or less. Although the buyer must pay for the initial test, any retest is at the seller's expense.

Alternative 1(e): Cost of Repair Contingency

In addition to whatever other conditions or contingencies exist, the buyer has the right to terminate the contract if the estimated cost of "Necessary Repairs" equals or exceeds a dollar amount negotiated by the parties and inserted in the blank in Alternative 1(e). However, *the cost of repair contingency applies to the estimated cost to correct system repairs only, i.e., those listed in subsection (a)*. As of July 1, 2007, costs for wood-destroying insect treatment and radon remediation are expressly *excluded* and do not count towards the dollar amount inserted in the blank in Paragraph 1(e).

Note that the provision states, "...a reasonable estimate **obtained by the buyer** of the total cost of repairs...." (Emphasis added.) If a buyer wishes to terminate a contract because the estimated cost of the Necessary Repairs exceeds the dollar amount set forth in (e), then the buyer must notify the seller in writing of his/her election to terminate the contract no later than seven (7) days following the Repair Notice Date, time being of the essence, and produce a reasonable estimate of eligible repairs. The buyer has the right to terminate, even if the seller is willing to make all the requested Necessary Repairs. However, if a buyer fails to notify the seller in writing that the buyer wishes to terminate the contract within 7 days of the Repair Notice Date, then buyer loses the ability to terminate the contract based solely on the cost of repair contingency. *While the clock for the repairs timetable in Alternative 1(b) begins on the date the buyer's written repair request is actually made (assuming it is made within a reasonable time), the Cost of Repair Contingency's seven day clock begins to run from the date stated in the first blank in Alternative 1(b), namely the "Repair Notice Date," regardless of the date when the actual repair request is originally made/delivered.*

Appropriateness of Repair Requests

Legitimate repair requests are those which pertain to systems or categories enumerated in Alternative 1(a)(i), (ii), (iii), or (b) and which are not performing the function for which intended or are in need of immediate repair. Although some matters not covered by these

contract sections may be addressed in inspection reports, such items are *excluded* from repair negotiations. (Termite treatment and radon remediation requests arise under subparagraphs (c) and (d).)

Example: On August 15, Seller agrees to sell his home to Buyer using Standard Form 2-T, Paragraph 16, Alternative 1. The closing is scheduled for September 28. On August 16, Buyer hires a reputable home inspection service to inspect the home. The inspection reveals that the wiring in a room addition is well below safety code standards and is dangerous, and also that there is a large scratch in the dining room's hardwood floor. Rewiring is estimated to cost \$2,000; floor buffing \$350. Pursuant to the provisions of Alternative 1, Buyer promptly informs Seller in writing of the necessary wiring repair. If Seller refuses to make the repair, Buyer has the option of either accepting the house with the substandard wiring or terminating the contract and receiving a refund of the earnest money (but not the cost of the inspection). On the other hand, if Buyer asks for the floor to be fixed, Seller may legitimately refuse that request and hold Buyer to the contract, assuming Seller agrees to repair the wiring.

The repair issues, like most contractual provisions, are negotiable. For example, the seller in the above situation may respond by asking the buyer to split the repair cost. The buyer, of course, can decline, but it is not uncommon for the parties to resolve issues by agreement. If they cannot agree, then the terms of the contract will govern and determine each party's options.

Paragraph 16 - Alternative 2

Alternative 2 first became available in North Carolina July 1, 2004. This alternative allows a buyer to pay the seller a specified sum of money, known as the "Option Fee," in exchange for which the buyer has the right to terminate the contract for any reason (or no reason) prior to a stated date, known as the "Option Termination Date." Thus, the buyer may terminate the contract because of the parties' inability to agree on repairs, or personal property issues, or even for absolutely *no reason* at all, including simply "I changed my mind." Under Alternative 2, even after a contract is formed, it may be undone *solely at the buyer's election* until the Option Termination Date has passed. The seller's consolation if the buyer opts to terminate the contract prior to the option termination date is that the seller retains the option fee. However, any **earnest money** must be refunded to the buyer. The amount of the option fee is negotiable, and is to be set forth in Paragraph 4(c) of Standard Form 2-T.

While it would seem that disputes should be rare given the unambiguous language of the contract, the escrow agent should make a reasonable effort to determine whether a dispute exists. If a party (usually the seller) objects to the release of the earnest money deposit, any broker acting as escrow agent must hold the earnest money deposit in his or her trust account pursuant to Commission Rule A.0107(g) [21 NCAC 58A .0107(g)], and may only release the deposit upon (1) written agreement of the parties (buyer and seller); (2) pursuant to an Order from a court of competent jurisdiction; or (3) by utilizing the Clerk of Court procedure set forth in N.C. Gen. Stat. § 93A-12. This is so even if the party's objection is completely without merit.

Buyers would be well advised to investigate *any* aspect of the property and its surroundings which is important to them, whether zoning and use issues, restrictive covenants, inspections, building code restrictions, homeowner association issues, cost and availability of hazard insurance and any other matters of importance to them, *prior to the Option Termination Date*, to ensure that they are fully satisfied. Ideally, the only issues which should remain following the option termination date are the conditions set forth in Paragraphs 5, 6 and 7 of Standard Form 2-T, relating to the buyer's loan, flooding, title, and the like.

Option Termination Date

The buyer must notify the seller in writing prior to 5:00 p.m. on the option termination date that the buyer is exercising the option to terminate the contract. **Note that “*time is of the essence*” regarding the Option Termination Date.** Thus, the buyer's failure to timely deliver *written notice to the seller* prior to 5:00 p.m. on the specified date ends the buyer's right to unilaterally terminate the contract.

While Alternative Two is identified as an “option,” it differs from the conventional real estate option contract in the method of exercise. In a conventional option contract, the buyer typically exercises his option by giving the seller timely written notice of his intent to complete the transaction. Under the Alternative Two option, the buyer must give timely written notice to the seller if the buyer elects *not* to complete the transaction. Absent such written notice, the transaction should proceed.

Delivery of Termination Notice

The contract allows the buyer to terminate the contract “... by delivering to Seller written notice of termination...” Typically, under the common law of agency, communication or delivery to a party's agent is deemed communication or delivery to the party (principal). Likewise, Paragraph 27 of the *Offer to Purchase* states that “... any notice ... to be given to a party herein may be given to the party or to such party's agent.” Thus, delivery of the termination notice to the listing agent will be construed as delivery to the principal (seller).

A buyer agent who receives a termination notice from his or her client must be certain to *immediately* deliver it to the listing agent or seller, if unrepresented, so that the Buyer's rights under the contract are preserved. Buyers should be encouraged to decide whether they wish to terminate the contract prior to the final day and not wait until the last minute to deliver the Notice. Note also that *the “mailbox rule” does not apply in this context; thus mailing the notice one or two days prior to the option termination date will not relieve the buyer from his or her contractual obligations unless the notice is actually received by the seller/listing agent prior to the option termination date.* The mailbox rule comes into play in certain situations involving contract formation and acceptance, but does not apply to delivery of the termination notice.

Inspection and Repair Issues under Alternative 2

Alternative 2 does *not* require the buyer to purchase the property “as is.” The express language of Alternative 2(a) specifically allows the buyer to inspect the property at buyer's expense *any time prior to closing*. But, the buyer is advised “... to have all inspections/investigations of the Property, including *but not limited to* those matters set forth in Alternative 1, performed prior to the Option Termination Date.” (Emphasis added.) Because Alternative 2 is independent of Alternative 1, the constraints set forth in Alternative 1 limiting repair requests to certain specified systems or components *do not apply to Alternative 2*. Thus, the buyer is free to have *any* inspections he or she wishes and may request the seller to repair *anything* the inspections reveal, whether in the main dwelling, or on the property or in outbuildings. *The Alternative 1(a) definitions and limitations do not apply*. However, the seller may agree to repair certain items or refuse to undertake any repairs. Regardless of the seller's response, the buyer may choose to terminate the contract so long as s/he notifies the seller by the Option Termination Date. After that date, Seller's refusal to repair will not be grounds for contract termination, absent another contract provision providing for it.

Under both Alternative 1 and 2, closing constitutes acceptance of the property in its then existing condition, absent other provisions made in writing.

Interplay of Contract Conditions and Alternative 2

The conditions set forth in Standard Form 2-T Paragraph 5 (loan conditions), Paragraph 6 (Flood Hazard Condition), and Paragraph 7 (requiring that there are no zoning restrictions, or easements, and that the condition of the property be the same at closing as at date of offer, the appraisal condition, and requirements of satisfaction of all liens, and marketable and insurable title) remain valid and binding through closing. If any of these conditions cannot be satisfied, then the transaction may still fail.

For instance, assume that the buyer does not terminate the contract by the option termination date, but ultimately is unable to conclude the transaction because he or she cannot satisfy the financing contingency despite his or her best efforts. Or, assume the buyer is prepared to perform, but the seller ultimately is unable to convey insurable and marketable title. The buyer may avoid the contract because of the failure of the applicable condition. What happens to the option fee then? The last sentence of Paragraph 16, Alternative 2(b) states: “...The Option Fee is not refundable, is not a part of any earnest monies, and will be credited to the purchase price at closing.” The intent is that the seller retains the option money, regardless of whether the transaction closes. The buyer already has received the benefit of his or her bargain for which he or she paid the option fee, namely, time -- the option period that has now expired.

Closing Date

The definition of “closing” under the contract is the date and time the deed is recorded. The standard form contract has never provided that “time is of the essence” as to the closing date. Since time is not of the essence, courts generally will allow parties a

reasonable time to perform after the stated deadline has passed, so long as the parties are working in good faith towards full performance of the contract. Questions have often arisen about what constitutes a “reasonable time.” To address these questions, revised Paragraph 18 now states:

18. CLOSING: Closing shall be defined as the date and time of recording of the deed and shall be on or before _____ (**the “Closing Date”**). All parties agree to execute any and all documents and papers necessary in connection with Closing and transfer of title on or before the Closing Date at a place and time designated by Buyer. The deed is to be made to

_____.

Absent agreement to the contrary in this contract or any subsequent modification thereto, the following terms shall apply: If either party is unable to close by the Closing Date, then provided that the party is acting in good faith and with reasonable diligence to proceed to closing, such party shall be entitled to reasonable delay of the Closing Date and shall give as much notice as possible to the non-delaying party and closing agent. In such event, however, either party for whom the Closing Date is delayed shall have a maximum of ten (10) days from the Closing Date, or any extension of the Closing Date agreed-upon in writing, in which to close without payment of interest. Following expiration of the ten-day period, the party not ready to close shall be responsible for paying to the other party (if ready, willing and able to close) interest on the purchase price at the rate of eight percent (8%) per annum accruing from the end of the ten-day period until closing occurs or the contract is terminated. Should the delay in closing continue for more than thirty (30) days from the last agreed-upon extension of the Closing Date, however, then the non-delaying party shall have the unilateral right to terminate the contract and receive the earnest money, but the right to such receipt shall not affect any other remedies available to the non-delaying party for such breach.

Pursuant to this provision, the deed is to be recorded “on or before” the stated “Closing Date,” and the parties agree to execute the closing documents on or before that date. Thus, a closing date of September 30 means that the parties could sign the papers and close on September 20, or 23, or 28, if both were ready, but no later than September 30. However, if on September 30 either the Seller or Buyer, despite their diligent, good faith efforts, is unable to close by that date, then the contract states that there shall be up to an automatic ten (10) day grace period. The delaying party is asked to give as much notice as possible to the closing agent and to the opposing party. *The ten-day period runs from the closing date stated in the contract or any extension of that date agreed to in writing by both parties.*

If the transaction still has not closed prior to the expiration of the initial ten day period, the contract provides that the party who is not prepared or able to close may have up to an additional twenty (20) days within which to consummate the transaction, but at a price. The party who is not prepared to close must pay daily interest at a rate of eight percent per year on the purchase price to the party who is ready to close “accruing from the end of the ten-day period,” (i.e., beginning day 11), until closing or termination of the contract. If the transaction has not closed within 30 days following the last agreed-upon

extension of the Closing Date, then the non-delaying party has the unilateral right to terminate the contract and receive the earnest money, without prejudice to any other remedies the non-breaching party may have under the contract.

For instance, if the purchase price of the property is \$400,000.00, then 8% *per year* is \$32,000, divided by 365, resulting in daily interest of \$87.67. If the buyer is the party who is having difficulty closing and closing does not occur until 20 days after the Closing Date stated in the contract, then the buyer will owe the Seller an additional \$876.70 at closing as interest for the delay (10 days x \$87.67/day). The amount of interest due from one party to the other must appear on the HUD-1.

Possession

Paragraph 19 provides that possession will be delivered to the buyer at Closing (i.e., the date of recording of the deed) and that if the buyer takes possession prior to closing or the seller remains in possession after the closing, then the parties should attach the applicable addendum. Thus, if the **seller is to remain in possession for some period after closing**, then the contract should require that the seller pay appropriate rent to the buyer for such period, and deal with a variety of other issues including provisions for damages, maintenance of insurance and the like. Similarly, if the **buyer is to assume possession prior to closing**, then the buyer should be required to pay rent to the seller for the period between transfer of possession and closing and other issues relating to the rental should be addressed. The North Carolina Association of REALTORS® and the North Carolina Bar Association have drafted forms which address each scenario, namely, Standard Form 2A7-T, “Buyer Possession Before Closing Agreement,” and Standard Form 2A8-T, “Seller Possession After Closing Agreement.”

As of July 1, 2007, Paragraph 19 also states: “Seller shall remove, by the date possession is made available to the Buyer, all personal property which is not a part of the purchase and all garbage and debris from the Property.” The remedy for seller’s breach is not specified and might be somewhat elusive. Issues concerning the seller’s personal property and the like should be resolved no later than the settlement conference. After closing, the buyers would be well-advised to notify sellers in writing of what the buyer intends to do with seller’s property *before* the buyer discards it or gives it to charity or otherwise disposes of it, to avoid legal claims by the seller against the buyer.

Contingency Provisions

A buyer often is willing to purchase real estate only if a particular condition is satisfied. For example, a buyer may need a provision allowing him to close only if he sells his present home; another prospective purchaser may want a condition placed in the contract requiring to a suitable on-site septic system. Contingency provisions related to environmental issues are also common.

There are a number of contingency provisions in approved **addenda** forms provided by the Bar Association and/or the Association of Realtors, as noted at the outset of these materials. One of the most common contingencies is the sale of the buyer's residence. When dealing with such a contingent sale, the *Contingent Sale Addendum* is available for use in conjunction with the standard *Offer to Purchase and Contract* form.

Under the *Contingent Sale Addendum*, the buyer makes an offer to purchase contingent upon the sale of the buyer's property. The seller "may continue to market the Property and receive other offers to purchase." If the seller's continued marketing attracts a new buyer whose offer the seller is inclined to accept, then the seller is required to give **written notice** to the original buyers to allow them an opportunity to waive the contingency as to the sale of their home or give up their right to purchase the property.

Paragraph 3 of the *Contingent Sale Addendum* provides that the first buyers, upon receipt of the seller's written notice of a second offer, have a designated number of hours from **receipt** of the seller's notice to deliver to seller a **written waiver** of their contingent sale rights (typically 48 or 72 hours.) If the first buyers fail to deliver the written notice within the specified time frame, then their contract with the seller is null and void and the seller is free to accept the second buyer's offer. The first buyers are entitled to a refund of their earnest money deposit.

If, on the other hand, the first buyers, after receiving the seller's written notice, desire to remain under contract to purchase the property, then they must waive in writing the sale of their home as a condition to performing the current contract and deliver that waiver to the seller or listing agent within the time period stated in Paragraph 3. Pursuant to Paragraph 4, the buyers waive "...any rights under any loan condition described in the contract based upon lender's refusal to allow the loan to close because the loan is conditioned upon Buyer selling the real property ..." described in the Addendum.

An important consideration is the interaction between Alternative 2 and the *Contingent Sale Addendum*. A situation could arise when an Offer uses Alternative 2 in conjunction with the *Contingent Sale Addendum* where the buyer has a considerably shorter option period than he or she originally contemplated. Consider the following:

Example: A buyer uses a *Contingent Sale Addendum* and Alternative 2, and pays a \$400 option fee for a three-week option period. Three days into that three week option period, the seller receives another Offer that the seller is inclined to accept and notifies buyer in writing of the second offer. Buyer must now decide within whatever time period is stated in the *Contingent Sale Addendum* whether the buyer will waive the financing conditions or let the contract become null and void. In the latter case, the buyer will have paid a \$400 option fee expecting a three-week option period, but will have actually had only a few days to conduct inspections. Under these circumstances, a buyer who no longer wants to purchase the property will be entitled to a refund of the earnest money deposit, but should not expect any refund of the option fee. Should the buyer choose to waive the financing condition and the sale of his or her existing property, then the buyer still will have the remainder of the option period within which to conduct inspections and decide whether to conclude the transaction. A buyer

who waives the financing condition would be well advised to confirm his or her ability to obtain a mortgage loan, because once the Option Termination Date has passed, the buyer will not be able to avoid performance based on financial inability and most likely would lose the earnest money deposit, as well as the option fee paid for the option period.

The dilemma presented above could be addressed by: 1) negotiating a very small option fee if using the *Contingent Sale Addendum*; 2) adding a clause to the *Contingent Sale Addendum* delaying Seller's right to exercise the "kick-out" provision until after the Option Termination Date; 3) providing that the buyer is entitled to a pro-rata rebate of the Option Fee if Seller kicks buyer out prior to the expiration of the Option Termination period; or 4) using Alternative 1, instead of Alternative 2.

Risk of Loss

The **Uniform Vendor and Purchaser Risk Act**, N.C. Gen. Stat. §§ 39-37 to -39, is in effect in North Carolina. The substantive provision of that Act relating to risk of loss reads as follows:

§ 39-39. Risk of loss — Any contract hereafter made in this State for the purchase and sale of realty shall be interpreted as including an agreement that the parties shall have the following rights and duties, unless the contract expressly provides otherwise:

(1) If, when neither the legal title nor the possession of the subject matter of the contract has been transferred, all or a material part thereof is destroyed without fault of the purchaser, the vendor cannot enforce the contract, and the purchaser is entitled to recover any portion of the price that he has paid;

(2) If, when either the legal title or the possession of the subject matter of the contract has been transferred, all or any part thereof is destroyed without fault of the vendor, the purchaser is not thereby relieved from a duty to pay the price, nor is he entitled to recover any portion thereof that he has paid.

The foregoing statute supplies the rule, *in the absence of other contractual provision*, and holds that when neither legal title nor possession has passed to a buyer and all or a material part of the subject matter of a real estate contract is destroyed without the fault of the purchaser, the seller cannot enforce the purchase contract and the buyer may recover any portion of the price already paid. On the other hand, if legal title or possession of the real estate has been transferred pursuant to a contract and all or any part of the property is destroyed without the fault of the seller, the purchaser is not relieved of the duty to pay the price and is not entitled to recover any portion of the price already paid.

Paragraph 21 of the Offer to Purchase and Contract, specifically deals with risk of loss, and **therefore supplants the Uniform Vendor and Purchaser Risk Act**. It reads as follows:

21. RISK OF LOSS: The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller. If the improvements on the Property are destroyed or materially damaged prior to Closing, Buyer may terminate this contract by written notice delivered to Seller or Seller's agent and all deposits shall be refunded to Buyer. In the event Buyer does NOT elect to terminate this contract, Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property being purchased. Seller is advised not to cancel existing insurance on the Property until after confirming recordation of the deed.

This provision clearly places the risk of loss or damage “by fire or other casualty prior to Closing” on the seller. On the other hand, it does not address the subject of allocation of risk due to government action, probably because the form is designed for a residential transaction and it is extremely rare that eminent domain or rezoning will intervene to cause a problem. Note that under Paragraph 21, the buyer can only terminate the contract where **material** damage has occurred. Of course, the term “material” is subject to varying interpretations.

Signatures and Dates

Parties' Signatures

Both the buyer and seller must sign the offer to purchase and contract. If a husband and wife own the property being sold as tenants by the entirety, or by two or more persons as tenants in common, then all co-owners must sign the contract in order to be obligated. Similarly, if a husband and wife are purchasing the property as tenants by the entirety, or two or more persons who will take title as tenants in common are purchasing the property, then all purchasers must sign the contract.

Even where one spouse individually owns the property, both spouses should sign the contract. This is because the non-owning spouse has the right to claim a “marital life estate” under certain circumstances. (See N.C. Gen. Stat. § 29-30 which gives a surviving spouse an option to take a life estate in one-third of all property which the deceased spouse owned during the marriage. This potential life estate is *not* extinguished by the owner-spouse’s conveyance of the property unless the non-owner-spouse also signed the deed.) Where contracts to convey real property are concerned, a practical interpretation of North Carolina law dictates that *both husband and wife should always be required to sign the offer to purchase contract as sellers, even though only one spouse owns the property*. This will obligate the non-titled spouse who does not have an ownership interest in the property to join in signing the deed at closing and will enable the buyer to force that spouse to sign the deed in a suit for specific performance should such action be necessary.

Where only the spouse owning the property has signed the contract, and the other spouse subsequently refuses to join in signing a deed conveying the property, the buyer could be entitled to either (1) rescind the contract due to the seller's inability to convey clear title

free of encumbrances or (2) specifically enforce the contract as to the signing spouse with an abatement in price because of the title defect. Of course, the buyer could honor the contract and accept a deed signed only by the spouse owning the property, but this could result in the buyer receiving title encumbered by the possibility that the non-signing spouse might exercise his or her right to a marital life estate in the property in the future. The buyer also may have difficulty in obtaining financing under these circumstances. Note that the non-owning spouse's marital life estate will be extinguished automatically and the cloud on title thereby dispelled, if he or she divorces the owner spouse or if he or she predeceases the owner-spouse, but relying on either is a gamble. The seller-spouse who owns the property cannot specifically enforce the contract against the buyer because the seller is not able to provide clear title.

Unlike the seller's situation, it is *not* necessary to have the signature of the buyer's spouse on the sales contract if the buyer is to solely own the property. However, most lenders will require the buyer's spouse to sign the deed of trust acknowledging the lender's security interest in the property, even though the spouse's signature may not be required on the underlying promissory note.

Escrow Agent's Signature

The escrow agent under a real estate contract is usually a firm, and is most likely to be the listing firm. However, others sometime act as escrow agents, including the real estate firm representing the buyer or the closing attorney's law firm. *Any individual agent representing the escrow agent firm may sign the offer acknowledging receipt of the buyer's earnest money deposit, if any.* Typically, this will be the individual acting as the listing agent, or the closing attorney. The escrow agent's signature is not required for any purpose other than to acknowledge receipt of the deposit.

Dates

The date of the offer and the date of the acceptance should be shown on the contract. Although their absence may not affect the legal validity of the contract, the date of acceptance is helpful (although not definitive) for determining the "Effective Date" of the contract (see *Offer to Purchase* paragraph 27). The Effective Date, in turn, is critical for determining the buyer's deadline for obtaining loan approval. In addition, real estate agents are required to indicate the date of acceptance in the contract by Real Estate Commission Rule 21 NCAC 58A.0107 to determine when the three banking days within which to deposit the earnest money after acceptance begins to run.

The *Offer to Purchase and Contract* is a complex form, requiring careful study prior to use. *Guidelines* are available to assist the drafter in preparing the contract. And, as noted previously, a number of *addenda* have been created to address special needs of the parties. More detailed information about the contract may be found in the Commission's textbook. See Hetrick, Patrick K., Outlaw, Larry A, and Moylan, Patricia A., *North Carolina Real Estate Manual*, ch. 11 (2008 – 2009 ed.), from which these materials are extensively derived.

OFFER TO PURCHASE AND CONTRACT

_____ , as Buyer, hereby offers to purchase and _____ , as Seller, upon acceptance of said offer, agrees to sell and convey, all of that plot, piece or parcel of land described below, together with all improvements located thereon and such fixtures and personal property as are listed below (collectively referred to as the "Property"), upon the following terms and conditions:

1. REAL PROPERTY: Located in the City of _____ , County of _____ , State of North Carolina, being known as and more particularly described as: Street Address _____ Zip _____

NOTE: Governmental authority over taxes, zoning, school districts, utilities and mail delivery may differ from address shown. Legal Description: _____

(All A portion of the property in Deed Reference: Book _____ Page No. _____ , _____ County.)

NOTE: Prior to signing this Offer to Purchase and Contract, Buyer is advised to review Restrictive Covenants, if any, which may limit the use of the Property, and to read the Declaration of Restrictive Covenants, By-Laws, Articles of Incorporation, Rules and Regulations, and other governing documents of the owners' association and/or the subdivision, if applicable. If the Property is subject to regulation by an owners' association, it is recommended that Buyer obtain a copy of a completed Owners' Association Disclosure And Addendum (standard form 2A12-T) prior to signing this Offer to Purchase and Contract, and include it as an addendum hereto.

2. FIXTURES: The following items, if any, and if owned by the Seller, are included in the purchase price free of liens: any built-in appliances, light fixtures, ceiling fans, attached floor coverings, blinds, shades, drapery rods and curtain rods, brackets and all related hardware, window and door screens, storm windows, combination doors, awnings, antennas, satellite dishes and receivers, burglar/fire/smoke alarms, pool and spa equipment, solar energy systems, attached fireplace screens, gas logs, fireplace inserts, electric garage door openers with controls, outdoor plants and trees (other than in movable containers), basketball goals, storage sheds, mailboxes, wall and/or door mirrors, attached propane gas tank, invisible fencing including all related equipment, lawn irrigation systems and all related equipment, water softener/conditioner and filter equipment, and any other items attached or affixed to the Property, EXCEPT any such items leased by the Seller and the following items:

3. PERSONAL PROPERTY: The following personal property is included in the purchase price: _____

4. PURCHASE PRICE: The purchase price is \$ _____ and shall be paid in U.S. Dollars. Should any check or other funds paid by Buyer be dishonored, for any reason, by the institution upon which the payment is drawn, Buyer shall have one (1) banking day after written notice to deliver good funds to the payee. In the event Buyer does not timely deliver good funds, the Seller shall have the right to terminate this contract upon written notice to the Buyer. The purchase price shall be paid as follows:

(a) \$ _____, EARNEST MONEY DEPOSIT with this offer by cash personal check bank check certified check other: _____ to be deposited and held in escrow by _____ ("Escrow Agent") until the sale is closed, at which time it will be credited to Buyer, or until this contract is otherwise terminated. In the event: (1) this offer is not accepted; or (2) any of the conditions hereto are not satisfied, then all earnest monies shall be refunded to Buyer. In the event of breach of this contract by Seller, all earnest monies shall be refunded to Buyer upon Buyer's request, but such return shall not affect any other remedies available to Buyer for such breach. In the event of breach of this contract by Buyer, then all earnest monies shall be forfeited to Seller upon Seller's request, but such forfeiture shall not affect any other remedies available to Seller for such breach.

NOTE: In the event of a dispute between Seller and Buyer over the return or forfeiture of earnest money held in escrow, a licensed real estate broker ("Broker") is required by state law (and Escrow Agent, if not a Broker, hereby agrees) to retain said earnest money in the Escrow Agent's trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a Broker is holding the Earnest Money, the Broker may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.



This form jointly approved by: North Carolina Bar Association North Carolina Association of REALTORS®, Inc.



STANDARD FORM 2-T Revised 7/2007 © 7/2007

Buyer initials _____ Seller initials _____

(check if applicable) **THE PARTIES AGREE THAT A REAL ESTATE BROKERAGE FIRM ACTING AS ESCROW AGENT MAY PLACE ANY EARNEST MONIES DEPOSITED BY BUYER IN AN INTEREST BEARING TRUST ACCOUNT, AND THAT ANY INTEREST EARNED THEREON SHALL BELONG TO THE ESCROW AGENT IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.**

- (b) \$ _____, (ADDITIONAL) EARNEST MONEY DEPOSIT to be paid to Escrow Agent no later than _____, **TIME BEING OF THE ESSENCE** WITH REGARD TO SAID DATE.
- (c) \$ _____, OPTION FEE in accordance with paragraph 16, Alternative 2, to be paid to Seller on the Effective Date as set forth in paragraph 27. (NOTE: If Alternative 2 applies, then do not insert \$0, N/A, or leave blank).
- (d) \$ _____, BY ASSUMPTION of the unpaid principal balance and all obligations of Seller on the existing loan(s) secured by a deed of trust on the Property in accordance with the attached Loan Assumption Addendum.
- (e) \$ _____, BY SELLER FINANCING in accordance with the attached Seller Financing Addendum.
- (f) \$ _____, BALANCE of the purchase price in cash at Closing.

5. LOAN CONDITION:

(a) **Loan:** Buyer must be able to obtain a FHA VA (attach FHA/VA Financing Addendum) Conventional Other: _____ loan at a Fixed Rate Adjustable Rate in the principal amount of _____ (plus any financed VA Funding Fee or FHA MIP) for a term of _____ year(s), at an initial interest rate not to exceed _____ % per annum, with mortgage loan discount points not to exceed _____ % of the loan amount ("Loan").

(b) **Loan Obligations:** The Buyer agrees to:

- (i) Make written application for the Loan, authorize any required appraisal and pay any necessary fees within _____ days after the Effective Date;
- (ii) Promptly furnish Seller written confirmation from the lender of having applied for the Loan.

If Buyer fails to furnish Seller written confirmation from the lender of having applied for the Loan, Seller may make written demand for compliance. If Buyer does not furnish Seller written confirmation from the lender of application within five (5) days after such demand, then Seller may terminate this contract by written notice to Buyer at any time thereafter, provided Seller has not received either written evidence of the application or a waiver of the Loan Condition, and all Earnest Money shall be forfeited to Seller as liquidated damages and as Seller's sole and exclusive remedy for Buyer's failure to close, but without limiting Seller's rights under paragraph 17 for damage to the Property. Buyer further agrees to:

- (iii) Pursue qualification for and approval of the Loan diligently and in good faith;
- (iv) Continually and promptly provide requested documentation to lender.

(c) **Inability to Obtain Loan Approval:** If Buyer has complied with Buyer's Loan Obligations (iii) and (iv) above, then within _____ days after the Effective Date (or any agreed-upon written extension of this deadline) **TIME BEING OF THE ESSENCE**, Buyer shall have the right to terminate this contract for inability to obtain Loan approval by delivering to Seller written notice of termination. If Buyer has timely delivered such notice, this contract shall be null and void and all Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived this condition. Thereafter, if Buyer fails to close based upon inability to obtain the Loan, then all Earnest Money shall be forfeited to Seller as liquidated damages and as Seller's sole and exclusive remedy for Buyer's failure to close, but without limiting Seller's rights under paragraph 17 for damage to the Property. (**WARNING:** Buyer is advised to consult with Buyer's lender to assure that the number of days allowed for Buyer to obtain the Loan is sufficient to allow Buyer's lender time to take all reasonable steps necessary to provide reliable loan approval.)

6. FLOOD HAZARD DISCLOSURE/CONDITION (Choose ONE of the following alternatives):

- To the best of Seller's knowledge, the Property IS located partly or entirely within a designated Special Flood Hazard Area. Buyer understands that it may be necessary to purchase flood insurance in order to obtain any loan secured by the Property from any federally regulated institution or a loan insured or guaranteed by an agency of the U.S. Government.
- To the best of Seller's knowledge, the Property IS NOT located partly or entirely within a designated Special Flood Hazard Area. If, following the Effective Date of this contract, it is determined that any permanent improvements on the Property are located within a designated Special Flood Hazard Area according to the current FEMA flood map, or if this contract is subject to a Loan Condition and Buyer's lender requires Buyer to obtain flood insurance as a condition of making the Loan, then in either event Buyer shall have the right to terminate this contract upon written notice to Seller, and all earnest monies shall be refunded to Buyer.

7. **OTHER CONDITIONS:** (State N/A in each blank that is not a condition to this contract.)

- (a) There must be no restriction, easement, zoning or other governmental regulation that would prevent the reasonable use of the Property for _____ purposes.
- (b) The Property must be in substantially the same or better condition at Closing as on the date of this offer, reasonable wear and tear excepted.
- (c) The Property must appraise at a value equal to or exceeding the purchase price or, at the option of Buyer, this contract may be terminated and all earnest monies shall be refunded to Buyer, even if the Loan Condition has been waived as provided in paragraph 5.
If this contract is NOT subject to a financing contingency requiring an appraisal, Buyer shall arrange to have the appraisal completed on or before _____.
- (d) All deeds of trust, liens and other charges against the Property, not assumed by Buyer, must be paid and satisfied by Seller prior to or at Closing such that cancellation may be promptly obtained following Closing. Seller shall remain obligated to obtain any such cancellations following Closing.
- (e) Title must be delivered at Closing by GENERAL WARRANTY DEED unless otherwise stated herein, and must be fee simple marketable and insurable title, free of all encumbrances except: ad valorem taxes for the current year (prorated through the date of Closing); utility easements and unviolated restrictive covenants that do not materially affect the value of the Property; and such other encumbrances as may be assumed or specifically approved by Buyer. The Property must have legal access to a public right of way.

8. **SPECIAL ASSESSMENTS: NOTE:** For purposes of this agreement, a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether or not it is fully payable at time of closing. A "pending" special assessment is defined as an assessment that is under formal consideration by a governing body. Seller warrants that there are no pending or confirmed governmental special assessments for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows (Insert "None" or the identification of such assessments, if any):

Unless otherwise agreed, Seller shall pay all owners' association assessments and all governmental assessments confirmed through the time of Closing, if any, and Buyer shall take title subject to all pending assessments disclosed by Seller herein, if any.

9. **PRORATIONS AND ADJUSTMENTS:** Unless otherwise provided, the following items shall be prorated and either adjusted between the parties or paid at Closing: (a) Ad valorem taxes on real property shall be prorated on a calendar year basis through the date of Closing; (b) Ad valorem taxes on personal property for the entire year shall be paid by the Seller unless the personal property is conveyed to the Buyer, in which case, the personal property taxes shall be prorated on a calendar year basis through the date of Closing; (c) All late listing penalties, if any, shall be paid by Seller; (d) Rents, if any, for the Property shall be prorated through the date of Closing; (e) Owners' association dues and other like charges shall be prorated through the date of Closing. Seller represents that the regular owners' association dues, if any, are \$ _____ per _____. Unless otherwise agreed, Buyer shall pay any fees required for obtaining account payment information on owners' association dues or assessments for payment or proration and any charge made by the owners' association in connection with the disposition of the Property to Buyer, including any transfer and/or document fee imposed by the owners' association.

10. **EXPENSES:** Unless otherwise agreed, Buyer shall be responsible for all costs with respect to any loan obtained by Buyer, appraisal, title search, title insurance, recording the deed and for preparation and recording of all instruments required to secure the balance of the purchase price unpaid at Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this agreement, and for excise tax (revenue stamps) required by law. Seller shall pay at Closing \$ _____ toward any of Buyer's expenses associated with the purchase of the Property, including any FHA/VA lender and inspection costs that Buyer is not permitted to pay, but excluding any portion disapproved by Buyer's lender.

11. **HOME WARRANTY:** If a home warranty is to be provided, select one of the following: Buyer may obtain a one-year home warranty at a cost not to exceed \$ _____ and Seller agrees to pay for it at Closing. Seller has obtained and will provide a one-year home warranty from _____ at a cost of \$ _____ and will pay for it at Closing.

12. **FUEL:** Buyer agrees to purchase from Seller the fuel, if any, situated in any tank on the Property at the prevailing rate with the cost of measurement thereof, if any, being paid by Seller.

Buyer initials _____ Seller initials _____

13. **EVIDENCE OF TITLE:** Seller agrees to use his best efforts to deliver to Buyer as soon as reasonably possible after the Effective Date of this contract, copies of all title information in possession of or available to Seller, including but not limited to: title insurance policies, attorney's opinions on title, surveys, covenants, deeds, notes and deeds of trust and easements relating to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys.

14. **LABOR AND MATERIAL:** Seller shall furnish at Closing an affidavit and indemnification agreement in form satisfactory to Buyer showing that all labor and materials, if any, furnished to the Property within 120 days prior to the date of Closing have been paid for and agreeing to indemnify Buyer against all loss from any cause or claim arising therefrom.

15. **PROPERTY DISCLOSURE:**

- Buyer has received a signed copy of the N.C. Residential Property Disclosure Statement prior to the signing of this Offer to Purchase and Contract.
- Buyer has NOT received a signed copy of the N.C. Residential Property Disclosure Statement prior to the signing of this Offer to Purchase and Contract and shall have the right to terminate or withdraw this contract without penalty prior to **WHICHEVER OF THE FOLLOWING EVENTS OCCURS FIRST:** (1) the end of the third calendar day following receipt of the Disclosure Statement; (2) the end of the third calendar day following the date the contract was made; or (3) Closing or occupancy by the Buyer in the case of a sale or exchange.
- Exempt from N.C. Residential Property Disclosure Statement because (SEE GUIDELINES) _____
- The Property is residential and was built prior to 1978 (Attach Lead-Based Paint or Lead-Based Paint Hazards Disclosure Addendum.)

16. **PROPERTY INSPECTION/INVESTIGATION** (Choose ONLY ONE of the following Alternatives):

ALTERNATIVE 1:

(a) **Property Condition:** Unless otherwise stated herein, it is a condition of this contract that as to all permanent improvements except: _____ (i) the built-in appliances, electrical system, plumbing system, heating and cooling systems, roof coverings (including flashing and gutters), doors and windows, exterior building surfaces, structural components (including foundations, retaining walls, columns, chimneys, floors, walls, ceilings and roofs), porches and decks, fireplaces and flues, crawl space and attic ventilation systems (if any), water and sewer systems (public and private), shall be performing the function for which intended and shall not be in need of immediate repair; (ii) there shall be no unusual drainage conditions or evidence of excessive moisture adversely affecting the structure(s); and (iii) there shall be no friable asbestos or existing environmental contamination.

(b) **Inspections/Repair Negotiations:** Buyer, at Buyer's expense, may inspect or obtain such inspections of the Property as Buyer deems appropriate. Unless otherwise stated herein, only items covered by subsections (a)(i), (a)(ii), and (a)(iii) above are included in repair negotiations under this contract ("Necessary Repairs"). Any inspections shall be completed and written notice of Necessary Repairs shall be given to Seller on or before _____ (the "Repair Notice Date"). Seller shall have the option of completing Necessary Repairs or refusing to complete them. Seller shall provide written notice to Buyer of Seller's response within _____ days of Buyer's notice, **TIME BEING OF THE ESSENCE.** Seller's failure to provide said notice as required shall constitute an election by the Seller not to complete Necessary Repairs. If Seller elects not to complete all Necessary Repairs, then Buyer shall have the option of (a) accepting the Property in its present condition, (b) accepting Seller's offer to make repairs to the extent and as described in the Seller's response, or (c) terminating this contract, in which case all earnest monies shall be refunded. The Buyer shall deliver the Buyer's written decision to Seller within five (5) days after receiving the Seller's written response, **TIME BEING OF THE ESSENCE.** Failure of Buyer to provide this written decision by the time stated herein shall constitute acceptance of Seller's agreement to make repairs to the extent and as described in the Seller's response. Buyer is advised to have any inspections made prior to incurring expenses for Closing and in sufficient time to permit any required repairs to be completed by Closing. Buyer shall have the right to verify that any Necessary Repairs have been completed in a good and workmanlike manner.

(c) **Wood-Destroying Insects:** Buyer shall have the option of obtaining, at Buyer's expense, a report from a licensed pest control operator on a standard form in accordance with the regulations of the North Carolina Structural Pest Control Committee, stating that as to all structures, except _____, there was no visible evidence of wood-destroying insects and containing no indication of visible damage therefrom. The report must be obtained on or before the Repair Notice Date. If

the report indicates that there is visible evidence of wood-destroying insects or visible damage therefrom, Seller shall have the option of performing any required treatment or completing Necessary Repairs, or refusing to perform any required treatment or complete Necessary Repairs. If Seller elects not to perform required treatment or complete Necessary Repairs, Buyer shall have the option of accepting the Property without the required treatment or Necessary Repairs, or terminating the contract, in which case all earnest monies shall be refunded. Buyer and Seller shall exercise their respective rights under this subsection (c) in the same manner and within the same time limitations as set forth in subsection (b) above. The Buyer is advised that the inspection report described in this paragraph may not always reveal either structural damage or damage caused by agents or organisms other than wood-destroying insects. If new construction, Seller shall provide a standard warranty of termite soil treatment.

(d) **Radon Inspection:** Buyer shall have the option, at Buyer's expense, to have the Property tested for radon on or before the Repair Notice Date. The test result shall be deemed satisfactory to Buyer if it indicates a radon level of less than 4.0 pico curies per liter of air (as of January 1, 1997, EPA guidelines reflect an "acceptable" level as anything less than 4.0 pico curies per liter of air). If the test result exceeds the above-mentioned level, Seller shall have the option of: a) remediating to bring the radon level within the satisfactory range; or b) refusing to remediate. Upon the completion of remediation, Buyer may have a radon test performed at Seller's expense, and if the test result indicates a radon level less than 4.0 pico curies per liter of air, it shall be deemed satisfactory to the Buyer. If Seller elects not to remediate, or if remediation is attempted but fails to bring the radon level within the satisfactory range, Buyer shall have the option of: a) accepting the Property with its then current radon level; or b) terminating the contract, in which case all earnest monies shall be refunded. Buyer and Seller shall exercise their respective rights under this subsection (d) in the same manner and within the same time limitations as set forth in subsection (b) above.

(e) **Cost Of Repair Contingency:** In addition to the above, Buyer shall have the right to terminate this contract if a reasonable estimate obtained by Buyer of the total cost of Necessary Repairs equals or exceeds \$ _____. This right may be exercised by Buyer without regard to any decision by Seller to complete, or refuse to complete, Necessary Repairs. Buyer shall notify the Seller in writing of its decision to terminate this contract under this Cost of Repair Contingency no later than seven (7) days following the Repair Notice Date, **TIME BEING OF THE ESSENCE**, in which case all earnest monies shall be refunded to Buyer. Neither the cost of wood-destroying insect treatment under subsection (c) above nor the cost of radon remediation under subsection (d) above shall be included in the cost of repairs under this subsection (e).

(f) CLOSING SHALL CONSTITUTE ACCEPTANCE OF THE PROPERTY IN ITS THEN EXISTING CONDITION UNLESS PROVISION IS OTHERWISE MADE IN WRITING.

ALTERNATIVE 2: *(This Alternative applies ONLY if Alternative 2 is checked AND Buyer has paid the Option Fee.)*

(a) **Property Investigation with Option to Terminate:** In consideration of the sum set forth in paragraph 4(c) paid by Buyer to Seller (not Escrow Agent) and other valuable consideration, the sufficiency of which is hereby acknowledged (the "Option Fee"), Buyer shall have the right to terminate this contract **for any reason or no reason, whether related to the physical condition of the Property or otherwise**, by delivering to Seller written notice of termination (the "Termination Notice") by 5:00 p.m. on _____, 20____, **TIME BEING OF THE ESSENCE** (the "Option Termination Date"). At any time prior to Closing, Buyer shall have the right to inspect the Property at Buyer's expense (Buyer is advised to have all inspections/investigations of the Property, including but not limited to those matters set forth in Alternative 1, performed prior to the Option Termination Date).

(b) **Exercise of Option:** If Buyer delivers the Termination Notice prior to the Option Termination Date, **TIME BEING OF THE ESSENCE**, this contract shall become null and void and all earnest monies received in connection herewith shall be refunded to Buyer; however, the Option Fee will not be refunded and shall be retained by Seller. If Buyer fails to deliver the Termination Notice to Seller prior to the Option Termination Date, then Buyer will be deemed to have accepted the Property in its physical condition existing as of the Option Termination Date; provided such acceptance shall not constitute a waiver of any rights Buyer has under paragraphs 5, 6 or 7 above. The Option Fee is not refundable, is not a part of any earnest monies, and will be credited to the purchase price at Closing.

(c) CLOSING SHALL CONSTITUTE ACCEPTANCE OF THE PROPERTY IN ITS THEN EXISTING CONDITION UNLESS PROVISION IS OTHERWISE MADE IN WRITING.

17. **REASONABLE ACCESS/RESTORATION AND INDEMNITY:** Seller will provide reasonable access to the Property (including working, existing utilities) through the earlier of Closing or possession by Buyer. Buyer and Buyer's agents and contractors shall have the right to enter upon the Property for the purpose of appraising and evaluating the Property, and performing the tests and inspections permitted in this contract. Buyer shall, at Buyer's expense, promptly repair any damage to the Property resulting from any activities of Buyer and Buyer's agents and contractors. Buyer will indemnify and hold Seller harmless from all loss, damage, claims, suits or costs, which shall arise out of any contract, agreement, or injury to any person or property as a result of any activities of Buyer and Buyer's agents and contractors relating to the Property. This repair obligation and indemnity shall survive this contract and any termination hereof. Buyer may conduct a walk-through inspection of the Property prior to Closing.

18. **CLOSING:** Closing shall be defined as the date and time of recording of the deed and shall be on or before _____ (the "Closing Date"). All parties agree to execute any and all documents and papers necessary in connection with Closing and transfer of title on or before the Closing Date at a place and time designated by Buyer. The deed is to be made to _____

Absent agreement to the contrary in this contract or any subsequent modification thereto, the following terms shall apply: If either party is unable to close by the Closing Date, then provided that the party is acting in good faith and with reasonable diligence to proceed to closing, such party shall be entitled to reasonable delay of the Closing Date and shall give as much notice as possible to the non-delaying party and closing agent. In such event, however, either party for whom the Closing Date is delayed shall have a maximum of ten (10) days from the Closing Date, or any extension of the Closing Date agreed-upon in writing, in which to close without payment of interest. Following expiration of the ten-day period, the party not ready to close shall be responsible for paying to the other party (if ready, willing and able to close) interest on the purchase price at the rate of eight percent (8%) per annum accruing from the end of the ten-day period until closing occurs or the contract is terminated. Should the delay in closing continue for more than thirty (30) days from the last agreed-upon extension of the Closing Date, however, then the non-delaying party shall have the unilateral right to terminate the contract and receive the earnest money, but the right to such receipt shall not affect any other remedies available to the non-delaying party for such breach.

19. **POSSESSION:** Unless otherwise provided herein, possession shall be delivered at Closing. In the event possession is NOT to be delivered at Closing: a Buyer Possession Before Closing Agreement is attached OR a Seller Possession After Closing Agreement is attached. Seller shall remove, by the date possession is made available to the Buyer, all personal property which is not a part of the purchase and all garbage and debris from the Property.

20. **OTHER PROVISIONS AND CONDITIONS:** CHECK ALL STANDARD ADDENDA THAT MAY BE A PART OF THIS CONTRACT, IF ANY, AND ATTACH HERETO. ITEMIZE ALL OTHER ADDENDA TO THIS CONTRACT, IF ANY, AND ATTACH HERETO. (NOTE: UNDER NORTH CAROLINA LAW, REAL ESTATE AGENTS ARE NOT PERMITTED TO DRAFT CONDITIONS OR CONTINGENCIES TO THIS CONTRACT.)

- Additional Provisions Addendum (Form 2A11-T)
- Back-Up Contract Addendum (Form 2A1-T)
- Contingent Sale Addendum (Form 2A2-T)
- FHA/VA Financing Addendum (Form 2A4-T)
- Insurance Availability/Affordability Addendum (Form 370-T) (NC Association of REALTORS form only)
- Lead-Based Paint Or Lead-Based Paint Hazard Addendum (Form 2A9-T)
- OTHER: _____
- Loan Assumption Addendum (Form 2A6-T)
- New Construction Addendum (Form 2A3-T)
- Owners' Association Disclosure And Addendum (Form 2A12-T)
- Seller Financing Addendum (Form 2A5-T)
- Vacation Rental Addendum (Form 2A13-T)

21. **RISK OF LOSS:** The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller. If the improvements on the Property are destroyed or materially damaged prior to Closing, Buyer may terminate this contract by written notice delivered to Seller or Seller's agent and all deposits shall be refunded to Buyer. In the event Buyer does NOT elect to terminate this contract, Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property being purchased. Seller is advised not to cancel existing insurance on the Property until after confirming recordation of the deed.

22. **ASSIGNMENTS:** This contract may not be assigned without the written consent of all parties, but if assigned by agreement, then this contract shall be binding on the assignee and his heirs and successors.

23. **TAX-DEFERRED EXCHANGE:** In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision. (NOTE: If Alternative 2 under paragraph 16 of this contract will apply, Seller should seek advice concerning the taxation of the Option Fee.)

Buyer initials _____ Seller initials _____

24. **PARTIES:** This contract shall be binding upon and shall inure to the benefit of the parties, i.e., Buyer and Seller and their heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

25. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

26. **ENTIRE AGREEMENT:** This contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions hereto must be in writing and signed by all parties. Nothing contained herein shall alter any agreement between a REALTOR® or broker and Seller or Buyer as contained in any listing agreement, buyer agency agreement, or any other agency agreement between them.

27. **NOTICE AND EXECUTION:** Any notice or communication to be given to a party herein may be given to the party or to such party's agent. Any written notice or communication in connection with the transaction contemplated by this contract may be given to a party or a party's agent by sending or transmitting it to any mailing address, e-mail address or fax number set forth in the "Notice Address" section below. This offer shall become a binding contract (the "Effective Date") when signed by both Buyer and Seller and such signing is communicated to the offering party. This contract may be signed in multiple originals, all of which together constitute one and the same instrument, and the parties adopt the word "SEAL" beside their signatures below.

28. **COMPUTATION OF DAYS:** Unless otherwise provided, for purposes of this contract, the term "days" shall mean consecutive calendar days, including Saturdays, Sundays, and holidays, whether federal, state, local or religious. For the purposes of calculating days, the count of "days" shall begin on the day following the day upon which any act or notice as provided in this contract was required to be performed or made.

Buyer has has not made an on-site personal examination of the Property prior to the making of this offer.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

Date: _____

Date: _____

Buyer _____ (SEAL)

Seller _____ (SEAL)

Date: _____

Date: _____

Buyer _____ (SEAL)

Seller _____ (SEAL)

NOTE: INSERT THE ADDRESS AND/OR ELECTRONIC DELIVERY ADDRESS EACH PARTY AND AGENT APPROVES FOR THE RECEIPT OF ANY NOTICE CONTEMPLATED BY THIS CONTRACT. INSERT "N/A" FOR ANY WHICH ARE NOT APPROVED.

BUYER NOTICE ADDRESS:

SELLER NOTICE ADDRESS:

Mailing Address: _____

Mailing Address: _____

Buyer Fax#: _____

Seller Fax#: _____

Buyer E-mail Address: _____

Seller E-mail Address: _____

SELLING AGENT NOTICE ADDRESS:

LISTING AGENT NOTICE ADDRESS:

Mailing Address: _____

Mailing Address: _____

Selling Agent Fax#: _____

Listing Agent fax#: _____

Selling Agent E-mail Address: _____

Listing Agent E-mail Address: _____

Selling Agent Phone#: _____
Phone#: _____

Listing Agent _____

Escrow Agent acknowledges receipt of the earnest money and agrees to hold and disburse the same in accordance with the terms hereof.

Date _____

Firm: _____

By: _____
(Signature)

Individual Agent/license#: _____ Selling

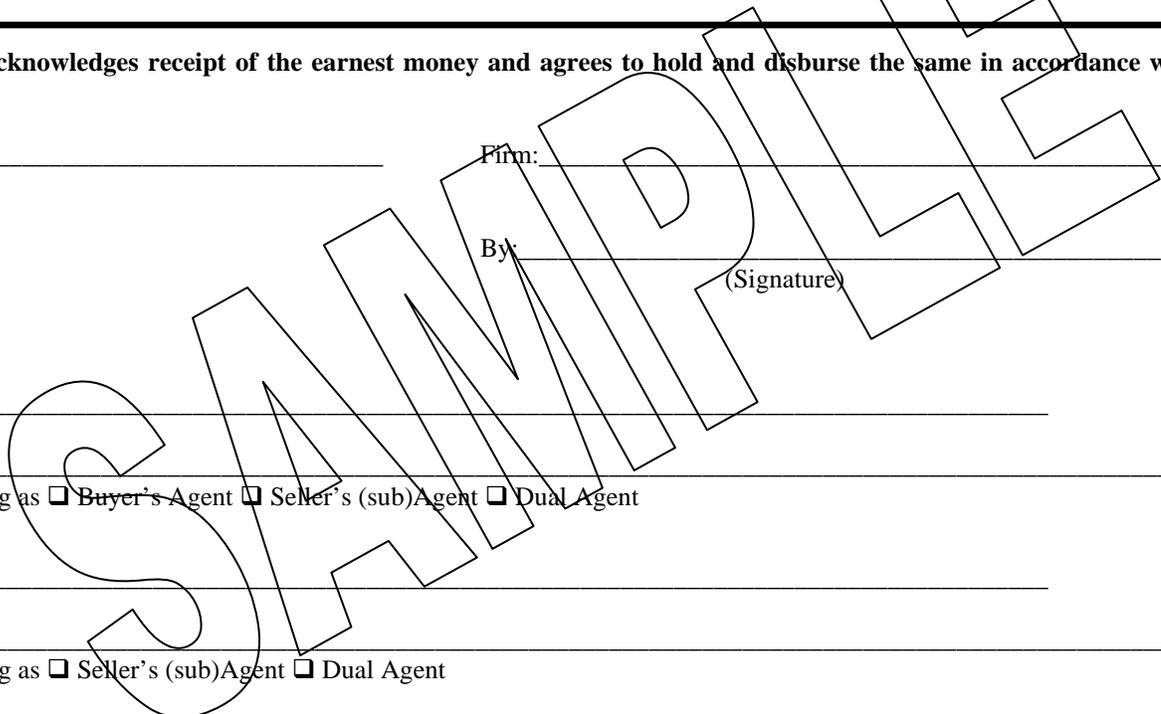
Firm Name: _____

Acting as Buyer's Agent Seller's (sub)Agent Dual Agent

Individual Agent/license#: _____ Listing

Firm Name: _____

Acting as Seller's (sub)Agent Dual Agent



GUIDELINES FOR COMPLETING THE OFFER TO PURCHASE AND CONTRACT
(Standard Form No. 2-T)

INTRODUCTION: These guidelines are provided to assist agents and attorneys who are completing the Offer to Purchase and Contract form on behalf of Buyers and Sellers. The Offer to Purchase and Contract is the most important document in any real estate sale and it is imperative that it accurately reflects the entire agreement of the Buyer and Seller. An improper contract may have substantial adverse effects on the rights and interests of the parties. These guidelines include general comments about contract completion as well as suggestions and explanations regarding selected contract provisions with which agents often have difficulty. However, situations will frequently arise that are not covered by these guidelines. Agents should always remember that an attorney should be consulted any time there is uncertainty regarding the proper completion of this important form.

USE OF FORM: The Offer to Purchase and Contract form is jointly approved by the NORTH CAROLINA ASSOCIATION OF REALTORS[®], INC. and the NORTH CAROLINA BAR ASSOCIATION, as Standard Form No. 2-T. The version of this form with the REALTOR[®] logo is produced by NCAR for use by its members, only as printed. The version of this form without the REALTOR[®] logo is produced for the NORTH CAROLINA BAR ASSOCIATION and may be used, only as printed, by attorneys and any real estate agent.

This form may be used in a variety of real estate sales transactions, but it was developed primarily for use in the sale of existing single-family residential properties. Do not use this form as a substitute for a lease-option agreement, lease-purchase agreement or installment land contract. Also, if the sale involves the construction (or completion of construction) of a new single-family dwelling, use the current standard New Construction Addendum (NCAR/NCBA Form 2A3-T) or consult a NC real estate attorney for an appropriate form.

GENERAL INSTRUCTIONS:

1. Type this form if possible; otherwise print or write legibly in ink.
2. Fill in all blank spaces. If any space is not used, enter "N/A" or "None" as appropriate.
3. Be precise. Avoid the use of abbreviations, acronyms, jargon, and other terminology that may not be clearly understood.
4. Every change, addition or deletion to an offer or contract must be initialed and should be dated by both Buyer and Seller.
5. If numerous changes are made or if the same item (such as the purchase price) is changed more than once, complete a new contract form to avoid possible confusion or disputes between the parties. If, *after the parties have entered into a valid contract*, you prepare a new form for the parties to sign because the existing contract contains so many changes that it is difficult to read, then do not discard the existing contract. Keep it with the new form.
6. Review with the parties all contract provisions. Advise the parties to consult their attorney if they have any questions about the legal consequences of the contract or any particular provision.

NAMES OF BUYER AND SELLER: Fill in the complete name of each Buyer. If husband and wife, show the names of both (John A. Doe and wife, Mary B. Doe). Do not use "Mr. and Mrs. John A. Doe." Fill in the complete name of each Seller. If husband and wife, show the names of both (John A. Doe and wife, Mary B. Doe). Do not use "Mr. and Mrs. John A. Doe," "Owner of Record," or last name only.

1. **REAL PROPERTY:** Fill in City, County and Street Address. If any are not applicable, indicate by "None." CAUTION: A street address alone is generally not an adequate legal description.

Legal Description: Even if the Property has a street address, include a legal description sufficient to identify and distinguish the Property from all other property. An adequate legal description includes any of the following:

- (1) **Reference to a recorded plat (map):** Include the lot #, block #, name of subdivision, and recording reference for the plat as recorded in the Register of Deeds office and fill in the county (or counties). CAUTION: A reference to a tax map alone is generally not an adequate legal description.
- (2) **Reference to a recorded deed:** Determine whether the Property is all or a portion of the land described in the deed. Check the applicable box. Insert the book # and page # of the Deed Book as recorded in the Register of Deeds office and fill in the county (or counties).



- (3) **Metes and bounds description:** Do not attempt to complete a metes and bounds exhibit. An attorney should be consulted prior to completing the Offer to Purchase and Contract if a metes and bounds description is necessary or if any of the above legal descriptions is not available.

Covenants: Purchasers take title to property subject to the restrictive covenants and are bound to follow them, even if they did not actually know the property was subject to restrictive covenants. Once restrictions are properly imposed upon a property, they "run with the land" and are binding on the owner and all subsequent purchasers. No owner or purchaser can use the property for any purpose that violates the restrictions. Therefore, before the Buyer signs an offer to purchase for property which is located in a subdivision or development, the Buyer should review any document that may limit the use of the Property or govern the Property owner or obligate the Property owner to a financial payment other than the purchase price, taxes, and governmental assessments. If such documents are not available from either the listing agent or the seller, then an attorney should be consulted prior to completing the form.

If the Property is subject to an owners' association, it is recommended that the current standard Owners' Association Disclosure and Addendum (NCAR/NCBA Form 2A12-T) be provided to Buyer prior to any offer being made and incorporated as an addendum to the Offer to Purchase and Contract.

2. FIXTURES: If the Seller wishes to *exclude* from the sale any items that are presently on the Property and are listed in the fixtures clause, or to *exclude* any items that are presently on the Property that may usually be considered to be real property ("fixtures") and are NOT listed in the fixtures clause, list such items. (EXAMPLES: Storage shed; mailboxes; wall/door mirrors; etc.) It is not necessary to cross out items that are listed in the fixtures clause but are not present on the Property. *NOTE: Care should be taken to ascertain that any fixtures included in the sale are owned by the Seller and are not merely rented or leased.* (EXAMPLE: Water treatment/conditioner equipment; gas tank). It is advisable to list any excluded item about which a dispute may arise.

3. PERSONAL PROPERTY: List all items of personal property that are to be included in the sale. (EXAMPLES: Curtains, draperies, etc.; free standing appliances such as a refrigerator or range; fireplace tools; window air conditioner; etc.) It is advisable to list any item included in the sale about which some dispute may arise. *NOTE: Care should be taken to ascertain that any personal property included in the sale is owned by the Seller and is not merely rented or leased.*

4. PURCHASE PRICE: Insert the amount of the purchase price in dollars.

Subparagraph (a): Insert the amount of the earnest money deposit in dollars, check the appropriate box for method of payment, and insert the name of the Escrow Agent designated to hold the earnest money (usually the listing firm), not the name of an individual agent (unless it is to be held by a broker who is a sole practitioner). Note that the name indicated here should also be indicated on the "Firm" line at the bottom of the form under the acknowledgment of receipt of the earnest money. *NOTE: Any earnest money check should be made payable to the designated Escrow Agent. If the parties agree that a real estate firm acting as Escrow Agent may deposit the Earnest Money into an interest-bearing trust account, check the appropriate box.*

Subparagraph (b): If the initial earnest money deposit or an additional earnest money deposit is to be given at a later date, insert the amount of the deposit in dollars and insert the due date. **NOTE: Time is "of the essence" with respect to the payment of any additional earnest money deposit.**

Subparagraph (c): If Alternative 2 of paragraph 16 applies, insert the amount of the Option Fee. Do not insert \$0, N/A or leave blank if Alternative 2 applies, as this may create a question about the legal enforceability of any resulting contract.

Subparagraph (d): Insert the dollar amount of the existing loan on the Property; complete and attach the current standard Loan Assumption Addendum (NCBA/NCAR Form 2A6-T).

Subparagraph (e): Insert the dollar amount of the financing from the Seller; complete and attach the current standard Seller Financing Addendum (NCAR/NCBA Form 2A5-T).

Subparagraph (f): Insert the dollar amount of the balance due from the Buyer. *NOTE: This amount should equal the purchase price minus any dollar amounts inserted in subparagraphs (a), (b), (c), (d), or (e). In the case of a counteroffer, which alters any figure in Paragraph 4, all altered figures must be initialed and dated by all parties. Care should be taken to be certain that the figures in subparagraphs (a) through (f), when added, always equal the purchase price.*

5. LOAN CONDITION:

Subparagraph (a):

- (1) Check off or insert the type of loan the Buyer will be obtaining. If FHA or VA financing is being used, attach the current standard FHA/VA Financing Addendum (NCAR/NCBA Form 2A4-T).
- (2) The principal amount may be either a specific loan amount expressed as a dollar figure or as a percentage of the purchase price (EXAMPLE: 95% of purchase price).

(3) Insert the specific term of the desired loan.

(4) Insert a specific maximum interest rate and a specific maximum percentage for discount points. **Do NOT use “market” or “prevailing.”**

Subparagraph (b): Insert the number of days the Buyer has to make written application for the loan, authorize any required appraisal, and pay any necessary fees. Note that Buyer must promptly furnish Seller written confirmation from the lender of having applied for the Loan, and that Seller may terminate the Contract and retain any earnest money deposit if Buyer fails to provide such confirmation within 5 days of Seller’s written demand.

Subparagraph (c): Insert the number of days that Buyer will have to determine whether Buyer will be able to obtain any loan. Buyer should consult with Buyer’s lender to assure that the number of days allowed for Buyer to obtain the Loan is sufficient to allow Buyer’s lender time to take all reasonable steps necessary to provide reliable loan approval. **Note that time is “of the essence” with respect to the date by which Buyer must notify the Seller in writing of Buyer’s decision to terminate the contract for inability to obtain loan approval.** Note also that if Buyer does not terminate the contract and is unable to close based upon an inability to obtain the loan, any earnest money deposit is forfeited to the Seller.

6. FLOOD HAZARD DISCLOSURE/CONDITION: The appropriate box should be selected based upon Seller’s instructions. In making a selection, the Seller should understand that if the second box is selected, the Buyer has the right to terminate the contract and to a refund of their earnest money if it is later determined that any permanent improvements on the Property are in fact located in a Special Flood Hazard Area or if the Buyer’s lender requires the Buyer to obtain flood insurance. Since the Buyer does not have this right if the first box is selected, it is to the Seller’s advantage to select the first box if the Property is located partly or entirely in a Special Flood Hazard Area. Information about flood hazards can be obtained from the Federal Emergency Management Agency at www.fema.gov.

7. OTHER CONDITIONS:

Subparagraph (a): Insert the *intended* use of the Property by the Buyer. Be specific. (EXAMPLES: Single-family residential; two-family residential; three-family residential; type of business or office use; type of commercial use.) If the intended use is unusual or different from the current allowable use, the Buyer should make an inquiry **prior to completing the Offer to Purchase and Contract** to determine if there are any zoning ordinances, governmental regulations or restrictive covenants that would prohibit such intended use. If the Buyer indicates that there is more than one intended use of the Property, consult an attorney prior to completing the Offer to Purchase and Contract.

Subparagraph (c): If the contract is NOT subject to a financing contingency requiring an appraisal, insert the completion date for any appraisal Buyer may choose to have performed. If the contract is subject to a financing contingency requiring an appraisal, DO NOT insert a date in the blank. Instead, insert “N/A.”

8. SPECIAL ASSESSMENTS: *Regular owners’ association dues are covered in Paragraph 9.* Listing Agent should consult with Seller, as Seller must identify any pending or confirmed assessments in the blank. If there are no such assessments, insert “None.” Note that unless otherwise agreed, Seller is responsible for any assessments that are *confirmed* through the time of Closing, and Buyer is responsible for any assessments disclosed by Seller that are *pending* at the time of Closing.

9. PRORATIONS AND ADJUSTMENTS: Insert the dollar amount and time period covered by payment of the regular owners’ association dues. If the Property is subject to regulation by an owners’ association, it is recommended that the current standard Owners’ Association Disclosure and Addendum (NCAR/NCBA Form 2A12-T) be attached.

10. EXPENSES: Insert the **fixed** dollar amount the Seller will pay. This amount may also be expressed as a percentage of the purchase price. **Include in this amount any FHA/VA lender and inspection costs (seller mandated fees) to be paid by Seller. Do NOT use “expenses not to exceed” or “a maximum of” or similar language.** Examples of Buyer’s expenses associated with the purchase of the property may include, but are not limited to, discount points, loan origination fees, appraisal fees, attorney’s fees, inspection fees and loan “pre-pays” (taxes, insurance, etc.). If the Seller will not pay any such expenses, insert “0” in the blank. Note that Seller’s payment of any such amount is subject to approval by Buyer’s lender.

11. HOME WARRANTY: If a home warranty is to be paid for by Seller, check one of the two boxes, insert maximum cost to be paid and identify warranty company if applicable.

15. PROPERTY DISCLOSURE: Indicate the status of the Buyer's receipt of the required N.C. Residential Property Disclosure Statement by checking the appropriate box. If the transaction is exempt from the N. C. Residential Property Disclosure Act, then enter one of the following: (1) Court Ordered Transfer; (2) Borrower to Lender Transfer; (3) Fiduciary Transfer; (4) Co-owner to Co-owner Transfer; (5) Within Family Transfer; (6) Spouse to Spouse Divorce Decree Transfer; (7) Tax Sale; (8) Governmental Transfer; (9) First Sale of Dwelling Never Inhabited; (10) Lease with Option to Purchase (where lessee occupies or intends to occupy the dwelling) (**Caution: See warning under "Use of Form"**); (11) Buyer and Seller Agreement; or (12) Property to be transferred consists of less than 1 or more than 4 residential units. *See North Carolina General Statutes Section 47E-2 for a complete description of exemptions.*

If the Property is residential property built prior to 1978, the current standard Lead-Based Paint or Lead-Based Paint Hazard Addendum (NCAR/NCBA Form 2A9-T) must be attached.

16. PROPERTY INSPECTION, INVESTIGATION: Check *either* ALTERNATIVE 1 *or* ALTERNATIVE 2.

ALTERNATIVE 1:

Subparagraph (a): Property Condition: Insert any permanent improvements on the Property that are excluded from the Property Condition contingency. Note that Buyer's lender may not permit exclusions.

Subparagraph (b): Inspections/Repair Negotiations: Insert the date by which all Property inspections will be completed by the Buyer *and* written notice of necessary repairs given to Seller. It is strongly recommended that the Property inspections be completed within 14 days of formation of the contract unless there are extenuating circumstances that would prohibit such inspections being completed by such time. *In all cases, the inspections should be performed as soon as possible.* Also insert the number of days Seller has to provide Buyer a written response to Buyer's notice of necessary repairs. **Note that time is "of the essence" with respect to the Seller's written response. Note that time is also "of the essence" with respect to the number of days following the Seller's written response within which the Buyer may terminate the contract if the Seller elects not to complete all necessary repairs.**

Subparagraph (c): Wood-Destroying Insects: Insert any structures on the Property that are excluded from the wood-destroying insect condition. Note that Buyer's lender may not permit exclusions. Also note that any required treatment or necessary repairs are negotiated between the Seller and the Buyer in the same manner and within the same time limitations as other necessary repairs. Re-inspection may be necessary to meet lender time requirements for such inspections.

Subparagraph (e): Cost of Repair Contingency: In the event the parties agree that the Buyer will have the right to terminate the contract if a reasonable estimate of the cost of necessary repairs exceeds a certain dollar amount, insert that amount in the blank. In negotiating an acceptable amount, it should be kept in mind that the intended purpose of this provision is to give the Buyer an opportunity to terminate the contract in situations where significant unanticipated repairs are necessary and/or estimated repair costs are significantly greater than what might be expected, given the age, size and condition of the covered improvements. Note that only the cost of repairing items required under subparagraphs (a) and (c) are to be considered in the estimate, and that the estimated cost of wood-destroying insect treatment and radon remediation are not to be included in determining the cost-of-repair amount. **Also note that time is "of the essence" with respect to time within which the Buyer has to exercise any right to terminate the contract under the Cost of Repair Contingency.** If this provision is not to be part of the contract, it should be stricken and initialed and dated by the Buyer and the Seller.

ALTERNATIVE 2:

Subparagraph (a): Property Investigation with Option to Terminate: The Option Fee represents the money paid by Buyer for the exclusive right to purchase the Property during the option period. Upon acceptance of the offer, the Option Fee must be paid directly to Seller. The rules of the NC Real Estate Commission prohibit the retention by a real estate agent/firm of an Option Fee check or other negotiable instrument for more than 3 business days after acceptance of the offer. Insert the date for termination of the option. During this time, Seller may entertain other offers only in a back-up position. **Note that time is "of the essence" with regard to the Option Termination Date.**

Subparagraph (b): Exercise of Option: The Option Fee cannot be refundable. Do *not* alter this provision to make the Option Fee refundable.

18. CLOSING: Insert the desired closing date. The closing date established should provide a reasonable period of time for obtaining inspections, obtaining loan approval, satisfying contract conditions, and preparing closing documents. Also, provide the full name of each grantee in the deed.

19. POSSESSION: The contract assumes possession will be delivered at closing. "Closing" is defined in Paragraph 18 as the date and time of recording of the deed. In selecting the place and time of Closing, Buyer should consider that recording is necessary before possession may be delivered unless the parties otherwise agree. If the parties agree to transfer possession to Buyer prior to recording of the deed, then attach a Buyer Possession Before Closing Agreement (NCAR/NCBA Form 2A7-T) or consult a NC real estate attorney for an appropriate agreement. If the parties agree to permit Seller to remain in possession after recording of the deed, then attach a Seller Possession After Closing Agreement (NCAR/NBCA Form 2A8-T) or consult a NC real estate attorney for an appropriate agreement.

20. OTHER PROVISIONS AND CONDITIONS: Check any standard addenda that may be attached to the contract, and indicate by name any other attached addenda. Any addenda referred to here should be properly identified, signed under seal by the parties, and attached to each original of the contract. Any copy of the contract must always have all addenda attached. Additional provisions or conditions may be added in this space if necessary. Identify each such provision or condition as (a), (b), etc. If any added provision conflicts with another provision of the contract, clarify which provision is to govern. **CAUTION: Agents must be extremely careful when adding contract provisions. The drafting of such provisions could constitute the unauthorized practice of law and could result in disciplinary action against an agent by the North Carolina Real Estate Commission, as could the inclusion of an inadequate or improper provision.**

27. NOTICE AND EXECUTION: Two originals of the completed and signed contract are normally sufficient, one each for Buyer and Seller, with copies for the real estate firms involved, the closing attorney and the lender.

ON-SITE EXAMINATION: Check appropriate box.

SIGNATURES, DATES, AND ADDRESSES: All parties with an ownership interest must sign as Seller and all parties named as Buyer must sign as Buyer.

- (1) If a married Buyer is taking title as sole owner, and if the contract contains a financing contingency provision, it is advisable to have the Buyer's spouse join in signing the contract so that the spouse will be obligated to join in signing any deed of trust that may be required by the lender to secure the Buyer's loan. Otherwise, the Buyer may be able to avoid performance of the contract if the spouse refuses to sign the deed of trust.
- (2) ***If the Seller(s) is married, both the husband and wife always must sign the contract.*** This is true even if the Property is owned by only one spouse. The non-owner spouse holds a potential "marital life estate" under North Carolina law and must sign the deed in order for the other spouse to convey clear title. The signature of the non-owner spouse on the contract will obligate that spouse to join in signing the deed.
- (3) Indicate the dates that the parties actually sign the Offer to Purchase and Contract.
- (4) Insert the notice addresses for the Buyer, Seller and their agents, including current mailing and e-mail addresses and fax numbers. Note that in accordance with paragraph 27, the parties agree that any written notice or communication may be transmitted to any mailing address, e-mail address or fax number set forth in the contract which they select. Thus, it is very important that correct contact information be inserted. If a party does not have an e-mail address or fax machine, or if a party does not desire written notice or communication to be transmitted to the party's e-mail address and/or fax machine, insert "N/A" or "None" in the relevant blank. REALTORS® representing a party to a transaction are reminded that if the other party to the transaction is exclusively represented, REALTORS® generally must conduct all dealings concerning the transaction with the other party's agent and not the other party (see Standard of Practice 16-13 of the REALTOR® Code of Ethics).

EARNEST MONEY ACKNOWLEDGEMENT: The "Firm" should be the same as the firm indicated as Escrow Agent (usually the listing firm) in Paragraph 4(a). The agent signing for the firm serving as Escrow Agent on the "By:" line must be associated with that firm. Usually, this will be the individual listing agent.

AGENT/FIRM NAMES AND CONFIRMATION OF AGENCY RELATIONSHIP: Enter the names of the individual selling and listing agents, their respective individual license numbers and firm names, and check the appropriate agency representation box for each. Note that this procedure is **confirmation** of a prior disclosure of the agency relationship and in no way should be considered as an initial disclosure of agency relationship. Signatures are not necessary.

ADDITIONAL PROVISIONS ADDENDUM

Property Address: _____

NOTE: All of the following provisions which are marked with an "X" shall apply to the attached Offer to Purchase and Contract or Offer to Purchase and Contract – Vacant Lot/Land ("Contract"). Those provisions marked "N/A" shall not apply.

- 1. EXPIRATION OF OFFER: This offer shall expire unless acceptance is delivered to Buyer or to _____, on or before _____ [] AM [] PM, on _____, or until withdrawn by Buyer, whichever occurs first.
2. (To be used with Alternative 1 only) SEWER SYSTEM: This Contract is contingent upon [] Buyer [] Seller ("Responsible Party") obtaining an Improvement Permit or written evaluation from the County Health Department ("County") for a (check only ONE) [] conventional or [] other _____ ground absorption sewage system for a _____ bedroom home. All costs and expenses of obtaining such Permit or written evaluation shall be borne by Responsible Party unless otherwise agreed. In any event Seller, by no later than _____, shall be responsible for clearing that portion of the Property required by the County to perform its tests and/or inspections. Responsible Party shall use best efforts to obtain such Permit or written evaluation. If the Improvement Permit or written evaluation from the County cannot be obtained by _____ (date), either party may terminate this Contract and the Earnest Money Deposit shall be refunded to Buyer.
3. CLOSING OF EXISTING CONTRACT CONTINGENCY: This Contract is contingent upon closing of an existing contract on Buyer's real property located at: _____ on or before _____. If this contingency is not removed on or before midnight of _____ Seller may terminate this Contract and all earnest monies shall be returned to Buyer.
4. RENTAL/INCOME/INVESTMENT PROPERTY: The Property is subject to existing leases and/or rights of tenants in possession under month-to-month tenancies. Seller agrees to deliver to Buyer on or before _____, true and complete copies of all existing leases, rental agreements, outstanding tenant notices, written statements of all oral tenant agreements, statement of all tenant's deposits, uncured defaults by Seller or tenants, and claims made by or to tenants, if any. This Contract is contingent upon Buyer's approval of said documents. Buyer shall be deemed to have approved said documents unless written notice to the contrary is delivered to Seller or Seller's agent within seven (7) days of receipt of same. If Buyer does not approve said documents and delivers written notice of rejection within the seven day period, this Contract shall be terminated and all earnest monies shall be returned to Buyer. NOTE: DO NOT USE THIS PROVISION FOR PROPERTY SUBJECT TO THE NORTH CAROLINA VACATION RENTAL ACT. A VACATION RENTAL ADDENDUM SHOULD BE USED IN SUCH CASES.

IN THE EVENT OF A CONFLICT BETWEEN THIS ADDENDUM AND THE OFFER TO PURCHASE AND CONTRACT OR THE OFFER TO PURCHASE AND CONTRACT—VACANT LOT/LAND, THIS ADDENDUM SHALL CONTROL.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

Buyer: _____ (SEAL) Date: _____
Buyer: _____ (SEAL) Date: _____
Seller: _____ (SEAL) Date: _____
Seller: _____ (SEAL) Date: _____



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CONTINGENT SALE ADDENDUM

Property Address: _____

1. It is a condition of the attached Offer to Purchase and Contract or Vacant Lot Offer to Purchase and Contract ("Contract") that Buyer shall enter into a valid purchase agreement for the sale of Buyer's real property located at _____ and close such sale on or before the Closing Date specified in the Contract.

The Buyer's property

- is listed with _____, or
will be listed on or before _____, with _____, or
Buyer is attempting to sell the property without the assistance of a real estate broker.

2. As long as this condition remains a term of this Contract, Seller may continue to market the Property and receive other offers to purchase. Should Seller receive another offer, which in the Seller's sole discretion, is acceptable, Seller shall deliver to Buyer or Buyer's agent written notice of such fact.

3. Buyer shall have a period of _____ hours after receipt of such notice in which to respond to Seller or Seller's agent. If within such required time period, Buyer fails to deliver to Seller or Seller's agent a written waiver of Buyer's rights under this condition, then the Contract shall be null and void and Buyer shall be entitled to a refund of all earnest monies.

4. If Buyer delivers a written waiver to Seller or Seller's agent within the time period specified in paragraph 3 above, Buyer shall be deemed to have waived any rights under any loan condition described in the Contract based upon lender's refusal to allow the loan to close because the loan is conditioned upon Buyer selling the real property described above. In the event of any such waiver, Closing shall take place no later than the Closing Date specified in the Contract or _____ days from the date of the waiver, whichever occurs sooner.

5. Upon waiver of this condition as set forth above, the Contract shall remain in full force and effect without the condition.

TIME IS OF THE ESSENCE WITH REGARD TO THE DATES AND TIMES EITHER SET FORTH OR REFERRED TO IN THIS ADDENDUM, SPECIFICALLY INCLUDING, BUT NOT LIMITED TO, THE CLOSING DATE.

IN THE EVENT OF A CONFLICT BETWEEN THIS ADDENDUM AND THE CONTRACT, THIS ADDENDUM SHALL CONTROL.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

Date _____

Date _____

Buyer: _____ (SEAL)

Seller: _____ (SEAL)

Date _____

Date _____

Buyer: _____ (SEAL)

Seller: _____ (SEAL)



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[NOTE: The following are suggested notices that may be copied for the purpose of complying with the notice and waiver provisions contained in paragraphs (2) and (3) of the Contingent Sale Addendum. **DO NOT DETACH THE ORIGINAL OF THIS FORM FROM THE CONTRACT.**]

NOTICE TO BUYER OF RECEIPT OF ANOTHER OFFER

NOTICE is hereby given to _____ (insert name of Buyer) from Seller under the Contingent Sale Addendum to the Contract between them dated _____ for real property located at _____ (insert address of property being purchased by Buyer) that Seller has received another offer, which in the Seller's sole discretion is acceptable.

Seller: _____

Date: _____

Seller: _____

Date: _____

WAIVER OF BUYER'S RIGHTS

BUYER hereby waives any rights Buyer has under the Contingent Sale Addendum to the Contract between Buyer and _____ (insert name of Seller) dated _____ for real property located at _____ (insert address of property being purchased by Buyer), including any rights under any loan condition described in the Contract based upon lender's refusal to allow the loan to close because the loan is conditioned upon Buyer selling the real property described in the Contingent Sale Addendum.

Buyer: _____

Date: _____

Buyer: _____

Date: _____

LOAN ASSUMPTION ADDENDUM

Type of Existing Loan to be Assumed (Use a separate addendum for each loan to be assumed.)

 FHA VA Private Conventional
 Fixed Rate at % per annum
 Adjustable Rate currently at % per annum with adjustments occurring
 Other

Approximate Principal Balance: \$ as of

The loan payments are currently \$ per

Final payment date of loan: Loan Account No:

Loan currently held by:

Address:

Telephone No.:

Mortgage Loan Assumption Costs and Discount Points not to exceed \$

This contract is contingent upon Buyer being able to assume the unpaid principal balance of the existing loan described above for the remainder of the loan term at the interest rate set forth above (subject to adjustment if the loan is indicated above as an adjustable rate loan) with mortgage loan assumption costs and discount points not to exceed the amount set forth above. If such assumption requires the lender's approval, Buyer agrees to use his best efforts to secure such approval and to advise Seller immediately upon receipt of the lender's decision. Approval must be granted on or before . All payments due from Seller on the loan must be current at closing, and the principal balance assumed shall be computed as of the date of closing. The amount shown for the assumption balance and cash at closing shall be adjusted as appropriate at closing to reflect the purchase price provided in the contract to which this Addendum is attached; provided, however, the outstanding principal balance shall not be greater than \$ or less than \$ at closing. Accrued, but unpaid interest and other charges on the loan, if any, shall be computed to the date of closing and paid by Seller. Interest and other charges on the loan prepaid by Seller, if any, shall be credited to Seller at closing and paid by Buyer. Examples of other charges include FHA and private mortgage insurance premiums. Unless otherwise provided herein, the existing loan must be assumable without either acceleration of the amount secured or any change in the original terms of the note and deed of trust. Upon request, Seller shall provide Buyer with copies of the note(s) and deed(s) of trust to be assumed.

Subject to the limitation provided above and unless otherwise provided herein, Buyer shall be responsible for all loan assumption costs. Seller shall have no obligation to pay any loan assumption costs unless specifically provided herein. If Seller is to pay any loan assumption costs, these costs are as follows:

Unless otherwise provided herein, the escrow account(s), if any, shall be purchased by Buyer.

Unless otherwise provided herein, if the hazard and/or flood insurance policies are transferred to Buyer, Buyer shall pay Seller for any prepaid insurance based on a proration of the existing premium on a per diem basis.

 Assumption of loan with release of liability (applicable only if marked): This contract is contingent upon Seller being released from liability on the assumed loan, and if a VA loan, Buyer must assume Seller's potential indemnity liability to the U.S. Government for the repayment of the loan.

 Assumption of VA loan with substitution of entitlement (applicable only if marked): This contract is contingent upon Buyer substituting Buyer's VA entitlement for Seller's VA entitlement on the assumed loan.



Buyer Initials _____ Seller Initials _____

Other Provisions: _____

IN THE EVENT OF A CONFLICT BETWEEN THIS ADDENDUM AND THE OFFER TO PURCHASE AND CONTRACT OR THE VACANT LOT OFFER TO PURCHASE AND CONTRACT, THIS ADDENDUM SHALL CONTROL.

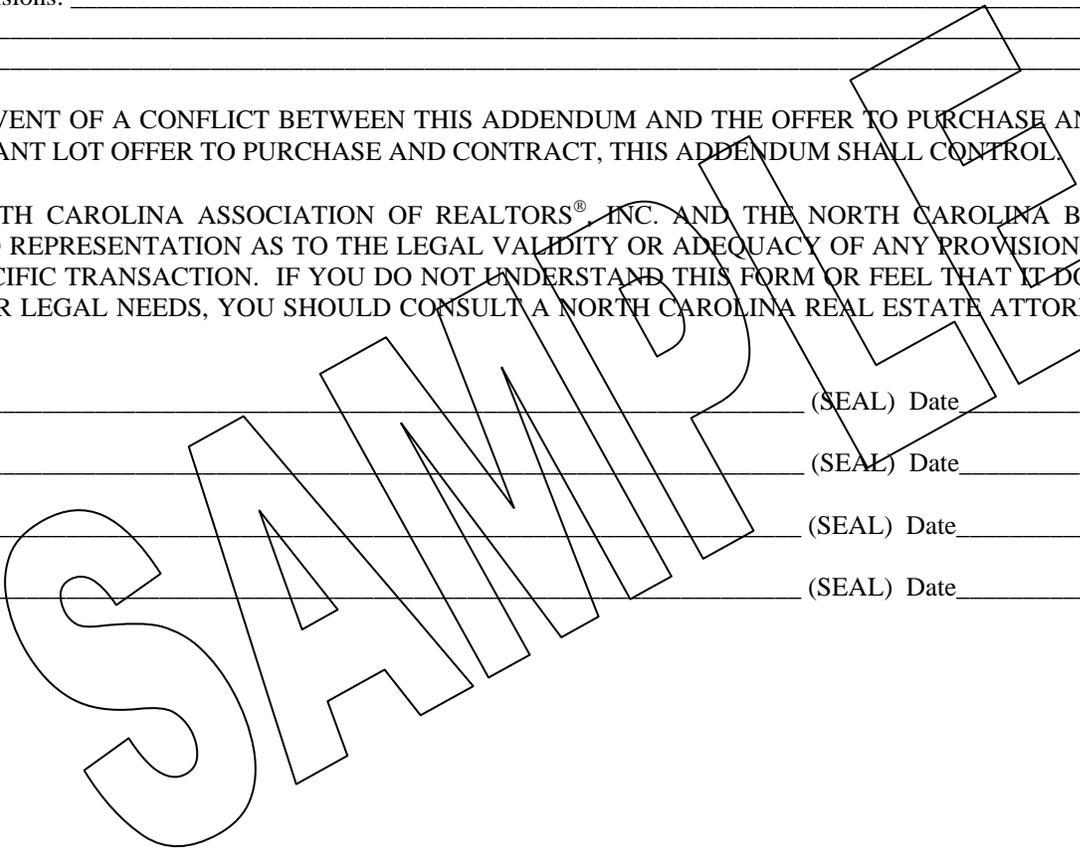
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Buyer: _____ (SEAL) Date _____

Buyer: _____ (SEAL) Date _____

Seller: _____ (SEAL) Date _____

Seller: _____ (SEAL) Date _____



BUYER POSSESSION BEFORE CLOSING AGREEMENT

THIS AGREEMENT IS AN ADDENDUM TO THE OFFER TO PURCHASE AND CONTRACT.

WARNINGS TO BUYERS AND SELLERS:

- **THIS FORM IS NOT TO BE USED FOR LEASE PURCHASE OR LEASE OPTION TRANSACTIONS. IT DOES NOT CONTAIN ALL OF THE PROTECTIONS OF A STANDARD RESIDENTIAL LEASE. DO NOT USE FOR OCCUPANCY OF MORE THAN 7 DAYS.**
- **YOU ARE ADVISED TO CONFIRM WITH AN INSURANCE PROFESSIONAL THE TERMS OF COVERAGE UNDER YOUR PROPERTY AND CASUALTY INSURANCE POLICY BEFORE USING THIS ADDENDUM.**

Buyer: _____
 has entered into a Offer to Purchase and Contract ("Contract") dated _____
 with Seller: _____
 to purchase the Property known as: _____

Buyer may take possession of the Property on _____ ("Commencement Date"). (NOTE: If Paragraph 16, Alternative 2 of the Contract applies, then choose a date following the Option Termination Date.) This Agreement shall terminate at the earlier of the Closing date ("Closing") or seven (7) days from the Commencement Date (the entire period is referred to as the "Term"). Buyer and Seller, in consideration of the provisions set forth below, hereby agree as follows:

1. Buyer's possession of the Property constitutes an acknowledgement that all inspections under Paragraph 16 of the Contract are completed or waived. Buyer accepts the Property in its then present condition.
2. Prior to Closing, Buyer shall not alter, modify, damage or fail to maintain the Property in its present condition. Buyer shall make no changes in the Property, decorating or otherwise, prior to Closing without the written consent of Seller. In the event that Closing does not occur, Buyer shall pay all costs necessary to correct any alteration, modification or damage to the Property to bring the Property back to the condition it was in at the time of the execution of this Agreement.
3. Buyer shall pay Seller a non-refundable lump sum of \$ _____ for the Term in advance upon execution of this Agreement ("Rent").
4. In the event Closing has not occurred by midnight of the last day of the Term, Buyer shall vacate the Property. If Buyer remains in the Property thereafter ("Holding Over"), such Holding Over shall be a breach of this Agreement.
5. Buyer shall have all utilities registered in Buyer's name as of the Commencement Date and shall pay the costs of all utilities (sewer, water, gas, electricity, etc.) during the Term.
6. Buyer shall be responsible for lawn maintenance and trash removal during the Term.
7. Buyer shall keep any personal property owned by Buyer on or in the Property insured for the benefit of Buyer in such amount and to such extent as Buyer determines desirable.
8. Seller shall procure and/or maintain in effect a policy or policies of fire and hazard insurance adequately covering the Property and Seller's personal property, if any, located on the Property. Risk of loss or damage to the Property by fire or other casualty remains with the Seller until Closing.
9. Buyer shall indemnify and hold Seller harmless from and against any and all liability, fines, suits, claims, demands, actions, costs and expenses of any kind or nature whatsoever caused by, or arising out of, or in any manner connected with any damage to the Property occasioned by Buyer's use and/or occupancy of the Property during the Term, including intentional or negligent acts by Buyer, Buyer's family, and/or agents and employees of Buyer, or any injury to person or persons, including death, or any damage occurring in or about the Property and resulting from or occasioned by Buyer's use and/or occupancy of the Property during the Term.



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Buyer initials _____ Seller initials _____

- 10. Buyer shall not sublet the Property or assign this Agreement.
- 11. Seller shall pay the owner's association dues and other like charges, if any, during the Term.
- 12. Check one: pets are allowed on the Property no pets are allowed on the Property.
- 13. In the event of Buyer's breach of this Agreement or the Contract, Buyer may be evicted from the Property pursuant to a summary ejectment proceeding brought before the magistrate in the county where the Property is located, as provided in Chapter 42 of the North Carolina General Statutes.
- 14. The losing party in any legal proceeding brought by Buyer or Seller against the other party for breach of any provision of this Agreement (including an action for summary ejectment) shall be liable for the costs and expenses of the prevailing party, including reasonable attorneys' fees (at all tribunal levels).
- 15. **Time is of the essence with regard to the expiration of the Term.**

EXCEPT AS SPECIFICALLY MODIFIED HEREIN, ALL OF THE TERMS AND CONDITIONS OF THE CONTRACT SHALL REMAIN IN FULL FORCE AND EFFECT.

IN THE EVENT OF A CONFLICT BETWEEN THIS AGREEMENT AND THE CONTRACT, THIS AGREEMENT SHALL CONTROL.

THE NORTH CAROLINA ASSOCIATION OF REALTORS® INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

Buyer: _____ (SEAL) Date _____

Buyer: _____ (SEAL) Date _____

Seller: _____ (SEAL) Date _____

Seller: _____ (SEAL) Date _____

SELLER POSSESSION AFTER CLOSING AGREEMENT

THIS AGREEMENT IS AN ADDENDUM TO THE OFFER TO PURCHASE AND CONTRACT.

WARNINGS TO BUYERS AND SELLERS:

- **THIS FORM DOES NOT CONTAIN ALL OF THE PROTECTIONS OF A STANDARD RESIDENTIAL LEASE. DO NOT USE FOR OCCUPANCY OF MORE THAN 7 DAYS.**
- **YOU ARE ADVISED TO CONFIRM WITH AN INSURANCE PROFESSIONAL THE TERMS OF COVERAGE UNDER YOUR PROPERTY AND CASUALTY INSURANCE POLICY BEFORE USING THIS ADDENDUM.**

Seller: _____
 has entered into an Offer to Purchase and Contract ("Contract") dated _____ with
 Buyer: _____
 to sell the Property known as: _____
 Seller desires to remain in possession of the Property on and after the Closing date ("Closing") throughout the "Term," which ends the
 earlier of _____, 20____, (insert a date not later than seven (7) days after Closing) or the date Seller
 vacates the Property. Seller and Buyer, in consideration of the provisions set forth below, hereby agree as follows:

1. Seller acknowledges that all appliances, systems and equipment are in good working order and that Seller shall be responsible for the maintenance and repair of all appliances, systems and equipment on the Property for the Term. The following appliances, systems and equipment are not in working order at the time of this Agreement: _____
2. Seller shall not alter, modify, damage or fail to maintain the Property in its condition at Closing. In the event that the Property is altered, modified, damaged or not maintained by Seller in its condition at Closing, Seller shall pay all costs necessary to correct any alterations, modifications or damage to the Property to bring the Property back to its condition at Closing.
3. Seller shall pay Buyer a non-refundable lump sum of \$_____ for the Term payable in advance at Closing ("Rent").
4. Seller shall vacate the Property no later than midnight of the last day of the Term. If Seller remains in the Property thereafter ("Holding Over"), such Holding Over shall be a breach of this Agreement. Seller shall continue to be bound by all of the terms and conditions of this Agreement, except that during such Holding Over, for each day that Seller remains in possession of the Property, Seller shall pay to Buyer the greater of the Rent or \$500 per day.
5. Seller shall keep all utilities registered in Seller's name and shall pay the costs of all utilities (sewer, water, gas, electricity, etc.) during the Term.
6. Seller shall be responsible for lawn maintenance and trash removal during the Term.
7. Seller shall procure and/or maintain in effect a policy or policies of insurance adequately covering Seller's personal property and insuring against any public liability which may arise out of, or by virtue of, the use and occupancy of the Property by Seller, Seller's family and/or agents and employees of Seller. Risk of loss or damage to the Property by fire or other casualty transfers to Buyer at Closing.
8. As of Closing, Buyer shall keep the Property, together with any improvements and any personal property owned by Buyer on or in the Property, insured for the benefit of Buyer in such amount and to such extent as Buyer determines desirable.
9. Seller shall indemnify and hold Buyer harmless from and against any and all liability, fines, suits, claims, demands, actions, costs and expenses of any kind or nature whatsoever caused by, or arising out of, or in any manner connected with any damage to the Property occasioned by Seller's use and/or occupancy of the Property during the Term, including intentional or negligent acts by Seller, Seller's family, and/or agents and employees of Seller, or any injury to person or persons, including death, or any damage occurring in or about the Property and resulting from or occasioned by Seller's use and/or occupancy of the Property during the Term.



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Buyer Initials _____ Seller Initials _____

- 10. Seller shall not sublet the Property or assign this Agreement.
- 11. Buyer shall pay the owner's association dues and other like charges, if any, during the Term.
- 12. In the event of Seller's breach of this Agreement, Seller may be evicted from the Property pursuant to a summary ejectment proceeding brought before the magistrate in the county where the Property is located, as provided in Chapter 42 of the North Carolina General Statutes.
- 13. The losing party in any legal proceeding brought by Buyer or Seller against the other party for breach of any provision of this Agreement (including an action for summary ejectment) shall be liable for the costs and expenses of the prevailing party, including reasonable attorneys' fees (at all tribunal levels).
- 14. **Time is of the essence with regard to the Term.**

EXCEPT AS SPECIFICALLY MODIFIED HEREIN, ALL OF THE TERMS AND CONDITIONS OF THE CONTRACT SHALL REMAIN IN FULL FORCE AND EFFECT.

IN THE EVENT OF A CONFLICT BETWEEN THIS AGREEMENT AND THE CONTRACT, THIS AGREEMENT SHALL CONTROL.

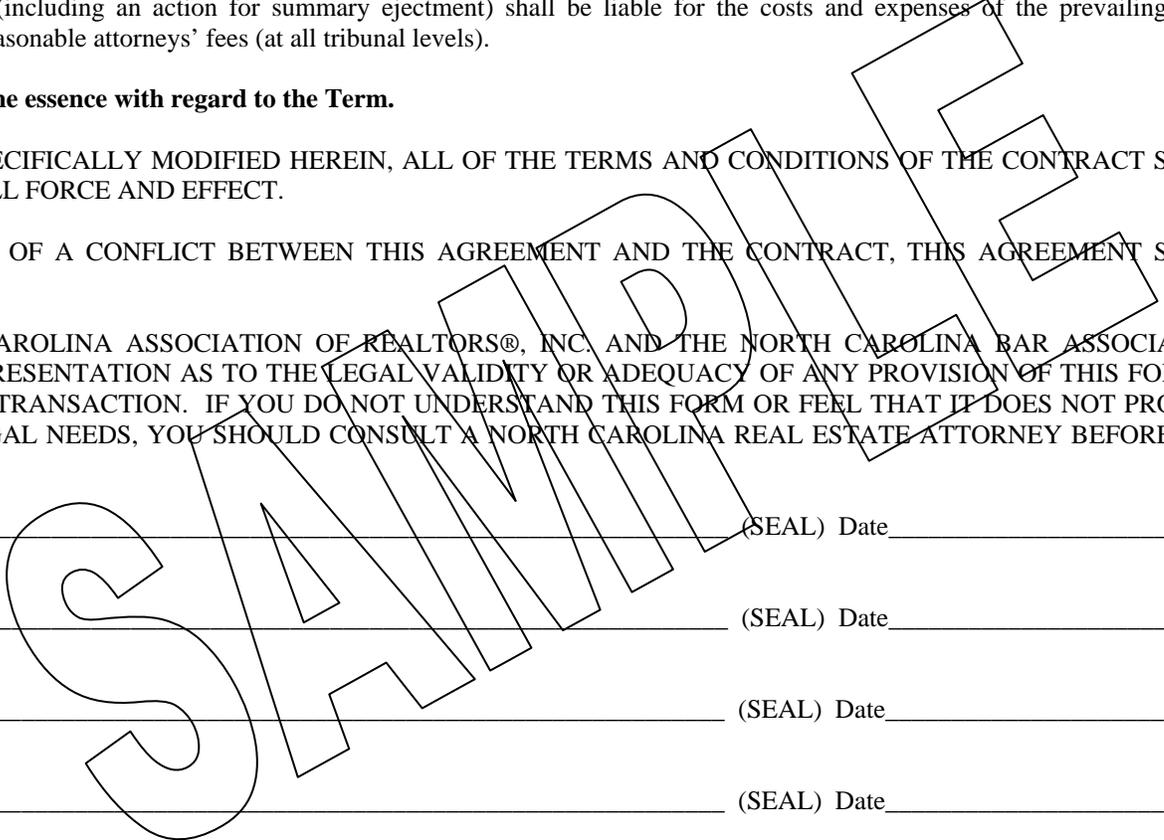
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Buyer: _____ (SEAL) Date _____

Buyer: _____ (SEAL) Date _____

Seller: _____ (SEAL) Date _____

Seller: _____ (SEAL) Date _____





**STATE OF NORTH CAROLINA
RESIDENTIAL PROPERTY DISCLOSURE STATEMENT**

INSTRUCTIONS TO PROPERTY OWNERS

1. G.S. 47E requires owners of residential real estate (single-family homes and buildings with up to four dwelling units) to furnish purchasers a property disclosure statement. This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option and sale under a lease with option to purchase (unless the tenant is already occupying or intends to occupy the dwelling). A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.
2. You must check one of the boxes for each of the 21 questions on the reverse side of this form.
 - a. If you check "Yes" for any question, you must explain your answer and either describe any problem or attach a report from an engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No", you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.
 - c. If you check "No Representation", you have no duty to disclose the conditions or characteristics of the property, even if you should have known of them.

* If you check "Yes" or "No" and something happens to the property to make your Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a corrected Statement or correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for completing and delivering the Statement to the purchasers; and the broker must disclose any material facts about your property which they know or reasonably should know, regardless of your responses on the Statement.
4. You must give the completed Statement to the purchaser no later than the time the purchaser makes an offer to purchase your property. If you do not, the purchaser can, under certain conditions, cancel any resulting contract (See "**Note to Purchasers**" below). You should give the purchaser a copy of the Statement containing your signature and keep a copy signed by the purchaser for your records.

Note to Purchasers: If the owner does not give you a Residential Property Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract and be entitled to a refund of any deposit monies you may have paid. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: _____

Owner's Name(s): _____

Owner(s) acknowledge having examined this Statement before signing and that all information is true and correct as of the date signed.

Owner Signature: _____ Date _____

Owner Signature: _____ Date _____

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that they have examined it before signing; that they understand that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain their own inspection from a licensed home inspector or other professional.

Purchaser Signature: _____ Date _____

Purchaser Signature: _____ Date _____

(OVER)

Property Address/Description: _____

[Note: In this form, "property" refers only to dwelling unit(s) and not sheds, detached garages or other buildings.]

Regarding the property identified above, do you know of any problem (malfunction or defect) with any of the following:

- | | Yes* | No | Representation |
|---|--------------------------|--------------------------|--------------------------|
| 1. FOUNDATION, SLAB, FIREPLACES/CHIMNEYS, FLOORS, WINDOWS (INCLUDING STORM WINDOWS AND SCREENS), DOORS, CEILINGS, INTERIOR AND EXTERIOR WALLS, ATTACHED GARAGE, PATIO, DECK OR OTHER STRUCTURAL COMPONENTS including any modifications to them?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Siding is <input type="checkbox"/> Masonry <input type="checkbox"/> Wood <input type="checkbox"/> Composition/Hardboard <input type="checkbox"/> Vinyl <input type="checkbox"/> Synthetic Stucco <input type="checkbox"/> Other _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Approximate age of structure? _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. ROOF (leakage or other problem)?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Approximate age of roof covering? _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. WATER SEEPAGE, LEAKAGE, DAMPNESS OR STANDING WATER in the basement, crawl space or slab?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. ELECTRICAL SYSTEM (outlets, wiring, panel, switches, fixtures etc.)?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. PLUMBING SYSTEM (pipes, fixtures, water heater, etc.)?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. HEATING AND/OR AIR CONDITIONING?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Heat Source is: <input type="checkbox"/> Furnace <input type="checkbox"/> Heat Pump <input type="checkbox"/> Baseboard <input type="checkbox"/> Other _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Cooling Source is: <input type="checkbox"/> Central Forced Air <input type="checkbox"/> Wall/Window Unit(s) <input type="checkbox"/> Other _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Fuel Source is: <input type="checkbox"/> Electricity <input type="checkbox"/> Natural Gas <input type="checkbox"/> Propane <input type="checkbox"/> Oil <input type="checkbox"/> Other _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. WATER SUPPLY (including water quality, quantity and water pressure)?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Water supply is: <input type="checkbox"/> City/County <input type="checkbox"/> Community System <input type="checkbox"/> Private Well <input type="checkbox"/> Other _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Water pipes are: <input type="checkbox"/> Copper <input type="checkbox"/> Galvanized <input type="checkbox"/> Plastic <input type="checkbox"/> Other _____ <input type="checkbox"/> Unknown..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. SEWER AND/OR SEPTIC SYSTEM?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Sewage disposal system is: <input type="checkbox"/> Septic Tank <input type="checkbox"/> Septic Tank with Pump <input type="checkbox"/> Community System <input type="checkbox"/> Connected to City/County System <input type="checkbox"/> City/County System available <input type="checkbox"/> Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates state law]) <input type="checkbox"/> Other _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. BUILT-IN APPLIANCES (RANGE/OVEN, ATTACHED MICROWAVE, HOOD/FAN, DISHWASHER, DISPOSAL, etc.)?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. PRESENT INFESTATION, OR DAMAGE FROM PAST INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS which has not been repaired?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. DRAINAGE, GRADING OR SOIL STABILITY OF LOT?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. OTHER SYSTEMS AND FIXTURES: CENTRAL VACUUM, POOL, HOT TUB, SPA, ATTIC FAN, EXHAUST FAN, CEILING FAN, SUMP PUMP, IRRIGATION SYSTEM, TV CABLE WIRING OR SATELLITE DISH, OR OTHER SYSTEMS?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Also regarding the property identified above, including the lot, other improvements, and fixtures located thereon, do you know of any:

- | | | | |
|---|--------------------------|--------------------------|--------------------------|
| 13. ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES ?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. ENVIRONMENTAL HAZARDS (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. COMMERCIAL OR INDUSTRIAL NUISANCES (noise, odor, smoke, etc.) affecting the property?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. VIOLATIONS OF ZONING ORDINANCES, RESTRICTIVE COVENANTS OR OTHER LAND-USE RESTRICTIONS OR BUILDING CODES INCLUDING THE FAILURE TO OBTAIN PROPER PERMITS FOR ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. UTILITY OR OTHER EASEMENTS, SHARED DRIVEWAYS, PARTY WALLS OR ENCROACHMENTS FROM OR ON ADJACENT PROPERTY?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 18. LAWSUITS, FORECLOSURES, BANKRUPTCY, TENANCIES, JUDGMENTS, TAX LIENS, PROPOSED ASSESSMENTS, MECHANICS' LIENS, MATERIALMENS' LIENS, OR NOTICE FROM ANY GOVERNMENTAL AGENCY that could affect title to the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. OWNERS' ASSOCIATION OR "COMMON AREA" EXPENSES OR ASSESSMENTS?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 20. FLOOD HAZARD or that the property is in a FEDERALLY-DESIGNATED FLOOD PLAIN?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 21. PRIVATE ROAD(S) OR STREETS adjoining the property?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. If yes, do you know of an existing owners association or maintenance agreement to maintain the road or street?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

* **If you answered "Yes" to any of the above 21 questions, please explain (Attach additional sheets, if necessary):** _____

Owner Initials and Date

Owner Initials and Date

Purchaser Initials and Date

Purchaser Initials and Date