

**BACK-UP CONTRACT ADDENDUM**

Property Address: \_\_\_\_\_

The additional provisions set forth below are hereby made a part of the Offer to Purchase and Contract or the Offer To Purchase and Contract - Vacant Lot/Land (the "Back-up Contract") for the Property located at \_\_\_\_\_

between Buyer: \_\_\_\_\_

and Seller: \_\_\_\_\_

Buyer and Seller acknowledge that Seller has previously entered into an Offer to Purchase and Contract or an Offer To Purchase and Contract - Vacant Lot/Land (the "Primary Contract") with \_\_\_\_\_ [insert last name only](the "Primary Buyer" under the Primary Contract), that the Primary Contract is currently pending, and that this Back-up Contract is accepted in a secondary or back-up position to the Primary Contract under the following terms and conditions:

- (1) It is a condition of this Back-up Contract that the Primary Contract is terminated as described below before Buyer and Seller shall be obligated to perform under this Back-up Contract. Termination of the Primary Contract shall be evidenced by:
  - (a) written release signed by all parties thereto;
  - (b) written notice of termination from Seller to Primary Buyer that Seller is exercising a right to terminate the Primary Contract; or
  - (c) written notice of termination from Primary Buyer to Seller that Primary Buyer is exercising a right to terminate the Primary Contract; or
  - (d) final judgment of a court of competent jurisdiction that the Primary Contract is invalid, illegal, unenforceable, or is otherwise terminated.

**NOTE:** For example, NCAR Forms 350-T, 351-T, 352-T, 353-T, 390-T or 391-T may be used to evidence the release or notices called for in this paragraph.

- (2) Seller shall indemnify Buyer and hold Buyer harmless from any and all claims, damages and costs, including reasonable attorneys' fees, incurred by Buyer as a result of Buyer's reliance upon any wrongful or ineffective termination of the Primary Contract by Seller.
- (3) Modification of the terms or conditions of the Primary Contract including extensions of time, shall not constitute a termination of the Primary Contract and shall not cause this Back-up Contract to move into a primary position.
- (4) Buyer and Seller agree that Buyer may not examine or otherwise have access to the Primary Contract without written permission from Seller and Primary Buyer. Seller represents that the Primary Contract calls for settlement date of \_\_\_\_\_ (date).
- (5) Buyer and Seller agree that any Initial Earnest Money Deposit shall be deposited within three (3) banking days following the Effective Date of this Back-up Contract even while this Back-up Contract is in secondary position.
- (6) In the event the Primary Contract closes, then this Back-up Contract shall become null and void, and any Earnest Money Deposit shall be refunded to Buyer.
- (7) In the event the Primary Contract is terminated, Seller shall promptly provide Buyer:
  - (a) written notice stating that this Back-up Contract has become primary ("Notice"); and
  - (b) written evidence that the Primary Contract has been terminated as provided in paragraph 1 above.

Buyer shall complete Settlement within \_\_\_\_\_ days from receipt of the written Notice or by the dates specified in the Back-up Contract, whichever occurs later.

Buyer initials \_\_\_\_\_ Seller initials \_\_\_\_\_



(8) In any event, Buyer must receive notification from Seller on or before \_\_\_\_\_, **TIME BEING OF THE ESSENCE**, that the Primary Contract has been terminated or this Back-up Contract shall become null and void and any Earnest Money Deposit shall be refunded to Buyer. Buyer may terminate this Back-up Contract before said date without liability by giving written notice of termination to Seller at any time prior to receipt by Buyer of written Notice from Seller that this Back-up Contract has become primary and any Earnest Money Deposit shall be refunded to Buyer.

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

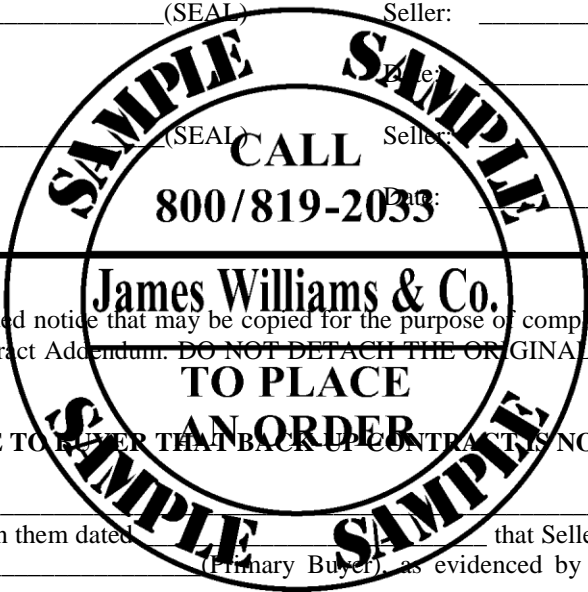
THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU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

Buyer: \_\_\_\_\_ (SEAL) Seller: \_\_\_\_\_ (SEAL)

Date: \_\_\_\_\_ Date: \_\_\_\_\_

Buyer: \_\_\_\_\_ (SEAL) Seller: \_\_\_\_\_ (SEAL)

Date: \_\_\_\_\_ Date: \_\_\_\_\_



[NOTE: The following is a suggested notice that may be copied for the purpose of complying with the notice provision contained in paragraph (7) of the Back-Up Contract Addendum. DO NOT DETACH THE ORIGINAL OF THIS FORM FROM THE BACK-UP CONTRACT.]

**NOTICE TO BUYER THAT BACK-UP CONTRACT IS NOW IN EFFECT**

NOTICE is hereby given to \_\_\_\_\_ (insert name of Buyer) from Seller under the Back-up Contract between them dated \_\_\_\_\_ that Seller has terminated the Primary Contract with \_\_\_\_\_ (Primary Buyer), as evidenced by the **ATTACHED** (initial any one of the following):

- (a) \_\_\_\_\_ written release signed by all parties thereto; or
- (b) \_\_\_\_\_ written notice of termination from Seller to Primary Buyer that Seller is exercising a right to terminate the Primary Contract; or
- (c) \_\_\_\_\_ written notice of termination from Primary Buyer to Seller that Primary Buyer is exercising a right to terminate the Primary Contract; or
- (d) \_\_\_\_\_ final judgment of a court of competent jurisdiction that the Primary Contract is invalid, illegal, unenforceable, or is otherwise terminated.

and that the Back-up Contract entered into between Seller and Buyer has become primary and its terms and conditions are now in effect.

Seller: \_\_\_\_\_

Date: \_\_\_\_\_

Seller: \_\_\_\_\_

Date: \_\_\_\_\_