

BACK-UP CONTRACT ADDENDUM

NOTE: This Addendum should NOT be used in a short sale transaction. Use ONLY the Short Sale Addendum (form 2A14-T)

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

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

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

This Addendum is attached to and made a part of the Offer to Purchase and Contract ("Back-Up Contract") between Seller and Buyer for the Property.

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. Condition. 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.
2. Termination of Primary Contract. Termination of the Primary Contract shall be evidenced by:
(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.

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.

3. Indemnification/Hold Harmless. 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.

4. Modification of Primary Contract. 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.

5. Access to Primary Contract. 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 a settlement date of \_\_\_\_\_ (date).

6. Initial Earnest Money Deposit. Buyer and Seller agree that an 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.

7. Closing on Primary Contract. 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.

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



8. **Notification of Termination of Primary Contract.** In the event the Primary Contract is terminated, Seller shall promptly provide Buyer the following two items:

- (a) written notice stating that this Back-up Contract has become primary; and
- (b) written evidence that the Primary Contract has been terminated as provided in paragraph 2 above (“Notice of Primary Status”).

9. **Due Diligence/Settlement Dates.**

- (a) Due Diligence Fee. Any Due Diligence Fee provided for in this Contract shall be due and payable to Seller upon delivery to Buyer of Notice of Primary Status and delivered within two (2) days thereafter.
- (b) Due Diligence Period. The Due Diligence Period of this Contract shall extend through 5:00 p.m. on the last day of a \_\_\_\_\_ day period following Seller’s delivery to Buyer of Notice of Primary Status.
- (c) Settlement Date. The Settlement Date of this Contract shall be on a date that is \_\_\_\_\_ days following Seller’s delivery to Buyer of Notice of Primary Status.

**NOTE:** instead of inserting dates in the “Due Diligence Period” and “Settlement Date” blanks in the Contract, insert “See attached Back-Up Contract Addendum”

10. **Buyer’s Right to Terminate.** Buyer may terminate this Back-up Contract without liability by giving written notice of termination to Seller at any time prior to receipt by Buyer of Notice of Primary Status and any Earnest Money Deposit shall be refunded to Buyer.

11. **Automatic Termination.** In any event, Buyer must receive Notice of Primary Status from Seller no later than 5 p.m. on \_\_\_\_\_, **TIME BEING OF THE ESSENCE**, or this Back-up Contract shall become null and void and any Earnest Money Deposit shall be refunded to Buyer.

IN THE EVENT OF A CONFLICT BETWEEN THIS ADDENDUM AND THE BACK-UP CONTRACT THIS ADDENDUM SHALL CONTROL, EXCEPT THAT IN THE CASE OF SUCH A CONFLICT AS TO THE DESCRIPTION OF THE PROPERTY OR THE IDENTITY OF THE BUYER OR SELLER, THE BACK-UP CONTRACT 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: \_\_\_\_\_ Seller: \_\_\_\_\_

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

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

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Entity Buyer: \_\_\_\_\_ Entity Seller: \_\_\_\_\_

(Name of LLC/Corporation/Partnership/Trust/etc.) \_\_\_\_\_ (Name of LLC/Corporation/Partnership/Trust/etc.) \_\_\_\_\_

By: \_\_\_\_\_ To: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Print Name

Print Name

Title: \_\_\_\_\_ Title: \_\_\_\_\_

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 8 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: \_\_\_\_\_  
Seller: \_\_\_\_\_ Date: \_\_\_\_\_

