

## 2011-2012 UPDATE COURSE

# SELECTED RESIDENTIAL SALES CONTRACT FORMS

<b>OUTLINE:</b>
<a href="#"><u>REVISED STANDARD FORM 2-T</u></a>
<a href="#"><u>FORM 2A1-T: BACKUP CONTRACT ADDENDUM</u></a>
<a href="#"><u>FORM 2A2-T: CONTINGENT SALE ADDENDUM</u></a>

**LEARNING OBJECTIVE:** Upon completing this Section, licensees should have a better understanding of certain addenda to the standard form Offer to Purchase and Contract, primarily the Contingent Sale Addendum and the Back-Up Contract Addendum, and issues related to their use.

## INTRODUCTION

Most of the 2010-2011 *Real Estate Update* course materials was devoted to a review and application of the new Standard Form 2-T, Offer to Purchase and Contract, jointly authored by the North Carolina Association of REALTORS® and the North Carolina Bar Association, that became effective January 1, 2011. However, corollary revisions to the various addenda created by the same Joint Forms Task Force were not final until late 2010/early 2011 and thus were not addressed in last year's Update course. Now that these addenda are relatively final, two or three of the more commonly utilized addenda will be discussed herein.

One may view the most current authorized version of any form by visiting [www.nc.living.net](http://www.nc.living.net), a public website sponsored by the North Carolina Association of REALTORS®, and then click on "Consumer Information" and scroll down to NCAR Sample Forms. Licensees are reminded that only Realtor members or licensees affiliated with a REALTOR® member firm are permitted to use the copyrighted forms with the REALTOR® logo. Licensees who are not Realtor members may use any of the copyrighted forms that bear only the North Carolina Bar Association's logo. Forms ending in "T" signify "transactional" forms. See NCAR's Forms Policy available at the website listed above.

The Short Sale Addendum was discussed previously in Section One and will not be reviewed again here. Before reviewing two other addenda, it should be mentioned that the standard offer to purchase form has undergone minor revisions since January 2011. The revised version has been approved by both groups and became effective July 1, 2011. The changes are summarized below.

## REVISED STANDARD FORM 2-T: OFFER TO PURCHASE & CONTRACT

Because the January 1, 2011 version of the standard residential Offer to Purchase & Contract form was discussed extensively in the 2010-2011 Real Estate Update Course materials, that review will not be repeated here. Readers are referred to last year's Update course materials, now available on the Commission's website under "Publications," if copies of that material are desired. Rather, *the minor revisions made by the Joint Forms Task Force to Standard Form 2-T are summarized below*. Sample copies of the most current form may be found on the website mentioned previously. Some of the revised provisions are reprinted at the end of this Section.

- The due diligence fee remains payable to the Seller "by the Effective Date," but any initial earnest money deposit may be submitted to the escrow agent either 1) with the offer, or 2) within five days of the Effective Date. Payment of an additional earnest money deposit, if any, continues to be by cash or other immediately available funds, such as wire transfer or official bank check with time being of the essence.
- A "Note" has been added in both Paragraph 4(a), Buyer's Due Diligence Process, and Paragraph 5(a), Buyer Representations, expressly recognizing that the ***buyer's performance of his/her obligations under the contract are not conditioned upon Buyer obtaining or closing any loan***. This explicit statement is included to reinforce buyers' awareness and understanding that *if they have any doubts concerning their ability to obtain suitable financing, then they must exercise their right to terminate the contract prior to the expiration of the due diligence period*. Failure to timely terminate the contract will result in forfeiture of the earnest money deposit if the buyers later are unable to close, whether due to lack of financing or any reason other than seller's breach or destruction of the property.
- As previously, the parties may always negotiate repairs and "improvements" and any such agreement should be in writing and signed by all parties. The requirement that any agreed upon repairs must be made in a good and workmanlike manner and the Buyer's right to verify same with a final walk-through has been moved from Paragraph 4(c) to Paragraphs 8(b) and (l), *Seller Obligations*. According to the "Summary of Significant Changes to NCAR Residential Forms" published by NCAR, this was done "... to clarify that this is a seller obligation, breach of which would entitle buyer to recover due diligence fee and costs in addition to refund of earnest money deposit, and that buyer's right to verify that repairs have been properly made survives the end of the due diligence period."
- The "Warning" in Paragraph 4(f) clarifies that while the buyer may continue to investigate the property after the expiration of the due diligence period, the failure to exercise the right to timely terminate waives any right to later terminate the contract based on any matter relating to buyer's due diligence.
- Seller continues to have the duty under Paragraph 8(f) to convey marketable and insurable title by General Warranty Deed to the buyer, now "... free of all encumbrances *and defects*

*which would be revealed by a current and accurate survey of the Property....”* (New language in italics.) A “Note” now adds that the buyer’s failure to discover any *encumbrance or title defect* prior to the expiration of the due diligence period does *not* relieve the seller from the duty to provide clear title.

- An attorney fee clause has been added to Paragraph 8(m) so that in the event the seller breaches the contract and the buyer must sue the seller for either the due diligence fee, earnest money deposit or reimbursement of reasonable costs expended during the due diligence period, the buyer may request that the seller be ordered to pay a portion of his/her attorney fees and court costs as part of the judgment if the buyer wins the lawsuit.
- A third option has been added to Paragraph 10, Home Warranty, stating that the seller will not provide any home warranty.

**Comment re: Deposit of earnest money deposit.** Apparently some brokers are confused about the interplay between the new contract language allowing the earnest money deposit to be paid within five days of contract formation and a broker’s general obligation under Rule 58A.0107 to deposit trust monies into a trust/escrow account within three banking days of receipt. There really is no conflict; a broker can’t deposit that which s/he has not received.

Thus, if the buyer doesn’t even write the earnest money deposit check payable to the listing company until two days after the Effective Date (contract formation) and gives it to his/her buyer agent on Day 3 who in turn delivers it to the listing company on Day 4, then listing company’s clock begins to tick from its receipt of the check on Day 4 and it would have 3 banking days from that date to deposit the earnest money check into its trust account.

Note that Rule A.0107(a) allows (but does not require) a broker to hold and safeguard a negotiable instrument for an earnest money deposit *without depositing it into an escrow account pending contract formation*. Once the seller and buyer are actually under contract, the three banking day clock starts to tick *if the check is in the possession of a broker*. Thus, a buyer agent who is holding an earnest money deposit check payable to the listing company while the parties are negotiating the terms of an agreement, should *promptly* deliver it to the listing company upon contract formation and the listing company, as payee, would have *three banking days from its receipt* of the check to deposit it into its trust account.

## **FORM 2A1-T: THE BACK-UP CONTRACT ADDENDUM**

This addendum is intended to be used in situations where the seller already is under contract to sell with Buyer #1, but has received an offer from Buyer #2 that the seller is inclined to accept, but is not at liberty to do so, since the seller already is obligated to sell the property to Buyer #1. This particular addendum may become increasingly important or be utilized more frequently in light of the altered “normal” occasioned by the new residential Offer to Purchase and Contract form that became effective January 1, 2011. As licensees are aware, the new Standard Form 2-T eliminated the two alternatives and substituted a straight-forward “due diligence” approach in residential sales transactions. Under this approach, the seller commits to

sell the property on stated terms, and the buyer contracts to purchase the property, *but retains the right to unilaterally terminate the contract for any or no reason* by delivering written notice of termination to the seller *on or before a stated date*. Given the paradigm shift, one may find that sellers are less likely to remove their property from the market, choosing instead to continue to show the property and entertain other offers until the buyer's due diligence period has expired.

There is nothing that prevents a seller from negotiating terms of a contract with other potential purchasers even when the seller has already accepted an offer and is under contract to sell to buyer #1. If the seller and a second interested buyer are able to successfully negotiate the terms of an agreement, then they actually enter into and sign a contract, whether Standard Form 2-T or some other contract. However, to avoid the seller being obligated to sell the same property to two different people, *it is imperative that this second contract include language acknowledging the existence of seller's contract with Buyer #1 and the secondary position of the parties' contract*. Such is the purpose of **Standard Form 2A1-T**, the July 2011 version of which is reprinted at the end of this Section. Its **primary provisions are summarized below**.

- It identifies by surname Buyer #1, classifies that pending contract as primary, and states that unless and until that contract is terminated, the contract with Buyer #2 will remain in a secondary, back-up position.
- While the seller discloses the primary contract settlement date, the buyer otherwise has no access to the primary contract without written permission of both seller and primary buyer. If the primary contract closes, then the back-up contract becomes null and void and buyer #2 is entitled to a refund of any earnest money deposit.
- If the primary contract is terminated, then the seller must notify the back-up buyer in writing that the back-up contract has become primary and the buyer is to complete settlement within a number of days (stated in paragraph 7) from the receipt of that Notice or by the dates stated in the contract, *whichever is later*. The seller agrees to indemnify buyer #2 from any liability in the event the seller ineffectively terminates the primary contract.
- The addendum includes a "drop dead" date of sorts in Paragraph 8 which provides that buyer #2 must receive notice from the seller that the back-up contract has become primary on or before a stated date, *"time being of the essence,"* or the back-up contract becomes null and void and the earnest money deposit is refunded to the buyer. Buyer (but not seller) has the right to terminate the back-up contract by providing written notice of that election to the seller any time prior to the drop dead date *so long as* the buyer has not received notice from the seller that the primary contract has been terminated.
- The addendum expressly states that any earnest money deposit paid under the back-up contract will be deposited into a trust or escrow account within three banking days of contract formation even while the contract remains in a secondary or back-up position.

**Query:** Does buyer #2 have the right to inspect the property or proceed with due diligence while the contract remains in a secondary position? Technically, the parties *are* under contract even

though it is not in primary position. Thus, if a back-up buyer wanted to commence property inspections and investigations, the seller should allow him/her access to the property, as stated in the contract. A back-up buyer certainly could begin a search of public records to check for restrictive covenants, liens, assessments, taxes and similar matters, but how many buyers would want to expend monies for inspections or appraisals of a property they may never have a chance to acquire? Nonetheless, if they chose to do so, the seller should allow access.

### **Issues**

What are some of the issues the parties/brokers should consider when entering into a back-up contract? Two that readily spring to mind are: 1) how to handle a due diligence fee and 2) how to define the dates or periods for buyer's due diligence period and final settlement?

### **Due Diligence Fee**

Understand that the *“Effective Date” of the back-up contract is the date on which it has been signed by all parties to the contract and acceptance by the last offeree has been communicated to the last offeror.* The addendum expressly recognizes that any earnest money deposit paid by the buyer is to be deposited into a trust or escrow account within three banking days of the Effective Date, rather than waiting to deposit it until the back-up contract becomes primary, if ever. Similarly, if any due diligence fee is to be paid, then presumably it should be paid to the seller upon the Effective Date of the contract as well, but why would a buyer offer to pay a (generally) non-refundable fee to a seller when the buyer may never have the opportunity to reap the benefits of the underlying contract? Possible solutions might include a provision that:

- 1) waives any due diligence fee entirely (i.e., offers zero), since the contract does not require payment of a due diligence fee to be valid; or
- 2) calls for the payment of an agreed due diligence fee within some time period of the back-up contract becoming primary (if not previously terminated by the buyer); or
- 3) states that a due diligence fee may be paid, but that it either will be held by an escrow agent until the back-up contract becomes primary and paid to seller at that time or that seller must refund any due diligence fee paid by buyer in the event the back-up contract never becomes primary.

*Brokers are reminded that they should refrain from attempting to draft language to be used in contracts to which the broker is not a party, as to do so may be construed as the unauthorized practice of law. Parties are free to draft their own language, because they are the principals and are not doing it for others, or they may consult an attorney for appropriate language.*

### **Determining Relevant Dates**

A thornier issue than the due diligence fee matter is how does one set the relevant dates for due diligence period and settlement in the back-up contract? Theoretically, the parties to the back-up contract should both be aware of the due diligence period expiration date and the settlement date stated in the primary contract and may consider these dates in determining the relevant dates to insert in the back-up contract. The buyer should consider what inquiries and

investigations s/he wishes to conduct, to what extent some might be accomplished at little or no cost while waiting to learn if the primary contract is terminated, how long it may take for other desired investigations, such as home inspections or appraisals, and confirmation of any necessary financing, and how long the buyer is willing to wait for an opportunity to purchase the property. All of these considerations will factor into the dates to be inserted in the back-up contract as to the due diligence period and settlement date. These dates also may be influenced by the time period stated in Paragraph 7 of the Addendum, as well as the automatic termination date in Paragraph 8.

If the buyer is willing to remain in secondary position through or beyond the Settlement Date stated in the primary contract, then s/he could gauge the due diligence period expiration date in the back-up contract from the primary contract Settlement Date, and if the primary contract was terminated well before its original Settlement Date, the parties to the back-up contract could mutually agree to advance the dates in their contract, if they wished. Alternatively, dates for the performance of certain acts might be defined in relation to other events, e.g., the buyer's due diligence period shall expire at 5pm on the 29<sup>th</sup> day following buyer's receipt of written Notice that the back-up contract has become primary and settlement shall occur on or before the 45<sup>th</sup> day following buyer's receipt of written Notice that the contract is primary. Exercise caution, however, as dates for performance that begin to run from some other act may create ambiguity; thus, dates certain may be preferable.

#### **Addendum Paragraph 7**

Whatever dates are stated in the back-up contract itself may be impacted by Paragraph 7 of the Addendum, which states in relevant part: "Buyer shall complete *Settlement* within days from receipt of the written Notice [that the primary contract has been terminated] *or* by the dates specified in the Back-up Contract, *whichever occurs later.*" (Italics added.) Buyers should be aware of the interaction between the contract and addendum provisions. A buyer who calculates the back-up contract dates from the primary contract Settlement Date or establishes those dates in reference to the receipt of the Notice, most likely should have sufficient time to conduct and conclude all necessary inspections or investigations.

#### **Addendum Paragraph 8**

This paragraph addresses the final date by which buyer #2 must learn that the back-up contract has become primary or the back-up contract, by its own terms, becomes null and void and the buyer's earnest money deposit is returned to him/her. It would seem illogical, although possible, to have the automatic termination date be earlier than the due diligence period expiration date in the primary contract. More realistically, the date in addendum paragraph 8 might be as early as a few days after the due diligence period expiration date in the primary contract, and the only limit as to final automatic expiration date in Paragraph 8 would be whatever the parties mutually agree. In other words, the date in Paragraph 8 could range from a few days of the primary contract's due diligence period expiration date to weeks or months after the Settlement Date in the primary contract. If the primary contract failed to close, then the seller is obligated to sell to buyer #2 under the terms of the parties' back-up contract.

Does a buyer risk much by inserting in Paragraph 8 a date six weeks after the settlement date in the primary contract? No. Recall that the buyer retains the ability to terminate the back-

up contract *anytime* prior to the date in Paragraph 8 *so long as* the buyer has not received written Notice from the seller that the back-up contract has become primary. Thus, if the buyer grows tired of waiting or finds another property s/he likes better or just changes his/her mind, the buyer may give written notice of termination, whether three days or ten days or four weeks after entering into the contract. **NOTE that the ability to terminate the back-up contract is not reciprocal.** In other words, the seller does not have the right to unilaterally terminate the back-up contract because s/he has changed his/her mind or received a better offer from another prospective buyer. ***If the primary contract does not close, then the seller is obligated to convey the property to buyer #2 pursuant to the terms of their contract so long as the date stated in Paragraph 8 has not arrived and the buyer has not previously terminated the back-up contract.***

### **Interaction of Contract and Addendum Provisions as to Deadlines**

It would appear that if a back-up buyer sets the due diligence period expiration date to occur prior to the primary contract's Settlement Date, but the date in Addendum Paragraph 8 is after the primary contract's Settlement Date, that buyer may find that s/he has virtually no time within which to conduct desired inspections, investigations and confirm financing.

**Example:** Seller goes under contract with Buyer #1 on October 17, 2011. The due diligence period expires November 17, 2011 and the Settlement Date is November 28, 2011. In early November, buyer #2 makes an offer and s/he and seller negotiate a contract to which Std Form 2A1-T is attached. The contract states that buyer's due diligence period expires on November 30, 2011 and that settlement shall occur on December 19, 2011. The parties agreed to 30 days in Paragraph 7 of the Back-Up Contract Addendum and the date in Paragraph 8 is December 15, 2011.

1. May Buyer #2 begin to conduct any desired inspections of the property? Yes. Would buyer #2 be entitled to reimbursement of any costs expended in conducting due diligence if the back-up contract never becomes primary? No; buyer #2 would only be entitled to a refund of his/her earnest money deposit.
2. What if Buyer #1 notifies Seller in writing on November 16, 2011 that s/he is terminating the primary contract and Seller notifies buyer #2 in writing on November 17, 2011 that the back-up contract is now primary? Buyer #2 should immediately undertake any and all investigations, inspections, loan applications and confirmation, and determine whether s/he wishes to proceed with the contract prior to November 30, 2011, as that is the date on which his/her due diligence period expires, unless the seller is willing to agree to an extension.
3. What if the primary contract is still in place, and on November 23, buyer #2 finds a different property better suited to his/her needs. May buyer #2 unilaterally terminate the back-up contract by providing written notice of that decision to the seller? Yes, because buyer #2 has not received notice that the back-up contract has become primary. Buyer #2 also would be entitled to a refund of the earnest money deposit.
4. What if buyer #1 ultimately fails to consummate that transaction and seller and buyer #1 enter into a written Termination of Contract Agreement on December 3, 2011. Listing agent/seller

immediately (within an hour) delivers written notice to buyer's agent/buyer that the back-up contract is now primary and attaches a copy of the Termination of Contract.

A) May Buyer #2 terminate the back-up contract? Not at this point, as the due diligence period has expired and the right to terminate under Addendum Paragraph 8 was not exercised prior to receipt of notice that the back-up contract was now primary.

B) What are buyer #2's rights to inspect under the contract? Well, buyer may conduct whatever inspections and investigations s/he desires and seller must allow buyer access to the property under contract Paragraph 8, Seller Obligations, but buyer has lost the right to unilaterally terminate the contract for any or no reason because, absent a mutually agreed extension, buyer's due diligence period expired three days before buyer's contract became primary.

C) *But what about the 30 day "grace period" extension in Addendum Paragraph 7?* Paragraph 7 only addresses a possible delay/extension of the **Settlement Date** — **it does NOT extend or modify the due diligence period stated in the underlying contract.** Thus, under these facts, if Buyer receives notice on December 3 that the back-up contract has become primary, *buyer will have lost the right to unilaterally terminate the contract under both the contract and addendum provisions*, even if the buyer has a "legitimate" reason, e.g. can't qualify for financing, or there are major structural issues or whatever, but the buyer could have until January 2, 2012 to complete settlement, since 30 days from the receipt of Notice is later than the December 19 Settlement date stated in the contract.

D) What if buyer #1 has been unable to close by December 12, 2011 and on December 13 seller delivers written notice to buyer #1 that seller is terminating the primary contract and seller simultaneously notifies buyer #2 that the back-up contract is now primary? Buyer #2 basically is in the same position as s/he was under 4(C) above, except that s/he would have until January 12, 2012 to close.

**UNDERSTAND** *that if the dates stated in the back-up contract have passed by the time the back-up contract becomes primary, then the buyer will only have the number of days stated in Paragraph 7 within which to **close** the transaction unless the parties agree in writing to extensions of other deadlines.* If Buyer #2 fails to close for any reason (other than the seller's breach), the seller will be entitled to receive the earnest money deposit. Under the facts above, the back-up contract will **not** automatically become null and void until December 15, 2011 has passed. Remember also, however, that the buyer has the unilateral right to terminate the back-up contract any time prior to the date in Addendum Paragraph 8 **so long as** s/he has not received written notice that the back-up contract has become primary.

## **FORM 2A2-T: THE CONTINGENT SALE ADDENDUM**

It is not uncommon for licensees to encounter situations where the buyer is unable to purchase a new property without first selling his/her current property because the buyer can't obtain final loan approval so long as s/he remains liable on his/her existing mortgage. The sale



of the buyer's existing property, in reality, is a prerequisite to the buyer's ability to perform his/her obligations under the contract; *however*, recall that the buyer's ability to obtain suitable financing no longer is a condition of the contract and the buyer's inability to obtain the requisite financing does not excuse the buyer's performance under the contract. Thus, to avoid setting the buyer up either to fail or to compel the buyer to terminate the contract prior to the expiration of the due diligence period if the buyer's property has not actually closed by that time, it is imperative that a condition or contingency be added to the parties' agreement. To address this need, given the broker's inability to suggest language, the Joint Forms Task Force created **Form 2A2-T, the Contingent Sale Addendum** (© 7/2011), which is reprinted at the end of this Section.

The Addendum clearly states that buyer's purchase of seller's property is expressly conditioned on the sale of buyer's property and sets out the parameters below.

- Buyer is to provide the seller with a copy of a contract to purchase buyer's property prior to the expiration date of buyer's due diligence period or the buyer's contract to purchase the seller's property becomes null and void and buyer is entitled to a refund of the earnest money deposit. [**Note:** the buyer may mark out confidential information, such as the purchase price and the purchaser's identity, prior to providing a copy to buyer's seller.]
- If the buyer accepts an offer to purchase buyer's property prior to the expiration of buyer's due diligence period, then the closing on the sale of buyer's property should occur prior to the Settlement Date of the parties' contract to purchase. If the buyer has not closed on the sale of buyer's property prior to the Settlement Date in the parties' contract, then the buyer has the right to terminate his/her contract to purchase seller's property by providing written notice to the seller within three days of their stated Settlement Date, *time being of the essence*, and may still receive a refund of the earnest money deposit. If the buyer fails to terminate his contract with seller in writing within three days of the Settlement Date and later fails to close on the purchase of seller's property, then the seller retains the earnest money deposit.
- If the buyer is under contract to sell his property prior to the expiration of the due diligence period in buyer's contract with seller, but thereafter the purchaser of buyer's property terminates that contract, then the buyer "... shall promptly provide Seller written notice and reasonable documentation of such termination ...." at which point *either* the buyer or seller may terminate their contract by providing written notice to the other and the buyer is entitled to refund of the earnest money deposit.
- If the buyer is not already under contract to sell his/her property at the time buyer and seller enter into their contract for buyer to purchase, then buyer indicates in the addendum whether the buyer's property is or will be listed with a real estate broker, with whom and by when, or whether the buyer plans to sell his/her property without using a real estate broker.

### **No “Kick-Out” Clause?**

Licensees should carefully read the provisions of the Contingent Sale Addendum. Some more “seasoned” licensees may ask: “Where is the kick-out clause?” There is none. The seller is obligated to sell to the buyer *at least* until the expiration of the buyer’s due diligence period. At that point, if the buyer has failed to deliver a copy of a contract to purchase buyer’s property to the seller, then the parties’ contract becomes *null and void*. **NOTE:** no written notice is required from either party to the other; the contract is terminated/expires by its own provisions, and the buyer is entitled to a refund of the earnest money deposit.

So if the contract automatically becomes null and void, then does buyer automatically get the earnest money deposit back if the seller disputes its return? No. While the contract may terminate by its own terms, and while it is clear who should receive the earnest money deposit in that event, if payment of the earnest money deposit is disputed and the deposit is being held by a broker, then the broker must continue to hold that earnest money deposit in its trust account pursuant to Rule A.0107(g) pending written agreement of the parties or court order or until the broker opts to utilize the G.S. 93A-12 procedure (90 day notice and pay to the Clerk of Court).

### **Extent of Conditions Imposed by Contingent Sale Addendum**

Licensees should also be aware that the only matter addressed by the Contingent Sale Addendum is that the sale of buyer’s property becomes a condition to his/her performance of the contract to purchase seller’s property. If buyer, after the expiration of his due diligence period, fails to purchase seller’s property for any reason *other than* the failure to close on the sale of buyer’s property, then the seller will be entitled to receive the earnest money deposit. For example, what if buyer learns after the expiration of his due diligence period that the property he is purchasing failed to appraise for the purchase price and the buyer lacks sufficient cash to close given the reduced loan amount, but buyer’s buyer is ready, willing and able to purchase? Buyer may not be able to close, but the seller will be entitled to the earnest money deposit because buyer’s failure to close was not related to the sale of buyer’s property.

What if buyer’s buyer learns after the expiration of his/her due diligence period but two weeks prior to settlement that buyer’s property didn’t appraise for the contract price and now they can’t close due to financing issues? This fact situation appears to fall under Addendum Paragraph 2, which requires buyer to “promptly” notify seller in writing that the contract for the sale of buyer’s property has failed. Thereafter, *either party could terminate their contract* by providing written notice to the other and buyer would be entitled to a refund of the earnest money deposit, even though buyer’s due diligence period may have expired days or weeks earlier.

**Example:** What if the Settlement Date in buyer’s contract to purchase is October 26 and the Settlement Date in buyer’s contract to sell buyer’s property is October 23. Buyer’s buyer notifies him on October 21 that, for whatever reasons, they will not be able to close the purchase until October 31, but that there is “no problem” with the financing and they really want the property and are moving forward in good faith. What are buyer’s options?

Buyer does not have the option of terminating the contract with his buyers, because under Paragraph 13 of the contract a party who is moving forward in good faith, but who can't close by the stated Settlement Date may have up to fourteen additional days within which to close. Thereafter, either party may terminate by providing written notice to the other. Thus, buyer's buyer has until November 6 to close and buyer would not be in breach of his contract to purchase with seller so long as he can close on or before November 9. However, because the closing on buyer's property will not occur until after the Settlement Date in buyer's contract to purchase, buyer has the option under Paragraph 1(b) of the Contingent Sale Addendum to elect to terminate the contract with seller on or before October 29 (i.e., within three days of the Settlement Date) and receive a refund of the earnest money deposit. If buyer fails to terminate the contract with the seller and thereafter cannot close for whatever reasons, the seller will be entitled to receive the earnest money deposit, unless the parties enter into a written agreement extending their Settlement Date.

### **Other Hypotheticals**

**#1:** On September 1, Tom enters into a contract with Jane to sell her 504 Fairway Place using the July 1, 2011 standard Offer to Purchase and Contract. The **Due Diligence Period** expires on **September 22** and the **Settlement Date** is **October 10**. Jane pays Tom a \$250 Due Diligence Fee and an Earnest Money Deposit of \$2500 is deposited in the listing firm's trust account. In paragraph 5(b) of the contract, Jane indicates that she does have to sell other property in order to complete her purchase of Fairway Place. A Contingent Sale Addendum (Form 2A2-T) (© 7/1/11) is attached. Jane's property at 609 Fourth Street is not under contract at the time of the contract with the Seller.

On **September 22**, Buyer Jane still does not have Fourth Street under contract and she notifies Tom prior to 5:00 PM that day that she is terminating the contract with Tom.

Q: Is Jane entitled to a refund of the Earnest Money Deposit?

A: **YES.** See paragraph 4(f) of the Offer to Purchase and Contract.

Q: Is Jane entitled to a refund of the Due Diligence Fee?

A: **NO.** See paragraph 1(i) of the Offer to Purchase and Contract.

**#2:** Same facts as #1 *except* Jane does not terminate the contract with Tom on September 22 because she has an oral commitment from Alice to buy Fourth Street. On September 24<sup>th</sup>, Alice and Jane enter into a contract for the sale of Fourth Street with the closing set for October 31<sup>st</sup>. Jane immediately delivers a copy of the Fourth Street contract to Tom and notifies him that she intends to proceed with the purchase of Fairway Place.

Q: Does Jane still have the right to purchase Fairway Place under the contract with Tom?

A: **NO.** The contract became null and void on September 23. See second sentence of paragraph 1(a) of Contingent Sale Addendum.

Q: Is Buyer Jane entitled to a refund of the Earnest Money Deposit?

A: **YES.** See second sentence of paragraph 1(a) of Contingent Sale Addendum.

Q: Is Buyer Jane entitled to a refund of the Due Diligence Fee?

A: **NO.** See second sentence of paragraph 1(i) of the Offer to Purchase and Contract.

**#3:** Same facts as #1 *except* that Jane enters into the contract to sell Fourth Street on September 22<sup>nd</sup>, with the closing set for October 31<sup>st</sup>. Jane immediately delivers a copy of the Fourth Street contract to Tom and notifies him that she intends to proceed with the purchase of Fairway Place.

Q: Does Jane still have the right to purchase Fairway Place under the contract with Tom?

A: **YES.** Jane delivered the Fourth Street contract to Tom prior to the expiration of the Due Diligence Period. See first sentence of paragraph 1(a) of Contingent Sale Addendum.

Q: Is Jane still obligated to close on Fairway Place by October 10<sup>th</sup>, the Settlement Date in the Fairway Place contract?

A: **YES.** This poses potential problems for Jane since her closing on Fourth Street isn't scheduled until October 31<sup>st</sup>. The Delay In Settlement/Closing paragraph in the Offer to Purchase and Contract (paragraph 13) would give Jane a maximum of 14 days following the Settlement Date, or through October 24<sup>th</sup>, within which to complete settlement/closing on Fairway Place. After October 24<sup>th</sup>, Tom could terminate the Fairway Place contract. It would be advisable for Jane—prior to the expiration of the Due Diligence Period—to seek an agreement from Tom to extend the Settlement Date in the Fairway Place contract. If Tom won't agree to an extension, Jane should consider terminating the Fairway Place contract.

**#4:** Same facts as #1 *except* that at the time of contract with Tom, Jane is already under contract to sell Fourth Street to Alice. The Settlement Date in the contract for Fourth Street is October 1. During the Due Diligence Period of the Fairway Place contract, Jane does her due diligence on Fairway Place, successfully negotiates several repair items with Tom, and based on the information she has received from her lender, she is satisfied that her loan will be approved (subject to Jane closing on the sale of Fourth Street). Jane therefore elects not to terminate the contract with Tom prior to the expiration date of the Due Diligence Period (September 22). However, on October 1, Alice notifies Jane that Alice is terminating the contract for Fourth Street. Jane notifies Tom on October 2 that her contract for Fourth Street has fallen through and that she is terminating the contract with Tom.

Q: Does Jane have the right to terminate the contract with Tom and get a refund of the Earnest Money Deposit?

A: **YES.** See paragraph 2 of Contingent Sale Addendum.

Q: Is Buyer Jane entitled to a refund of the Due Diligence Fee?

A: **NO.** See second sentence of paragraph 1(i) of the Offer to Purchase and Contract.

Q: If Jane notifies Tom that the contract for Fourth Street had fallen through but does not terminate the contract with Tom, would Tom have the right to terminate the contract?

A: **YES.** See paragraph 2 of Contingent Sale Addendum.

**#5:** Same facts as #4 except that on October 1, 2011, Jane is notified that a problem with the title to Fourth Street has been discovered by Alice's closing attorney. Based on the closing attorney's assessment of what will be involved in correcting the defect, Alice and Jane reschedule Settlement in the Fourth Street contract for October 14. Jane notifies Tom that she has been assured that the defect in title to Fourth Street will be cleared up in two weeks at most and that she fully intends to complete settlement and closing on Fairway Place.

Q: If the Fourth Street transaction does close on October 14, does Jane still have the right to close on Fairway Place?

A: **YES.** Although this is past the Settlement Date for the Fairway Place transaction, Jane has the right to a 14-day delay under paragraph 13 of the Offer to Purchase and Contract.

**#6:** Same facts as #4 except that on September 15<sup>th</sup>, 2011, Tom receives a full-price offer on Fairway Place from Fred. Tom and Fred enter into a back-up contract for the sale of Fairway Place.

Q: May Tom force Jane to waive her rights under the Contingent Sale Addendum in her contract with Tom?

A: **NO. There is no "kick-out" provision in the revised Contingent Sale Addendum.**

**CAUTION:** What if the date in the contract for the expiration of buyer's due diligence period is somehow linked to buyer's house first going under contract, because buyer doesn't want to expend funds to investigate and inspect until buyer knows that his/her property is under contract? For example, contract Paragraph 1(j) states that buyer's due diligence period will expire "three weeks after buyer's property goes under contract" or "three weeks after the removal of the contingency." What does the latter phrase mean and what deadlines have been established under either attempt? In essence, no deadlines have been established due to circular reasoning.

Recall that the addendum states that if the buyer fails to secure and deliver a copy of a contract to purchase the buyer's property by the expiration of the buyer's due diligence period, then the parties' contract becomes null and void. However, if the due diligence period doesn't expire until some period of time after the buyer's property goes under contract, then the contract will never become null and void under addendum paragraph 1(a) because there is no definite termination date for the buyer's due diligence period stated in the contract; rather, the contract calculates the expiration date of the buyer's due diligence period from the date the contingency is initially satisfied by the buyer accepting an offer to purchase buyer's property.

A seller would be extremely unwise to sign a contract with such a provision, unless the buyer is paying a hefty due diligence fee. Recall that under the new Contingent Sale Addendum, the seller no longer has the right to "kick out" a buyer by terminating an existing contract if the seller finds another interested buyer. Once the seller signs a contract with a Contingent Sale Addendum, the seller minimally will have to wait until the end of the due diligence period to see if the buyer's home goes under contract. If the buyer's home is not under contract by that deadline, then the contract between the buyer and the seller is null and void and the seller is free to sell to a third party.

However, if the contract fails to establish a definite date in paragraph 1(j) for the expiration of buyer's due diligence period, then the parties may find themselves in a never-ending spiral. The seller would at least have to wait until the settlement date stated in the parties' contract to see if the buyer will close, and would be unable to accept any offers other than in a back-up capacity during that period. If the settlement date was equally vague or included language linking it to a contract for or sale of buyer's property, then seller may have seriously restricted his/her ability to convey the property to anyone other than buyer until such time as buyer decided to terminate the parties' contract.

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## Selected Revised Provisions from Std Form 2-T, Offer to Purchase, © July 2011

[New/revised language is underlined.]

### Par 1(d):

#### "Purchase Price":

\$ \_\_\_\_\_ paid in U.S. Dollars upon the following terms:

\$ \_\_\_\_\_ BY DUE DILIGENCE FEE made payable to Seller by the Effective Date

\$ \_\_\_\_\_ BY INITIAL EARNEST MONEY DEPOSIT made payable to Escrow Agent named in Paragraph 1(f)  with this offer OR  delivered within five (5) days of the Effective Date of this Contract by  cash  personal check  official bank check  wire transfer

\$ \_\_\_\_\_ BY (ADDITIONAL) EARNEST MONEY DEPOSIT made payable to Escrow Agency named in Paragraph 1(f) by cash or immediately available funds such as official bank check or wire transfer to be delivered to Escrow Agent no later than \_\_\_\_\_, ***TIME BEING OF THE ESSENCE*** with regard to said date.....

Should Buyer fail to deliver either the Due Diligence Fee or any Initial Earnest Money Deposit by their due dates, or 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, Seller shall have the right to terminate this Contract upon written notice to Buyer.

### NOTE under Paragraphs 4(a) and 5(a):

**4(a): NOTE:** Buyer is advised to consult with Buyer's lender prior to signing this offer to assure that the Due Diligence Period allows sufficient time for the appraisal to be completed and for Buyer's lender to provide Buyer sufficient information to decide whether to proceed with or terminate the transaction since the Loan is not a condition of the Contract.

**5(a): NOTE:** Buyer's obligations under this Contract are not conditioned upon obtaining or closing any loan. If Buyer represents that Buyer does not have to obtain a new loan in order to purchase the Property, Seller is advised, prior to signing this offer, to obtain documentation from Buyer which demonstrates that Buyer will be able to close on the Property without the necessity of obtaining a new loan.

### Revised Par. 4(c):

(c) **Repair/Improvement Negotiations/Agreement:** The parties acknowledge and understand that they may, but are not required to, engage in negotiations for repairs/improvements to the Property. Buyer is advised to make any repair/improvement requests in sufficient time to allow repair/improvement negotiations to be concluded prior to the expiration of the Due Diligence Period. Any agreement that the parties may reach with respect to repairs/improvements shall be considered an obligation of the parties and is an addition to this Contract and as such, must be in writing and signed by the parties in accordance with Paragraph 20. **NOTE:** See Paragraph 8(b) Access to Property/Walk-Through Inspection and Paragraph 8(l) Negotiated Repairs/Improvements. ~~Unless otherwise agreed, negotiated repairs shall be made in a good and workmanlike manner and Buyer shall have the right to verify same prior to Settlement.~~

**Revised Par. 8(b) and (i):**

**8(b): Access to Property/Walk-Through Inspection:** Seller shall provide reasonable access to the Property (including working, existing utilities) through the earlier of Closing or possession by Buyer, including, but not limited to, allowing the Buyer an opportunity to conduct a final walk-through inspection of the Property.

**8(i): Negotiated Repairs/Improvements:** Negotiated repairs/improvements shall be made in a good and workmanlike manner and Buyer shall have the right to verify same prior to Settlement.

**Revised Par. 4(f):**

**(f) Buyer's Right to Terminate:** Buyer shall have the right to terminate this Contract for any reason or no reason, by delivering to Seller written notice of termination (the "Termination Notice") during the Due Diligence Period (or any agreed-upon written extension of the Due Diligence Period), ***TIME BEING OF THE ESSENCE***. If Buyer timely delivers the Termination Notice, this Contract shall be terminated and the Earnest Money Deposit shall be refunded to Buyer.

**WARNING:** If Buyer is not satisfied with the results or progress of Buyer's Due Diligence, Buyer should terminate this Contract, *prior to the expiration of the Due Diligence Period*, unless Buyer can obtain a written extension from Seller. **SELLER IS NOT OBLIGATED TO GRANT AN EXTENSION.** Although Buyer may continue to investigate the Property following the expiration of the Due Diligence Period, Buyer's failure to deliver a Termination Notice to Seller prior to the expiration of the Due Diligence Period shall constitute a waiver by Buyer of any right to terminate this Contract based on any matter relating to Buyer's Due Diligence. Provided however, following the Due Diligence Period, Buyer may still exercise a right to terminate if Seller fails to materially comply with any of Seller's obligations under Paragraph 8 of this Contract or for any other reason permitted under the terms of this Contract or North Carolina law.

**NOTE:** ~~Following the Due Diligence Period, Buyer may still exercise a right to terminate this Contract for any other reason permitted under the terms of this Contract or North Carolina law.~~

**Revised Par 4(b)(v): Survey:** A survey to determine whether the property is suitable for Buyer's intended use and the location of easements, setbacks, property boundaries and other issues which may or may not constitute title defects. ~~A survey to determine whether there are any encroachments on the Property from adjacent properties (fences, driveways, etc.), encroachments from the Property onto adjacent properties, road or utility easements crossing the Property, violations of set back lines, lack of legal access to a public right of way, or indefinite or erroneous legal descriptions in previous deeds to the Property.~~

**Revised Par. 8(f):**

(f) **Title, Legal Access:** Seller shall execute and deliver a GENERAL WARRANTY DEED for the Property at Settlement unless otherwise stated herein, which shall convey fee simple marketable and insurable title, free of all encumbrances and defects disclosed which would be revealed by a current and accurate survey of the Property except: ad valorem taxes for the current year (prorated through the date of Settlement); 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 in writing. The Property must have legal access to a public right of way.

NOTE: Buyer's failure to terminate this Contract prior to the expiration of the Due Diligence Period as a result of any encumbrance or defect that is or would have been revealed by a title examination of the Property or a current and accurate survey shall not relieve Seller of any obligation under this subparagraph.

**Revised Par. 8(m):**

(m) **Seller's Failure to Comply or Breach:** If Seller fails to materially comply with any of Seller's obligations under this Paragraph 8 or Seller materially breaches this Contract, and Buyer elects to terminate this Contract as a result of such failure or breach, then the Earnest Money Deposit and the Due Diligence Fee shall be refunded to Buyer and Seller shall reimburse to Buyer the reasonable costs actually incurred by Buyer in connection with Buyer's Due Diligence without affecting any other remedies. If legal proceedings are brought by Buyer against the Seller to recover the Earnest Money Deposit, the Due Diligence Fee and/or the reasonable costs actually incurred by Buyer in connection with Buyer's Due Diligence, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney fees and court costs incurred in connection with the proceeding.

**Revised Par 10. HOME WARRANTY:** ~~If a home warranty is to be provided,~~ Select one of the following:

- No home warranty is to be provided by Seller.
- Buyer may obtain a one-year home warranty at a cost not to exceed \$\_\_\_\_\_ and Seller agrees to pay for it at Settlement.
- Seller has obtained and will provide a one-year home warranty from \_\_\_\_\_ at a cost of \$\_\_\_\_\_ and will pay for it at Settlement.

**NOTE:** Home warranties typically have limitations on and conditions to coverage. Refer specific questions to the home warranty company.



**BACK-UP CONTRACT ADDENDUM**

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) 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; 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.

(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.

(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



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North Carolina Bar Association  
North Carolina Association of REALTORS®, Inc.



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

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

**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: _____
Seller: _____	Date: _____

CONTINGENT SALE ADDENDUM

Seller's Property: \_\_\_\_\_

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

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

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

1. Closing Contingency for Buyer's Real Property located at: \_\_\_\_\_ ("Buyer's Property"):

- (a) Contract For Buyer's Property: If Buyer's Property is under contract as of the Effective Date of this Contract with Seller OR goes under contract during the Due Diligence Period of this Contract, then Buyer shall deliver a copy of the contract for Buyer's property ("Contract for Buyer's Property") to Seller and it shall be a condition of this Contract that closing on the sale of Buyer's Property occurs on or before the Settlement Date of this Contract. If Buyer fails to deliver to Seller a copy of a Contract for Buyer's Property by the expiration of the Due Diligence Period this Contract shall be null and void and the Earnest Money Deposit shall be refunded to Buyer. In any instance when Buyer is providing to Seller a copy of a Contract for Buyer's Property, Buyer may mark out any confidential information, such as the purchase price and the buyer's identity, prior to providing the copy to Seller.
(b) Closing on Contract For Buyer's Property: If there is a Contract For Buyer's Property, but the closing on the sale of Buyer's Property has not occurred by the Settlement Date of this Contract, then Buyer may terminate this Contract within three days following the Settlement Date of this Contract by written notice to Seller, TIME BEING OF THE ESSENCE, and the Earnest Money Deposit shall be refunded to Buyer,

(WARNING: If Buyer does not terminate this Contract as set out in (b) above, and Buyer fails to timely complete Settlement and Closing as provided in Paragraph 13 of this Contract, Buyer risks the loss of the Earnest Money Deposit).

2. Termination of Contract for Buyer's Property. If, following the expiration of the Due Diligence Period of this Contract, any Contract for Buyer's Property previously delivered to Seller terminates for any reason, Buyer shall promptly provide Seller written notice and reasonable documentation of such termination. In the event of any such termination, then either party may terminate this Contract by written notice to the other party and the Earnest Money Deposit shall be refunded to Buyer.

3. Listing of Buyer's Property for Sale. If Buyer has not entered into a Contract For Buyer's Property as of the Effective Date of this Contract, Buyer's Property (check only ONE of the following options):

- is listed with \_\_\_\_\_
will be listed on or before \_\_\_\_\_ with \_\_\_\_\_
Buyer is attempting to sell the Buyer's Property without the assistance of a real estate broker.

IN THE EVENT OF A CONFLICT BETWEEN THIS ADDENDUM AND THE CONTRACT, THIS ADDENDUM SHALL CONTROL, EXCEPT THAT IN THE CASE OF SUCH A CONFLICT AS TO THE DESCRIPTION OF THE SELLER'S PROPERTY OR THE IDENTITY OF THE BUYER OR SELLER, THE CONTRACT SHALL CONTROL.



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



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

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Date \_\_\_\_\_

Date \_\_\_\_\_

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

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

Date \_\_\_\_\_

Date \_\_\_\_\_

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

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

Date \_\_\_\_\_

Date \_\_\_\_\_

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

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