

## OFFER TO PURCHASE AND CONTRACT—NEW CONSTRUCTION

[Consult "Guidelines" (Form 800G) for guidance in completing this form]

[This form is designed for use when the Seller of a new home is or has engaged a licensed contractor who is constructing or will construct a "spec" or custom single-family dwelling on land owned or to be owned by Seller and then convey improved land to Buyer. It is not for use when: (1) the Seller does not or will not own the land to be conveyed, (2) Buyer owns the land or (3) Buyer will provide financing for construction.]

For valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Buyer offers to purchase and Seller upon acceptance agrees to sell and convey the Property on the terms and conditions of this Offer To Purchase and Contract—New Construction and any addendum or modification made in accordance with its terms (together the "Contract").

1. **TERMS AND DEFINITIONS:** The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) **"Seller":** \_\_\_\_\_

The General Contractor is ☐ the Seller OR ☐ is (insert contractor's name): \_\_\_\_\_

NC contractor's license #: \_\_\_\_\_ classification: \_\_\_\_\_ limit: \_\_\_\_\_ ("General Contractor")

(b) **"Buyer":** \_\_\_\_\_

(c) **"Real Estate":** The Real Estate shall include all that certain lot or parcel of land described below together with all appurtenances thereto.

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

County: \_\_\_\_\_, North Carolina

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

Legal Description: (Complete ALL applicable)

Plat Reference: Lot \_\_\_\_\_, Block/Section \_\_\_\_\_, Subdivision \_\_\_\_\_

\_\_\_\_\_ as shown on Plat Book/Slide \_\_\_\_\_ at Page(s) \_\_\_\_\_

The PIN/PID or other identification number of the Real Estate is: \_\_\_\_\_

Other description \_\_\_\_\_

Some or all of the Real Estate may be described in Deed Book \_\_\_\_\_ at Page \_\_\_\_\_

(d) **"Purchase Price":**

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

Paid in U.S. Dollars upon the following terms (to be adjusted by allowance and Change Orders as defined in Paragraph 3(b)(iii)):

BY INITIAL EARNEST MONEY DEPOSIT made payable and delivered to Escrow Agent named in Paragraph 1(j) by ☐ cash ☐ personal check ☐ official bank check ☐ wire transfer, ☐ electronic transfer within five (5) days of the Effective Date of this Contract.

BY (ADDITIONAL) EARNEST MONEY DEPOSIT made payable and delivered to Escrow Agent named in Paragraph 1(j) by ☐ cash ☐ official bank check ☐ wire transfer ☐ electronic transfer no later than 5 p.m. on \_\_\_\_\_, **TIME BEING OF THE ESSENCE.**

BY SELLER FINANCING in accordance with the attached Seller Financing Addendum.

BY BUILDING DEPOSIT made payable to Seller in accordance with the terms of subparagraph (l) below

BALANCE of the Purchase Price in cash at Settlement (some or all of which may be paid with the proceeds of a new loan)



**NOTE:** If the parties agree that Buyer will pay any fee or deposit described above by electronic or wire transfer, Seller agrees to cooperate in effecting such transfer, including the establishment of any necessary account and providing any necessary information to Buyer, provided, however, Buyer shall be responsible for additional costs, if any, associated with such transfer.

Whenever the final cost for allowances is more or less than the allowances set forth in this Contract or any addendum to this Contract and whenever there are Change Orders which change the cost for the Dwelling, the difference shall be adjusted between the parties either prior to Settlement or at Settlement. The Purchase Price shall be the complete cost for the Property.

Should Buyer fail to deliver any Initial Earnest Money Deposit by its due date, 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 cash, official bank check, wire transfer or electronic transfer to the payee. In the event Buyer does not timely deliver the required funds, Seller shall have the right to terminate this Contract upon written notice to Buyer. See paragraph 24 for a party's right to attorneys' fees incurred in collecting the Earnest Money Deposit.

(e) **"Pre-Construction Evaluation Period":** The period beginning on the Effective Date and extending through 5 p.m. on \_\_\_\_\_, **TIME BEING OF THE ESSENCE.**

(f) **"Dwelling":** Seller shall complete construction of a single family dwelling and related improvements to be constructed on the Real Estate in accordance with the Plans and Specifications agreed to by Seller and Buyer.

(g) **"Property":** The Property shall mean the Real Estate described in 1(c) plus the Dwelling described in 1(f).

(h) **"Plans and Specifications":**

**NOTE:** All site plans, drawings, floor plans, landscape plans, schedule of allowances, description of materials and specification lists should either be listed with copies attached as exhibits OR described with specificity (title of document, date, number of pages, designer, etc.) so they can be clearly identified and referenced:

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(i) **"Earnest Money Deposit":** The Initial Earnest Money Deposit, the Additional Earnest Money Deposit and any other earnest monies paid or required to be paid in connection with this transaction, collectively the "Earnest Money Deposit", shall be deposited and held in escrow by Escrow Agent until Closing, 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) a condition of any resulting contract is not satisfied, then the Earnest Money Deposit shall be refunded to Buyer. See paragraph 24 for a party's right to the Earnest Money Deposit, and attorneys' fees incurred in collecting the Earnest Money Deposit, in the event of breach of this Contract by the other party.

(j) **"Escrow Agent"** (insert name): \_\_\_\_\_

Buyer and Seller consent to disclosure by the Escrow Agent of any material facts pertaining to the Earnest Money Deposit to the parties to this transaction, their real estate agent(s) and Buyer's lender(s).

**NOTE:** In the event of a dispute between Seller and Buyer over the disposition of the Earnest Money Deposit 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 the Earnest Money Deposit 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 or an attorney licensed to practice law in North Carolina ("Attorney") is holding the Earnest Money Deposit, the Broker or Attorney may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

THE PARTIES AGREE THAT A REAL ESTATE BROKERAGE FIRM ACTING AS ESCROW AGENT MAY PLACE THE EARNEST MONEY DEPOSIT IN AN INTEREST BEARING TRUST ACCOUNT AND THAT ANY INTEREST EARNED THEREON SHALL BE DISBURSED TO THE ESCROW AGENT MONTHLY IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

(k) **“Effective Date”**: The date that: (i) the last one of Buyer and Seller has signed or initialed this offer or the final counteroffer, if any, and (ii) such signing or initialing is communicated to the party making the offer or counteroffer, as the case may be. The parties acknowledge and agree that the initials lines at the bottom of each page of this Contract are merely evidence of their having reviewed the terms of each page, and that the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement.

(l) **“Building Deposit”**: The purpose of the Building Deposit, if any, shall be to compensate Seller for the cost of making the following special improvements: \_\_\_\_\_

The Building Deposit shall be paid to Seller (not Escrow Agent) promptly upon occurrence of both of the following events: (i) expiration of the Pre-Construction Evaluation Period and (ii) receipt by Buyer of documentary evidence of Seller’s financial ability to construct the Dwelling. If the Building Deposit is to be payable in installments, the payments shall be made according to the following schedule (insert “0” or “N/A” if the Building Deposit will not be paid in installments or if no Building Deposit will be paid).

**NOTE:** The total of any installments should equal the amount of the Building Deposit set forth in Paragraph 1(d) above, if any:

\$ _____	Date or event triggering payment: _____
\$ _____	Date or event triggering payment: _____
\$ _____	Date or event triggering payment: _____
\$ _____	Date or event triggering payment: _____

**The Building Deposit is not a part of the Earnest Money Deposit and will be used by Seller in the construction of the special improvements described above.** The Building Deposit will be credited to the Purchase Price at Settlement. The Building Deposit shall be refundable only in the event of a material breach of the Contract by Seller, or if this Contract is terminated under paragraph 13. Should Buyer fail to deliver the Building Deposit or any installment thereof in accordance with the terms of this subparagraph, Buyer shall have seven (7) days after written notice to deliver the Building Deposit or the installments to Seller. In the event Buyer does not timely deliver the Building Deposit, Seller shall have the right to terminate this Contract upon written notice to Buyer.

**WARNING:** In determining whether and how much Building Deposit Buyer is willing to pay, Buyer should carefully consider that even though Buyer may be legally entitled to a refund of the Building Deposit in the event of a material breach of this Contract by Seller, actual recovery of the Building Deposit may be difficult, time-consuming and/or costly if Seller is unable or unwilling to voluntarily refund the Building Deposit.

(m) **“Settlement”**: The proper execution and delivery to the closing attorney of all documents necessary to complete the transaction contemplated by this Contract, including the deed, settlement statement, deed of trust and other loan or conveyance documents, and payment of all funds necessary to complete such transaction.

(n) **“Settlement Date”** The parties agree that Settlement will take place on \_\_\_\_\_ (the “Settlement Date”), unless otherwise agreed in writing, at a time and place designated by Buyer. The parties acknowledge and understand that Settlement may be delayed for a number of reasons, including but not limited to: (i) an extension of the Pre-Construction Evaluation Period under paragraph 2(e); (ii) a delay in construction under paragraph 3(g); (iii) an unsatisfactory title update or the closing attorney’s lack of authority to disburse funds under paragraph 1(o); or (iv) Seller’s failure to perform any required correction, repair, treatment or remediation or other work that may be required under paragraph 4. In the event of a delay in Settlement, the Settlement Date will be extended by a reasonable time to account for the delay(s) experienced. Unless otherwise agreed in writing, there must be Substantial Completion of the Dwelling on or before the Settlement Date.

(o) **“Closing”**: The completion of the legal process which results in the transfer of title to the Property from Seller to Buyer. Closing includes the following steps: (1) the Settlement (defined above); (2) the completion of a satisfactory title update to the Property following the Settlement; (3) the closing attorney’s receipt of authorization to disburse all necessary funds; and (4) recordation in the appropriate county registry of the deed(s) and deed(s) of trust, if any, which shall take place as soon as reasonably possible for the closing attorney after Settlement. Upon Closing, the proceeds of sale shall be disbursed by the closing attorney in accordance with the settlement statement and the provisions of Chapter 45A of the North Carolina General Statutes. If the title update should reveal unexpected liens, encumbrances or other title defects, or if the closing attorney is not authorized to disburse the lender’s funds, then the Closing shall be suspended and the Settlement deemed delayed.

**WARNING:** The North Carolina State Bar has determined that the performance of most acts and services required for a closing constitutes the practice of law and must be performed only by an attorney licensed to practice law in North Carolina. State law prohibits unlicensed individuals or firms from rendering legal services or advice. Although non-attorney settlement agents may perform limited services in connection with a closing, they may not perform all the acts and services required to complete a closing. A closing involves significant legal issues that should be handled by an attorney. Accordingly, it is the position of the North Carolina Bar Association and the North Carolina Association of REALTORS® that all buyers should hire an attorney licensed in North Carolina to perform a closing.

(p) **“Special Assessments”:** A charge against the Property by a governmental authority in addition to ad valorem taxes and recurring governmental service fees levied with such taxes, or by an owners’ association in addition to any regular assessment (dues), either of which may be a lien against the Property.

**NOTE:** Buyer’s and Seller’s respective responsibilities for Proposed and Confirmed Special Assessments are addressed in paragraphs 8(a) and 10(k).

(q) **“Substantial Completion”:** The completion of the construction of the Dwelling in accordance with the Plans and Specifications and any other special provisions that may be part of the Contract to the degree that: (i) it is habitable and broom-clean, (ii) a certificate of occupancy has been issued by the appropriate governmental authority having jurisdiction over the construction of the Dwelling and delivered to Buyer, and (iii) only Punch List Items remain to be corrected.

2. **CONDITIONS APPLICABLE DURING PRE-CONSTRUCTION EVALUATION PERIOD:** During the Pre-Construction Evaluation Period, the following conditions shall apply:

(a) **Buyer Loan(s)/Other Funds Condition:** ☐ Not Applicable

Unless not applicable, Buyer’s performance is contingent upon Buyer’s ability to obtain a loan(s) and/or other funds to purchase the Property from the following sources (*check all applicable sources*):

☐ First Mortgage Loan:

A first mortgage loan of the following type: ☐ FHA ☐ VA (attach FHA/VA Financing Addendum) ☐ Conventional ☐ USDA

☐ Other type: \_\_\_\_\_

in the principal amount of \_\_\_\_\_ plus any financed VA Funding Fee or FHA MIP.

☐ Second Mortgage Loan:

A second mortgage loan of the following type: \_\_\_\_\_

☐ Other funds:

Funds from the following other source(s) in order to purchase the Property: \_\_\_\_\_

Buyer agrees to pursue qualification for and approval of the loan(s) and/or other funds diligently and in good faith. Prior to the expiration of the Pre-Construction Evaluation Period, **TIME BEING OF THE ESSENCE**, Buyer shall have the right to terminate this Contract by delivering to Seller written notice of termination if Buyer, in Buyer’s sole discretion, is not satisfied that the loan(s) and/or other funds will be approved and funded. If Buyer has timely delivered such notice, this Contract shall be terminated 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. Buyer shall provide documentary evidence to Seller that Buyer can obtain the other loan(s) and/or funds.

**NOTE:** Buyer’s obligations under this Contract are not conditioned upon obtaining or closing any loan. Some mortgage loan programs and other programs providing funds for the purchase of property selected by Buyer may impose additional obligations, conditions or costs upon Seller or Buyer, and more information may be needed. Material changes with respect to funding the purchase of the Property that affect the terms of the contract are material facts that must be disclosed.

(b) **Seller Loan Condition:** ☐ Not Applicable

Unless not applicable, Seller’s performance is contingent upon Seller’s ability to obtain such financing as may be necessary to perform Seller’s obligations under this Contract. Seller agrees to pursue qualification for and approval of such financing diligently and in good faith. Prior to the expiration of the Pre-Construction Evaluation Period, **TIME BEING OF THE ESSENCE**, Seller shall have the right to terminate this Contract by delivering to Buyer written notice of termination if Seller, in Seller’s sole discretion, is not satisfied that Seller will be able to obtain financing necessary to perform Seller’s obligations under this Contract or financing upon such terms that are acceptable to Seller. If Seller has timely delivered such notice, this Contract shall be terminated and all

Earnest Money shall be refunded to Buyer. If Seller fails to deliver such notice, then Seller will be deemed to have waived this condition. Seller shall provide documentary evidence to Buyer of Seller's financial ability to construct the Dwelling.

(c) **Reports:** This Contract is contingent upon Seller obtaining the following applicable report(s) or permits (collectively the "Reports"):

- (i) **Soil Suitability** (☐ Applicable ☐ Not Applicable): The soil is suitable for the Dwelling.
- (ii) **Utility Availability** (☐ Applicable ☐ Not Applicable): The following utilities are available to the Property:\_\_\_\_\_.
- (iii) **Environmental Restrictions** (☐ Applicable ☐ Not Applicable): There is no environmental contamination, law, rule or regulation that prohibits or unreasonably limits the use of the Property for residential purposes.
- (iv) **Environmental Permits** (☐ Applicable ☐ Not Applicable): An Improvement Permit from any environmental regulatory agency which may have jurisdiction concerning the Real Estate which would allow the construction of the Dwelling.
- (v) **Flood Hazard** (☐ Applicable ☐ Not Applicable): There is no flood hazard that prohibits or unreasonably limits the use of the Property for residential purposes.
- (vi) **Septic System** (☐ Applicable ☐ Not Applicable): 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.
- (vii) **Private Drinking Water Well** (☐ Applicable ☐ Not Applicable): A Construction Permit from the County Health Department ("County") for a private drinking water well.
- (viii) **Zoning/Restrictive Covenants** (☐ Applicable ☐ Not Applicable): The Dwelling may be constructed in accordance with applicable zoning and restrictive covenants.
- (ix) **Architectural Review** (☐ Applicable ☐ Not Applicable): Approval from architectural review board/committee that the Dwelling meets applicable architectural requirements.

All costs and expenses of obtaining the Reports shall be borne by Seller, and Seller shall use best efforts to timely obtain the Reports and provide copies of them to Buyer. If the Reports cannot be obtained by the expiration of the Pre-Construction Evaluation Period, either party may terminate this Contract by delivering to the other party written notice of termination no later than 5 p.m. on the third day following the expiration of the **Pre-Construction Evaluation Period, TIME BEING OF THE ESSENCE**. If the terminating party has timely delivered such notice, this Contract shall be terminated and all Earnest Money shall be refunded to Buyer. If neither party delivers such notice, then the parties will be deemed to have waived this condition.

(d) **Insurance Availability/Affordability Condition:**

☐ (i) **Casualty Insurance:** (if checked, the following terms apply). Buyer must be able to obtain the insurance set forth in subparagraph (a) or (b) below at a rate not exceeding One Hundred Fifty Percent (150%) of the "Base Rate" for such insurance as filed by the NC Rate Bureau with the NC Department of Insurance.

(Check the appropriate box)

☐ (a) Buyer intends to occupy the Dwelling as Buyer's primary residence, and must be able to obtain insurance on the Property with coverage at least equivalent to that contained in a Homeowners 2 - Broad Form policy (also known as an HO2 policy) without optional coverages.

☐ (b) Buyer does not intend to occupy the Dwelling as Buyer's primary residence and must be able to obtain insurance on the Property with coverage at least equivalent to that contained in a Dwelling Property 2 - Broad Form policy (also known as a DP2 policy) without optional coverages.

☐ (ii) **Flood Insurance:** (if checked, the following terms apply). Buyer must be able to obtain Flood Insurance on the proposed Dwelling through the Federal Environmental Management Act Program.

(iii) **Termination:** If either subparagraph (i) or (ii) or both, above, have been checked, then prior to the expiration of the Pre-Construction Evaluation Period, **TIME BEING OF THE ESSENCE**, Buyer shall have the right to terminate this Contract by delivering to Seller written notice of termination if Buyer, in Buyer's sole discretion, is not satisfied that Buyer will be able to obtain insurance of the type and at the rate described above. If Buyer has timely delivered such notice, this Contract shall be terminated 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.

(e) **Street Disclosure/Investigation:**

Buyer shall have the opportunity during the Pre-Construction Evaluation Period to investigate the status of the street/road upon which the Property fronts as well as any other street/road used to access the Property, including: (1) whether any street(s)/road(s) are public or private, (2) whether any street(s)/road(s) designated as public are currently maintained by the State of NC or any municipality where the Property is located, and (3) if private or not accepted for public maintenance, the consequences and responsibility for maintenance and the existence, terms and funding of any maintenance agreements. Prior to the expiration of the Pre-Construction Evaluation Period, **TIME BEING OF THE ESSENCE**, Buyer shall have the right to terminate this Contract by delivering to Seller written notice of termination if Buyer, in Buyer's sole discretion, is not satisfied with the status of the street/road



upon which the Property fronts as well as any other street/road used to access the Property. If Buyer has timely delivered such notice, this Contract shall be terminated 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.

**NOTE:** NC General Statutes Section 136-102.6(f) (the "Statute") requires that under circumstances described in the Statute, a buyer must be provided a subdivision streets disclosure statement prior to entering into an agreement to buy subdivided property described in the Statute. If Buyer or Seller are uncertain whether the sale of the Property described in this Contract is subject to the Statute, consult a NC real estate attorney.

(f) **Extension: TIME IS OF THE ESSENCE** REGARDING THE EXPIRATION OF THE PRE-CONSTRUCTION EVALUATION PERIOD. The parties may, but are not required to, agree to extend the Pre-Construction Evaluation Period. Any extension of the Pre-Construction Evaluation must be in writing and signed by the parties. In the event of an extension, the Settlement Date shall be extended by the same period of time that the Pre-Construction Evaluation Period has been extended.

**NOTE:** The failure of a party to terminate this Contract based upon a condition contained in this Pre-Construction Evaluation Period paragraph shall not constitute a waiver of or otherwise affect any other rights that the party may have under this Contract.

### 3. CONSTRUCTION OF DWELLING.

(a) **Quality of Construction:** Seller shall construct the Dwelling (i) in accordance with the Plans and Specifications; (ii) in compliance with all laws, regulations, codes, and ordinances applicable to the construction of the Dwelling; and (iii) in a good and workmanlike manner with new, good quality materials and components.

(b) **Changes:**

(i) **Seller Changes:** Seller shall not make any significant deviation or change in the Plans and Specifications without the prior written consent of Buyer.

(ii) **Buyer Changes:** Buyer may request changes in the construction of the Dwelling within the general scope of the Plans and Specifications, consisting of additions, deletions or other revisions.

(iii) **Change Order:** Changes under (i) and/or (ii) above shall be made only by a Change Order, which shall be in writing and signed by both Buyer and Seller ("Change Order"). Any adjustments in the Purchase Price, Building Deposit and Settlement date shall be as set forth in the Change Order.

(c) **Construction Costs:** Seller shall provide and pay for all labor, materials, equipment, tools, clean-up, utilities, transportation, facilities, permits, fees, licenses, all plans and specifications and all other costs, charges and expenses whatsoever in connection with or related to the construction of the Dwelling unless otherwise agreed in writing.

(d) **Construction Financing:** Seller shall pay all costs, charges, and other expenses, of any nature whatsoever, for Seller's construction financing of the Dwelling.

(e) **Building Permit:** Within \_\_\_\_ days after the expiration of the Pre-Construction Evaluation Period, Seller will obtain the building permit for the construction of the Dwelling. **With respect to this deadline, TIME ☐ IS ☐ IS NOT OF THE ESSENCE.** Construction of the Dwelling shall commence upon issuance of the building permit and necessary land use permits.

(f) **Punch List Items:**

(i) Seller shall notify Buyer when there has been Substantial Completion of the Dwelling and shall schedule a mutually agreeable date and time on which Buyer shall inspect the Dwelling. Prior to Settlement, Buyer and Seller shall agree upon a written list of all deficiencies in workmanship and material that are detectable by visual examination ("Punch List Items"). Seller shall correct Punch List Items at Seller's cost within a reasonable period of time. AFTER SUBSTANTIAL COMPLETION(as defined in Paragraph 1(q)), SELLER'S FAILURE TO CORRECT A PUNCH LIST ITEM PRIOR TO SETTLEMENT WILL NOT BE GROUNDS FOR DELAYING SETTLEMENT OR THE IMPOSITION OF ANY CONDITIONS ON SETTLEMENT; PROVIDED, SETTLEMENT SHALL NOT RELIEVE SELLER FROM THE OBLIGATION TO CORRECT ANY PUNCH LIST ITEM.

(ii) This subparagraph (f) shall not be deemed to limit Buyer's right to conduct inspections under Paragraph 4 below or limit the obligations of Seller under the Limited Warranty of Construction under Paragraph 5 below.

(g) **Delay in Construction:** If Seller is delayed at any time in the progress of construction by (i) any act or neglect of Buyer; (ii) written Change Orders; (iii) shortages of materials, adverse weather conditions, or delays in transportation which were not reasonably anticipated; or (iv) acts of God, Seller shall give as much notice as possible of the delay to Buyer and the time for

Substantial Completion of construction of the Dwelling and the Settlement Date shall be extended by a reasonable time to account for the delay(s) experienced. BUYER ACKNOWLEDGES AND UNDERSTANDS THE IMPORTANCE OF COOPERATING FULLY WITH SELLER IN ORDER TO HELP EXPEDITE THE CONSTRUCTION OF THE DWELLING AND TO AVOID OR MINIMIZE ANY DELAY IN SETTLEMENT, INCLUDING BUT NOT LIMITED TO TIMELY COMMUNICATION OF ANY REQUESTED CHANGES IN THE CONSTRUCTION OF THE DWELLING IN ACCORDANCE WITH PARAGRAPH 3(b)(ii) ABOVE AND MAKING PROMPT DECISIONS ON ANY ALLOWANCE ITEMS.

4. **BUYER'S INVESTIGATION OF CONSTRUCTION:**

(a) **Inspections:** Buyer and/or Buyer's agents or representative may enter the Dwelling at reasonable times through the earlier of Closing or possession by Buyer, in such manner as not to interfere with the progress of construction, for the purpose of conducting such inspections as Buyer deems appropriate to determine whether the work performed or being performed conforms with the Plans and Specifications and the terms of this Contract. In the event that during construction Buyer shall reasonably determine that such construction is not proceeding in accordance with this Contract, Buyer shall give written notice to Seller specifying the particular deviation, deficiency, or omission, and Seller shall forthwith correct such deviation, deficiency, or omission. Buyer's rights under this paragraph shall not release Seller from any of Seller's obligations for the construction of the Dwelling in accordance with the Plans and Specifications and this Contract.

(b) **Wood-Destroying Insects:** Buyer shall have the option of obtaining, at Buyer's expense, prior to Settlement, 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 the Dwelling there was no visible evidence of wood-destroying insects and containing no indication of visible damage therefrom. If the report indicates that there is visible evidence of wood-destroying insects or visible damage therefrom, Seller shall perform any required treatment and make any necessary repairs. **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.**

(c) **Radon Inspection:** Buyer shall have the option, at Buyer's expense, to have the Property tested for radon prior to Settlement. 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 remediate to bring the radon level within the satisfactory range. 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 Buyer.

(d) **Delay in Settlement:** Seller's failure to perform any required correction, repair, treatment or remediation or other work that may be required under this paragraph 4 prior to Settlement will be grounds for delaying Settlement.

(e) **Buyer's Obligation to Repair Damage:** 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, but Buyer shall not be responsible for any damage caused by accepted practices either approved by the NC Home Inspector Licensure Board or applicable to any other NC licensed professional performing reasonable appraisals, tests, surveys, examinations and inspections of the Property.

(f) **Indemnity:** 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 except for any loss, damage, claim, suit or cost arising out of pre-existing conditions of the Property and/or out of Seller's negligence or willful acts or omissions. This repair obligation and indemnity shall survive this Contract and any termination hereof.

5. **WARRANTIES:**

(a) **Limited Warranty Of Construction.** Unless otherwise provided for herein, Seller, and General Contractor jointly and severally with Seller, hereby warrant(s) that, for a period of one (1) year from the date of Closing or the date Buyer occupies the Dwelling, whichever comes first, Seller and General Contractor will make all necessary repairs and corrections to the Dwelling, either interior or exterior, structural or nonstructural, that shall become necessary by reason of faulty construction, labor or materials or non-conformity of construction to the Plans and Specifications. At Seller's sole option, Seller and General Contractor may either (i) make such repairs and corrections, (ii) replace any faulty or non-conforming item or condition or (iii) pay to Buyer the reasonable cost of such repair, correction or replacement. This limited warranty: (1) is for the benefit of Buyer only and may not be assigned nor shall it inure to the benefit of any other person or entity, and (2) shall survive Closing and the delivery of the deed. This limited warranty is in addition to and not in lieu of any warranty implied by law and Seller and General Contractor agree they are in the business of building and selling such dwellings.

☐ If checked, the foregoing limited warranty shall not apply and is replaced by the attached written warranty provided by Seller and/or General Contractor.

(b) **Warranties Of Components.** Seller, and General Contractor jointly and severally with Seller, shall assign and deliver to Buyer at Settlement all guarantees and warranties of all components comprising the Dwelling to the extent the same are assignable. Buyer shall be responsible for compliance with any notice and claim procedures set forth therein. The warranty under Paragraph 5(a) shall not extend to any such component expressly guaranteed or warranted by the manufacturer.

(c) **Subterranean Termites.** Seller, and General Contractor jointly and severally with Seller, shall provide a Subterranean Termite Protection Builder's Guarantee and a New Construction Subterranean Termite Service Record, as published under Federal Law.

6. **INSULATION OF DWELLING:**

	WALLS	CEILINGS	FLOORS
TYPE			
THICKNESS			
R-VALUE			

7. **BUYER REPRESENTATIONS:**

(a) **Other Property:** Buyer ☐ DOES ☐ DOES NOT have to sell or lease other real property in order to qualify for a new loan or to complete the purchase of the Property. *(Complete the following only if Buyer DOES have to sell or lease other real property:)*

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

☐ *(Check if applicable)* Buyer's other property IS under contract as of the date of this offer, and a copy of the contract has either been previously provided to Seller or accompanies this offer. *(Buyer may mark out any confidential information, such as the purchase price and the buyer's identity, prior to providing a copy of the contract to Seller.)* Failure to provide a copy of the contract shall not prevent this offer from becoming a binding contract; however, SELLER IS STRONGLY ENCOURAGED TO OBTAIN AND REVIEW THE CONTRACT ON BUYER'S PROPERTY PRIOR TO ACCEPTING THIS OFFER.

☐ *(Check if applicable)* Buyer's other property IS NOT under contract as of the date of this offer. Buyer's property *(check only ONE of the following options):*

☐ is listed with and actively marketed by a licensed real estate broker.

☐ will be listed with and actively marketed by a licensed real estate broker.

☐ Buyer is attempting to sell/lease the Buyer's other property without the assistance of a licensed real estate broker.

**NOTE:** This Contract is NOT conditioned upon the sale/lease or closing of Buyer's other property. If the parties agree to make this Contract conditioned on a sale/lease or closing of Buyer's other property, an appropriate contingency addendum should be drafted by a North Carolina real estate attorney and added to this Contract.

(b) **Performance of Buyer's Financial Obligations:** To the best of Buyer's knowledge, there are no other circumstances or conditions existing as of the date of this offer that would prohibit Buyer from performing Buyer's financial obligations in accordance with this Contract, except as may be specifically set forth herein.

(c) **Mineral and Oil and Gas Rights Mandatory Disclosure Statement** *(check only one):*

☐ Buyer has received a signed copy of the N.C. Mineral and Oil and Gas Rights Mandatory Disclosure Statement prior to making this offer and acknowledges compliance with N.C.G.S. 47E-5 (Residential Property Disclosure Act).

☐ Buyer has NOT received a signed copy of the N.C. Mineral and Oil and Gas Rights Mandatory Disclosure Statement prior to making this offer and shall have the right to terminate or withdraw this Contract without penalty (including a refund of any Due Diligence Fee) 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 Effective Date; or (3) Settlement or occupancy by Buyer in the case of a sale or exchange.

☐ Exempt from N.C. Mineral and Oil and Gas Rights Mandatory Disclosure Statement because (SEE GUIDELINES): \_\_\_\_\_



Buyer's receipt of a Mineral and Oil and Gas Rights Mandatory Disclosure Statement does not modify or limit the obligations of Seller under Paragraph 10(g) of this Contract and shall not constitute the assumption or approval by Buyer of any severance of mineral and/or oil and gas rights, except as may be assumed or specifically approved by Buyer in writing.

**NOTE:** The parties are advised to consult with a NC attorney prior to signing this Contract if severance of mineral and/or oil and gas rights has occurred or is intended.

8. **BUYER OBLIGATIONS:**

(a) **Responsibility for Special Assessments:** Buyer shall take title subject to all Special Assessments that may be approved following Settlement.

(b) **Responsibility for Certain Costs:** Buyer shall be responsible for all costs with respect to:

- (i) any loan obtained by Buyer;
- (ii) charges by an owners' association or a management company/vendor as agent of the association under paragraph 9(b) of this Contract;
- (iii) appraisal;
- (iv) title search;
- (v) title insurance;
- (vi) any fees charged by the closing attorney for the preparation of the Closing Disclosure, Seller Disclosure and any other settlement statement;
- (vii) recording the deed; and
- (viii) preparation and recording of all instruments required to secure the balance of the Purchase Price unpaid at Settlement.

(c) **Authorization to Disclose Information:** Buyer authorizes the Buyer's lender(s), the parties' real estate agent(s) and closing attorney: (1) to provide this Contract to any appraiser employed by Buyer or by Buyer's lender(s); and (2) to release and disclose any buyer's closing disclosure, settlement statement and/or disbursement summary, or any information therein, to the parties to this transaction, their real estate agent(s) and Buyer's lender(s).

9. **SELLER REPRESENTATIONS:**

(a) **Ownership:** Seller represents that Seller:

- ☐ has owned the Real Estate for at least one year;
- ☐ has owned the Real Estate for less than one year
- ☐ does not yet own the Real Estate

(b) **Contractor's License:** Seller represents that the General Contractor is licensed to construct the improvements on the Real Estate.

(c) **Owners' Association(s) and Dues:** To best of Seller's knowledge, ownership of the Property ☐ subjects ☐ does not subject Buyer to regulation by one or more owners' association(s) and governing documents, which impose various mandatory covenants, conditions and restrictions upon the Property and Buyer's enjoyment thereof, including but not limited to obligations to pay regular assessments (dues) and Special Assessments. If there is an owners' association, then an Owners' Association Disclosure and Addendum For Properties Exempt from Residential Property Disclosure Statement (Standard Form 2A12-T) shall be completed by Seller, at Seller's expense, and must be attached as an addendum to this Contract.

10. **SELLER OBLIGATIONS:** In addition to Seller's obligation to construct the Dwelling in accordance with paragraph 3 above, Seller shall have the following additional obligations:

(a) **Evidence of Title, Payoff Statement(s) and Non Foreign Status:**

- (i) Seller agrees to use best efforts to provide to the closing attorney as soon as reasonably possible after the Effective Date, 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, leases, and easements relating to the Property.
- (ii) Seller shall provide to the closing attorney all information needed to obtain a written payoff statement from any lender(s) regarding any security interest in the Property as soon as reasonably possible after the Effective Date, and Seller designates the closing attorney as Seller's agent with express authority to request and obtain on Seller's behalf payoff statements and/or short-pay statements from any such lender(s).
- (iii) If Seller is not a foreign person as defined by the Foreign Investment in Real Property Tax Act, Seller shall also provide to the closing attorney a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act). In the event Seller shall not provide a non-foreign status affidavit, Seller acknowledges that there may be withholding as provided by the Internal Revenue Code.

(b) **Authorization to Disclose Information:** 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; (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; and (3) the closing attorney to release and disclose any seller's closing disclosure, settlement statement and/or disbursement summary, or any information therein, to the parties to this transaction, their real estate agent(s) and Buyer's lender(s).

(c) **Access to Property:** Seller shall provide reasonable access to the Property through the earlier of Closing or possession by Buyer, including, but not limited to, allowing the Buyer and/or Buyer's agents or representatives, an opportunity to (i) investigate enumerated issues found in paragraphs 2, 3 and 4, (ii) verify the satisfactory completion of negotiated change orders/repairs/improvements, and (iii) conduct a final walk-through inspection of the Property. Seller's obligation includes providing existing utilities operating at Seller's cost including any connections and de-winterizing.

**NOTE:** See paragraph 2 for limitations on Buyer's right to terminate this Contract as a result of Buyer's continued investigation of the Property following the expiration of the Examination Period.

(d) **Removal of Seller's Property:** Seller shall remove, by the date possession is made available to Buyer, all personal property which is not a part of the purchase and all garbage and debris from the Property.

(e) **Affidavit And Indemnification Agreement:** Seller shall furnish at Settlement an affidavit(s) and indemnification agreement(s) in form satisfactory to Buyer and Buyer's title insurer, if any, executed by Seller and any person or entity who has performed or furnished labor, services, materials or rental equipment to the Property within 120 days prior to the date of Settlement and who may be entitled to claim a lien against the Property as described in N.C.G.S. §44A-8 verifying that each such person or entity has been paid in full and agreeing to indemnify Buyer, Buyer's lender(s) and Buyer's title insurer against all loss from any cause or claim arising therefrom.

(f) **Designation of Lien Agent, Payment and Satisfaction of Liens:** If required by N.C.G.S. §44A-11.1, Seller shall have designated a Lien Agent, and Seller shall deliver to Buyer as soon as reasonably possible a copy of the appointment of Lien Agent. All deeds of trust, deferred ad valorem taxes, liens and other charges against the Property, not assumed by Buyer, must be paid and satisfied by Seller prior to or at Settlement such that cancellation may be promptly obtained following Closing. Seller shall remain obligated to obtain any such cancellations following Closing.

(g) **Good Title, Legal Access:** Seller shall execute and deliver a GENERAL WARRANTY DEED for the Property in recordable form no later than Settlement, which shall convey fee simple marketable and insurable title, without exception for mechanics' liens, and free of any other liens, encumbrances or defects, including those 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 covenants, conditions or restrictions that do not materially affect the value of the Property; and such other liens, encumbrances or defects as may be assumed or specifically approved by Buyer in writing. The Property must have legal access to a public right of way.

(h) **Deed, Taxes, and Fees:** Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Contract, and for state and county excise taxes, and any deferred, discounted or rollback taxes, and local conveyance fees required by law. The deed is to be made to: \_\_\_\_\_.

(i) **Agreement to Pay Buyer Expenses:** Seller shall pay at Settlement \$\_\_\_\_\_ toward any of Buyer's expenses associated with the purchase of the Property, at the discretion of Buyer and/or lender, if any, including any FHA/VA lender and inspection costs that Buyer is not permitted to pay.

**NOTE:** Parties should review the FHA/VA Addendum prior to entering an amount in Paragraph 10(i). Certain FHA/VA lender and inspection costs CANNOT be paid by Buyer at Settlement and the amount of these should be included in the blank above.

(j) **Owners' Association Fees/Charges:** Seller shall pay any charges by an owners' association or a management company/vendor as agent of the association under paragraph 11(a) of this Contract.

(k) **Payment of Special Assessments:** Seller shall pay, in full at Settlement, all Special Assessments that are approved prior to Settlement, whether payable in a lump sum or future installments, provided that the amount thereof can be reasonably determined or estimated. The payment of such estimated amount shall be the final payment between the Parties.

(l) **Late Listing Penalties:** All property tax late listing penalties, if any, shall be paid by Seller.

(m) **Owners' Association Disclosure and Addendum For Properties Exempt from Residential Property Disclosure Statement** (Standard Form 2A12-T): If applicable, Seller shall provide the completed Owners' Association Disclosure and Addendum For Properties Exempt from Residential Property Disclosure Statement to Buyer on or before the Effective Date.

(n) **Additional Third-Party Home Warranty:**

☐ No additional third party home warranty is to be provided by Seller.

☐ Buyer may obtain a \_\_\_\_\_-year home warranty at a cost not to exceed \$ \_\_\_\_\_ which includes sales tax and Seller agrees to pay for it at Settlement.

☐ Seller has obtained and will provide a \_\_\_\_\_-year home warranty from \_\_\_\_\_ at a cost of \$ \_\_\_\_\_ which includes sales tax 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.

Any additional third party home warranty shall not limit Seller's obligations under Paragraph 5.

(o) **Seller's Breach of Contract:** See paragraph 24 for Buyer's remedies in the event of breach of this Contract.

11. **CHARGES BY OWNERS' ASSOCIATION:** Responsibility for payment of charges by an owners' association or a management company/vendor as agent of the association shall be allocated between Buyer and Seller as follows:

(a) Seller shall pay:

(i) fees incurred by Seller in completing resale or other certificates related to a proposed sale of the Property;

(ii) fees required for confirming Seller's account payment information on owners' association dues or assessments for payment or proration, including any expedite fee permitted under N.C. Gen. Stat. § 47F-3-102 that is charged in connection with providing such information;

(iii) any fees charged for transferring or updating ownership records of the association; and

(iv) any fees other than those fees specifically required to be paid by Buyer under paragraph 9(b) below.

(b) Buyer shall pay:

(i) charges for providing information required by Buyer's lender;

(ii) working capital contributions, membership fees, or charges imposed for Buyer's use of the common elements and/or services provided to Buyer in connection with Buyer taking possession of the Property, such as "move-in fees"; and

(iii) determining restrictive covenant compliance.

12. **PRORATIONS AND ADJUSTMENTS:** Unless otherwise agreed, the following items shall be prorated, with Seller responsible for the prorated amounts through the date of Settlement, and either adjusted between the parties or paid at Settlement:

(a) Ad valorem taxes and recurring governmental service fees levied with such taxes on real property shall be prorated on a calendar year basis;

(b) Owners' association regular assessments ("dues") and other like charges.

13. **RISK OF LOSS AND INSURANCE:**

(a) **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 Real Estate 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 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.

(b) **Insurance:** Seller shall purchase and maintain "All Risks" Builder's Risk Insurance coverage, including Theft and Vandalism and Malicious Mischief, upon the Dwelling on a "Completed Values" basis, while the Dwelling is in the course of construction. "Completed Values" shall mean the full value of the Dwelling, as of the date that all construction is completed, including Seller's total cost plus profit, but excluding the cost of the land. In the event that construction is fully completed prior to sale of the Property, Seller shall purchase and maintain Permanent "All Risks" Property Insurance coverage on the Dwelling, including Theft and Vandalism and Malicious Mischief, on a "Replacement Cost" basis. "Replacement Cost" shall mean the full cost of replacement of the structure or structures at the same site with new material of like kind and quality without deduction for depreciation. In addition, Seller shall purchase and maintain Third Party Liability Insurance coverage on the premises of the Property during the course of, and after construction is completed.

14. **POSSESSION:** Possession, including all means of access to the Property (keys, codes including security codes, garage door openers, electronic devices, etc.) shall be delivered upon Closing as defined in Paragraph 1(o) unless otherwise provided herein.

15. **ADDENDA:** 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.

- ☐ Additional Provisions Addendum (Form 2A11-T)  
☐ Additional Signatures Addendum (Form 3-T)  
☐ Schedule of Allowances Addendum (Form 800A1-T)

- ☐ FHA/VA Financing Addendum (Form 2A4-T)  
☐ Owners' Association Disclosure Addendum (Form 2A12-T)  
☐ Seller Financing Addendum (Form 2A5-T)

☐ Identify other attorney or party drafted addenda: \_\_\_\_\_

**NOTE:** UNDER NORTH CAROLINA LAW, REAL ESTATE BROKERS ARE NOT PERMITTED TO DRAFT ADDENDA TO THIS CONTRACT. **16. ASSIGNMENTS:** This Contract may not be assigned without the written consent of all parties except in connection with a tax- deferred exchange, but if assigned by agreement, then this Contract shall be binding on the assignee and his heirs and successors.

17. **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, including assignment of this Contract in connection therewith, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

18. **PARTIES:** This Contract shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective 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.

19. **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.

20. **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.

21. **CONDUCT OF TRANSACTION:** The parties agree that any action between them relating to the transaction contemplated by this Contract may be conducted by electronic means, including the signing of this Contract by one or more of them and any notice or communication given in connection with this Contract. Any written notice or communication may be transmitted to any mailing address, e-mail address or fax number set forth in the "Notice Information" section below. Any notice or communication to be given to a party herein, and any fee, deposit or other payment to be delivered to a party herein, may be given to the party or to such party's agent. Delivery of any notice to a party via means of electronic transmission shall be deemed complete at such time as the sender performs the final act to send such transmission, in a form capable of being processed by the receiving party's system, to any electronic address provided for such party in the "Notice Information" section below. Seller and Buyer agree that the "Notice Information" and "Acknowledgment of Receipt of Monies" sections below shall not constitute a material part of this Contract, and that the addition or modification of any information therein shall not constitute a rejection of an offer or the creation of a counteroffer.

22. **EXECUTION:** This Contract may be signed in multiple originals or counterparts, all of which together constitute one and the same instrument.

23. **COMPUTATION OF DAYS/TIME OF DAY:** 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. Any reference to a date or time of day shall refer to the date and/or time of day in the State of North Carolina.

24. **REMEDIES:**

(a) **Breach by Buyer:** In the event of material breach of this Contract by Buyer, then without limiting any other remedies available to Seller for such breach, the Earnest Money Deposit shall be applied to such damages as Seller may be legally entitled to recover for such breach, and the balance of the Earnest Money Deposit, if any, shall be refunded to Buyer upon Buyer's request.

(b) **Breach by Seller:** In the event of material breach of this Contract by Seller, Buyer may (i) elect to terminate this Contract as a result of such breach, and shall be entitled to return of both the Earnest Money Deposit and the Due Diligence Fee, together with the reasonable costs actually incurred by Buyer in connection with Buyer's Due Diligence ("Due Diligence Costs"), or (ii) elect not to terminate and instead treat this Contract as remaining in full force and effect and seek the remedy of specific performance.

(c) **Attorneys' Fees:** If legal proceedings are brought by Buyer or Seller against the other to collect the Earnest Money Deposit, Due Diligence Fee, or Evaluation Costs, the parties agree that a party shall be entitled to recover reasonable attorneys' fees to the extent permitted under N.C. Gen. Stat. § 6-21.2. The parties acknowledge and agree that the terms of this Contract with respect to entitlement to the Earnest Money Deposit, Due Diligence Fee, or Evaluation Costs each constitute an "evidence of indebtedness" pursuant to N.C. Gen. Stat. § 6-21.2.

**NOTE:** A party seeking recovery of attorneys' fees under N.C. Gen. Stat. § 6-21.2 must first give written notice to the other party that they have five (5) days from the mailing of the notice to pay the outstanding amount(s) without the attorneys' fees.

SAMPLE



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.

This offer shall become a binding contract on the Effective Date. Unless specifically provided otherwise, Buyer's failure to timely deliver any fee, deposit or other payment provided for herein shall not prevent this offer from becoming a binding contract, provided that any such failure shall give Seller certain rights to terminate the contract as described herein or as otherwise permitted by law.

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

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

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

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

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

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

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

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

Entity Buyer:

Entity Seller:

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

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

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

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

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

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

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

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

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

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

General Contractor (to be executed only when Seller is not the General Contractor):

General Contractor hereby joins in the execution of this Agreement for the sole and limited purpose of agreeing to remain jointly and severally liable with the Seller for the warranty obligations set forth in Paragraph 5 of this Contract.

Name of General Contractor: \_\_\_\_\_

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

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

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

## WIRE FRAUD WARNING

TO BUYERS: BEFORE SENDING ANY WIRE, YOU SHOULD CALL THE CLOSING ATTORNEY'S OFFICE TO VERIFY THE INSTRUCTIONS. IF YOU RECEIVE WIRING INSTRUCTIOS FOR A DIFFERENT BANK, BRANCH LOCATION, ACCOUNT NAME OR ACCOUNT NUMBER, THEY SHOULD BE PRESUMED FRAUDULENT. DO NOT SEND ANY FUNDS AND CONTACT THE CLOSING ATTORNEY'S OFFICE IMMEDIATELY.

TO SELLERS: IF YOUR PROCEEDS WILL BE WIRED, IT IS RECOMMENDED THAT YOU PROVIDE WIRING INSTRUCTIONS AT CLOSING IN WRITING IN THE PRESENCE OF THE ATTORNEY. IF YOU ARE UNABLE TO ATTEND CLOSING, YOU MAY BE REQUIRED TO SEND AN ORIGINAL NOTARIZED DIRECTIVE TO THE CLOSING ATTORNEY'S OFFICE CONTAINING THE WIRING INSTRUCTIONS. THIS MAY BE SENT WITH THE DEED, LIEN WAIVER AND TAX FORM IF THOSE DOCUMENTS ARE BEING PREPARED FOR YOU BY THE CLOSING ATTORNEY. AT A MINIMUM, YOU SHOULD CALL THE CLOSING ATTORNEY'S OFFICE TO PROVIDE THE WIRE INSTRUCTIONS. THE WIRE INSTRUCTIONS SHOULD BE VERIFIED OVER THE TELEPHONE VIA A CALL TO YOU INITIATED BY THE CLOSING ATTORNEY'S OFFICE TO ENSURE THAT THEY ARE NOT FROM A FRAUDULENT SOURCE.

WHETHER YOU ARE A BUYER OR A SELLER, YOU SHOULD CALL THE CLOSING ATTORNEY'S OFFICE AT A NUMBER THAT IS INDEPENDENTLY OBTAINED. TO ENSURE THAT YOUR CONTACT IS LEGITIMATE, YOU SHOULD NOT RELY ON A PHONE NUMBER IN AN EMAIL FROM THE ATTORNEY'S OFFICE, YOUR REAL ESTATE AGENT OR ANYONE ELSE.

[THIS SPACE INTENTIONALLY LEFT BLANK]

## NOTICE INFORMATION

**NOTE:** INSERT AT LEAST ONE 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:

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Buyer Fax#: \_\_\_\_\_

Buyer E-mail: \_\_\_\_\_

### SELLER NOTICE ADDRESS:

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Seller Fax#: \_\_\_\_\_

Seller E-mail: \_\_\_\_\_

## CONFIRMATION OF AGENCY/NOTICE ADDRESSES

Selling Firm Name: \_\_\_\_\_

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

Firm License# : \_\_\_\_\_

Mailing Address : \_\_\_\_\_

Individual Selling Agent: \_\_\_\_\_  
☐ Acting as a Designated Dual Agent (check only if applicable)

Selling Agent License#: \_\_\_\_\_

Selling Agent Phone#: \_\_\_\_\_

Selling Agent Fax#: \_\_\_\_\_

Selling Agent E-mail: \_\_\_\_\_

Listing Firm Name: \_\_\_\_\_

Acting as ☐ Seller's Agent ☐ Dual Agent

Firm License#: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Individual Listing Agent: \_\_\_\_\_  
☐ Acting as a Designated Dual Agent (check only if applicable)

Listing Agent License#: \_\_\_\_\_

Listing Agent Phone#: \_\_\_\_\_

Listing Agent fax#: \_\_\_\_\_

Listing Agent E-mail: \_\_\_\_\_

## ACKNOWLEDGMENT OF RECEIPT OF MONIES

Seller: \_\_\_\_\_ ("Seller")

Buyer: \_\_\_\_\_ ("Buyer")

Property Address: \_\_\_\_\_ ("Property")

### ☐ ESCROW AGENT ACKNOWLEDGMENT OF RECEIPT OF INITIAL EARNEST MONEY DEPOSIT

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Escrow Agent of an Initial Earnest Money Deposit in the amount of \$\_\_\_\_\_. Escrow Agent as identified in Paragraph 1(j) of the Offer to Purchase and Contract hereby acknowledges receipt of the Initial Earnest Money Deposit and agrees to hold and disburse the same in accordance with the terms of the Offer to Purchase and Contract.

Date \_\_\_\_\_

Firm: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print name)

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### ☐ ESCROW AGENT ACKNOWLEDGMENT OF RECEIPT OF (ADDITIONAL) EARNEST MONEY DEPOSIT

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Escrow Agent of an (Additional) Earnest Money Deposit in the amount of \$\_\_\_\_\_. Escrow Agent as identified in Paragraph 1(j) of the Offer to Purchase and Contract hereby acknowledges receipt of the (Additional) Earnest Money Deposit and agrees to hold and disburse the same in accordance with the terms of the Offer to Purchase and Contract.

Date \_\_\_\_\_

Firm: \_\_\_\_\_

Time: \_\_\_\_\_ ☐ AM ☐ PM

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print name)

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### ☐ SELLER ACKNOWLEDGMENT OF RECEIPT OF BUILDING DEPOSIT

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Seller of a Building Deposit in the amount of \$\_\_\_\_\_, receipt of which Seller hereby acknowledges.

Date \_\_\_\_\_

Seller: \_\_\_\_\_  
(Signature)

Date \_\_\_\_\_

Seller: \_\_\_\_\_  
(Signature)