INTRODUCTION TO

BROKERAGE_©



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Introduction to Land Brokerage

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Introduction Land Brokerage: A Specialty Area

The preamble to the National Association of Realtors® Code of Ethics begins:

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. Realtors® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.1

As this passage would suggest, the proper stewardship of land is critical to the nation's economic and environmental health. That stewardship is in the hands of the nation's real estate brokers. Land brokerage is a specialty area within the real estate brokerage industry and involves expertise with unique practices; customs, forms, and even vocabulary, real estate professionals should obtain specialized training and experience before undertaking the responsibility of a land transaction. Real estate licensing agencies and the National Association of Realtors® (NAR) all emphasize the importance of licensees engaging the assistance of competent individuals when hired to provide professional services concerning a type of property outside their field of competence.2

With these concerns in mind, this course deals with some of basic concepts with which real estate brokers should be familiar while they gain experience in the field. The topics that will be addressed in this course include the different types of land and their characteristics; land use issues; the role of federal and states laws; marketing land; and due diligence, disclosure and other duties of the parties. Additionally, this course manual has a robust appendix of additional materials which may be useful to the beginning land broker.

¹ National Association of Realtors Code of Ethics, http://www.realtor.org/mempolweb.nsf/pages/code 2 lbid. Article 11.

Land Use

The United States has a land area of just under 2.3 billion acres. It is about half the size of Russia; about three tenths the size of Africa; about half the size of South America (or slightly larger than Brazil); slightly larger than China; more than twice the size of the European Union.³

Of its 2.3 billing acres, America's land is overwhelming devoted to rural pursuits: 97% of its use or 2.2 billion acres are involved in agriculture, including ranges, croplands, pastures, farmsteads, and roads), forest, and other land. The remaining 3% (60 million acres) is urban, including residential, commercial, utilities, mixed, transitional, and other urban land.4

Careers and Education in Land Brokerage

While it is difficult to determine how many real estate licensees actively work in the industry, the National Association of Realtors reports that its organization has more than 1 million members. In a 2013 study of its membership, NAR reported that eight out of 10 firms specialize in residential brokerage, with commercial brokerage and residential property management the most common secondary functions, each offered by nearly four in 10 residential brokerages.

Other primary business specialties at real estate firms include residential property management, 6 percent; and commercial brokerage and residential appraisal, 5 percent each. *Smaller shares of real estate firms focus on land development*, commercial property management, commercial appraisal, relocation, counseling, international and auction.⁵

American humorist Will Rogers once said, "Buy land. They ain't making any more of it."

While it is always difficult to predict the challenges ahead for those who choose land brokerage as a specialty, if Will Rogers was correct, Americans will always revere land ownership as the cornerstone of the American Dream. It is land brokers who will help them achieve it.

RLI

Land is a unique real estate specialty that requires a highly specialized professional education. As the destination for land expertise, the REALTORS® Land Institute offers a world-class land real estate education program. Today, RLI has more than 2,150 members, over 630 of which have earned the prestigious Accredited Land Consultant (ALC) designation.6

ALCs are considered the most accomplished, most experienced, and highest performing land real estate experts across the country. The results of a membership survey indicated that the average Accredited Land Consultant (ALC) earned \$373,925, which is approximately \$100,000 more per year than the average earned by non-designee respondents.

The largest ALC transactions to date include one that totaled \$650 million.7

Earning the ALC requires successful completion of a rigorous education program, a proven track record of performance, and a commitment to professionalism. ALC candidates must have at least three years of land sales experience, complete six land specialty courses in three categories, and meet high volume requirements.8 Courses may be completed through RLI's Land University or LANDU® in a variety of formats including: Virtual Instructor Led Training (VILT), live classroom, online independent study, and the LANDU® Education Bootcamp, a multi-day, live event where attendees can complete all of the ALC required coursework.

4 ERS Report Summary, Major Uses of Land in the United States, 2007, http://www.ers.usda.gov/media/177328/eib89_reportsummary.pdf

5 Study of Real Estate firms, http://www.realtor.org/news-releases/2013/09/study-of-real-estate-firms-shows-both-optimism-and-challenges

³ United States Geography Stats, http://www.nationmaster.com/country-info/profiles/United-States/Geography

⁶ https://rliland.com/join

⁷ https://rliland.com/alc

⁸ ALC Requirements, http://www.rliland.com/alc-requirements

ULI

Another organization to consider for professional development is the Urban Land Institute (ULI). Established in 1936, the Institute today has more than 30,000 members worldwide, representing the entire spectrum of the land use and development disciplines.

The Institute has long been recognized as one of the world's most respected and widely quoted sources of objective information on urban planning, growth, and development. Land brokers who work with developers may find ULI's education offerings very helpful.9

Types of Land

-Rural Land

The term *land use* is the human use of land. Land use involves the management and modification of natural environment or wilderness into built environment such as settlements and semi-natural habitats such as arable fields, pastures, and managed woods.

As discussed earlier, the predominant use of land in the U.S. is for agricultural purposes. Agricultural land can be further categorized as:

Cropland includes row crops and closely sown crops; hay and silage crops; tree fruits, small fruits, berries, and tree nuts; vegetables and melons; vineyards, nurseries, and miscellaneous other minor crops. In recent years, farmers have double-cropped about 4 percent of this acreage. Cropland can also include cropland pasture which acres of crops hogged or grazed but not harvested and some land used for pasture that could have been cropped without additional improvement. Some cropland is idle each year for various physical and economic reasons.

Grassland pasture and range encompass all open land used primarily for pasture and grazing, including shrub and brushland types of pasture, grazing land with sagebrush and scattered mesquite, and all tame and native grasses, legumes, and other forage used for pasture or grazing regardless of ownership.

Forest-use land includes both grazed and ungrazed forests but excludes an estimate of forest land in parks, wildlife areas, and similar special purpose uses from the U.S. Forest Service's inventory of total forest land. Some forest land is grazed.

Special use agricultural land includes rural transportation uses, rural parks and wildlife areas, farmsteads, and national defense/industrial areas.

Rural parks and wildlife areas include Federal and State parks, wilderness areas, and wildlife refuges outside Census-defined urban areas.

National defense and industrial areas include land owned by Department of Defense and Department of Energy and used for airfields, research and development, housing, and miscellaneous military uses.

Farmsteads, farm roads, lanes, and other miscellaneous farmland are included in special uses.

Three percent of American land is classified as urban. The Census Bureau defines an urban area as one with at least 50,000 people and urban clusters with 2,500-50,000 people and excludes portions of extended cities that are essentially rural in character and lands in rural residential uses.

⁹ ULI Education, http://uli.org/programs/education/courses-workshops/

-Urban Land

Within the urban category of land use, one might find these types of subcategories:

Residential

Residential areas provide housing. Residential land uses range from high density, represented by the multiple-unit structures of urban cores, to low density, where houses are on lots of more than an acre, on the periphery of urban expansion.

Commercial And Services

Commercial areas are those used predominantly for the sale of products and services. They are often abutted by, residential, agricultural, or other contrasting uses which help define them. This type of land would be used for shopping centers, usually in suburban and outlying areas; commercial strip developments along major highways and access routes to cities; junkyards; resorts; and so forth.

Industrial

Industrial areas include a wide array of land uses from light manufacturing to heavy manufacturing plants. Identification of light industries those focused on design, assembly, finishing, processing, and packaging of products can often be based on the type of building, parking, and shipping arrangements. Light industrial areas may be, but are not necessarily, directly in contact with urban areas; many are now found at airports or in relatively open country. Heavy industries use raw materials such as iron ore, timber, or coal. Included are steel mills, pulp and lumber mills, electric power generating stations, oil refineries and tank farms, chemical plants, and brick making plants. Stockpiles of raw materials and waste product disposal areas are usually visible, along with transportation facilities capable of handling heavy materials.

Recreational

Recreational land consists of uses such as golf driving ranges and courses, zoos, urban parks.

Governmental

Governmental land use can include property for schools, parks, government administration.

Miscellaneous Use

Other or miscellaneous land uses includes largely wetlands, rural residential land, desert, tundra, and other barren land generally of low value for agricultural purposes

Federal lands are lands in the United States for which ownership is claimed by the U.S. federal government, pursuant to Article Four, section 3, clause 2 of the United States Constitution. As of March 2012, out of the 2+ billion acres in the country, about 28% of the total was owned by the Federal government according to the Interior Department.10 Federal lands are managed by the Department of the Interior, the Department of Agriculture, and the Department of Defense, the Tennessee Valley Authority and/or other federal agencies.

NOTE

The Internal Revenue Service, state laws, zoning boards and authorities have definitions for the use of real estate that often contradict each other and on occasion, in ways that may seem illogical. For example, North Carolina General Statute § 93A deems a property to be commercial if the property's primary use is for any of the following purposes: (i) sales; (ii) office; (iii) research; (iv) institutional; (v) warehouse; (vi) manufacturing; (vii) industrial; or (viii) *multifamily residential purposes involving at least five dwelling units* [emphasis added].

On the other hand, no matter how many units a building has, the IRS defines a residential property as one where individuals eat, cook, and sleep. Thus the general definition of land use may vary, depending on the source.

¹⁰ Lipton, Eric, and Clifford Krauss, "Giving Reins to the States Over Drilling", New York Times, August 23, 2012. Rel trieved 2012-08-26

Land Use Issues

In its infancy as a nation, the US had few regulations existed to control the use of land, due to the seemingly endless amounts of it. "Manifest Destiny" and "Go West" the clarion calls to immigrants and to young people to homestead the prairies and new territories as America expanded and gained territories. But as American cities in the East—New York, Baltimore, Philadelphia—began to grow and land use became more controversial, public land regulation became important, especially to city governments trying to control industry, commerce, and housing within their boundaries. The first zoning ordinance was passed in New York City in 1916.11 By the 1930s, most states had adopted zoning laws. In the 1970s, concerns about the environment and historic preservation led to further regulation.

Today, federal, state, and local governments regulate growth and development through statutory law.

The majority of controls on land, however, stem from the actions of private developers and individuals. Deed restrictions are a common method for individuals to control land use, particularly in residential subdivisions. No subject is more important to land brokers—or more complex, arguably—than land use.

Highest and Best Use

The central tenet of any appraisal is highest and best use. In order to be considered as the highest and best use of a property, any potential use must pass a series of tests. The exact definition of highest and best use varies, but generally the use must take into account whether the potential use is legally allowable, physically possible, and financially feasible.

Even if land is improved, that is, it has a structure on it, most appraisers will consider the value of the land as though it were vacant. Appraisers will then consider what the possible uses of the land are based on zoning and physical and financial limitations.

Thus, a perfectly serviceable motel sitting on a lot near an airport might be valued as though no motel were there. Instead, an appraiser would consider if the land could be used for airport expansion or airport parking. An appraiser would consider these issues:

Legally allowable

Only those uses that are, or may be, legally allowed are potential highest and best uses. This may exclude uses that are not, and unlikely to become, allowed by zoning, uses forbidden by government regulations, and uses prohibited by deed restrictions or covenants.

"Legally allowable" can be a challenging issue because even uses that are currently not permitted may be considered. This happens when there is a reasonable prospect that the regulation, zoning, deed restriction, etc. can be changed to permit the proposed use.

Physically possible

Any potential use must be physically possible given the size, shape, topography, and other characteristics of the site. For example, 10,000 parking spaces would not fit on a 2-acre site; therefore, that use would fail the physical possibility test.

Financial feasibility

The highest and best use of a property must be financially feasible: the proposed use of a property must generate adequate revenue to justify the costs of construction plus a profit for the developer. If the value of the land as vacant exceeds the value of the property as improved less the costs of demolition, then redevelopment of the site becomes financially feasible.

Appraisers and developer use a variety of mathematical/financial models to estimate high and best use.

¹¹ Nolon, John R., Local Land Use Control in New York: An Aging Citadel Under Siege (July/Aug. 1992). New York State Bar Journal, p. 38, July–August 1992.

HABU and The Land Broker

Zoning

As discussed earlier, zoning has been a common practice in the U.S. since the early 1900s. Large urban populations and increasing demands on natural resources have made it an economic imperative to develop and implement methods to manage our lands.

Among those tools are urban planning, subdivision regulations, building codes, environmental regulations, and zoning.

It goes almost without saying that land brokers must be very familiar with these tools. This is no easy challenge since many rules and regulations constantly change and vary from jurisdiction to jurisdiction.

Information regarding the impact of these rules and regulations must be disclosed to consumers involved in any real estate transaction, and brokers should be able to guide those consumers to the appropriate resources of current information in the areas in which they are marketing real estate.

Zoning is one of the most complex of the land management tools available to planning departments. The primary purpose of zoning is to segregate uses that are thought to be incompatible. In practice, zoning also is used to prevent new development from interfering with existing uses and/or to preserve the "character" of a community.

Zoning is commonly controlled by local governments such as counties or municipalities, though the nature of the zoning regime may be determined or limited by state or national planning authorities or through enabling legislation.

Zoning may include regulation of the kinds of activities which will be acceptable on particular lots (such as residential, commercial or industry), the density and/or intensity of those activities that can be performed, the height and floor space of structures, their setbacks, landscaping impervious surface.

Most zoning systems have a procedure for permitting nonconforming structures and to granting variances (exceptions to the zoning rules), usually because of some perceived hardship caused by the particular nature of the property in question.

Zoning and Land Brokers

Discussing a parcel's zoning is fraught with liability for land brokers. Zoning categories and symbols vary among communities. A C-1 zone in one city is not necessarily the same as a C-1 in another. Typically, jurisdictions use letters of the alphabet as code abbreviations to identify the use allowed in a physical geographic area such as R for residential, C for commercial, and I for industrial.

These symbols are usually paired with some number. The number can specify the level of use, or it may indicate a certain amount of acreage or square footage for that particular property. While a land broker should determine the current zoning of any parcel that is involved in a transaction, the land's zoning should be checked and double=checked up through the time of zoning to make sure that nothing has changed since the property was marketed and the time of closing.

Deed Restrictions or Restrictive Covenants

Unlike zoning which is a governmental restriction on land use, deed restrictions are typically created by the owner of a parcel of land who wishes to control the development of the parcel into the foreseeable future. Often, developers restrict the parcels of property in a development to maintain a certain amount of uniformity. They are usually aimed at ensuring that there is aesthetic uniformity between the property and neighboring properties and that certain activities are curtailed.

Real estate deed restrictions restrict the way in which a property, such as a house or condominium, can be used. Written into the deed for the property, they can take the form of conditions, covenants and restrictions (CCRs), and are often imposed by the property's present or former owners, the developer or builder, the neighborhood or the homeowner association.

The types of deed restrictions can vary widely, often depending on the type of property and community in which the property is situated. For example, building and renovation restrictions could restrict things such as the number of rooms or structures that can be added to a property, the size of structures, what materials the structures can be made from, how close those structures must be to the street, the density of buildings per acre, the style of homes in a subdivision, landscaping and the paint colors for a house's exterior.

Neighborhood and homeowners' associations are also likely to enforce deed restrictions for properties such as townhouses or condos. Even in the absence of such associations, neighbors can seek to enforce the restrictions by means of lawsuits.

When zoning and deed restrictions contradict each other, typically the stricter provisions will prevail.

It should be noted that an owner of land can also put a restriction on property at its sale. For example an owner of waterfront property may wish to subdivide his lot, selling the waterfront lot but keeping the other lot for himself. As a condition of the sale, he may place a restriction on any future owners of the waterfront parcel from building more than a one-story structure, thus preserving a waterfront view for the lot that he is keeping.

Deed Restrictions and Land Brokers

Any such restrictions on land must be disclosed to consumers. They should be discoverable in the public records since these restrictions must be in writing and are likely to be recorded. While real estate brokers are not responsible for checking matters regarding title and "pulling the chain of title," it would be advisable to strongly encourage consumers to do so as part of their due diligence.

Poorly written CCRs and/or deed restrictions can impede the sale of land. As an example, some developers have placed restrictions in the sale of subdivision lots regarding the placement of manufactured homes. There is considerable confusion in the courts about whether modular homes are prohibited in such sales, or whether the provision was meant to ban trailers/mobile homes. These matters are best addressed by attorneys.

Easements

Another thorny issue in land use is easements. An *easement* is the right to use the land of another for a particular purpose. An easement is not a form of ownership; it merely grants the use of the property. It is a non-possessory interest. There are numerous ways to create easements, and there are many different types of easements.

An easement by grant is created when one party expressly transferring the easement to another party. This is commonplace; for example, developers of residential subdivisions usually grant permission to utility companies so that water, cable, and electric service will be brought to future homeowners. Utility companies have an easement in gross, which permits them to access their meters and utility boxes.

Easements by implication are created when there is no express statements between the parties but surrounding circumstances dictate that an easement must have been intended by the parties. These easements often involve a road or path to some desirable amenities, such as a lakeshore. These easements have a lot of potential for dispute since they are not reduced to writing.

Easements by prescription are created through adverse possession and also have potential for disputation. Such an easement could be created by a neighbor, who for 20 years, walks across his neighbor's yard every day to access a road. The walking neighbor was never given permission to do so, but by such continuous and open use, the walker can gain an easement that allows him to permanently walk across the property by "prescription."

Easements are usually for specific purposes, such as ingress and egress (the right to go in and out of property). They are also called rights-of-way. Easements can be extremely valuable. Other examples of easements are utility easements and avigation easements (air rights for airports.)

Easements and licenses are similar property interests, but there are three important distinctions: 1) an easement is generally a perpetual, non-revocable right while a license is often revocable and is typically limited in duration. 2) An easement is insurable from a title insurance standpoint, while a license is not typically insurable. 3) An easement is typically recorded; a license is not typically recorded. Generally speaking, an easement is a more powerful property interest than a license.

Easements can be terminated but termination is usually accomplished by a court action.

Easements and Land Brokers

Easements are best discovered by surveys. It is advisable that prior to accepting land listings that brokers ask their sellers to have a current survey done. At the very least, a survey should be performed before closing to make sure that any easements that appear (or encroachments—a physical and undesirable instruction on the property) be disclosed.

Real estate attorneys should be consulted regarding the discovery of easements. Land buyers will likely want to know if the easement burdens the property, and if so, to what extent. They will also want to know the precise location of the location, and whether it is critical to the use of the property.

Eminent domain

Eminent domain is the right of a government or municipal quasi-public body to acquire property for public use through a court action called *condemnation*, in which the court decides that the use is a public use and determines fair compensation to be paid to the owner.

Eminent domain is a very controversial legal practice. Many landowners dispute the value given to the property. The Supreme Court's decision in *Kelo v. City of New London*, 545 U.S. 469 (2005) was similarly controversial. *Kelo* affirmed the authority of New London, Connecticut, to take non-blighted private property by eminent domain, and then transfer it for a dollar a year to a private developer solely for the purpose of increasing municipal revenues. This 5-4 decision received heavy press coverage and inspired a public outcry criticizing eminent domain powers as too broad.

Eminent Domain and Land Brokers

Split Estate (Air, Surface, Subsurface)

Air Rights

Because of the current controversy surrounding hydraulic fracturing, consumers have become more aware of a legal theory called *split estates*. A split estate occurs when property rights to the surface, subsurface and/or air are severed and sold to different parties. Rights to air, surfaces and sub surfaces can be sold, lease, assigned and mortgaged. Thus it is critical for land brokers to know what rights have been retained or severed from any properties they are marketing.

Railroads were the first companies to realize the potential of making money from their air rights. A good example of this is Grand Central Terminal in New York City where the chief engineer of the New York Central and Hudson River Railroad devised a plan to earn profit from air rights. At first, the railroad simply constructed a platform above the rail yards to allow for the development of buildings overhead. By 1954, the railroad began to realize it could sell more air rights and Grand Central Terminal was proposed to be replaced by a 50 story tower. This is how the MetLife Building came to be built next to the station, after public protest regarding the demolition of Grand Central Terminal.

Building on platforms over railroad tracks is still potentially very profitable, especially in New York City. Similar to railroads, highway builders have proposed selling their air rights. Boston sold air rights in connection with the project known as the Big Dig.

Transferable development rights **(TDR)** is a way of controlling land use to complement zoning and strategic planning for more effective urban growth management and land conservation. TDR can be a creative form of development control, offering landowners financial incentives for the conservation and maintenance of the environmental, heritageor agricultural values of their land. These land-based development rights can in some jurisdictions be used, unused, transferred or sold by the owner of a parcel.

For example, some counties allow air rights to be transferred to the surrounding buildings. So in a dense downtown area, each building in the area may have the right to 35 stories of airspace. The owners of an old building of only three stories high could make a great deal of money by selling their building and allowing a 35 story skyscraper to be built in its place. To avoid the loss of historically interesting buildings, the government may instead choose to permit developers to purchase the unused air rights of nearby land. In this case, a skyscraper developer may purchase the unused 32 stories of air rights from the owners of the historic building, allowing them to build a skyscraper to a total height of 35 + 32 = 67 stories. This will allow the historic building owners to make almost as much money, if not more, without demolishing their building.

Not only can air rights be sold, they can also be leased. Owners of tall buildings may wish to lease the air space above their buildings for billboard advertising and receive regular rent payments.

Surface Rights

Surface rights can be as complicated as air rights. Surface rights can also be separated from the general bundle of rights. Timber rights as well as hunting and fishing rights are routinely leased or licensed to others.

Let's take a look at timber rights as an example of surface rights that can be severed. In the old days, farmers sold their timber rights when they wanted to clear their land for crops or livestock. During the Great Depression, people also sold their standing timber to earn some extra money.

Timber rights can be sold in a number of different ways. Some timber rights are for perpetuity while others allow for logging within a certain period of time after which the rights are extinguished.

Depending on the agreement, the owners of the timber rights may take all of the trees or only trees over a certain size or only trees of a certain species. The property owner can place restrictions on the removal of timber, such as location; quantity; and specific time limitations for when another can enter the land and remove the timber. After the timber has been removed according to the contract, all rights revert back to the landowner.

Many states impose severe restrictions for logging on private land. Even if a person owns all the timber rights for the property, the state may prohibit the cutting of any trees in certain areas and limit cutting in other areas. These restrictions usually include cutting trees for private use as well as commercial logging.

In most states if the timber will not be included in the sale of the land, the severed rights show up as an exception in the title report, title certificate or abstract of title.

Water Rights

While timber rights can be complex, perhaps the most complicated of surface rights is the right to the water that the physical property may contain or adjoin.

Many landowners are privileged to enjoy waterfront properties. Yet the rights to the use of the water are very complex, depending on where the water is and what kind of water is available.

West of the Mississippi

Most states west of the Mississippi River are known as *prior allocation* states in contrast to the eastern states' *riparian system*. ("Riparian" means "river bank.")

Prior appropriation water rights, sometimes known as the *Colorado Doctrine* in reference to the U.S. Supreme Court case *Wyoming v. Colorado*, is a system of allocating water rights from a water source that is very different from riparian water rights. Water law in the western United States generally follows the appropriation doctrine which developed due to the scarcity of water in that area.

While the legal details vary from state to state in the West, the general principle is that water rights are unconnected to land ownership, and can be sold or mortgaged like other property. The first person to use a quantity of water from a water source for a beneficial use has the right to continue to use that quantity of water for that purpose. Subsequent users can use the remaining water for their own beneficial purposes provided that they do not impinge on the rights of previous users.

Each water right has a yearly quantity and an appropriation date. Each year, the user with the earliest appropriation date (known as the "senior appropriator") may use up to their full allocation (provided the water source can supply it). Then the user with the next earliest appropriation date may use their full allocation and so on. In times of drought, users with junior appropriation dates might not receive their full allocation or even any water at all.

The Riparian Doctrine prevails in most of the state's east of the Mississippi River. The main idea behind riparian rights as a means of obtaining water is that a person who owns land on, alongside or crossed by a natural watercourse has a legal right to access and use the water running through the property.

In most other riparian states, courts generally require a riparian owner's use of water to be "reasonable." This "reasonable use" standard gives courts a lot of flexibility to resolve disputes between water users, but it does not give those users or others interested in water allocation much certainty in predicting how future disagreements will be resolved.

Because riparian rights are tied to the land, they cannot be sold or transferred to other users. When water is scarce, the riparian doctrine can be a legal headache: where does the line get drawn between riparian rights and public trust rights in regard to the withdrawal of water?

Riparian rights do not mean ownership of the water itself. Water has been legally held to be public property-- held by the state in trust for all people--rather than private property.

Subsurface Rights

As with air and surface rights, subsurface rights can be severed from the general bundle of property rights. Subsurface rights are ownership rights in a parcel of real estate to the water, minerals, gas, oil and so forth that lie beneath the surface of the property. These rights can also be assigned, leased, mortgaged and sold. This is a very common practice in the western U.S. A recent NAR study indicated that an astounding 26% of land sales did not include mineral rights.¹²

When most people consider buying land, they take into account only the surface and the buildings attached to the property when estimating its value. However, in some areas around the country, the minerals beneath the surface (mainly oil, natural gas and coal) may be worth far more than anything on the surface.

The owner of a fee simple estate is generally free to transfer subsurface mineral rights to someone else by selling or leasing them. While restrictive covenants and zoning laws may restrict a property owner's rights to do so, the owners of millions of acres in the U.S. have already done so.

¹² Overview of Land Markets Survey Conducted by NAR Research for the REALTORS® Land Institute, August 2014, p. 16.

The owner/lessee of subsurface mineral rights may have the right to enter the surface of the property in order to extract the minerals in a reasonable manner, such as drilling oil wells. Needless to say, holders of those rights could be careless or unreasonable in their efforts to obtain those minerals, so the specifics should be spelled out in the document that reserves or transfers those rights in order to balance the needs of the subsurface rights owner to extract the minerals with the needs of the surface rights owner to the quiet enjoyment of his property.

In particular, since any future purchaser of the surface rights will take the property subject to the mineral rights owner's right to extract the minerals, anyone selling mineral rights should be aware of how this sale will affect the market value of the surface rights.

A related concern is *forced pooling,* is a controversial legal tool used to gain access to minerals beneath private property in many cases, without the landowners' permission. Common in many oil and gas states, forced pooling has grown more contentious as concerns rise about drilling safety and homeowners in areas with little drilling experience or history struggle to understand the subsurface/mineral laws.

People who support property rights see forced pooling as an infringement of those rights since pooling compels holdout landowners to join gas-leasing agreements with their neighbors. The specific provisions of the laws vary from state to state, but drillers are generally allowed to extract minerals from a large area or "pool"--in most states a minimum of 640 acres--if leases have been negotiated for a certain percentage of that land. The company can then harvest gas from the entire area. In most cases, drillers aren't allowed to build surface wells on unleased land, so they use horizontal wells or other means to collect the minerals beneath those parcels.¹³

Approximately 40 states have some form of forced or compulsory pooling law.14

According to gas companies, forced pooling allows them to build fewer wells and obtain gas more efficiently, creating tidy drilling parcels as opposed to a quilt pattern of leased and unleased land. Property owners also support mandatory pooling if they are afraid that drilling companies will place wells near their property and siphon off their gas without payment. People who own the surface rights to their property while someone else owns the mineral rights also support pooling. Some forced pooling laws compel drillers to compensate these individuals as well.¹⁵

Split Estates and Land Brokers

As discussed earlier, the recent boom in natural gas exploration has raised consumer awareness about split estates, particularly as the laws and practices affect mineral rights. There is a great deal of controversy regarding hydraulic fracking and seismic activity, possible impacts on market value, and lending practices. Since title insurance companies have a standard exception for any "lease, grant, exception or reservation of minerals or mineral rights," when owners offer land for sale with severed mineral rights, they may not be able to provide marketable or insurable title.

Land brokers should advise their selling clients to check their title to determine if their rights are intact or not. Usually this work has to be done by an attorney and can be quite expensive. Mineral title searches take much more than the customary time for standard property title searches. Where standard property title searches can take a few hours with a follow-up title report to be issued within a few weeks, mineral rights searches are taking a few weeks or longer, and the follow-up title report may take a few months to complete.

Brokers who know that the property is offered as a split estate must disclose this information to prospective buyers.

¹³ Marie C. Baca, "Forced Pooling: When Landowners Can't Say No to Drilling, May 18, 2011, http://www.propublica.org/article/forced-pooling-when-landowners-cant-say-no-to-drilling. 14 Ibid. 15 Baca, op. cit.

Federal and State Laws/Programs

The National Flood Insurance Program

The devastation caused by Hurricane Katrina and other catastrophic floods of the last decade have brought the Federal Emergency Management Agency (FEMA) and flood insurance to the attention of real estate consumers.

FEMA has identified flood zones throughout the US. Each flood zone describes that land area in terms of its risk of flooding. Everyone lives in a flood zone–it's just a question of whether the risk is low, moderate, or high.

Consumers and brokers can find out about the flood risk of any property at FloodSmart.gov. A FIRM is a map created by the National Flood Insurance Program (NFIP) for floodplain management and insurance purposes. Digital versions of these maps are called DFIRMs.

A FIRM will generally show an area's base flood elevations, flood zones, and floodplain boundaries. Consumers and brokers should note, however, maps are constantly being updated due to changes in geography, construction and mitigation activities, and meteorological events. Therefore, for a truly accurate determination, consumers should be advised to contact their insurance agents.

If the website says the property is in a high risk area, flood insurance will likely be required by lenders and should be considered strongly by consumers even in a cash purchase. The final decision depends on flood insurance rate maps and an official flood zone hazard determination. Maps can be found at FEMA.gov.

Lenders should also be consulted about its flood insurance requirements. Lenders will require a flood certificate or "flood cert," a document that states the flood zone status of real property. FEMA flood maps are examined using the address or geographic coordinates of the property. Using the location on the map, the flood certification provider certifies what, if any, flood zone in which the property is located. Certification firms are usually staffed by licensed professional architects, engineers, surveyors, and/or consult with community floodplain administrators. Typically the certificates provide the following information:

- Special Flood Hazard Area status
 - Flood zone designation
- National Flood Insurance Program (NFIP) eligibility
 - NFIP Community Number
- FEMA Flood Insurance Rate Map and panel number
 - Coastal Barrier Resources System status

• Letter of Map Amendment or Letter of Map Revision applicability Fees for a flood cert are typically charged to the buyer.

FEMA manages the National Flood Insurance Program (NFIP) which offers flood insurance to property owners in communities that participate in the program.

The actual insurance policies are issued by private insurance companies, not by FEMA. The cost to insure a property against flood damage is determined by risk associated factors, such as whether there are structures on the land that are to be insured. The price to insure a property with a particular deductible and particular amount of coverage will be the same no matter which insurer is chosen because flood insurance premiums are government regulated. However, consumers have some control over the cost of their policy because they can choose your deductible amount.

Flood Insurance and the Land Broker

NAR offered the following advice for brokers who are marketing and selling property for which flood insurance may be required, or that is located in areas where the flood insurance would be an advisable precaution:16

1. While brokers are not generally required to investigate independently whether a property is in a flood zone or otherwise in an area likely to be subject to flooding or flood risks, should a real estate licensee know that a property being marketed for sale is in an area where flood insurance is required or has specific knowledge that flood insurance has been required for that particular property in the past, those facts must be disclosed to the buyer. If the broker know that the land or area has experienced flooding or is subject to flood risks, that information should also be disclosed.

2. Brokers should also advise buyers that, as a result of recent federal legislation (The Biggert-Waters Flood Insurance Reform Act of 2012) flood insurance rates are likely to be higher than in the past.

3. Brokers should provide sources of information about flood insurance from "official" sources or those otherwise known to be competent and reliable. These might include publications, pamphlets, or similar materials prepared or distributed by FEMA or other federal or state agencies or departments, or other sources known to be credible. Examples of such publications can be found at the following links:

-http://www.fema.gov/national-flood-insurance-program/flood-insurance-reform-act-2012

-http://www.floodsmart.gov

-http://www.fema.gov/national-flood-insurance-program

-http://www.fema.gov/floodplain-management/flood-insurance-rate-map-firm

Brokers should also be able to identify suppliers of flood insurance coverage though they should not recommend or endorse any particular carrier.

4. Brokers should ask buyers to sign an acknowledgement of receipt of any such materials provided.

5. Under the *Homeowner Flood Insurance Affordability Act*, some sellers are entitled to a refund of flood insurance premiums that they previously paid that were higher than now provided for under the Act but may not be able to collect that refund prior to closing of a sale of the property. Listing brokers representing sellers in that position should suggest that the seller discuss with his or her attorney the best way to preserve their right to collect that refund after the transaction closes.

¹⁶ NAR Legal Guidance Disclosure of Flood Insurance Requirements, Rates, and Rate Increases by Brokers and Agents (Updated April 2, 2014), http://www.ksefocus.com/billdatabase/clientfiles/172/4/1816.pdf

USDA Programs

In 1935, Congress passed Public Law 74-46, which recognized that "the wastage of soil and moisture resources on farm, grazing, and forest lands . . . is a menace to the national welfare" and established the Soil Conservation Service (SCS) as a permanent agency in the United States Department of Agricultural (USDA). In 1994, SCS's name was changed to the Natural Resources Conservation Service to better reflect the broadened scope of the agency's concerns.

Though now retired, the Farm and Ranch Lands Protection Program (FRPP) provided matching funds to help purchase development rights to keep productive farm and ranchland in agricultural uses. Working through existing programs, USDA partners with State, tribal, or local governments and non-governmental organizations to acquire conservation easements or other interests in land from landowners. USDA provided up to 50 percent of the fair market easement value of the conservation easement.

The *2014 Farm Bill* was enacted on February 7, 2014. NRCS offers voluntary Farm Bill conservation programs that benefit both agricultural producers and the environment. Some programs are available immediately, while others will require limited time to be set up within the agency. Consumers and brokers should consult with their local USDA Service Center. ¹⁷

NRCS also offers financial and technical assistance to help agricultural producers make and maintain conservation improvements on their land as well as easement programs to eligible landowners to conserve working agricultural lands, wetlands, grasslands and forestlands. NRCS works with partners to leverage additional conservation assistance for agricultural producers and landowners in priority conservation areas.

USDA Programs and Land Brokers

Brokers assisting agricultural land sellers or buyers should advise their clients to visit the USDA website at http:// www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/ to determine if their properties are eligible for assistance under any USDA programs.

Interstate Land Sales Disclosure Act

To protect consumers from fraudulent and "overenthusiastic" sales promotions in interstate land sales, Congress passed the *Interstate Land Sales Full Disclosure Act* in 1968. The law requires those engaged in the interstate sale or leasing of subdivision lots to file a statement of record and register the details of the land with HUD. The Act exempts the sale of lots in a subdivision containing fewer than 25 lots. If a development contains 25 or more lots, the developer must furnish prospective buyers with a property report containing all essential information about the property, such as distance over paved roads to nearby communities; number of homes currently occupied; soil conditions affecting foundations and septic systems; type of title a buyer receives, and existence of liens.

Interstate sales or leasing activities include out-of-state mailers, newspaper ads, television advertising directed to out-of-state buyers, and out-of-state telephone solicitation.

The property report must be given to a prospective purchaser prior to signing a lease or sales contract. A purchaser of a lot covered by the Act has seven days to reconsider the sale. The purchaser can revoke, or rescind, the sales contract—at the purchaser's option—until midnight of the seventh day following the signing of the contract. If a buyer signs a contract to purchase a lot covered by the Act and fails to receive a property report, the purchaser has two years in which to revoke the contract.

The Interstate Land Sales Disclosure Act and Land Broker

Consumers and real estate professionals involved in interstate selling of lots across state lines that come under this Act should seek legal advice to ensure full compliance. Brokers should, of course, inform prospective buyers that should their plans regarding their land purchase involve subdividing and marketing lots across state lines that compliance with this Act will be necessary,.

Environmental Legislation

There are numerous federal and state laws that deal with environmental issues and hazards that affect the sale and acquisition of land. Because environmental issues are so complex and numerous, it would be impossible to provide a comprehensive discussion of this subject in a course such as this one, so only the most significant legislation and issues will be discussed here.

In 1970, Congress established the Environmental Protection Agency (EPA) to "protect human health and to safeguard the natural environment—air, water, and land—upon which life depends."₁₈ While the EPA haddles environmental concerns, many environmental programs have been delegated to the states and they have primary responsibility for them. Often, it is most appropriate to contact local city, county, or state environmental agency (or health department) rather than EPA.

CERCLA

The EPA administers and enforces the *Comprehensive Environmental Response, Compensation and Liability Act* (CERCLA) which was enacted in 1980 to clean up uncontrolled hazardous waste sites and to address spills. CERCLA is also referred to as the *Superfund Act*.

This law created a tax on the chemical and petroleum industries and provided broad Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. CERCLA:

- Established prohibitions and requirements concerning closed and abandoned hazardous waste sites;
 - Provided for liability of persons responsible for releases of hazardous waste at these sites; and
 - Established a trust fund to provide for cleanup when no responsible party could be identified.

The law authorizes two kinds of response actions:

• Short-term removals, where actions may be taken to address releases or threatened releases requiring prompt response.

• Long-term remedial response actions, that permanently and significantly reduce the dangers associated with releases or threats of releases of hazardous substances that are serious, but not immediately life threatening. These actions can be conducted only at sites listed on EPA's National Priorities List (NPL).19

¹⁸ EPA website, http://www2.epa.gov/aboutepa/epa-history 19 http://www.epa.gov/superfund/policy/cercla.htm

Underground Storage Tanks

The EPA also enforces the Resource Conservation and Recovery Act (RCRA), a 1976 federal law that Congress passed requiring careful disposal of household, municipal, and commercial and industrial waste. RCRA gives EPA the power to make and enforce regulations for managing many kinds of waste.

RCRA regulations apply to three basic kinds of waste management: municipal solid waste landfills; hazardous waste generators and treatment, storage, and disposal facilities; and underground tanks storing hazardous materials.

The EPA defines municipal solid waste (MSW) as mostly nonhazardous garbage from businesses and homes. In contrast, hazardous waste is most often a by-product of a manufacturing process - material left after products are made. An underground storage tank is a large metal or fiberglass container designed to be buried in the ground and store liquid chemicals and other materials.

According to the EPA, the practice of burying tanks for underground storage was adopted to reduce the dangers of fire, explosion, weathering, and accident (such as hitting a tank with a car). As of 2014, there are about 1.5 million underground storage tanks (USTs) in the United States that contain hazardous substances or petroleum products (not counting farm and heating oil tanks). Of these, nearly 25 percent are leaking now or will leak in the future.²⁰

Over time, tanks degrade by rusting, cracking and leaking. Equipment that connects the tanks to the surface can fail as well, causing ground water to be contaminated by the slow seepage of chemicals. While new tanks are built to RCRA regulations, older tanks are more challenging to regulate and when they fail, cleanup is extremely costly.

Environmental Legislation and the Land Broker

In order to avoid liability and the expense of cleaning up hazardous waste on land, prospective purchasers must be able to demonstrate that they had no knowledge of the contamination at the time of purchase. Buyers can be eligible for the "innocent landowner" (ILO) defense to Superfund liability if they conducted all appropriate inquiries prior to purchase and complied with other pre- and post-purchase requirements.

Conducting environmental site assessments (ESAs) are one of the most important steps to establish the ILO defense. There are three stages or phases to ESAs.

A Phase I ESA is generally considered the first step in the process of environmental due diligence. A Phase I involves a visual inspection performed by walking over the site; a comprehensive photograph log; interviews with owners or users of adjacent properties; review of all records pertaining to the property and surrounding properties; and a comprehensive written report.²¹

If a site is considered contaminated, a Phase II environmental site assessment may be conducted. The Phase II ESA is an "intrusive" investigation which collects original samples of soil, groundwater or building materials to analyze for quantitative values of various contaminants. The most frequent substances tested are petroleum hydrocarbons, heavy metals, pesticides, solvents, asbestos and mold.22

Phase III Environmental Site Assessment is an investigation involving remediation of a site. Usually this assessment involves intensive testing, sampling, and monitoring, as well as studies for remediation and clean-up, costs and follow-up monitoring plans.

Prospective land buyers should consider the cost of bringing the land into compliance. Factored into any negotiations on the land should be the cost of the ESAs and environmental clean-up, if any.

²⁰ Resource Conservation and Recovery Act (RCRA) Facts Flash, http://www.epa.gov/superfund/students/clas_act/hazed/ff_06.htm

²¹ Partner Engineering and Sciences, Phase I Environmental Site Assessment, http://www.partneresi.com/services/phase-i-environmental-site-assessment-report.php 22 Partner Engineering and Sciences, Phase I Environmental Site Assessment, http://www.partneresi.com/services/phase-ii-environmental-site-assessment-report.php

Brownfields

The EPA has created opportunity for land owners and developers to use land blighted by environmental damage for beneficial land use. The EPA characterizes brownfields as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Cleaning up and reinvesting in these properties protects the environment, reduces blight, and takes development pressures off green spaces and working lands."²³

Throughout the U.S., brownfields have been successful turned into soccer fields, gardens, college campuses, and the like.²⁴ The EPA also provides direct funding for brownfields assessment, cleanup, revolving loans, and environmental job training as well as technical information on brownfields financing matters.²⁵

Brownfields and the Land Broker

When brokers and consumers determine that land has been environmentally damaged, they should consultant with the closest EPA regional office to determine I redeveloping the site could create an opportunity for buyers to restore the land, creating a benefit to the community in terms of jobs and environmental health.

Land Ownership by Foreign Interests

Over 30 states, particularly those with extensive farming areas, have laws restricting foreign interests in real estate, some applicable to ownership by foreign persons and some applicable only to inheritance by foreign persons. Some of these laws are specifically directed to investments in agricultural land. In most instances it is possible to structure the investment to avoid the applicability of the state laws concerned.₂₆

State Laws

Licensing Laws

Every state in the U.S. has licensing laws requiring those who act as middlemen or facilitators in land sales to have a broker's license. Educational requirements for licensing and continuing education vary from state to state. No jurisdiction requires a separate license for land sales; in other words, a license to broker real estate includes permission to handle land sales as well as residential, industrial, office, and other types of property.

In order to lawfully receive compensation, licenses must be valid; that is, they must be current (not expired) and in active status.

State Environmental Laws

As mentioned earlier, the federal government provides regulatory enforcement of environmental laws though the EPA. But states provide a level of environmental protection the same or more stringent than that provided by federal law. In those states, the more stringent state laws must be followed. However, the state law doesn't have to be followed if it's determined the federal law was intended to preempt more stringent state laws.

For example, California has a number of stringent environmental laws. One California waste management law regulates the kind of plastic trash bags sold within the state. New Jersey has laws restricting development in wetlands that are more stringent than federal law. States vary as to how close or different their laws are compared to federal law.

States have the power to pass laws on a variety of environmental matters. For example, states have the authority to pass laws that govern oil spills. State courts are where many people turn to file lawsuits against companies involved in oil spills.

26 Info regarding land ownership for foreigners in your state, go to:

²³ Brownfields and Land Revitalization, http://www.epa.gov/brownfields/

²⁴ Brownfields and Land Revitalization http://www.epa.gov/brownfields/success/sslocat.htm

²⁵ Brownfields and Land Revitalization, Grants & Funding, http://www.epa.gov/brownfields/grant_info/index.htm

Alien Land Ownership Guide: State Laws Relating to Ownership of U.S. Land by Aliens and Business Entities. NAR Report, 2006.

Subdivision Statutes

Many states have laws regarding land that is to be subdivided and developed. These laws were written to ensure that prospective landowners knew whether the sub divider was going to provide any land infrastructures, such as roads and other improvements.

Jurisdictions with such laws define *subdivision* differently. For example, Maine's laws state that "*subdivision* means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971."₂₇ North Carolina defines subdivision as the division of a "tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions are created for the purpose of sale or building development (whether immediate or future)" and all divisions involving the

"dedication of a new street or a change in existing streets" are subdivisions subject to regulation.28

Subdivision Statutes Laws and Land Brokers

Generally, states with subdivision statutes require that sellers and/or their representatives must make appropriate disclosures regarding administrative approvals, such as plat approvals or dedication of roads. Closing the sale of a lot in an unapproved subdivision or nondisclosure of subdivision street status and other jurisdictional matters can subject real estate licensees to disciplinary action by their licensing authority and possible civil or criminal lawsuit.

State Laws and Land Brokers

As mentioned earlier, the discussion of many concepts in this course are at an introductory level. Land brokers must always be sensitive to possible state and local statutes, ordinances and regulations that can influence a land transaction.

The doctrine of caveat emptor or let the buyer beware still prevails in many states.

The doctrine applies to the purchase of real estate. However, the public has a right to trust real estate professionals, even when those professionals do not represent them. Licensees, particularly those acting as agents of the property owner (i.e., listing agents or leasing agents/ property managers), have an independent duty to discover and disclose material facts.

Listing agents, as agents of the property owners and the persons making the initial representations in advertising the property, including information submitted to cooperative listing services, bear the primary responsibility for assuring that their statements concerning the property are accurate. However, *all licensees will be responsible for all representations/assertions they make, and will also be accountable for failure to disclose those matters which are deemed material facts.*

Listing brokers cannot rely on what their clients tell them about these matters either. Licensees who make statements to the public about a property is expected to have personally visited and inspected the property and will be held accountable for their representations/statements regardless.

Note also that if a licensee is selling his or her own property that G.S. 93A-6(b)(3) states that a licensee may be subject to disciplinary action for violating any of the fifteen provisions set forth in 93A-6(a) "... when selling, leasing, or buying his or her own property.") Licensees also should be aware that they are expected and required to disclose all material facts affecting the property or the broker's ability to complete the transaction even if those matters are not mentioned in the *Residential Property Disclosure and Homeowner's Association Disclosure*.

1. Marketing Land

a. Appraisal/CMA b. Tax Value c. Deed/Title insurance d. Leases e. Riparian Issues (streams, creeks, level, slope) f. Tobacco Rights/Allotments g. Timber Issues/Wooded Lots h. Deed Restrictions i. Soil Suitability Tests j. Fencing k. Surveys, Maps, Aerials, GIS I. Tax Maps. m. Photos

2. Buyer's Due Diligence

a. The Role of the Sellers/Buyers Attorney & CPA

3. Disclosure By Real Estate Professionals

4. Additional Education (ULI, ALC, etc.)

SUMMARY

Real estate professionals have enormous responsibilities to their clients, customers, and the public at large. They are the gatekeepers of the American dream of home ownership, and they are guardians for appropriate land use and a clean environment.

About The Author



Deborah Long is a Distinguished Real Estate Educator (DREI), one of only 110 in the world. She has achieved numerous distinctions including national and state recognition for her courses on ethics and on split estates. A career educator, she earned her doctorate in adult education and has written more than 20 real estate textbooks. She is available to teach courses on taxes, investment, commerce and social media, fair housing and demographics, and ethics.

Contact Debbie at 919.968.3742 or debbietheteacher@gmail.com.



About The Consultant

Lou Jewell ALC (Accredited Land Consultant) has been licensed as a broker in North Carolina since 1998 and an agent since 1994. Also licensed in Virginia. He has taught the Realtors® Land Institute's 2 – day 'Land 101" course all over the country and was awarded the 'Excellence in Education' award by RLI in 2009. Most recently he was recognized as the North Carolina RLI 2010 Land Realtor® of the year and RLI Carolinas Chapter "Land Realtor® of the Year 2018.

Lou had brokered over 1,000 land transactions, has had as many as 218 land listings and Developed 80+ rural land developments in Surry and Stokes Counties. He sits on the Realtors® Commercial Alliance 'Forms Committee' where he introduced what has become Form 502 Land Information Worksheet that the committee hopes to transform into a required Land Disclosure Form. Lou instigated adding "Land" as a Specialty to our Realtors® Code of Ethics Article 11 in 2008 and adopted 2010. He is active member of the RLI and Carolinas Chapter RLI as its State President 2003 and 2017/23 RLI Carolinas Chapter. He has served on the RLI Chapter Board since 1998, and has also served on the NC Realtors® Commercial Alliance Forms Committee since 2008.

Lou is a member of the Winston-Salem Board of Realtors® and the Southwest Virginia Association of Realtors

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LET'S TALK LAND www.letstalkland.net

"What They Don't Teach Us In Real Estate School......LAND."

Each state has their requirements for real estate licensure. Most states require 90 to 140 hours of classroom. Their syllabus is mostly federal and state laws, agency laws, transaction laws, real estate principals, real estate practice, finance, appraisals, property management, escrow, mortgages, etc. They have only a few pages to teach about land, if at all.

Where do real estate agents learn how to advise buyers and sellers about all the aspects in land transactions? The REALTORS® Land Institute (RLI), "The Voice of Land".

RLI is the essential national membership organization for land real estate professionals. RLI has over 1,200 national members out of approximately 1.6M REALTORS® (of which approximately 98% are residential) and RLI has about 500 members that have earned the elite Accredited Land Consultant (ALC) Designation. RLI's Land University (LANDU) provides 17 certified classes, like "Land Investment Analysis", "Transitional Land Real Estate Transactions", Agricultural Land Brokerage & Marketing", "Timberland Real Estate", "Real Estate Site Selection" and more. Meeting stringent requirements, a member may obtain the coveted ALC Designation. To identify an RLI member or ALC in your market area, go to www.rliland.com and use the "Find a Land Consultant" search tool on their home page.

Other than RLI, there are only two related Land classes available which count for CE credit. Each state has continuing education requirements which agents must complete to keep their real estate license active. In North Carolina, we are required to take eight hours annually. Four hours are required for all agents and four hours are elective with around three hundred of those courses houses are all about houses with few exceptions.

Several years ago, I instigated and now teach the only land class approved for North Carolina continuing education credit: "Introduction to Land Brokerage". Speaking with other agents around the country it appears it is the only land-related continuing education class that can count towards those hours.

Since 2003, I have taught one of the REALTORS® Land Institutes two-day courses "Land 101: Fundamentals of Land Brokerage" all over the country. I also wrote, along with Ron Loftis MAI, REALTOR®, a four hour continuing education class for the North Carolina Appraisal Board called "Rural Land Values – Art or Science". It, to my knowledge, is the only land class that meets our appraisal industry CE requirements.

Advocating and recognizing the need for land education, I now have a one hour talk show on WKTE 1090 AM in King North Carolina which airs weekly from 9 to 10 AM EST every Saturday. It can be streamed at www. WKTE1090.com by downloading the Simple radio App and local station.

Now, we have also launched a Podcast www.letstalkland.net. Also downloaded on Podbean and Spotify. Here you may listen to all recorded shows by date, title, and quest. The thesis of the show is to provide experts in the various field of land to provide the nuances and important aspects of their respected fields. It is a true land educational talk show.

It is designed for buyers, sellers and owners of land to have one source to discover land issues. It is also designed for real estate agents and REALTORS® a resource, in addition to the education provided by RLI through their LANDU Education Programs, for agents to access land education. We encourage agents to link to our show on their website to help their buyers and sellers better understand land transactions and we encourage national and state real estate associations to include it on the educational sections of their websites.

Some of the current subjects discussed by my shows guest are surveying, soils, timber, farm management, wetland, wetland mitigation and mitigation banking, auction advantage, land financing, land attorney, land development, a definitive book on land, land development, and more.

If you can suggest a guest or have any specific questions about land please contact me a lou@mylandpro. com.

Teresa Martin is one of our new agents and is the perfect student, curious and anxious to learn about land and land issues we all deal with. She brings a fresh perspective to our guest and subjects. Reach out to her at teresa.mylandpro@gmail.com

Of course Shadow. She is always the one to find the best land deal!

Dedication:

In Memory of NC Commercial REALTOR® and friend Pete Chenery

Pete was the inspiration for this course and was an advocate for the inclusion of land brokerage as a specialty in the Realtor® Code of Ethics. He also inspired to join the Realtors® Commercial Alliance Commercial Forms Committee where I Instigated and helped develop Form 502 "Land Information Worksheet".

Pete was always helping, always giving.

-Lou Jewell ALC

ADDITIONAL READING/VIEWING RESOURCES FOR STUDENTS:

Glossary

ACRE: A unit used in land measurement to equal 160 square rods or square feet that can be any shape. There are 640 acres in a square mile.

ACREAGE: Any parcel of land that can be measured in terms of acres. An area of land used for some purpose-farm, residential, etc.

ASSEMBLAGE: Is the acquisition of adjoining properties into one ownership.

ATTRITION RATE: The rate at which tracts of land, or more specifically lots, are sold over a specified rate.

AUCTION: A function of the liquidation of real property at a specific time and place.

BASIS: A tax term, which refers to the original or acquisition value of a property,(plus or minus and adjustments), used to determine the amount of tax that will be assessed. The basis is deducted from the sales price of the property when it is sold to determine the profit or loss.

BLUFF: A steep or high bank or cliff.

BOG: Very wet spongy ground not able to support much weight.

BOOT: Additional money or property that is received in a *1031 Like Kind Exchange*. Although the exchange of business or investment property is of Like Kind, it is not equal in value. You see this in the IRS code 1031 where no tax liability results from an exchange solely of Like Kind property used in a business or trade or held for investment. When an exchange includes *boot*, under Section 1245, the boot will be treated as ordinary income.

BOUNDARIES: The perimeters or limits of a parcel of land as fixed by legal description which is usually a metes and bounds description (survey).

BUFFER ZONE: A strip of land separating one parcel of land from another parcel.

CONSERVATION LAND TRUST: A non-profit organization with the commitment and resources to profit the conservation features of privately and publicly owned land.

COUNTY: A division of a state which may have one or more cities.

CULTIVATED LAND: Land plowed or spaded.

RESTRICTIVE COVENANTS: Provisions included in a deed that limits the grantee in the use of the conveyed property. They encumber the use of land for a period of time. (A personal goal of mine is to change the term to *Protective* Covenants. I would rather be protected than be restricted).

EASEMENT: Is a right that is created by a grant, agreement, prescription, reservation, or necessary implication, which one has in the land of another. Easements are also established to protect the land, for example, a land conservation easement. Note: There are "easements" and there are "easements". Be cautioned when pursuing land with easements. One big concern is the "burden" of an easement. How many people access the property over the easement? A well-intended understanding can become very costly. REALTORS® might choose to recommend to their clients that they get at least two opinions.

EASEMENT APPURTENANT: Also an easement used to cross a parcel of land to benefit another. This type of easement will transfer with the property. Old wagon trails or cartways are examples.

EASEMENT BY CONDEMNATION: Government can exercise its rights under eminent domain to create a new easement. New road construction is an example.

EASEMENT BY PRESCRIPTION: This type of easement is granted by a court of jurisdiction where it is proven that continuous and open use of the property has been used unchallenged for a period of time. It could be twenty years and varies by state.

EASEMENT IN GROSS: These easements benefit a person or maybe a company. Examples would be power, telephone, cable, water and sewer.

FIELD: An area of cleared land often bounded by fences or a stretch of open land.

FLAG LOT: A land parcel having the configuration of an extended flag and pole. The pole is the access to the site which is usually located in the rear of another lot fronting a main street or road.

FLOOD PLAINS: Are lowlands adjacent to streams, rivers, lakes, oceans that may flood one percent or higher in a given year. Flood plain maps area available in all jurisdictions.

FOREST LAND: This land must be at least one acre and is forested by at least ten percent in trees that is of any size and not developed for non-forest use.

FRONTAGE: Is the length of a property abutting a street, road or body of water; the number of lineal feet that fronts the street, road or water.

HECTARE: A metric unit of land equal to 2.47 acres.

HIGHEST AND BEST USE: That use among all legally and permissible and practically probable uses that will result in the highest and best use of land.

IMPROVED LAND: Real property whose value has been enhanced by the addition of on-site improvements such as, roads, sewer, utilities, etc.; as distinguished from Raw Land.

IRRIGATED LAND: Land supplied with water by artificial means such as ditches or canals.

LAND: Any portion, large or small, of the surface of the earth, considered by itself, or as belonging to an individual, or a people.

LAND CONTRACT: Another name for an installment purchase contract, by which the buyer obtains equitable title (the right to use the property) while the seller retains legal title as security for payment on the balance of the land.

LAND DESCRIPTION: The description of a particular land tract.

LAND RENT: The market value of land; the price of land services. This is crop land that is rented.

LAND LEASEBACK: A creative financing device often used with raw land which a developer wants to improve. The developer sells the land to an investor who leases back the land to the developer under a long-time term net lease and subordinates his fee ownership to the lender providing development financing.

LAND TRUST: An association organized by common owners of real property, which holds title to the real property in the name of one or more trustees for the benefit of the owners, whose beneficial interest may be represented by trust certificates.

LANDLOCKED: Real property having no access to a public right-of-way.

LEGAL DESCRIPTION: A description complete enough that an independent surveyor could locate and identify a specific piece of real property.

MARGINAL LAND: Land which is of little value because of some deficiency, such as poor access, or land with inadequate rain fall, or steep terrain.

MARKET VALUE: The highest price established in terms of money, which a property will bring if exposed for sale in the open market, allowing a reasonable time to find a purchaser who buys with the knowledge of all the uses to which the property is adapted and for which it is capable of being used.

METES AND BOUNDS: A common method of land description that identifies a property by specifying the shape and boundary dimensions of the parcel, using terminal points and angles.

MINERAL RIGHTS: The right to subsurface land and profits. Normally, when real property is conveyed, the grantee receives all rights and title to the land including everything above and below the surface, unless accepted by the grantor.

MITIGATION BANKING: The process of restoring, creating, enhancing, or preserving wetlands, which are set aside to compensate for future conversions of wetlands during development activates. This does not have to be the same tract of land and in most cases is not.

NET SHARE LEASE: A land lease where the owner pays a certain percentage of the production from the property and the tenant pays all operating cost.

NONCONFORMING: A permitted use which was lawfully established and maintained but which no longer conforms to the current use regulations because of a change in the zoning or land use laws.

PARCEL: A portion of land used as a general term to describe land. It can be a portion of land or a lot.

PASTURE: Land used for grazing animals or grown for hay.

PERC TEST (PERCOLATION): A test to determine the capability of the soil to absorb liquid, for the construction of a septic system. Used when city sewer systems are not available. This test is most commonly performed in rural areas.

PLAT MAP: A survey, which divides up two or more parcels of land, but is recorded at the court house and assigned a Plat Book and Page. It aids the legal description by being able to refer to book and page instead of a metes and bounds and description.

PLOTTAGE: The merging or consolidating of adjacent lots into one larger lot, with the consequent results of improved usability and increased value; also called assemblage.

PROPERTY RIGHTS: The rights and interest a person has in the property owned; not, in the technical sense, the property itself. These rights include the right to possess, to use, to encumber, to transfer and to exclude, called "bundle of rights".

RAW LAND: Unimproved land in its unused, natural state prior to the construction of any improvements.

REAL ESTATE: The physical land and appurtenances, including any structures; for all practical purposes synonymous with real property.

REAL PROPERTY: All land and appurtenances to land, including buildings, structures, fixtures, fences and improvements erected upon or affixed to the same, excluding any crops.

REALTY: Land and everything permanently affixed thereto.

REMAINDER LAND: When subdividing a parcel of land, any portion remaining is "remainder land".

RENT THEORY: The premise that the more profit a location will generate, the greater the land value.

RIGHT-OF-WAY: (Sometimes referred to as "Deeded right-of-way"), An easement over the lands of the property owner that provides legal access to another tract or several tracts of land. Anything other than a deeded right-of-way should be avoided, since informal agreements may be changed at will.

RIPARIAN: Are those rights and obligations which are incidental to ownership of land adjacent to or abutting on watercourses such as rivers, streams or ponds and lakes.

1031 LIKE KIND EXCHANGE: A 1031 tax deferred property exchange is an exchange in which capital gains deferral is available to real estate owners who sell their investments, rental or vacation real estate, and reinvest the net proceeds in other income producing real estate.

SEPTIC TANK: A sewage settling tank in which the solid matter of sewage is disintegrated by bacteria and liquids are discharged by gravity into a drain or leaching field underground.

SUSTAINABLE FORESTRY: Management practices that ensure the health and growth of forests for future generations.

SQUARE RODS: A traditional unit of area. One square rod is equal to 272.25 square feet, 30.25 square yards or 25.2929 square meters

SUBDIVISION: Land that is divided or proposed to be divided into one or more tracts, parcels or units of interest. When a survey is recorded at the court house, it then becomes a "plat".

SURVEY: The results in document form of a scientific means of describing a *deed of record* or creating a parcel or parcels of land. The record correlates with the actual land markers, and describes a bounty of land.

TIMBER: Trees of a size, quantity, or quality as to make them marketable when harvested from the land on which they live.

TITLE INSURANCE: A type of insurance that protects land owners against any claims against their ownership after the property is purchased and a deed is recorded. REALTORS* should recommend title insurance on any type of real estate purchase, including land.

TOPOGRAPHY: A term used to describe the general terrain or the lay of the land. Each tract of land, on a "topo" map has its own unique "finger print".

TOWNSHIP: Rectangular survey term referring to a specific measurement consisting of 6 square miles or 36 sections to a township (typically found west of the Mississippi River).

WATERSHED: Ridge dividing the areas drained by different river systems and or the entire area drained by a river and its tributaries.

WETLANDS: Areas where water covers the soil or is present at, or near the surface, all year or for varying periods during the year including the growing seasons.

ZONING: The locally adopted regulations that set the manner in which privately owned land might be used within a jurisdiction. Zoning regulates structures, and uses of property within a designated district or zone. It affects such things as use of the land types of structures permitted, building heights, setbacks and density.

Additional Questions to Ask Landowners

Anyone involved in a typical Land transaction, leasing, buying or selling may be exposed to 93 plus potential Land issues. For years now I have advocated for need of a "Land Disclosure" form throughout our country. So far only four states have such a document available for the real estate industry and they are Arizona, California, Georgia and Tennessee.

Most states have "Residential Property Disclosure" forms which are executed at time of the listing by the sellers and reviewed and signed off by the buyers during the offering process. We recommend these forms to also be used even in cases where you are selling without the assistance of a real estate firm.

North Carolina's "Residential Property Disclosure" form has only twenty-one issues, far less than the Land form who should have and fewer than other comparable forms found around the country. Here are a few examples of the ninety-three plus potential *Land Disclosure* issues currently in place by the four states previously mentioned.

"Are you aware of any ...?"

- -Encroachments
- -Easements
- -Endangered species: Plant / Animal
- -Flooding whether currently or previously
- -Forfeiture of rights (mineral, timber, development, etc.)
- -Government sponsored clean-up of the property
- -Groundwater contamination
- -Illegal uses (manufacture of liquor, methamphetamine, marijuana cultivation, etc.)
- -Landfill operations: legal or illegal or previous planned
- -Mineshafts or tunnels
- -Noxious fumes or odors
- -Pipelines (natural gas, petroleum, etc.)
- -Well water contamination: current or previous
- -Conservation Easements
- -Stream Restorations

"Are there any Gravesites on the Property?

"Are there any animal cemeteries or animal burial sites?

"Are you aware of the presence of:"

Asbestos, Benzene, Fuel/chemical storage, Paint (Lead based paint) (Other paint/solvents), Methane gas, Pesticides, Radioactive material, Radon gas, Underground storage tank(s), EPA Phase I, II or III studies.

"Are you aware of any past or present issues or problems with any of the following on the property?"

-Soil settlement/expansion -Drainage/grade -Earth Movement -Erosion -Flooding -Fissures -Dampness/moisture other than around rivers, streams, lakes, etc. -Sliding -Wetlands or previous wetland areas

"Do you have a survey? When was it done? Who did the survey? Do you have a copy? Has it been recorded?"

"Is or will it be subject to protective covenants, conditions or restrictions?"

"Is the legal owner(s) of the Property a foreign person or a non-resident alien pursuant to the Foreign -Investment in Real Property Tax Act (FIRPTA)?"

"Is the Property located in an unincorporated area of the county?"

"Is the Property subject to extra territorial jurisdiction?"

"What is the current zoning of the Property?"

"Has the property been timbered in the past 25 years?"

"Harvest monitored by a Registered Forester?"

"Timber replanted after the harvest with (species)?"

"Is the property in an Agricultural or Forest tax deferment program?"

Coming Soon: "Carbon Credits" that will also need to be disclosed.

Appendix

North Carolina General Statutes § 136-102.6 Compliance of subdivision streets with minimum standards of the Board of Transportation required of developers

Legal Research Home > North Carolina Lawyer

(a) The owner of a tract or parcel of land which is subdivided from and after October 1, 1975, into two or more lots, building sites, or other divisions for sale or building development for residential purposes, where such subdivision includes a new street or the changing of an existing street, shall record a map or plat of the subdivision with the register of deeds of the county in which the land is located. The map or plat shall be recorded prior to any conveyance of a portion of said land, by reference to said map or plat.

(b) The right-of-way of any new street or change in an existing street shall be delineated upon the map or plat with particularity and such streets shall be designated to be either public or private. Any street designated on the plat or map as public shall be conclusively presumed to be an offer of dedication to the public of such street.

(c) The right-of-way and design of streets designated as public shall be in accordance with the minimum right-ofway and construction standards established by the Board of Transportation for acceptance on the State highway system. If a municipal or county subdivision control ordinance is in effect in the area proposed for subdivision, the map or plat required by this section shall not be recorded by the register of deeds until after it has received final plat approval by the municipality or county, and until after it has received a certificate of approval by the Division of Highways as herein provided as to those streets regulated in subsection (g). The certificate of approval may be issued by a district engineer of the Division of Highways of the Department of Transportation.

(d) The right-of-way and construction plans for such public streets in residential subdivisions, including plans for street drainage, shall be submitted to the Division of Highways for review and approval, prior to the recording of the subdivision plat in the office of the register of deeds. The plat or map required by this section shall not be recorded by the register of deeds without a certification pursuant to G.S. 47-30.2 and, if determined to be necessary by the Review Officer, a certificate of approval by the Division of Highways of the plans for the public street as being in accordance with the minimum standards of the Board of Transportation for acceptance of the subdivision street on the State highway system for maintenance. The Review Officer shall not certify a map or plat subject to this section unless the new streets or changes in existing streets are designated either public or private. The certificate of approval shall not be deemed an acceptance of the dedication of the streets on the State highway system for map. Final acceptance by the Division of Highways of the public streets and placing them on the State highway system for maintenance of the subdivision plat or map. Final acceptance shall be conclusive proof that the streets have been constructed according to the minimum standards of the Board of Transportation.

(e) No person or firm shall place or erect any utility in, over, or upon the existing or proposed right-of-way of any street in a subdivision to which this section applies, except in accordance with the Division of Highway's policies and procedures for accommodating utilities on highway rights-of-way, until the Division of Highways has given written approval of the location of such utilities. Written approval may be in the form of exchange of correspondence until such times as it is requested to add the street or streets to the State system, at which time an encroachment agreement furnished by the Division of Highways must be executed between the owner of the utility and the Division of Highways. The right of any utility placed or located on a proposed

or existing subdivision public street right-of-way shall be subordinate to the street right-of-way, and the utility shall be subject to regulation by the Department of Transportation. Utilities are defined as electric power, telephone, television, telegraph, water, sewage, gas, oil, petroleum products, steam, chemicals, drainage, irrigation, and similar lines. Any utility installed in a subdivision street not in accordance with the Division of Highways accommodation policy, and without prior approval by the Division of Highways, shall be removed or relocated at no expense to the Division of Highways.

(f) Prior to entering any agreement or any conveyance with any prospective buyer, the developer and seller shall prepare and sign, and the buyer of the subject real estate shall receive and sign an acknowledgment of receipt of a separate instrument known as the subdivision streets disclosure statement (hereinafter referred to as disclosure statement). Said disclosure statement shall fully and completely disclose the status (whether public or private) of the street upon which the house or lot fronts. If the street is designated by the developer and seller as a public street, the developer and seller shall certify that the right-of-way and design of the street has been approved by the Division of Highways, and that the street has been or will be constructed by the developer and seller in accordance with the standards for subdivision streets adopted by the Board of Transportation for acceptance on the highway system. If the street is designated by the developer and seller shall include in the disclosure statement an explanation of the consequences and responsibility as to maintenance of a private street, and shall fully and accurately disclose the party or parties upon whom responsibility for construction and maintenance of such street or streets

shall rest, and shall further disclose that the street or streets will not be constructed to minimum standards, sufficient to allow their inclusion on the State highway system for maintenance. The disclosure statement shall contain a duplicate original which shall be given to the buyer. Written acknowledgment of receipt of the disclosure statement by the buyer shall be conclusive proof of the delivery thereof.

(g) The provisions of this section shall apply to all subdivisions located outside municipal corporate limits. As to subdivisions inside municipalities, this section shall apply to all proposed streets or changes in existing streets on the State highway system as shown on the comprehensive plan for the future development of the street system made pursuant to G.S. 136-66.2, and in effect at the date of approval of the map or plat.

(h) The provisions of this section shall not apply to any subdivision that consists only of lots located on Lakes Hickory, Norman, Mountain Island and Wylie which are lakes formed by the Catawba River which lots are leased upon October 1, 1975. No roads in any such subdivision shall be added to the State maintained road system without first having been brought up to standards established by the Board of Transportation for inclusion of roads in the system, without expense to the State. Prior to entering any agreement or any conveyance with any prospective buyer of a lot in any such subdivision, the seller shall prepare and sign, and the buyer shall receive and sign an acknowledgment of receipt of a statement fully and completely disclosing the status of and the responsibility for construction and maintenance of the road upon which such lot is located.

(i) The purpose of this section is to insure that new subdivision streets described herein to be dedicated to the public will comply with the State standards for placing subdivision streets on the State highway system for maintenance, or that full and accurate disclosure of the responsibility for construction and maintenance of private streets be made. This section shall be construed and applied in a manner which shall not inhibit the ability of public utilities to satisfy service requirements of subdivisions to which this section applies.

(j) The Division of Highways and district engineers of the Division of Highways of the Department of Transportation shall issue a certificate of approval for any subdivision affected by a transportation corridor official map established by the Board of Transportation only if the subdivision conforms to Article 2E of this Chapter or conforms to any variance issued in accordance with that Article.

(k) A willful violation of any of the provisions of this section shall be a Class 1 misdemeanor. (1975, c. 488, s. 1; 1977, c. 464, ss. 7.1, 8; 1987, c. 747, s. 21; 1993, c. 539, s. 996; 1994, Ex. Sess., c. 24, s. 14(c); 1997-309, s. 4; 1998-184, s. 3.)

Section 136-102.6

Last Modified: March 28, 2010

EASEMENTS

I. INTRODUCTION

A. An easement is a non-possessory right in the holder of an easement to make some use of land. In other words, an easement is a "lesser" interest in the fee estate that allows the party benefiting from the easement to make some use of the property, such as using it for access, installation of utility lines, etc.

B. Dominant vs. Servient:

1. The "holder" of an easement right, or the party that is benefiting from the easement, is referred to as the "dominant tenant". Likewise, the property benefiting from an easement is referred to as the "dominant estate" or "dominant tenement".

2. The party "burdened" by the easement is referred to as the "servient tenant". Likewise, the property burdened by the easement is the "servient estate" or "servient tenement".

C. Exclusive vs. non-exclusive easements.

1. Because an easement right is non-possessory, it generally does not allow the party benefited by the easement to exclude others or to stop them from also enjoying the property. In other words, easements are generally nonexclusive.

2. However, easements can be specifically granted as exclusive easements, allowing the holder of the easement right the ability to exclude others.

II. TYPES OF EASEMENTS AND CREATION

A. Appurtenant easements vs. easements in gross

1. An appurtenant easement is an easement that is intended to benefit a particular piece of land (dominant estate/ tenement) rather than a particular individual. In this case, there is also a servient estate/tenement— the land over which the dominant estate has its easement rights. a. Example: An easement is granted to a shopping mall parcel for access across the neighboring property owner's private road in order to allow shopping mall customers to get from the shopping mall parking lot to the street. This is an easement appurtenant to the shopping mall parcel, which is the dominant estate. The neighbor who has granted the easement owns the servient estate.

2. An easement in gross is intended to benefit a particular individual regardless of whether she owns any land. The land over which this individual has her easement rights is the servient estate/tenement. In the case of an easement in gross, there may be no dominant estate/tenement.

The intent is to benefit the holder of the easement right, but the holder's right to use may well enhance the value of the property she uses in connection with her exercise of an easement right.

a. EXAMPLE: Jim grants Sally an easement to fish in his pond, which is located on his privately owned property. As part of this easement right Sally is also granted an easement to enter onto Jim's property to go to and from the pond. While Sally may live next door, she may move miles away, and the easement follows her; NOT her property. This is an easement in gross; Sally is the dominant tenant; Jim is the servient tenant; Jim owns the servient estate (with the pond on it). There is NO dominant estate.

3. Most of the easements you will come across in commercial real estate transactions are appurtenant easements.

B. Easement by implication, or quasi-easement.

1. Narrow circumstances; court would be implying the easement as a matter of law—requires a court finding that the parties had intended to create an easement but simply failed to do so expressly.

2. An implied easement can be created only when the grantor conveys a portion of the real estate he owns or when he divides a larger tract among separate grantees. In either case, a *severance of parcels* occurs, which is a necessary prerequisite to an implied easement.

3. An easement can be implied at the time of severance ONLY if the "easement" use existed prior to the severance. Susie owns 2 lots, one of which fronts on a street and one of which is landlocked. Susie's driveway crosses both lots. Susie decides to keep the landlocked parcel and sell off the frontage parcel. Susie forgets to reserve a driveway easement for ingress an egress to her parcel. In order for Susie to establish that an implied easement should be created, one of the prerequisites Susie must prove is that she used the driveway located on the frontage property to access her property PRIOR to the conveyance of the frontage property; i.e., PRIOR to the severance.

C. Easement by necessity

1. When property is divided in a way that leaves a part of the property without access to a road (i.e., landlocked), an easement of ingress and egress ("way by necessity") is implied across the other part(s).

2. An easement by necessity exists only as long as the need exists. In other words, if the landlocked property later has direct access to another public road, the prior implied easement by necessity would go away.

D. Easement by prescription

1. Analogous to adverse possession—complicated concept but the bottom line is this—an easement by prescription essentially follows the line of thought that "it has been used for so many years for this purpose, an easement, though not expressly created, was created by prescription".

Example: Joe's property is located between Sally's home and the park.

Every day Sally walks across Joe's property with her dog to get to the park. Every day Sally walks back from the park across Joe's property back home. Sally has been doing this for 30 years (very old dog). Sally's argument that she has an easement by prescription would flow from this type of fact pattern. E. Affirmative and negative easements

1. An easement is affirmative when it entitles the dominant tenant to use the servient tenement for a particular purpose, such as Sally's right to use Jim's fishing pond.

2. An easement is negative when it entitles the dominant tenant to prevent the servient tenant from using the property in a particular way. For example, if Ralph gave Carol an easement for a view corridor across Ralph's property such that Carol's view of the lake would never get blocked, Ralph could not build a tall structure, wall or other obstruction, or allow an obstruction (such as a tree), to hinder Carol's rights under her view corridor easement. This is referred to as a negative easement;

Carol's view corridor rights allow her to compel Ralph to NOT do something.

F. How are easements created?

1. By express language, or grant. This is the most common method of granting an easement: by a deed or written conveyance. "I grant you a non-exclusive perpetual easement right to cross the westernmost 10 feet of my property."

2. By reservation. In conveying land by deed, if the grantor wants to reserve certain easement rights, another way to create that easement is by reservation: "I convey fee interest in Lot 1 to you, Grantee, but I, Grantor, reserve a non-exclusive easement for ingress and egress over the driveway located on Lot 1." This is a less common, but perfectly acceptable, manner of creating easements.

G. Easements distinguished from licenses.

1. Easements and licenses are similar property interests, but there are some important distinctions:

a. An easement is generally a perpetual, non-revocable right, while a license is often revocable and is typically limited in duration.

b. An easement is insurable from a title insurance standpoint, while a license is not typically insurable.

c. An easement is typically recorded; a license is not typically recorded

d. Generally speaking, an easement is a more powerful property interest than a license.

2. Requirements for creating an easement (generally the same as deed formalities); when these formalities are not complied with, the grantee has merely a license:

- a. A written instrument
- b. signed by the grantor and
- c. delivered to the grantee
- d. Easements are also typically recorded, which provides notice to third parties

H. Examples of certain types of easements:

- 1. Short form utility easement
- 2. Easement for ingress and egress over someone's property
- 3. Cross-access or reciprocal easement and maintenance agreement
- a. Shared driveway
- b. Shopping center parking area
- 4. Construction easement
- 5. Conservation easement
- 6. Easement for light and/or air a. No common law right to light or view-learn how to grow mushrooms
- b. Air rights use

7. Condominium/Townhome Declarations

- 8. Declaration of Covenants, Conditions, Restrictions and Easements a. Shopping mall REAs
- b. Mixed Use High Rise Declaration of CC&Rs

II. EXISTING EASEMENTS

I. One of the most important jobs a real estate lawyer has during the title and survey review period during contract due diligence is to identify all existing easements, both benefiting and burdening the property that the purchaser is acquiring.

1. Identify whether easement benefits or burdens the property, or both

a. If it benefits the property, make sure the easement is added as an insured parcel under the title policy. If it is not insured, and the purchaser is somehow deprived from its use of the easement, the purchaser will have NO recourse against the title company. VERY IMPORTANT.

b. If it burdens the property, determine to what extent, location, etc.

2. Identify the type/nature of the easement a. Is it a utility easement? Access easement?

b. Is the easement critical to the use of the property?

c. You need to get a full understanding of the purpose of the easement, its function, who is benefited, whether it is necessary, etc.

3. Ascertain the location of the easement

a. This is one of the CRITICAL elements of the title and survey review. If the easement is, say, a sewer line maintenance easement, make SURE it is not located under any improvements.

If it is located under existing improvements, you must look to the language in the easement to determine whether that is a problem (typically anytime an easement runs under improvements that IS a problem).

4. Identify which party has maintenance obligations, if any.

a. If the easement is a cross-access easement for a driveway, someone needs to maintain the driveway, re-pave it, plow it, etc.

Typically a cross easement will obligate one of the parties to perform the maintenance and the other party will share in the maintenance costs.

5. Identify whether there are any costs/payment obligations associated with the easement a. Same example regarding cross-access easement for driveway

6. Does easement provide for the right to obtain an estoppel from the other party/parties to the easement? a. Sometimes easements, particularly if they are complex enough, contain rights to obtain an estoppel from the other party/parties to the easement to verify that all fees are current, all maintenance has been performed, there are no disputes, no pending litigation, etc.

7. Is there any way to get rid of a burdensome easement or somehow obtain title company relief?

- 8. Termination
- a. Unity of ownership/merger—operation of law
- b. Valid written release
- c. Abandonment

d. Lapse of time for easements limited in duration (such as a temporary construction easement)

- e. End of necessity
- f. By default
- g. Invalidity

h. In the case of an easement by prescription, failure by the dominant tenant (benefited party—Sally walking her 30 year old dog) to object to unreasonable interference with the easement by the servient tenant (Joe erects a fence across the easement area) or a third party; if the dominant tenant (Sally) fails to enforce that right, the easement will go away.

III. EASEMENTS THAT RUN WITH THE LAND

A. "Running with the land" is a phrase that means that, no matter who owns the real estate, the easement (or other covenant) benefits or burdens the successor owner of the property. In other words, a beneficial easement that runs with the land will benefit future owners, while a burdensome easement that runs with the land will burden future owners. In the discussion of appurtenant easements and easements in gross, an appurtenant easement runs with the land of both the benefitted (dominant) and burdened (servient) estates (tenements). An easement in gross will run with the land as far as the burdened (servient) estate (tenement) is concerned, but it will not run with the land of the benefited (dominant) because an easement in gross is personal in nature, and is not tied to the benefited party's property ownership.

IV. PERSONAL EASEMENTS

These are easements in gross, as discussed above. They follow the person, not the real estate. They do NOT run with the land.
V. ENFORCEMENT

A. An easement is a property right, and the benefited party has the right to enforce it just as they would have the right to enforce a deed conveyance or another type of land grant.

B. If the nature of the enforcement is such that the benefited estate/party is trying to compel the burdened estate/party to honor the rights granted by the easement, the best avenue of protection is making a title claim contemporaneously with addendum and from the other party to the easement. A necessary precursor to making the title claim is that the easement was insured under the title policy.

C. If the nature of the enforcement is such that the burdened party is trying to compel the benefited party to comply with the terms of the easement (such as paying necessary share of maintenance costs), you would seek compliance like you would in any other contractual dispute.

D. Some easements provide for arbitration as an alternative dispute resolution mechanism.

SUBDIVISION LAWS

AN ORDINANCE AMENDING THE SUBDIVISION REGULATIONS OF SURRY COUNTY, NORTH CAROLINA.

BE IT ORDAINED by the Board of Commissioners of Surry County, North Carolina, that the Subdivision Regulations of Surry County, are hereby amended by rewriting the existing Subdivision Regulations Ordinance in its entirety to read as follows: "Subdivision Regulations Ordinance" Surry County, North Carolina ARTICLE I. GENERAL PROVISIONS Section 1:1 Title This Ordinance shall be known as the Subdivision Regulations Ordinance of Surry County, North Carolina. Section 1:2 Authority This Ordinance is adopted under the authority and provisions of the General Statutes of North Carolina Chapter 153A, Article 18, Part 2, Subdivision Regulations. Section 1:3 Jurisdiction Surry County shall by ordinance regulate the subdivision of land within its territorial jurisdiction. Section 1:4 Purpose The purpose of this Ordinance is to establish procedures and standards for the development and subdivision of real property within the jurisdiction of Surry County, NC, in order to: 1. Provide for the orderly growth and development consistent with the goals, objectives and policies of the Surry County Land Use Plan. 2. Provide for suitable residential and nonresidential subdivisions with adequate streets, utilities, and appropriate building 3. Provide for the distribution of population and traffic in a manner which shall avoid congestion and overcrowding and will create conditions that substantially promote public health, safety and general welfare. 4. Provide for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities. 5. Provide for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easement for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or

G.S. 136-66.11. 6. Provide for the dedication or reservation of adequate spaces for public lands and buildings. 7. Protect and enhance environmental quality. 8. Provide for the dedication or provision of facilities for adequate storm water drainage. 9. Provide proper land records for the protection of the public, and for better identification and permanent location of real property boundaries.

The Auction Advantage

I always tell folks that the true value of land is what a person will pay for it on any given day. But what if an investor must sell land quickly? An auction and the research leading up to it will provide the best method to determine the true value of land. If a seller needs to liquidate property in a timely fashion, the auctioneer can be counted on to provide a valuable service. Remember, an auction establishes true market value at that time and place. Whoever said that Land is not liquid?

Have you ever wondered why auctions work? Why would anyone sell anything at auction? Why would anyone buy at an auction? This chapter will answer those questions, and give you an overview of the whole process. Don't get me wrong, this is not a check list for conducting an auction, or a quick manual on how to hire an auctioneer. After reading this chapter you sure will not be an auctioneer! But you will have an idea about the benefits of auction marketing. You may, after reading this, consider selling or buying at auction.

Auctions have been around for centuries. Real estate, machinery, equipment, antiques, livestock and many other assets are sold at auction. Auctions are no longer simply a way to dispose of bankruptcy or foreclosure type properties: They are a proven way to sell real estate.

Auctions vs. Brokerage

- Must have a real estate license is most states.
- The auctioneer should be a REALTOR® but this is not required.
- Should belong to professional associations, both REALTOR® and Auctioneer.
- Should have professional designations in their related field of expertise.
- Must make disclosures: agency, property conditions, and so forth.

Compare the Facts about Auctions and Traditional Brokerage

> Need to be licensed	Auctions X	Brokerage X
> Should be a member of professional association	Х	Х
> Should have professional designations	Х	Х
> Must make disclosure: agency, property conditions	Х	Х
> No maximum sales price	Х	
> Seller determines sales date	Х	
> Marketing campaign focuses on one property	Х	
> Price is negotiated <i>up</i>	Х	
> Property can be sold "AS-IS"	Х	Х
> Multiple offers at one time	Х	
> Pre-sale due diligence	Х	
> Cannot determine sale date		Х
> Buyer may have multiple contingencies		Х
> Post offer due diligence		Х
> Possibility of no offers		Х

What Do Most Sellers Want?

- To sell their property for market value
- To get the most money possible
- To convert assets into cash
- Stop maintenance, insurance, repairs, vandalism of assets
- Sell in a short period of time

Why Do Auctions Work for the Benefit of Sellers?

Auctions have a deadline! That's right, a deadline. You are probably saying, "So what?" But think about it! That deadline creates urgency. It means that if buyers have any interest in purchasing a property, they must do so by a designated date, time and place. And think about this, too. At the auction, sellers get competing offers *all at once*! Each bid is an offer to purchase.

What Are The Seller's Responsibilities?

The seller's responsibilities are similar to those in any real estate transaction.

Examples are:

- Provide the auction company with title information
- Provide the auction company with property descriptions
- Provide the auction company with appraisals, surveys, etc.
- · Provide details about existing mortgages and liens
- Provide marketing expenses
- · Provide information about previous attempts of marketing
- Make disclosure of known defects
- Provide closing assistance
- Be realistic about the value of the property

How Does the Seller Know What Market to Sell In?

Sellers really need to be aware of current market conditions. And who better to advice than the professional auctioneer? Sellers can rely on the auctioneer they choose not only to advice on market conditions, but also preferred markets in which to sell. Interestingly, auctions work in most markets.

Slow markets – auctions may create the special focus your property needs Hot markets – auctions can prevent you from under selling in hot markets Changing markets – new developments, shifts in the economy, and more.

Is a Sale Mandatory even with a Low Price?

A number of my clients have expressed concern about property sold at auction and mandatory sale, even if they are offered a low price. I explain that that all depends upon the type of auction conducted. The auctioneer will advise the sellers on the type of auction best suited to their property.

Many auctions today are held as "Absolute Auctions". In an Absolute Auction the seller *must* sell the property to the highest bidder. Consequently, some of the most successful auctions, from the perspective of a sure sale, are Absolute Auctions. Again, the auctioneer will advise the sellers whether or not and Absolute Auction is right for their property.

Another type of auction is one conducted with "Reserve". An auction with Reserve gives the seller the opportunity of refusing the high bid. Many auctions are conducted with Reserve. And again, auctioneers can advise on the best type of auction for the seller.

What the Auction Company Does

- Determines the Objective of Sale
- Uses a due diligence checklist
- 1 or 2 staff members inspects property

• Meets with planning and development office, planning board, surveyors, attorneys

Looks at the local community and neighborhood

· Looks at the retail, housing, attractions, and selling features

• Creates a unique marketing plan that may include local, regional, or national media, radio, brochures for direct mail, trade journals, signs, open houses or previews, internet placement and

more

Auctioneer may offer broker referrals

Conducts the auction

Assists in follow-up and closing transaction

How Long Does it Take to Prepare for an Auction?

- In most cases 4 to 8 weeks are needed
- Advertising normally begins 3 to 4 weeks prior to auction
 - Telemarketing begins 1 to 2 weeks before sale
- Open house/property previews begin 1 to 2 weeks before sale date

When are Proceeds from the Sale Available to the Seller?

- Typically 2 to 4 weeks after sale
- The terms of sale will determine when proceeds are available
- Auctions often get the proceeds to sellers quicker than a negotiated deal.

Where is Information about Auctions Available in Local Areas?

• www.auctioneers.org for a list of upcoming events

Local newspapers

• The Auctioneer's Mailing List

• (Thanks to Dale Fulk Rodgers Realty & Auction Company Mount Airy, North Carolina For much of the above information, and for the way he conducts his business)

REAL ESTATE AGENTS LAND BROKERAGE SURVIVAL KIT

> Prepared for Land Class Participants ©by Lou Jewell, ALC REALTOR® and Lover of the LAND

Land and decisions about its ownership or stewardship of it, have been a defining factor in the history of the United States. .. The promise of having a stake in the land brought so many to our shores. ...LAND, that one asset, highly diverse, uniquely fixed, and limited in supply.... "Land is the only thing in the world that amounts to anything, for 'tis the only thing that lasts, and don't you be forgetting it! 'tis the only thing worth working for, worth fighting for, -worth dying for..." Gerald

O'Hara to Katie Scarlet GONE WITH THE WIND

RELATIONSHIPS ARE KEY

As you establish yourself as a Land Broker, one of a select group of people who are willing to brave the elements and ford the streams, my best advice to you centers around RELATIONSHIPS. These important associations will help you today and over the years. The depth they will provide to your practice will help you establish yourself as a Land Expert. Build this team and be loyal to them, and demand loyalty back! If you cannot call them when it may be inconvenient to them from time to time, find someone else to work with. As with most businesses, team effort is essential.

There follows a list of members you would do well to identify for your team. Try to find three folks you can work with in each category, but be sure to find at least one. These contacts will help you to know your market and the players in it.

LAND APPRAISER. Identify and meet with and interview this important member of your team. Talk with him or her about the average sales prices of lots and acreages. Keep track of this as you continue to keep in touch with this individual and chart it. This information is all-important as you evaluate land in your market. This information can support that you obtain from your local MLS system (if you have one). Be sure to use the MLS to chart the land currently on the market, too.

LAND BANK. The land bank is very important in the land business. Here's why: Down payments and interest rates. Any property over five (5) acres (with or without a home on it) is considered "non-conforming". Conventional lending services will make a loan on vacant land, however they want 20 to 50% down. On the other hand, the Land Bank asks 15% down on a 20-year program. (This program is based upon demographics, so your market area may not apply.) Note: Most Land Banks have in-house Appraisers.

ATTORNEY. Who can do business without a good attorney these days? Interview as many as you can find who specialize in land transactions. Talk with them about land, what they think about it, what brought them to specialize in land transactions, and how available they can be for you and your clients.

Try to identify at least three (3) attorneys you can work with and recommend to your clients. Remember, a land attorney should be very knowledgeable in subdivision laws, easements, timber contracts, mineral rights, extensive title searches, and land financing. There are definite nuances in the land business and your attorney needs to know about them and be available for consultation, even at night.

CPA/ TAX ACCOUNTANT/FINANCIAL PLANNER. There may be tax consequences in all land contracts. These professionals can help you identify them and can be a valuable resource to you and your clients especially if they specialize in 1031 Like-Kind Exchange work. They can explain how to figure the "tax basis" in your transactions.

SURVEYOR. A surveyor is a big help in determining the "highest and best use" of a property. Do the same thing with surveyors as you did with other team members. Take the time to interview and select as those you enjoy working with and can recommend to your clients.

Be sure the surveyor is up-to-date on zoning and subdivision laws in your market area. Find at least one who not only is available, but will work with you. That is important. I call my surveyor at night if I need to.

ENVIRONMENTAL PROFESSIONALS. Take the time to get to know your environmental health department professionals. Be sure to meet and spend time with the Health Department Director and Staff. At a minimum, learn from them: 1) How to set up a septic system; 2) How to fill out septic applications; 3) How to understand and fill out well permits.

In addition, 1) learn how to do your own soil analysis, 2) know how to get a water sample if a property has existing well or wells, and 3) get copies of soil maps and system application forms so you will have them handy when needed. In a rural land transaction, the septic permit is all you need to close. Remember, the septic permit may take 2 to 4 (or sometimes more) weeks to obtain, so be sure to start the process as soon as you are under contract.

SOIL SCIENTIST. Soil scientists are an invaluable asset to your team because they can approve sites that a Health Department cannot. They can suggest alternative systems (probably considerably more expensive) and even override a Health Department decision. Most counties do NOT have a soil scientist on staff, so you will need to do some detective work to find and establish a relationship with at least one. A soil scientist can teach you how to evaluate soil, a lesson well worth learning.

SEPTIC SYSTEM INSTALLER. In the land business, where septic systems are common, what would your team be without at least one reliable septic system installer on board? Identify and interview several and select those you can work with and refer to clients. From your contacts, learn the different types of systems, their costs and how they are laid out. Go to an installation site and observe for yourself first-hand how the system is installed. Support your own research with a collection of information and brochures from various manufacturers whom your installer can recommend.

WELL DRILLER/CONTRACTOR. A poorly built or maintained well can allow pollutants to enter water directly. The closer the well is to sources of pollution, the more likely the well will become polluted. For instance, if the well casing is cracked and pesticides that are being mixed near the well are spilled, the pesticides can easily leak into the well and pollute your drinking water, so it is essential to take the time to get to know a certified well-driller in your area. A good place to start to look for a well driller is your State Division of Water Quality. Once you locate reliable resources, and identify those you will want to work with, find out about their pricing structure (most charge by the foot) and get basic knowledge like the typical depth of a well in your area, and now to chlorinate a well. Your regional DENR Groundwater Section office, county health department or local Cooperative Extension Center can be a valuable source of information on the following topics: New well or spring construction and site selection, well inspection and maintenance, Certified well drillers, Unused well abandonment, Construction records for existing wells ,Well water testing including- Advice on appropriate tests to run, List of certified testing laboratories, Assistance interpreting test results, Health risks. Your local Cooperative Extension Center can also provide information on: Backflow prevention, Water pollution and health risks, Water treatment devices, Groundwater.

COUNTY/CITY PLANNING BOARDS. Attend meetings of your local board. You will gain invaluable knowledge and insight which you can share with your clients. Get current copies of zoning laws, subdivision laws, zoning maps, flood plain maps, and other information that will be of help to you. Know of plans for the future including zoning changes and annexations, as this will help you anticipate the market. Learn how to establish a new street name and address.

MAPPING STAFF. Get to know the mapping staff in your county. They can help you to identify property, property owners, provide tax maps, topographical (topo) maps, and aerials of property. (Most counties now have GIS systems.) The mapping staff can teach you how to use these tools if you take the time to establish a relationship with them.

REGISTRAR OF DEEDS STAFF. Get to know the folks at the Registrar of Deeds Office. They will help you do your own title search and do the research to discover anything that may affect the title or value of the property including: any type of easement, encumbrances, mineral rights, timber rights, and so forth. Remember: ALWAYS get a copy of the Deed or deeds involved as you do your research. Do not rely on the attorney to do this for you. You are the expert and responsible. 42 **TAX ASSESSMENT OFFICER.** Take time to go to meet the tax assessment officer. Such individuals are helpful in understanding what has sold and trends in sales beyond MLS date. My agent furnishes me leads from time to time. This member of your team can be an excellent resource and most Realtors do not use them, so you can stand apart if you do.

TIMBER EXPERT. Professional Forestry services can help you as you identify the "highest and best use of the land" and a timber expert is an excellent addition to your team. That person can help you remember which tree is which, learn how to identify prized trees, learn how to "cruise" timber, provide a "certified cruise" and basically learn how the timber market works. You need to know about or how to figure board feet, how a timber contract works, and how to auction timber. TIMBER IS CASH. Your client actually can buy land with a timber contract, cut the timber, and still own the land with no out-of-pocket money. Being able to evaluate timber will help you price land.

ROAD BUILDER. The construction business has become a more complicated one as environmental and safety rules proliferate and methods and equipment become more sophisticated. The increased complexity of the field makes planning jobs even tougher than before Road construction, grading, concrete work, retaining wall construction and taking preventative measures, which are cheaper than curative ones, can reduce the risks of landslides and increased soil and water erosion. Your road builder can tell you about the importance of aligning a road along a ridge, especially with a south-west aspect, and how it helps to avoid water drainage problems, avoids exposure to excess moisture and frost, and uses sunlight to keep roads dry. Ask him or her about phased construction, such as gradually increasing the width of the track, avoids having to manage large amounts of excavated material and allows for the natural compaction of earthwork by rain. Road building is a complicated effort and you will want to add a seasoned road builder (or more) to your team. They can let you know the cost of putting in basic access roads to state-specified built roads. This will also help you on a break-up evaluation.

CORPS OF ENGINEERS/SOIL & WATER/ENVIRONMENTAL PROTECTION AGENCIES. All these government agencies are resources for you and may well be involved in any land development project in which you are involved. Get to know them and what services they provide.

LAND CONSERVATORY. Identify the local Land Conservatory decision-makers. They may be aware of purchase programs and incentives that may purchase your listing or a part of it. Tax benefits at the Federal and State level may aid in your sale.

UTILITIES PROVIDERS. Contact the utilities providers in your area including telephone, power and cable. Know who they are, what their service area is, how they work in terms of applications and so forth, what their charges are (if any) for new service, or moving a pole or poles and possibly create a hand-out with this information you can supply to your clients.

LAND BROKERAGE TOOL KIT

These are must-have items to help you become a LAND EXPERT if you use them.

-300' Tape

-Surveyor's Flagging Tape

-4' Surveyor's Stakes

-Small-Hand Sledgehammer

-A Handful of 10-Penny Nails (Who is holding the dumb end of the tape?)

-Machete

-Really Good Walking/Hiking Shoes

-Beverage Container You Can Wear

-Insect Repellant

-Professional Compass

-Hand Auger

-Scale Ruler

-Digital Camera w/ Extra Disc

-GPS Locator

-Calculator

-Area maps

-Topographical Maps/ Aerial maps of Subject and Adjoining Properties

-Septic/Well Permits Application Forms

-You may want to add to this list ...

Now You Are Ready! Happy Land Brokerage and Good Luck!!

© Lou Jewell, Accredited Land Consultant 2004 Member of The Realtors Land Institute (RLI) Land 101 National Instructor since 2003 www.rliland.com (800)-441-5263 Land Pro Real Estate, Inc. 102 East main Street Pilot Mountain, NC 27041 (336)-669-1405 Cell www.mylandpro.com lou@mylandpro.com





Land Information Worksheet

NOTICE: This information worksheet is designed to assist all parties in collecting information about the property. The worksheet is not a substitute for any professional inspections or warranties that a buyer may wish to obtain. THIS IS NOT A DISCLOSURE. This worksheet is not intended to be used in connection with residential building lots.

This information worksheet is referenced in the Agreement for Purchase and Sale of Land (Form 580L-T) to (i) indicate that the information referenced herein is the type of information relevant to a property in the possession of a seller that they shall deliver to a buyer pursuant to Section 4 thereof, and, (ii) to provide an example of the types of matters a buyer may investigate regarding a property pursuant to Section 6(c) thereof.

Property Address:	
Owner:	
Tax Parcel Number:	

Do you as owner have any information regarding or are you aware of any information regarding the following:

Yes No Unknown

A. <u>Physical Aspects</u>

 Current or past soil evaluation test (agricultural, septic or otherwise)		
7. Drainage, grade issues, flooding or conditions conducive to flooding		
8. Dampness/moisture other than around river, streams, lakes, etc.		
9. Gravesites, pet cemeteries or animal burial pits		
10. Rivers, lakes, ponds, creeks, streams or springs		
11. Wells		
\Box potable \Box non-potable gallons per minute; depth shared (y/n) ; year installed		
depth, shared (y/n); year installed 12. Existing Septic System		
If yes, number of bedroom permit	_	_
13. Commercial or industrial uses causing noxious fumes or odors		
Legal/Land Use Aspects		
1. Current or past title insurance policy or title search		

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B.

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			Yes	No	Unknown
	2	Convert of dood(a) for moments			
	2. 3.	Copy of deed(s) for property Forfeiture or transfer of rights (mineral, timber, development, etc.)			
	э. 4.	Government administered programs or allotments			
	т . 5.	Septic permits (current or expired)			
	5. 6.	Rollback or other tax deferral recaptures upon sale			
	0. 7.	Litigation or estate proceeding affecting ownership or boundaries			
		Notices from governmental or quasi-governmental authorities related to the property			
		Private use restrictions or other protective covenants, conditions and restrictions			
		. Recent work by persons entitled to file lien claims			
		If yes, have all such persons been paid in full			ū
		If not paid in full, provide lien agent name and project number:		_	-
		. Jurisdictional government land use authority (city or county)	_		
		i. Name:			
	12	. Current zoning:			
	13	. Schools (names):(elementary)			
		(middle)			
		(high)			
	14	. Fees or leases for use of any system or item on property			
		. Location within a government designated disaster evacuation zone (e.g.			
		hurricane, nuclear facility, hazardous chemical facility, hazardous waste facility)	🗖 👘		
	16	. Access (legal and physical) other than by direct frontage on a public road			
		i. Access via easement			
		ii. Access via private road	🗖		
C.		Survey/Boundary Aspects			
			_	_	_
	1.	Current or past survey	🖵		
	2.	Approximate acreage:; Cleared Acreage			
	3.	Wooded Acreage; Cleared Acreage			
	4.	Encroachments			
	5.	Public or private use paths or roadways rights of way/easement(s)			
	,	i. Financial or maintenance obligations related to same			
		Communication, power or other utility rights of way/easements			
		Railroad or other transportation rights of way/easements			
	8.	Conservation easement			
	9.	Riparian Buffers	🖵		
D.		Agricultural, Timber, Mineral Aspects			
D .		Agricultural, Thilder, Milleral Aspects			
	1	Agricultural Status (e.g. forestry deferral)			
		Licenses, leases or usage permits granted for, but not limited to, crops,		_	-
	2.	minerals or mineral rights, oil and gas rights, hunting, water, grazing or timber			
	3.				
	4.	Harvest impact			
	5.	Diagnosis or treatment for vegetative disease or insect infestation		ā	
	6.	Timber cruises or other timber related reports			
	7.	Timber harvest within past 25 years		ū	
		i. If yes, monitored by Registered Forester?			
		ii. If replanted, what species:			
		iii. Years planted:			

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E. **Environmental Aspects**

1.	Curren	t or past Phase I, Phase II or Phase III Environmental Site Assessment(s)		
2.	Aband	oned or junk motor vehicles or equipment of any kind		
3.	Illegal/	methamphetamine uses?		
4.		l or State listed species 🛛 Plants 🖵 Animals		
5.	Govern	ment sponsored clean-up of the property		
6.	Ground	dwater, surface water or well water contamination Current Previous		
7.	Previor	us commercial or industrial uses		
8.	Wetlan	ıds		
	i.	Permits or certifications related to Wetlands		
	ii.	Coast areas of environmental concern		
9.	The us	e of, burial, storage or presence of on the property or in any structure on the prop	perty:	
	i.	Asbestos		
	ii.	Benzene		
	iii.	Fuel/chemical storage		
	iv.	Paint Lead based paint D Other paint/solvents		
	v.	Methane gas		
	vi.	Pesticides		
	vii.	Radioactive material		
	viii.	Radon gas		
	ix.	Underground or above ground storage tank(s)		
	х.	Agricultural chemical storage (above or under ground)		

F. **Utilities**

Provider

U Water	Tap Fee	🗆 paid 🗖 not paid	Available location:
Sewer	Tap Fee	□ paid □ not paid	Available location:
Gas	Tap Fee	🗖 paid 🗖 not paid	Available location:
Electricity			Available location:
Cable			Available location:
General Fiber Optic			Available location:
Telephone			Available location:
□ Private well			Available location:
□ Shared private well or cor	nmunity well		Available location:
Hauled water			Available location:

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Explanation Sheet Attached to Land ChecklistInstructions: Place a number in the first column that corresponds to numbers rows attached to this sheet.		
	Instructions : Place a number in the first column that corresponds to numbers rows attached to this sheet.	
	Attach additional sheets as necessary	

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OFFER TO PURCHASE AND CONTRACT - VACANT LOT/LAND [Consult "Guidelines" (Form 12G) for guidance in completing this form]

NOTE: If seller is selling less than the entire parcel of land owned, then compliance with subdivision regulation and/or an adequate legal description of the land being sold must be considered. This contract should not be used to sell property by reference to, exhibition of, or any other use of a plat showing a subdivision of the property before the plat has been properly approved and recorded with the register of deeds as of the date of the contract. If a preliminary plat has been approved, this contract may be used if an addendum drafted by a North Carolina real estate attorney addressing certain statutory requirements is attached. See NC General Statutes Section 160D-807 for more details and possible exceptions. If Buyer is contemplating a subdivision of the land as a condition of purchase, Buyer should first consult with an NC real estate attorney.

NOTE FOR NEW CONSTRUCTION: If Seller is Buyer's builder or has engaged a builder and the sale involves the construction of a new single-family dwelling prior to closing, use the standard Offer to Purchase and Contract—New Construction (Form 800-T) or, if the construction is completed, use the Offer to Purchase and Contract (Form 2-T) with the New Construction Addendum (Form 2A3-T).

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 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": _

(b) "**Buyer**":

(c) "**Property**": The Property shall include all that real estate described below together with all appurtenances thereto including the improvements located thereon.

The Property \Box will \Box will not include a manufactured (mobile) home(s). (If a manufactured home(s) is included, Buyer and Seller should include the Manufactured (Mobile) Home provision in the Additional Provisions Addendum (Standard Form 2A11-T) with this offer.)

City:Zip: County:, North Carolina	Street Add	dress:		
County:, North Carolina	City:			Zip:
	County:		, North C	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/Unit , Block/Section	n , Subdivision/Condomini	um
	, as shown on Plat Book/Slide	at Page(s)
The PIN/PID or other identification number o	f the Property is:	
Other description:		
Some or all of the Property may be described	in Deed Book	at Page
\$	Date by a cash a personal check click check check between the personal check click check check check check check check check check check check c	payable and delivered to Seller by the Effective □ official bank check □ wire transfer



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Buyer initials Seller initials	
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\$ BY (ADDITIONAL) EARNEST MONEY DEPOSIT made payable and delivered to
Escrow Agent named in Paragraph 1(f) no later than 5 p.m. on,
TIME BEING OF THE ESSENCE by a cash a official bank check a wire transfer
electronic transfer
\$ BY ASSUMPTION of the unpaid principal balance and all obligations of Seller on the
existing loan(s) secured by a deed of trust on the Property in accordance with the
attached Loan Assumption Addendum (Standard Form 2A6-T).
\$ BY SELLER FINANCING in accordance with the attached Seller Financing
Addendum (Standard Form 2A5-T).
\$ 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.

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 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, and Seller shall be entitled to recover the Due Diligence Fee together with all Earnest Money Deposit paid or to be paid in the future. In addition, Seller may be entitled to recover reasonable attorney fees and court costs. See paragraph 21 for a party's right to attorneys' fees incurred in collecting the Earnest Money Deposit or Due Diligence Fee.

(e) "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 promptly 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 21 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.

(f) "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.

(g) "Effective Date": The date that: (1) the last one of Buyer and Seller has signed or initialed this offer or the final counteroffer, if any, and (2) 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.

(h) "Due Diligence": Buyer's opportunity to investigate the Property and the transaction contemplated by this Contract, including but not necessarily limited to the matters described in Paragraph 2 below, to decide whether Buyer, in Buyer's sole discretion, will proceed with or terminate the transaction.

(i) "Due Diligence Fee": A negotiated amount, if any, paid by Buyer to Seller with this Contract for Buyer's right to terminate the Contract for any reason or no reason during the Due Diligence Period. It shall be the property of Seller upon the Effective Date and shall be a credit to Buyer at Closing. The Due Diligence Fee shall be non-refundable except in the event of a material breach of this

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Contract by Seller, or if this Contract is terminated under Paragraph 21(b) or as otherwise provided in any addendum hereto. Buyer and Seller each expressly waive any right that they may have to deny the right to conduct Due Diligence or to assert any defense as to the enforceability of this Contract based on the absence or alleged insufficiency of any Due Diligence Fee, it being the intent of the parties to create a legally binding contract for the purchase and sale of the Property without regard to the existence or amount of any Due Diligence Fee. See paragraph 21 for a party's right to attorneys' fees incurred in collecting the Due Diligence Fee.

(j) "Due Diligence Period": The period beginning on the Effective Date and extending through 5:00 p.m. on

TIME BEING OF THE ESSENCE.

(k) "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 the closing attorney's receipt of all funds necessary to complete such transaction

(1) "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.

NOTE: See paragraph 10, DELAY IN SETTLEMENT/CLOSING for conditions under which Settlement may be delayed.

(m) "Closing": The completion of the legal process which results in the transfer of title to the Property from Seller to Buyer, which 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 all necessary funds, then the Closing shall be suspended and the Settlement deemed delayed under Paragraph 10 (Delay in Settlement/Closing).

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.

(n) "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 the payment of Special Assessments are addressed in paragraphs 4(a) and 6(k).

BUYER'S DUE DILIGENCE PROCESS: 2.

WARNING: BUYER IS STRONGLY ENCOURAGED TO CONDUCT DUE DILIGENCE DURING THE DUE DILIGENCE PERIOD. 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 will 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 6 of this Contract or for any other reason permitted under the terms of this Contract or North Carolina law.

(a) Loan: Buyer, at Buyer's expense, shall be entitled to pursue qualification for and approval of the Loan if any.

NOTE: There is no loan or appraisal contingency in this Offer To Purchase and Contract. Therefore, 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 loan process and for Buyer's lender to provide Buyer sufficient information to decide whether to proceed with or terminate the transaction.

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(b) Property Investigation: Buyer or Buyer's agents or representatives, at Buyer's expense, shall be entitled to conduct all desired tests, surveys, appraisals, investigations, examinations and inspections of the Property as Buyer deems appropriate, including but NOT limited to the following:

- Soil And Environmental: Reports to determine whether the soil is suitable for Buyer's intended use and whether there is (i) any environmental contamination, law, rule or regulation that may prohibit, restrict or limit Buyer's intended use.
- (ii) Septic/Sewer System: Any applicable investigation(s) to determine: (1) the condition of an existing sewage system, (2) the costs and expenses to install a sewage system approved by an existing Improvement Permit, (3) the availability and expense to connect to a public or community sewer system, and/or (4) whether an Improvement Permit or written evaluation may be obtained from the County Health Department for a suitable ground absorption sewage system.
- (iii) Water: Any applicable investigation(s) to determine: (1) the condition of an existing private drinking water well, (2) the costs and expenses to install a private drinking water well approved by an existing Construction Permit, (3) the availability, costs and expenses to connect to a public or community water system, or a shared private well, and/or (4) whether a Construction Permit may be obtained from the County Health Department for a private drinking water well.
- (iv) Review of Documents: Review of the Declaration of Restrictive Covenants, Bylaws, Articles of Incorporation, Rules and Regulations, and other governing documents of any applicable owners' association and/or subdivision. If the Property is subject to regulation by an owners' association, it is recommended that Buyer review the completed Owners' Association And Addendum (Standard Form 2A12-T) provided by Seller prior to signing this offer. It is also recommended that the Buyer determine if the owners' association or its management company charges fees for providing information required by Buyer's lender or confirming restrictive covenant compliance.
- (v) Appraisals: An appraisal of the Property
- (vi) 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.
- (vii) Zoning and Governmental Regulation: Investigation of current or proposed zoning or other governmental regulation that may affect Buyer's intended use of the Property, adjacent land uses, planned or proposed road construction, and school attendance zones.
- (viii) Flood Hazard: Investigation of potential flood hazards on the Property, and/or any requirement to purchase flood insurance in order to obtain the Loan.
- (ix) Utilities and Access: Availability, quality, and obligations for maintenance of utilities including electric, gas, communication services, storm water management, and means of access to the Property and amenities.
- Streets/Roads: Investigation of the status of the street/road upon which the Property fronts as well as any other street/road (x) 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 accepted for maintenance by the State of NC or any municipality, or (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.

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.

(xi) Special Assessments: Investigation of the existence of Special Assessments that may be under consideration by a governmental authority or an owners' association.

(c) Sale/Lease of Existing Property: As noted in paragraph 3(b), this Contract is not conditioned upon the sale/lease or closing of other property owned by Buyer. Therefore, if Buyer must sell or lease other real property in order to qualify for a new loan or to otherwise complete the purchase of the Property, Buyer should seek to close on Buyer's other property prior to the end of the Due Diligence Period or be reasonably satisfied that closing on Buyer's other property will take place prior to the Settlement Date of this Contract

(d) 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 applicable to any N.C. licensed professional performing reasonable appraisals, tests, surveys, examinations and inspections of the Property. This repair obligation shall survive any termination of this Contract.

(e) 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 indemnity shall survive this Contract and any termination hereof.

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(f) Buyer's Right to Terminate: Provided that Buyer has delivered any agreed-upon Due Diligence Fee, 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.

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

3. BUYER REPRESENTATIONS:

(a) Funds to complete purchase:

(*Check if applicable*) Cash. Buyer intends to pay cash in order to purchase the Property and does not intend to obtain a loan or funds from sources other than Buyer's own assets. Verification of cash available for Settlement is 🗖 is not 🗖 attached.

NOTE: If Buyer does not intend to obtain a new loan(s) and/or funds from sources other than Buyer's own assets, 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 loan or funds from sources other than Buyer's own assets.

OR:

□ (Check if applicable) Loan(s)/Other Funds: Buyer intends to obtain a loan(s) and/or other funds to purchase the Property from the following sources (check all applicable sources):

□ First Mortgage Loan:

Buyer intends to obtain a first mortgage loan of the following type in order to purchase the Property: 🗖 Conventional 🗖 USDA Other type:

in the principal amount of

Second Mortgage Loan:

Buyer intends to obtain a second mortgage loan of the following type in order to purchase the Property:

• Other funds:

Buyer intends to obtain funds from the following other source(s) in order to purchase the Property:

NOTE: Buyer's obligations under this Contract are not conditioned upon obtaining any loan(s) or other funds from sources other than Buyer's own assets. Some mortgage loan programs and other programs providing funds for the purchase of property selected by Buyer may impose repair obligations and/or additional 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) 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. (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.
- u will be listed with and actively marketed by a licensed real estate broker.

Buyer is attempting to sell/lease the Buyer's 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.

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(c) 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.

4. 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 7(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).

5. SELLER REPRESENTATIONS:

- (a) **Ownership**: Seller represents that Seller:
 - □ has owned the Property for at least one year.
 - □ has owned the Property for less than one year.
 - does not yet own the Property.

(b) 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.

(c) Sewage System Permit: (Applicable D Not Applicable) Seller warrants that the sewage system described in the Improvement Permit attached hereto has been installed, which representation survives Closing, but makes no further representations as to the system.

(d) Private Drinking Water Well Permit: (D Applicable D Not Applicable) Seller warrants that a private drinking water well has been installed, which representation survives Closing, but makes no further representations as to the well. (If well installed after July 1, 2008, attach Improvement Permit hereto.

6. SELLER 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.

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(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) conduct Due Diligence, (ii) verify the satisfactory completion of negotiated 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 dewinterizing. To the extent applicable, Seller shall also be responsible for timely clearing that portion of the Property required by the County to perform tests, inspections and/or evaluations to determine the suitability of the Property for a sewage system and/or private drinking water well.

NOTE: See WARNING in paragraph 2 above for limitation on Buyer's right to terminate this Contract as a result of Buyer's continued investigation of the Property following the expiration of the Due Diligence Period.

(d) Removal of Seller's Property: Seller shall remove from the Property, by the date possession is delivered, (i) all personal property which is not a part of the purchase and (ii) unless otherwise agreed, all garbage and debris.

(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.

NOTE: Buyer's failure to conduct a survey or examine title of the Property prior to the expiration of the Due Diligence Period does not relieve the Seller of their obligation to deliver good title under this paragraph.

NOTE: If any sale of the Property may be a "short sale," consideration should be given to attaching a Short Sale Addendum (Standard Form 2A14-T) as an addendum to this Contract.

(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.

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Buyer initials _____ Seller initials _

(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 7(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.

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

(m) Owners' Association Disclosure and Condominium Resale Statement Addendum (Standard Form 2A12-T): If applicable, Seller shall provide the completed Owners' Association Disclosure and Condominium Resale Statement Addendum to Buyer on or before the Effective Date.

(n) Seller's Breach of Contract: See paragraph 21 for Buyer's remedies in the event of breach of this Contract.

7. 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 7(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.

8. PRORATIONS AND ADJUSTMENTS: Unless otherwise agreed, the following items shall be prorated, with Seller responsible for the prorated amounts of any taxes and dues through the date of Settlement, and Seller entitled to the amount of prorated rents through the date of Settlement, and either adjusted between the parties or paid at Settlement:

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

(b) Rents: Rents, if any, for the Property;

(c) Dues: Owners' association regular assessments (dues) and other like charges.

9. CONDITION OF PROPERTY/RISK OF LOSS:

(a) Condition of Property at Closing: If the Property is not in substantially the same or better condition at Closing as on the date of this offer, reasonable wear and tear excepted, Buyer may terminate this Contract by written notice delivered to Seller and the Due Diligence Fee and Earnest Money Deposit shall be refunded to Buyer. If the Property is not in such condition and Buyer does NOT elect to terminate this Contract, Buyer shall be entitled to receive, in addition to the Property, the proceeds of any insurance claim filed by Seller on account of any damage or destruction to the Property.

(b) Risk of Loss: The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller. Seller is advised not to cancel existing insurance on the Property until after confirming recordation of the deed.

10. DELAY IN SETTLEMENT/CLOSING: This paragraph shall apply if one party is ready, willing and able to complete Settlement on the Settlement Date ("Non-Delaying Party") but it is not possible for the other party to complete Settlement by the Settlement Date ("Delaving Party"). In such event, the Delaving Party shall be entitled to a delay in Settlement and shall give as much notice as possible to the Non-Delaying Party and closing attorney. If the Delaying Party fails to complete Settlement and Closing within seven (7) days of the Settlement Date (including any amended Settlement Date agreed to in writing by the parties), then the Delaying Party shall be in breach and the Non-Delaying Party may terminate this Contract and shall be entitled to enforce any remedies available to such party under this Contract for the breach.

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11. POSSESSION: Unless otherwise provided herein, possession, including all means of access to the Property (keys, codes including security codes, gate openers, electronic devices, etc.) shall be delivered at Closing as defined in Paragraph 1(m). No alterations, excavations, tree or vegetation removal or other such activities may be done before possession is delivered

12. 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)

□ Back-Up Contract Addendum (Form 2A1-T)

Loan Assumption Addendum (Form 2A6-T)

Owners' Association Disclosure Addendum (Form 2A12-T) □ Seller Financing Addendum (Form 2A5-T) □ Short Sale Addendum (Form 2A14-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.

13. ASSIGNMENTS: This Contract may not be assigned without the written consent of all parties except in connection with a taxdeferred exchange, but if assigned by agreement, then this Contract shall be binding on the assignee and assignee's heirs and successors.

14. 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. Buyer and Seller 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.

15. 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.

16. 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.

17. 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.

18. 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, any fee, deposit of 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.

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

20. 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.

21. REMEDIES:

(a) Breach by Buyer: In the event of material breach of this Contract by Buyer, any Earnest Money Deposit shall be paid to Seller. The payment of any Earnest Money Deposit and any Due Diligence Fee to Seller (without regard to their respective amounts, including zero) together shall serve as liquidated damages ("Liquidated Damages") and as Seller's sole and exclusive remedy for such breach, but without limiting Seller's rights under Paragraphs 2(d) and 2(e) for damage to the Property. It is acknowledged by the parties that the amount of the Liquidated Damages is compensatory and not punitive, such amount being a reasonable estimation of the actual loss that Seller would incur as a result of a breach of this Contract by Buyer. The payment to Seller of the Liquidated Damages shall not constitute a penalty or forfeiture but actual compensation for Seller's anticipated loss, both parties acknowledging the difficulty determining Seller's actual damages for such breach.

(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 Due Diligence 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 Due Diligence 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.

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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.)
Ву:	By:
Name:	Name:
Print Name Title:	Print Name Title:
Date:	Date:

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 INSTRUCTIONS 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 FORMS 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 CLOSING ATTORNEY'S OFFICE, YOUR REAL ESTATE AGENT OR ANYONE ELSE.

NOTICE INFORMATION

BUYER NOTICE ADDRESS:	SELLER NOTICE ADDRESS:
Mailing Address:	Mailing Address:
Buyer Fax #:	Seller Fax #:
Buyer E-mail:	Seller E-mail:
CONFIRMATION OF AGE	ENCY/NOTICE ADDRESSES
Selling Firm Name:Acting as Duyer's Agent Seller's (sub)Agent Dual Agent Firm License#: Mailing Address:	Listing Firm Name:Acting as Seller's 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#:	Individual Listing Agent: Acting as a Designated Dual Agent (check only if applicable Listing Agent License#: Listing Agent Phone#: Listing Agent Fax#:
Selling Agent Fax#:	Listing Agent E-mail:

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ACKNOWLEDGMENT OF RECEIPT OF MONIES

Seller:			("Seller")
Buyer:			("Buyer")
Property Address:			("Property")
LISTING AGE	ENT ACKNOWLEDGMENT OF F	RECEIPT OF DUE DI	LIGENCE FEE
			for the sale of the Property provides for the payment to which Listing Agent hereby acknowledges.
Date		Firm:	
		Ву:	(Signature)
			(Print name)
□ SELLER ACK	NOWLEDGMENT OF RECEIPT	OF DUE DILIGENCI	
Paragraph 1(d) of		etween Buyer and Seller	for the sale of the Property provides for the payment to
Date		Seller:	
Date	·····	Selici.	(Signature)
Date:		Seller:	
Dute		bener.	(Signature)
Escrow Agent of a of the Offer to Pure	n Initial Earnest Money Deposit in th	e amount of \$ ges receipt of the Initial	for the sale of the Property provides for the payment to Escrow Agent as identified in Paragraph 1(f) Earnest Money Deposit and agrees to hold and disburse
Date:		Firm:	
		By:	(Signature)
			(Signature)
			(Print name)
ESCROW AG	ENT ACKNOWLEDGMENT OF	RECEIPT OF (ADDIT	TONAL) EARNEST MONEY DEPOSIT
Escrow Agent of a 1(f) of the Offer to	the Offer to Purchase and Contract be n (Additional) Earnest Money Deposi o Purchase and Contract hereby ackno ume in accordance with the terms of the	t in the amount of \$ owledges receipt of the	for the sale of the Property provides for the payment to Escrow Agent as identified in Paragraph (Additional) Earnest Money Deposit and agrees to hold I Contract.
Date:		Firm:	
	🗆 AM 🗖 PM	By:	
		J	(Signature)
			(Print name)
		Page 13 of 13	
		<u> </u>	



AGREEMENT FOR PURCHASE AND SALE OF IMPROVED REAL PROPERTY

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between

a(n) ______("Buyer"), and

(individual or State of formation and type of entity)

a (n)

("Seller").

(individual or State of formation and type of entity)

(NOTE: If the Buyer or Seller is an entity, in order to form a binding agreement and complete a transaction, the entities listed as Buyer or Seller in this Agreement should be validly formed and in good standing with the Secretary of State in the State of formation of the entity.)

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "Property": (Address)_

Plat Reference: Lot(s)	, Bloc	k or Section	, as show	vn on Plat Book or Slide
at Page(s)	,		County, consisting of	acres.

□ If this box is checked, "Property" shall mean that property described on Exhibit A attached hereto and incorporated herewith by reference,

(For information purposes: (i) the tax parcel number of the Property is	:	;	and,
(ii) some or all of the Property, consisting of approximately	acres, is described in Deed Book		,
Page No. , County.)			

together with all buildings and improvements thereon and all fixtures and appurtenances thereto and all personal property, if any, itemized on Exhibit A.

\$ (b) '	<u>Purchase Price</u>	" shall mean t	he sum of					
								Dollars,
payal	ble on the followi	ing terms:						
\$ (i) " <u>F</u>	<u>Carnest Money</u> "	shall mean						Dollars
or ter	ms as follows:							
The	Earnest	Money	shall	be	deposited (name		escrow n/entity with	with whom
paym of Se	sited- "Escrow A ent of the Purcha ction 10 herein. d any check or of	se Price of the Should Buyer ther funds paid	e Property at r fail to deliv	Closing, ver the Ea	ys of the Contr or disbursed as a rnest Money by	act Date, 1 greed upor the date re	to be applied a under the pre- equired hereu	l as part covisions inder, or
North Carolina	ly approved by: Bar Association Association of H	·	•			STANI		M 580-T d 7/2022 D 7/2022
Buyer Initials	Sel	ler Initials						

the payment is drawn, Buyer shall have one (1) banking day after written notice of such dishonor to deliver cash, official bank check, wire transfer or electronic transfer to the Escrow Agent. If Buyer fails to deliver the required funds within one (1) banking day after written notice, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received acknowledgement by Escrow Agent of its receipt of funds from Buyer. If the Escrow Agent has not delivered to the Seller the acknowledgement of Earnest Money on the last page of this Agreement by the calendar day following the date the Earnest Money is required to be delivered hereunder, it shall be presumed that the Earnest Money was not delivered by the required time (unless, upon the written request of Seller, Escrow Agent can provide proof of its receipt of the Earnest Money by the required time). Buyer and Seller consent to the disclosure by the Escrow Agent, to the parties to this Agreement, the Broker(s) and any Buyer lender, of any material facts pertaining to the Earnest Money.

□ ANY EARNEST MONEY DEPOSITED BY BUYER IN A TRUST ACCOUNT MAY BE PLACED IN AN INTEREST BEARING TRUST ACCOUNT, AND: (check only ONE box)

□ ANY INTEREST EARNED THEREON SHALL BE APPLIED AS PART PAYMENT OF THE PURCHASE PRICE OF THE PROPERTY AT CLOSING, OR DISBURSED AS AGREED UPON UNDER THE PROVISIONS OF SECTION 10 HEREIN. (Buyer's Taxpayer Identification Number is:)

ANY INTEREST EARNED THEREON SHALL BELONG TO THE ACCOUNT HOLDER IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on **Exhibit B**. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. (NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust given hereunder is subordinated to senior financing, the material terms of such financing must be set forth on Exhibit B. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)

\$

\$

(iii) Cash, balance of Purchase Price, at Closing in the amount of _____

Dollars.

Buyer, at Buyer's expense, shall be entitled to pursue qualification for and approval of any loan Buyer intends to obtain in connection with the transaction contemplated by this Agreement. (Note: Buyer's obligations under this Agreement are not conditioned upon obtaining or closing any loan. Therefore, Buyer is advised to consult with Buyer's lender prior to signing this offer to assure that the Examination Period allows sufficient time for Buyer's lender to provide Buyer sufficient information to decide whether to proceed with or terminate the transaction.)

(c) "<u>Closing</u>" shall mean the date of completion of the process detailed in Section 11 of this Agreement. Closing shall occur on or before ______ or ______ or _______

(d) "<u>Contract Date</u>" means the date this Agreement has been fully executed by both Buyer and Seller.

(e) "<u>Examination Period</u>" shall mean the period beginning on the first day after the Contract Date and extending through 5:00pm (based upon time at the locale of the Property) on

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TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.

	("]	Listing Agent" – License #	
Acting as: Seller's Agent;	Dual Agent		
and			("Selling Age
		("Selling Agent"- License #	
Acting as: 🛛 Buyer's Agent;	□ Seller's (Sub)Agent;	Dual Agent	
" <u>Seller's Notice Address</u> " shall b			
a mail address.	fax number:		
except as same may be changed p	ursuant to Section 12.		

- (i) If this block is marked, additional terms of this Agreement are set forth on Exhibit B attached hereto and incorporated herein by reference. (Note: Under North Carolina law, real estate agents are not permitted to draft conditions or contingencies to this Agreement.)
- **(**j) If this block is marked, additional terms of this Agreement are set forth on the Additional Provisions Addendum (Form 581-T) attached hereto and incorporated herein by reference.
- **(**k) If this block is marked, additional terms of this Agreement are set forth on the Back Up Agreement Addendum (Form 581A-T) attached hereto and incorporated herein by reference.

Section 2. Sale of Property and Payment of Purchase Price: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

Section 3. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities as detailed on attached Exhibit B, and/or Exhibit C, as applicable, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), any deferred or rollback taxes, and other conveyance fees or taxes required by law, any fees required for confirming Seller's account payment information on owners' association dues or assessments for payment or proration; any fees imposed by an owners' association and/or a management company as agent of the owners' association in connection with the transaction contemplated by this Agreement other than those fees required to be paid by Buyer in this Section 3 below, and the following:

Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement, charges required by an owners' association declaration to be paid by Buyer for Buyer's future use and enjoyment of the Property, including, without limitation, working capital contributions, membership fees, or charges for Buyer's use of the common elements and/or services provided to Buyer, any costs or charges for determining restrictive covenant

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Each party shall pay its own attorney's fees.

Section 4. Deliveries: Seller agrees to use best efforts to deliver to Buyer, as soon as reasonably possible after the Contract Date, copies of all material information relevant to the Property in the possession of Seller, including but not limited to: title insurance policies (and copies of any documents referenced therein), surveys, soil test reports, environmental surveys or reports, site plans, civil drawings, building plans, maintenance records and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all hard copy materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, following release of the Earnest Money, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof. Notwithstanding the above provisions regarding delivery and return of information and documentation, should there exist a separate non-disclosure, confidentiality, or similar agreement between Buyer and Seller, the terms of which conflict with this provision insofar as delivery and return of information and documentation, then the terms of such non-disclosure, confidentiality, or similar agreement shall control as to the delivery and return of information and documentation.

Section 5. Evidence of Title: Seller agrees to convey fee simple insurable title to the Property without exception for mechanics' liens, free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (as defined in Section 7, if applicable) and (c) specific instruments on the public record at the Contract Date agreed to by Buyer (not objected to by Buyer prior to the end of the Examination Period), which specific instruments shall be enumerated in the deed referenced in Section 11 (items 5(a), 5(b) and 5(c) being collectively "Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property (or any personal property listed on Exhibit A) after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) Title Examination: After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(b) Same Condition: If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

(c) Inspections: Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, conducting timber cruises, and surveying the Property; provided, however, that Buyer shall not conduct any invasive testing of any nature without the prior express written approval of Seller as to each specific invasive test intended to be conducted by Buyer. Buyer shall conduct all such on-site inspections, examinations, testing, timber cruises and surveying of the Property in a good and workmanlike manner, at Buyer's expense, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours Seller's or any tenant's business is open to the public. Buyer shall provide Seller or any tenant (as applicable) reasonable advance notice of and Buyer shall cause its agents or representatives and third party service providers (e.g. inspectors, surveyors, etc.) to give reasonable advance notice of any entry onto the Property. Buyer

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shall be obligated to observe and comply with any terms of any tenant lease which conditions access to such tenant's space at the Property. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law, and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself and its agents or representatives in exercising its rights under this Section 6(c) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Except as provided in Section 6(b) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.

Section 7. Leases (Check one of the following, as applicable):

□ If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

□ If this box is checked, Seller discloses that there are one or more leases affecting the Property ("Leases"), and the following provisions are hereby made a part of this Agreement.

(a) A list of all Leases shall be set forth on **Exhibit** C. Seller represents and warrants that, as of the Contract Date, there are no other Leases, oral or written, recorded or not, nor any subleases affecting the Property, except as set forth on **Exhibit** C;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

(c) Seller represents and warrants that, as of the Contract Date, there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant, could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 4. Seller agrees not to commit a Lease Default as Landlord after the Contract Date; and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) In addition to the conditions provided in Section 6 of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease). Seller agrees to deliver an assignment of any Lease at or before Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at or before Closing. The assignment shall provide: (i) that Seller shall defend, indemnify and hold Buyer harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Buyer which are caused by or the result of any default by Seller under any Lease prior to the date of Closing, and (ii) that Buyer shall defend, indemnify and hold Seller harmless from claims, losses, damages and liabilities or incurred by Seller under any Lease prior to the date of Closing, and (ii) that Buyer shall defend, indemnify and hold Seller harmless from claims, losses, damages and liabilities or incurred by Seller under any Lease prior to the date of Closing, and (ii) that Buyer shall defend, indemnify and hold Seller harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Seller which are caused by or the result of any default by Buyer under any Lease after the date of Closing.

(e) Seller also agrees to work diligently to obtain any tenant signatures on any estoppel certificates in such form as Buyer may reasonably request and to work diligently to obtain any subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

Section 8. Environmental: Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to: those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1976 (42 U.S.C. §6903) or

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(vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

Section 9. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Earnest Money Disbursement: In the event that any condition hereto is not satisfied, then the Earnest Money shall be refunded to Buyer. In the event of breach of this Agreement by Seller, the Earnest Money shall be refunded to Buyer upon Buyer's request, but such return shall not affect any other remedies available to Buyer for such breach. In the event of breach of this Agreement by Buyer, the Earnest Money shall be paid to Seller as liquidated damages and as Seller's sole and exclusive remedy for such breach, but without limiting Seller's rights under Section 6(c) or Section 22 of this Agreement. It is acknowledged by the parties that payment of the Earnest Money to Seller in the event of a breach of this Agreement by Buyer is compensatory and not punitive, such amount being a reasonable estimation of the actual loss that Seller would incur as a result of such breach. The payment of the Earnest Money to Seller shall not constitute a penalty or forfeiture but actual compensation for Seller's anticipated loss, both parties acknowledging the difficulty determining Seller's actual damages for such breach.

NOTE: In the event of a dispute between Seller and Buyer over the disposition of the Earnest Money held in escrow, a licensed real estate broker is required by state law (and Escrow Agent, if not a broker, hereby agrees) to retain the Earnest Money in the Escrow Agent's trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a broker or an attorney licensed to practice law in North Carolina is holding the Earnest Money, 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.

Seller and Buyer hereby agree and acknowledge that the Escrow Agent assumes no liability in connection with the holding of the Earnest Money pursuant hereto except for negligence or willful misconduct of Escrow Agent. Escrow Agent shall not be responsible for the validity, correctness or genuineness of any document or notice referred to under this Agreement. Seller and Buyer hereby agree to indemnify, protect, save and hold harmless Escrow Agent and its successors, assigns and agents pursuant to this Agreement, from any and all liabilities, obligations, losses, damages, claims, actions, suits, costs or expenses (including attorney fees) of whatsoever kind or nature imposed on, incurred by or asserted against Escrow Agent which in any way relate to or arise out of the execution and delivery of this Agreement and any action taken hereunder; provided, however, that Seller and Buyer shall have no such obligation to indemnify, save and hold harmless Escrow Agent for any liability incurred by, imposed upon or established against it as a result of Escrow Agent's negligence or willful misconduct.

Section 11. Closing: At or before Closing, Seller shall deliver to Buyer a special warranty deed unless otherwise specified on Exhibit B and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, a bill of sale for any personalty listed on Exhibit A, an owner's affidavit, lien waiver forms (and such other lien related documentation as shall permit the Property to be conveyed free and clear of any claim for mechanics' liens) and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall cause to be delivered the funds necessary to pay to Seller the Purchase Price. The Closing shall be conducted by Buyer's attorney or handled in such other manner as the parties hereto may mutually agree in writing. Possession shall be delivered at Closing, unless otherwise agreed herein. The Purchase Price and other funds to be disbursed pursuant to this Agreement shall not be disbursed until the Buyer's attorney's (or other designated settlement agent's) receipt of authorization to disburse all necessary funds.

Section 12. Notices: Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing (which shall include electronic mail) and shall be deemed to have been properly given and received (i) on the date delivered in person or (ii) the date deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller, and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith, (iii) 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 mail address or facsimile number, if any, provided in Section 1(g) as to Seller, and in Section 1(h) as to Buyer or (iv) on the date deposited with a recognized overnight delivery service, addressed to the addresses set out in Section 1(g) as to Seller, and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith. If a notice is sent by more than one method, it will be deemed received upon the earlier of the dates of receipt pursuant to this Section.

Section 13. Counterparts; Entire Agreement: This Agreement may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Agreement may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto. The

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invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included.

Section 14. Enforceability: This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that notice given in accordance with Section 12 is not required for effective communication for the purposes of this Section 14. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 15. Adverse Information and Compliance with Laws:

(a) Seller Knowledge/Assessments: Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows (Insert "None" or the identification of any matters relating to (i) through (iv) above, if any):

Note: For purposes of this Agreement: (i) a "special assessment" is defined as 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; a special assessment may be either pending or confirmed; (ii) .a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether, at the time of Closing, it is payable in a lump sum or future installments; (iii) a "pending" special assessment is defined as an assessment that is under formal consideration by a governmental agency or an owners' association but which has not been approved prior to Closing. Seller shall pay, in full at Closing, all confirmed governmental or association special assessments, provided that the amount thereof can be reasonably determined or estimated. The payment of such determined or estimated amount shall be the final payment between Buyer and Seller as to any confirmed special assessments. If the amount of any special assessment cannot be reasonably determined or estimated, the special assessment shall be deemed a pending special assessment. Buyer shall take title subject to all pending special assessments disclosed by Seller herein, if anv.

(b) <u>Compliance</u>: To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

(c) **Owners' Association**: If the Property is subject to regulation by an owners' association, Seller shall deliver the following information to Buyer pursuant to Section 4 as if the same were listed therein (or Seller shall state that Seller does not have same in their possession or that such item is not applicable): (i) the name of the owners' association; (ii) the amount of regular assessments (dues); (iii) the name, address and telephone number of the president of the owners' association or of the association manager or management company; (iv) the owners' association website address; (v) the Seller's statement of account; (vi) the master insurance policy showing the coverage provided and the deductible amount; (vii) copies of any Declaration and/or Restrictive Covenants; (viii) the Rules and Regulations, (ix) the Articles of Incorporation and Bylaws of the owners' association; (x) the current financial statement and budget of the owners' association; (xi) the parking restrictions and information; and (xii) the architectural guidelines. Seller authorizes and directs any owners' association, any management company of the owners' association, any insurance company and any attorney who has previously represented the Seller to release to Buyer, Buyer's agents, representative, closing attorney or lender true and accurate copies of the foregoing items affecting the Property, including any amendments thereto.

Section 16. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 17. Applicable Law: This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

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Section 18. Assignment: This Agreement is freely assignable unless otherwise expressly provided on Exhibit B.

Section 19. Tax-Deferred Exchange: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 20. Memorandum of Contract: Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

Section 21. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

Section 22. Brokers: Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Buyer and/or the Seller.

Section 23. Attorneys Fees: If legal proceedings are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding.

EIFS/SYNTHETIC STUCCO: If the adjacent box is checked, Seller discloses that the Property has been clad previously (either in whole or in part) with an "exterior insulating and finishing system" commonly known as "EIFS" or "synthetic stucco". Seller makes no representations or warranties regarding such system and Buyer is advised to make its own independent determinations with respect to conditions related to or occasioned by the existence of such materials at the Property.

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

BUYER:	SELLER:	
Individual	Individual	
Date:	Date:	
 Date:	 Date:	

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Business Entity

Business Entity

(Name of Entity)	(Name of Entity)
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

WIRE FRAUD WARNING

To Buyers: Before sending any wire, you should call the closing agent's office to verify the instructions. If you receive wiring instructions 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 agent'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 closing agent. If you are unable to attend closing, you may be required to send an original notarized directive to the closing agent's office containing the wiring instructions. This directive may be sent with the deed, lien waiver and tax forms if those documents are being prepared for you by the closing agent. At a minimum, you should call the closing agent'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 agent'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 agent'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 closing agent's office, your real estate agent or anyone else.

The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.

Date:

(Name of Escrow Agent)

By:

Escrow Agent's contact/notice information is as follows:

e-mail	address:
--------	----------

fax number:

except as same may be changed pursuant to Section 12.

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AGREEMENT FOR PURCHASE AND SALE OF LAND

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between

_____("Buyer"), and

(individual or State of formation and type of entity)

a (n)

a(n)

___("Seller").

(individual or State of formation and type of entity)

(NOTE: If the Buyer or Seller is an entity, in order to form a binding agreement and complete a transaction, the entities listed as Buyer or Seller in this Agreement should be validly formed and in good standing with the Secretary of State in the State of formation of the entity.)

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "Property": (Address)_

Plat Reference: Lot(s)	, Block or Section	, as shown	on Plat Book or Slide
at Page(s)	,	_ County, consisting of	acres.

□ If this box is checked, "Property" shall mean that property described on Exhibit A attached hereto and incorporated herewith by reference,

(For information purposes: (i) the tax parcel number of the Property is:	:;	and,
(ii) some or all of the Property, consisting of approximately	acres, is described in Deed Book	,
Page No. , County.)		

together with all buildings and improvements thereon and all fixtures and appurtenances thereto.

\$	(b) " <u>Pı</u>	rchase Price" shall mean the sum of	
			Dollars,
	("Price I Period (Examina number 1(b)(ii)	Per Acre") as determined by a survey obtained l "Survey"). Buyer shall provide a copy of the S tion Period. The purchase price shall be dete of gross acres as determined by the Survey.	the sum of \$ per gross acre by Buyer prior to the expiration of the Examination Survey to Seller not later than the expiration of the rmined by multiplying the Price Per Acre by the Adjustments to the amounts due under Sections reflect any adjustment in the Purchase Price in I be payable on the following terms:
\$	(i) " <u>Ear</u>	nest Money" shall mean	Dollars
	or terms	as follows:	
	The Ear	nest Money shall be deposited in escrow with Page 1 of 9	
		0	STANDARD FORM 580L-T Revised 7/2022 © 7/2022
REALIOR-	Buver Initials	Seller Initials	

deposited- "Escrow Agent") within five (5) calendar days of the Contract Date, to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein. Should Buyer fail to deliver the Earnest Money by the date required hereunder, 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 of such dishonor to deliver cash, official bank check, wire transfer or electronic transfer to the Escrow Agent. If Buyer fails to deliver the required funds within one (1) banking day after written notice, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received acknowledgement by Escrow Agent of its receipt of funds from Buyer. If the Escrow Agent has not delivered to the Seller the acknowledgement of Earnest Money on the last page of this Agreement by the calendar day following the date the Earnest Money is required to be delivered hereunder, it shall be presumed that the Earnest Money was not delivered by the required time (unless, upon the written request of Seller, Escrow Agent can provide proof of its receipt of the Earnest Money by the required time). Buyer and Seller consent to the disclosure by the Escrow Agent, to the parties to this Agreement, the Broker(s) and any Buyer lender, of any material facts pertaining to the Earnest Money.

□ ANY EARNEST MONEY DEPOSITED BY BUYER IN A TRUST ACCOUNT MAY BE PLACED IN AN INTEREST BEARING TRUST ACCOUNT, AND: (check only ONE box)

□ ANY INTEREST EARNED THEREON SHALL BE APPLIED AS PART PAYMENT OF THE PURCHASE PRICE OF THE PROPERTY AT CLOSING, OR DISBURSED AS AGREED UPON UNDER THE PROVISIONS OF SECTION 10 HEREIN. (Buyer's Taxpayer Identification Number is:)

□ ANY INTEREST EARNED THEREON SHALL BELONG TO THE ACCOUNT HOLDER IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

(ii) <u>Delivery of a promissory note</u> secured by a deed of trust, said promissory note in the amount of Dollars

______, with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on **Exhibit B**. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. (NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust given hereunder is subordinated to senior financing, the material terms of such financing must be set forth on Exhibit B. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)

(iii) Cash, balance of Purchase Price, at Closing in the amount of ______

\$

Dollars.

Buyer, at Buyer's expense, shall be entitled to pursue qualification for and approval of any loan Buyer intends to obtain in connection with the transaction contemplated by this Agreement. (Note: Buyer's obligations under this Agreement are not conditioned upon obtaining or closing any loan. Therefore, Buyer is advised to consult with Buyer's lender prior to signing this offer to assure that the Examination Period allows sufficient time for Buyer's lender to provide Buyer sufficient information to decide whether to proceed with or terminate the transaction.)

(c) "<u>Closing</u>" shall mean the date of completion of the process detailed in Section 11 of this Agreement. Closing shall occur on or before ______ or _____

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Buyer Initials _____ Seller Initials _____

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- (d) "<u>Contract Date</u>" means the date this Agreement has been fully executed by both Buyer and Seller.
- (e) "<u>Examination Period</u>" shall mean the period beginning on the first day after the Contract Date and extending through 5:00pm (based upon time at the locale of the Property) on

		TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.				
	(f)	" <u>Broker(s)</u> " shall mean:				
		("Listing Agency"),				
		("Listing Agent" – License #)				
		Acting as: D Seller's Agent; Dual Agent				
		and ("Selling Agency"),				
		("Selling Agent"- License #)				
		Acting as:Buyer's Agent;Seller's (Sub)Agent;Dual Agent				
	(g)	" <u>Seller's Notice Address</u> " shall be as follows:				
		e-mail address:fax number:				
		except as same may be changed pursuant to Section 12.				
	(h)	"Buver's Notice Address" shall be as follows:				
	(11)	<u>Durce stronger runnes</u> shull be us follows.				
		e-mail address:fax number:				
		except as same may be changed pursuant to Section 12.				
	(i)	If this block is marked, additional terms of this Agreement are set forth on Exhibit B attached hereto and incorporated herein by reference. (Note: Under North Carolina law, real estate agents are not permitted to draft conditions or contingencies to this Agreement.)				
	(j)	If this block is marked, additional terms of this Agreement are set forth on the Additional Provisions Addendum (Form 581-T) attached hereto and incorporated herein by reference.				
	(k)	If this block is marked, additional terms of this Agreement are set forth on the Back Up Agreement Addendum (Form 581A-T) attached hereto and incorporated herein by reference.				
Section Purchas		of Property and Payment of Purchase Price: Seller agrees to sell and Buyer agrees to buy the Property for the				

Section 3. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities as detailed on attached Exhibit B, and/or Exhibit C, as applicable, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), and other conveyance fees or taxes required by law, any fees required for confirming Seller's account payment information on owners' association dues or assessments for payment or proration; any fees imposed by an owners' association and/or a management company as agent of the owners' association in connection with the transaction contemplated by this Agreement other than those fees required to be paid by Buyer in this Section 3 below, and the following:

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Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement, charges required by an owners' association declaration to be paid by Buyer for Buyer's future use and enjoyment of the Property, including, without limitation, working capital contributions, membership fees, or charges for Buyer's use of the common elements and/or services provided to Buyer, any costs or charges for determining restrictive covenant compliance, and the following:

Each party shall pay its own attorney's fees.

Deferred/Rollback Taxes: Buyer \Box intends to continue \Box does not intend to continue the existing present use valuation property tax deferral(s) relating to the Property. In the event the Buyer intends to continue the existing present use valuation property tax deferral(s) relating to the Property, Buyer shall be responsible for making all necessary applications for continuation of the existing present use valuation property tax deferred/rollback taxes applicable to the Property.

If Buyer does not intend to continue the existing present use valuation property tax deferral(s) relating to the Property, \Box Seller \Box Buyer shall be responsible for payment of any deferred/rollback taxes applicable to the Property.

Section 4. Deliveries: Seller agrees to use best efforts to deliver to Buyer, as soon as reasonably possible after the Contract Date, copies of all material information relevant to the Property in the possession of Seller, including but not limited to: information regarding matters detailed on Form 502- Land Information Worksheet, title insurance policies (and copies of any documents referenced therein), surveys, soil test reports, environmental surveys or reports, site plans, civil drawings, building plans, maintenance records and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all hard copy materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, following release of the Earnest Money, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof. Notwithstanding the above provisions regarding delivery and return of information and documentation, should there exist a separate non-disclosure, confidentiality, or similar agreement between Buyer and Seller, the terms of which conflict with this provision insofar as delivery and return of information and documentation, then the terms of such non-disclosure, confidentiality, or similar agreement shall control as to the delivery and return of information and documentation.

Section 5. Evidence of Title: Seller agrees to convey fee simple insurable title to the Property without exception for mechanics' liens, free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (as defined in Section 7, if applicable) and (c) specific instruments on the public record at the Contract Date agreed to by Buyer (not objected to by Buyer prior to the end of the Examination Period), which specific instruments shall be enumerated in the deed referenced in Section 11 (items 5(a), 5(b) and 5(c) being collectively "Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) <u>Title Examination</u>: After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(b) <u>Same Condition</u>: If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds

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payable on account of the damage or destruction applicable to the Property.

(c) Inspections: Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of investigating matters such as those detailed on Form 502- Land Information Worksheet, conducting timber cruises, and examining and surveying the Property; provided, however, that Buyer shall not conduct any invasive testing of any nature without the prior express written approval of Seller as to each specific invasive test intended to be conducted by Buyer. Buyer shall conduct all such on-site inspections, examinations, testing, timber cruises and surveying of the Property in a good and workmanlike manner, at Buyer's expense, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours Seller's or any tenant's business is open to the public. Buyer shall provide Seller or any tenant (as applicable) reasonable advance notice of and Buyer shall cause its agents or representatives and third party service providers (e.g. inspectors, surveyors, etc.) to give reasonable advance notice of any entry onto the Property. Buyer shall be obligated to observe and comply with any terms of any tenant lease which conditions access to such tenant's space at the Property. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law, and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself and its agents or representatives in exercising its rights under this Section 6(c) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Except as provided in Section 6(a) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.

Section 7. Leases (Check one of the following, as applicable):

□ If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

□ If this box is checked, Seller discloses that there are one or more leases affecting the Property ("Leases"), and the following provisions are hereby made a part of this Agreement.

(a) A list of all Leases shall be set forth on **Exhibit C**. Seller represents and warrants that, as of the Contract Date, there are no other Leases, oral or written, recorded or not, nor any subleases affecting the Property, except as set forth on **Exhibit C**;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 3 as if the Leases were listed therein;

(c) Seller represents and warrants that, as of the Contract Date, there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 3. Seller agrees not to commit a Lease Default as Landlord after the Contract Date; and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) During the Examination Period, Buyer and Seller shall cooperate in good faith to determine if any Lease shall be terminated prior to Closing or shall continue after Closing. As to any Lease determined to continue after Closing, Seller shall deliver an assignment of Seller's interest in such Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease). Seller agrees to deliver such assignment of Lease at or before Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at or before Closing. The assignment shall provide: (i) that Seller shall defend, indemnify and hold Buyer harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Buyer which are caused by or the result of any default by Seller under any Lease prior to the date of Closing, and (ii) that Buyer shall defend, indemnify and hold Seller harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Buyer shall defend, indemnify and hold Seller harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Buyer shall defend, indemnify and hold Seller harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Seller which are caused by or the result of any default by Buyer under any Lease after the date of Closing.

(e) Seller also agrees to work diligently to obtain any tenant signatures on any estoppel certificates in such form as Buyer may reasonably request and to work diligently to obtain any subordination, nondisturbance and attornment agreements in such form as

Buyer may reasonably request.

Section 8. Environmental/Physical Aspects of Property: Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within any structures on the Property or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to: those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

Section 9. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Earnest Money Disbursement: In the event that any condition hereto is not satisfied, then the Earnest Money shall be refunded to Buyer. In the event of breach of this Agreement by Seller, the Earnest Money shall be refunded to Buyer upon Buyer's request, but such return shall not affect any other remedies available to Buyer for such breach. In the event of breach of this Agreement by Buyer, the Earnest Money shall be paid to Seller as liquidated damages and as Seller's sole and exclusive remedy for such breach, but without limiting Seller's rights under Section 6(c) or Section 22 of this Agreement. It is acknowledged by the parties that payment of the Earnest Money to Seller in the event of a breach of this Agreement by Buyer is compensatory and not punitive, such amount being a reasonable estimation of the actual loss that Seller would incur as a result of such breach. The payment of the Earnest Money to Seller shall not constitute a penalty or forfeiture but actual compensation for Seller's anticipated loss, both parties acknowledging the difficulty determining Seller's actual damages for such breach.

NOTE: In the event of a dispute between Seller and Buyer over the disposition of the Earnest Money held in escrow, a licensed real estate broker is required by state law (and Escrow Agent, if not a broker, hereby agrees) to retain the Earnest Money in the Escrow Agent's trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a broker or an attorney licensed to practice law in North Carolina is holding the Earnest Money, 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.

Seller and Buyer hereby agree and acknowledge that the Escrow Agent assumes no liability in connection with the holding of the Earnest Money pursuant hereto except for negligence or willful misconduct of Escrow Agent. Escrow Agent shall not be responsible for the validity, correctness or genuineness of any document or notice referred to under this Agreement. Seller and Buyer hereby agree to indemnify, protect, save and hold harmless Escrow Agent and its successors, assigns and agents pursuant to this Agreement, from any and all liabilities, obligations, losses, damages, claims, actions, suits, costs or expenses (including attorney fees) of whatsoever kind or nature imposed on, incurred by or asserted against Escrow Agent which in any way relate to or arise out of the execution and delivery of this Agreement and any action taken hereunder; provided, however, that Seller and Buyer shall have no such obligation to indemnify, save and hold harmless Escrow Agent for any liability incurred by, imposed upon or established against it as a result of Escrow Agent's negligence or willful misconduct.

Section 11. Closing: At or before Closing, Seller shall deliver to Buyer a special warranty deed unless otherwise specified on Exhibit B and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, an owner's affidavit, lien waiver forms (and such other lien related documentation as shall permit the Property to be conveyed free and clear of any claim for mechanics' liens) and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall cause to be delivered the funds necessary to pay to Seller the Purchase Price. The Closing shall be conducted by Buyer's attorney or handled in such other manner as the parties hereto may mutually agree in writing. Possession shall be delivered at Closing, unless otherwise agreed herein. The Purchase Price and other funds to be disbursed pursuant to this Agreement shall not be disbursed until the Buyer's attorney's (or other designated settlement agent's) receipt of authorization to disburse all necessary funds.

Section 12. Notices: Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing (which shall include electronic mail) and shall be deemed to have been properly given and received (i) on the date delivered in person or (ii) the date deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller, and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith, (iii) 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

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electronic mail address or facsimile number, if any, provided in Section 1(g) as to Seller, and in Section 1(h) as to Buyer or (iv) on the date deposited with a recognized overnight delivery service, addressed to the addresses set out in Section 1(g) as to Seller, and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith. If a notice is sent by more than one method, it will be deemed received upon the earlier of the dates of receipt pursuant to this Section.

Section 13. Counterparts; Entire Agreement: This Agreement may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Agreement may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included.

Section 14. Enforceability: This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that notice given in accordance with Section 12 is not required for effective communication for the purposes of this Section 14. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 15. Adverse Information and Compliance with Laws:

(a) Seller Knowledge/Assessments: Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments or (v) any caves, mineshafts, tunnels, fissures, open or abandoned wells, gravesites, pet cemeteries, animal burial pits or landfill operations (past or present) located at the Property, except as follows (Insert "None" or the identification of any matters relating to (i) through (v) above, if any):

Note: For purposes of this Agreement: (i) a "special assessment" is defined as 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; a special assessment may be either pending or confirmed; (ii) .a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether, at the time of Closing, it is payable in a lump sum or future installments; (iii) a "pending" special assessment is defined as an assessment that is under formal consideration by a governmental agency or an owners' association but which has not been approved prior to Closing. Seller shall pay, in full at Closing, all confirmed governmental or association special assessments, provided that the amount thereof can be reasonably determined or estimated. The payment of such determined or estimated amount shall be the final payment between Buyer and Seller as to any confirmed special assessments. If the amount of any special assessment cannot be reasonably determined or estimated, the special assessment shall be deemed a pending special assessment. Buyer shall take title subject to all pending special assessments disclosed by Seller herein, if any.

(b) Compliance: To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

(c) **Owners' Association**: If the Property is subject to regulation by an owners' association, Seller shall deliver the following information to Buyer pursuant to Section 4 as if the same were listed therein (or Seller shall state that Seller does not have same in their possession or that such item is not applicable): (i) the name of the owners' association; (ii) the amount of regular assessments (dues); (iii) the name, address and telephone number of the president of the owners' association or of the association manager or management company; (iv) the owners' association website address; (v) the Seller's statement of account; (vi) the master insurance policy showing the coverage provided and the deductible amount; (vii) copies of any Declaration and/or Restrictive Covenants; (viii) the Rules and Regulations, (ix) the Articles of Incorporation and Bylaws of the owners' association; (x) the current financial statement and budget of the owners' association; (xi) the parking restrictions and information; and (xii) the architectural guidelines. Seller authorizes and directs any owners' association, any management company of the owners' association, any insurance company and any attorney who has previously represented the Seller to release to Buyer, Buyer's agents, representative, closing attorney or lender true

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and accurate copies of the foregoing items affecting the Property, including any amendments thereto.

Section 16. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 17. Applicable Law: This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

Section 18. Assignment: This Agreement is freely assignable unless otherwise expressly provided on Exhibit B.

Section 19. Tax-Deferred Exchange: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 20. Memorandum of Contract: Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

Section 21. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

Section 22. Brokers: Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Buyer and/or the Seller.

Section 23. Attorneys Fees: If legal proceedings are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding.

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

BUYER:	SELLER:
Individual	Individual
Date:	Date:
	· · · · · · · · · · · · · · · · · · ·
Date:	Date:
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Business Entity

Business Entity

(Name of Entity)	(Name of Entity)
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

WIRE FRAUD WARNING

To Buyers: Before sending any wire, you should call the closing agent's office to verify the instructions. If you receive wiring instructions 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 agent'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 closing agent. If you are unable to attend closing, you may be required to send an original notarized directive to the closing agent's office containing the wiring instructions. This directive may be sent with the deed, lien waiver and tax forms if those documents are being prepared for you by the closing agent. At a minimum, you should call the closing agent'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 agent'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 agent'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 closing agent's office, your real estate agent or anyone else.

The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.

Date:

(Name of Escrow Agent)

By:

Escrow Agent's contact/notice information is as follows:

e-mail address:

fax number:

except as same may be changed pursuant to Section 12.

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Seller:

Buyer: Property: **NOTE:** This Additional Provisions Addendum is attached to and a part of the (check one box below) Agreement for Purchase and Sale of Improved Real Property (Form 580-T), or Agreement for Purchase and Sale of Land (Form 580L-T) between the parties referenced above ("Agreement"). All of the following provisions which are marked with an "X" shall apply to the Agreement. Those provisions marked "N/A" or not marked shall not apply. ADDITIONAL EARNEST MONEY: Not later than the expiration of the Examination Period (time being of the 1._____ essence with regard to said date), Buyer shall deposit with the same party as the original Earnest Money, additional Earnest Money in the amount of \$______, which shall be treated for all purposes of this Agreement as Earnest Money. If this additional Earnest Money is not deposited prior to the expiration of the Examination Period, notwithstanding the provisions of Section 6 of the Agreement, this Agreement shall be deemed terminated and Buyer shall receive a return of the Earnest Money. Monies paid pursuant to this provision shall be applicable to the Purchase Price and shall reduce the Section 1(b)(iv) cash due at Closing by the amount so paid. per gross acre ("Price Per Acre") as determined by a PURCHASE PRICE: shall mean the sum of \$_____ 2. survey obtained by Buyer prior to the expiration of the Examination Period ("Survey"). Buyer shall provide a copy of the Survey to Seller not later than the expiration of the Examination Period. The purchase price shall be determined by multiplying the Price Per Acre by the number of gross acres as determined by the Survey. Adjustments to the amounts due under Sections 1(b)(ii) - 1(b)(iv) shall be made, as applicable, to reflect any adjustment in the Purchase Price in accordance with this provision. ACREAGE VARIANCE: The assumed area of the Property is ______ acres ("Stated Acreage"). In the 3. event that the survey obtained by Buyer determines that the acreage varies (greater or lesser) from the Stated Acreage by more than __%, then Seller or Buyer shall have the right to terminate the Agreement by written notice delivered to the other within ten (10) days of the delivery of the survey to Seller by Buyer. CONFIDENTIALITY: Buyer and Seller agree that a material consideration of this Agreement is that the existence of and the terms and conditions of same (except as may be provided in Section 6(c) of this Agreement) shall remain confidential and shall not be disclosed. In the event this item is marked, Section 20 (Memorandum of Contract) of the Agreement is hereby deleted as recording a memorandum of contract would violate this provision. SEPTIC SYSTEM EVALUATION: Buyer has been advised that the Property does not presently have a connection to a public sewer system and has been advised of the need to have a soils evaluation done. (check only one of the below three boxes): Buyer hereby waives the right to have a soils evaluation completed and releases Seller from any claims which may arise directly or indirectly related to the condition of the soil at the Property.



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form jointly approved by: North Carolina Bar Association's Real Property Section North Carolina Association of REALTORS , Inc. STANDARD FORM 581-T Revised 7/2020 © 7/2022

- □ Buyer elects to have a licensed soils scientist evaluate the suitability of the soils at the Property for a future septic system, but Buyer does not intend to obtain an improvement permit or written evaluation from the County Health Department ("County") prior to Closing.
- As a part of the Buyer's due diligence, Buyer intends to obtain an improvement permit or written evaluation from the County for a (check only ONE) □ conventional or □ other______ ground absorption sewage system. All costs and expenses of obtaining such permit or written evaluation shall be borne by Buyer unless otherwise agreed. Buyer, its agents or representatives shall have the right to enter upon the Property to undertake tests and inspections related to obtaining such permit or written evaluation. Seller agrees to reasonably cooperate with Buyer in
- 6. _____ **INTENDED USE**: shall mean the use of the Property for the following purpose:

(state with specificity any intended use). Seller represents that to its actual knowledge, without independent investigation, there are not any changes contemplated in any applicable laws, ordinances or restrictions affecting the Property or private use restrictions or governmental regulations that would prohibit the Intended Use at the Property.

7. _____ INTERDEPENDENT BUSINESS ASSET PURCHASE AGREEMENT: Buyer's obligations under this Agreement are expressly conditional upon Buyer simultaneously acquiring the assets of _______ (state name of seller under asset purchase agreement- "Asset Seller") pursuant to the terms and conditions of that Asset Purchase Agreement between Buyer (or an affiliate of Buyer) and Asset Seller dated ______, 202___ ("Asset Purchase Agreement"). It is expressly agreed that all of Buyer's duties and obligations under this Agreement are expressly conditional upon Asset Seller performing all of its duties and obligations under the Asset Purchase Agreement, and it is expressly agreed that a breach by Asset Seller under the Asset Purchase Agreement shall constitute a breach of this Agreement by Seller, and shall excuse Buyer's performance under this Agreement and entitle Buyer to all remedies against Seller for a breach of this Agreement unless and until such breach is waived by Buyer in writing or promptly cured to Buyer's satisfaction.

connection with such tests, inspections and any applications for a permit hereunder.

IN THE EVENT OF A CONFLICT BETWEEN THIS ADDENDUM AND THE AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY, THIS ADDENDUM SHALL CONTROL.

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

BUYER:	SELLER:
Individual	Individual
Date:	Date:
Date:	Date:

[Business Entity signatures on following page]

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Buyer Initials _____ Seller Initials _____

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Business Entity

Business Entity

(Name of Entity)	(Name of Entity)
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

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