



NEW MEXICO ASSOCIATION OF REALTORS®
ESCALATION CLAUSE ADDENDUM - 2020



The following terms and conditions are hereby incorporated into and made part of the Purchase Agreement dated:
_____, 20____ between _____ (“Buyer”)
and _____ (“Seller”) and relating to the following Property:

Address _____ City _____ Zip Code _____

Legal Description
Or see metes and bounds description attached as Exhibit _____, _____ County, New Mexico
(hereinafter the “Purchase Offer”).

1. ESCALATION TERMS: The following terms will apply to increase the Purchase Price in the Purchase Offer (“Purchase Price”):

A. Escalating Factor: In the event that Seller receives one or more additional bona fide offers to purchase the Property with terms acceptable to Seller, but which result in net proceeds of sale payable to Seller equal to or greater than the net proceeds of sale payable to Seller under the Purchase Offer (“Other Offer”), then the Purchase Price shall automatically increase to an amount which generates net proceeds of Purchase to Seller equal to \$ _____ (“Escalating Factor”) in excess of the highest net proceeds of sale generated in such Other Offers.

B. CAP: The Purchase Price shall not exceed \$ _____ (“Cap”).

C. Documentation: In the event that Other Offers cause an increase in the Purchase Price, Seller shall provide Buyer at time of Seller’s submission of a Counteroffer (See. Para. 4 below) sufficient documentation to justify the Purchase Price increase. Unless otherwise noted here, “Sufficient Documentation” means a copy of the Other Offer(s) submitted with the last names(s) of the buyer(s) on the Other Offer(s) redacted. In addition to Sufficient Documentation, Seller shall submit the following: _____

D. Multiple Escalations: Buyer acknowledges that the Escalating Factor of the Purchase Offer and the Escalating Factors of Other Offers may result in multiple escalation and, in some cases, escalations to the Cap.

2. ESCALATION INCREASE PROCEDURE: If Buyer will be financing a portion of the Purchase Price and this Escalation Clause causes an increase in the Purchase Price: (check one).

[] The loan amount provided for in the Purchase Offer shall remain the same, and Buyer shall pay any increase in cash at the time of settlement

OR

[] The loan amount provided for in the Purchase Offer shall automatically increase to be _____% of the new Purchase Price of the Property

OR

[] The loan amount shall not exceed \$ _____ and Buyer shall pay any amount of the increase in Purchase Price which is not included in the loan amount in cash at the time of settlement.

OR


[] The down payment amount provided for in the Offer shall remain the same, and any increase shall be added to the loan amount.



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3. APPRAISAL CONTINGENCY: Unless otherwise indicated below, Buyer does **NOT** waive the Appraisal Contingency set forth in the Purchase Offer:

 **IMPORTANT NOTE:** WAIVER OF THE APPRAISAL CONTINGENCY MEANS THAT BUYER AGREES TO PURCHASE THE PROPERTY REGARDLESS OF THE AMOUNT FOR WHICH THE PROPERTY APPRAISES AND BUYER AGREES TO PAY ANY AMOUNTS ABOVE LOAN AMOUNT IN CASH AT THE TIME OF SETTLEMENT/SIGNING.

If Buyer is using a USDA, FHA or VA loan to finance the Property, Buyer is PROHIBITED by such loan program requirements from waiving the Appraisal Contingency. However, these loan programs do not prohibit Buyer from paying more than the appraised value.

BUYER(S) WAIVES THE APPRAISAL CONTINGENCY (Paragraph 9 of the Purchase Agreement).
Buyer(s) Initials _____ / _____ / _____

If the loan program Buyer is using to finance the Property prohibits the waiver of the Appraisal Contingency, then notwithstanding any waiver of the Appraisal Contingency set forth above, Buyer does NOT waive the Appraisal Contingency.

4. ACCEPTANCE OF COUNTEROFFER: In the event that Seller agrees to accept a Purchase Price within the terms of the Purchase Offer and pursuant to this Escalation Clause Addendum, Seller shall submit to Buyer a Counteroffer fully executed by the Seller which shall reflect the Purchase Price adjusted according to the escalation provisions contained herein, along with Sufficient Documentation (as defined in Para. 1(C)). Acceptance of the Counteroffer will occur upon counter signature by Buyer, and delivery to Seller of the fully ratified Purchase Agreement. Nothing herein prohibits the Seller from making a counteroffer based on terms different from those offered in Buyer’s Purchase Offer and this Escalation Clause Addendum.

5. TERMINATION: The terms contained herein are for the use and purpose of obtaining a mutually agreeable Purchase Price and shall be deemed satisfied and will terminate upon ratification of a Purchase Agreement for the Property.

6. DISCLAIMER/ACKNOWLEDGMENT: Buyer acknowledges and affirms that the Purchase Offer and Escalation Clause has been made of his/her own volition and discretion and Buyer agrees to hold harmless the Brokerage(s) and Broker(s) with regard to negotiation of the Purchase Price. In the event Other Offers are presented on the Property, Buyer acknowledges that a copy of the documents constituting the Purchase Offer may be provided to the parties making such Other Offers.

BUYER(S)

Buyer Signature	If Entity, Title of Signatory	Offer Date	Time
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Buyer Name (Print)	If Entity, Name of Signatory
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Buyer Signature	If Entity, Title of Signatory	Offer Date	Time
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Buyer Name (Print)	If Entity, Name of Signatory
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SELLER(S)

Seller Signature	If Entity, Title of Signatory	Offer Date	Time
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Seller Name (Print)	If Entity, Name of Signatory
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Seller Signature	If Entity, Title of Signatory	Offer Date	Time
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Seller Name (Print)	If Entity, Name of Signatory
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