

# PURCHASE AND SALE AGREEMENT



Offer Date: \_\_\_\_\_, 20\_\_\_\_

2007 Printing

1. **Purchase and Sale.** The undersigned buyer ("Buyer") agrees to buy and the undersigned seller ("Seller") agrees to sell all that tract or parcel of land, with such improvements as are located thereon, described as follows: All that tract of land lying and being in Land Lot \_\_\_\_\_ of the \_\_\_\_\_ District, \_\_\_\_\_ Section of \_\_\_\_\_ County, Georgia, and being known as Address \_\_\_\_\_, City \_\_\_\_\_, Georgia, Zip Code \_\_\_\_\_, according to the present system of numbering in and around this area, being more particularly described as Lot \_\_\_\_\_, Block \_\_\_\_\_, Unit \_\_\_\_\_, Phase/Section \_\_\_\_\_ of \_\_\_\_\_ Subdivision, as recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, \_\_\_\_\_ County, Georgia records, together with all fixtures, landscaping, improvements, and appurtenances (hereinafter collectively referred to as "Property.") The full legal description of Property is the same as is recorded with the Clerk of the Superior Court of the county in which Property is located and is incorporated herein by reference.
2. **Purchase Price.** At the closing Buyer agrees to pay Seller the purchase price of the Property in cash, cashiers check, money order, certified check or wire transfer of immediately available funds of: \$ \_\_\_\_\_, \_\_\_\_\_ U.S. Dollars.
3. **Amount and Deposit of Earnest Money.** Buyer has paid to \_\_\_\_\_ ("Holder") earnest money of \$ \_\_\_\_\_ check, **OR** \$ \_\_\_\_\_ cash, which has been received by Holder. The earnest money shall be deposited in Holder's escrow/trust account (with Holder retaining the interest if the account is interest bearing) within 5 banking days from the Binding Agreement Date. If Buyer writes a check for earnest money and the same is deposited into Holder's escrow/trust account, Holder shall not be required to return the earnest money until the check has cleared the account on which the check was written. In the event any earnest money check is dishonored by the bank upon which it is drawn, Holder shall promptly give notice of the same to Buyer and Seller. Buyer shall have 3 banking days after receiving such notice to deliver good funds to Holder. In the event Buyer does not timely deliver good funds, Seller shall have the right to terminate this Agreement upon notice to Buyer.
4. **Date of Closing and Transfer of Possession.** This transaction shall be closed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ or on such other date as may be agreed to in writing by the parties. In the event Seller fails to satisfy valid title objections or the closing attorney or Buyer's mortgage lender (including in "all cash" transactions) fail to timely complete their respective obligations, then Buyer or Seller, may by unilateral notice to the other party (which notice must be received on or before the closing date) extend the closing date for 7 days or such shorter period as may be agreed to by the parties in writing. The exercise of this right by either party shall cause the unilateral right to extend the closing date to terminate and no longer be a part of this Agreement. Buyer agrees to allow Seller to retain possession of Property until and through: *[Select section A, B or C below. The sections not marked are not a part of this Agreement.]*  
 A. the closing; or  B. \_\_\_\_\_ hours after the closing; or  C. \_\_\_\_\_ days after the closing at \_\_\_\_\_ o'clock \_\_\_\_\_m.
5. **Seller's Contributions at Closing.** Seller shall, at the time of closing, contribute a sum not to exceed \$ \_\_\_\_\_ to be used by Buyer to pay for: a) the preparation of the warranty deed and owner's affidavit by the closing attorney; and b) at Buyer's discretion any of the following (if allowed by the lender): closing costs, prepaid items, escrow establishment charges, loan discount points, survey costs, and insurance premiums (including flood insurance, if applicable) relating to Property and/or Loan(s). Buyer shall pay all other costs, fees, and amounts for the above referenced items and to fulfill lender requirements or otherwise close this transaction.
6. **Method of Payment.** Buyer warrants that Buyer will have sufficient cash at closing, which when combined with the loan(s), if any, described below ("Loan(s)"), will allow Buyer to complete the purchase of Property. Buyer does not need to sell or lease other real property in order to complete the purchase of Property. The method of payment for the Property is as follows: *[Select section A, B or C below. The sections not marked shall not be a part of this Agreement.]*  
 A. **Purchase Subject to Loan Being Assumed:** See Exhibit \_\_\_\_\_  
 B. **All Cash at Closing:** Buyer's obligation to close shall not be subject to Buyer having the ability to obtain any Loan(s).  
 C. **Purchase Subject to Limited Financing Contingency:** Buyer shall have \_\_\_\_\_ days from the Binding Agreement Date ("Financing Contingency Period") to determine if Buyer has the ability to obtain the Loan(s) described below: *[Select 1 or 1 and 2 below. Any box not checked shall not be a part of this Agreement.]*
  1. **First Mortgage (promissory note secured by first priority security deed)**
    - a. Loan Amount: \_\_\_\_\_ percent (%) of the purchase price of Property
    - b. Term: \_\_\_\_\_ years
    - c. Interest rate at par of \_\_\_\_\_ percent (%) per annum (or initial interest rate if interest rate adjusts)
    - d. Loan Type:  Conventional  FHA (see exhibit)  VA (see exhibit)  Other (see exhibit)
    - e. Rate Type:  Fixed Rate Mortgage  Adjustable Rate Mortgage  Interest Only Mortgage
    - f. Source of Loan:  Institutional Lender  Seller (see Exhibit \_\_\_\_\_)  Other \_\_\_\_\_

**2. Second Mortgage (promissory note secured by second priority security deed)**

- a. Loan Amount: \_\_\_\_\_ percent (%) of the purchase price of Property  
b. Term: \_\_\_\_\_ years  
c. Interest rate at par of \_\_\_\_\_ percent (%) per annum (or initial interest rate if interest rate adjusts)  
d. Rate Type:  Fixed Rate Mortgage  Adjustable Rate Mortgage  Interest Only Mortgage  Equity Line  
e. Source of Loan:  Institutional Lender  Seller (see Exhibit \_\_\_\_\_)  Other \_\_\_\_\_

**3. Ability to Obtain.** The term "ability to obtain" as used herein shall mean that Buyer, as of the end of the Financing Contingency Period, is qualified to obtain the Loan(s) described above based upon the lender's customary and standard underwriting criteria. If Buyer does not have the ability to obtain either or both of the Loan(s) described above, Buyer shall cause a letter from the lender denying either of the Loan(s) to be delivered to Seller prior to the end of the Financing Contingency Period setting forth the Loan(s) described above for which Buyer applied and all of the reasons why Buyer does not have the ability to obtain said Loan(s). Except as may be provided below, this Agreement shall terminate without penalty to Buyer if the above-described letter is delivered to Seller in a timely manner.

Buyer shall be deemed to have the ability to obtain the Loan(s), this Agreement shall thereafter no longer be subject to any financing contingency and the method of payment shall thereafter be deemed to be "all cash" if either: a) Buyer does not deliver the above-referenced letter to Seller within the time frame set forth above, or b) Buyer delivers the above-referenced letter but the basis upon which Buyer does not have the ability to obtain the Loan(s) is that Buyer: (1) lacks sufficient funds to close; (2) is required to lease or sell other property as a condition of obtaining the Loan(s); or (3) did not timely provide the lender(s) with needed information to evaluate whether Buyer had the ability to obtain the Loan(s). Buyer shall not intentionally make any material changes in Buyer's financial condition which would adversely affect Buyer's ability to obtain the Loan(s) during Financing Contingency Period. Buyer shall be responsible for obtaining and providing to the lender(s) all required loan documentation, Official Georgia Wood Infestation Report, structural letter, well tests, septic system certifications, flood plain certifications and any other similar information.

**7. Closing Attorney.** This transaction shall be closed by the law firm of \_\_\_\_\_.

If Buyer is given the right to select a law firm from a mortgage lender's approved list of closing attorneys, Buyer agrees to select said law firm. If the law firm named above is not on the mortgage lender's approved list, and cannot be added in time to close this transaction, Buyer may select another law firm from lender's approved list to close this transaction. The closing attorney shall represent the mortgage lender in any transaction in which the Buyer obtains mortgage financing (including transactions where the method of payment referenced herein is "all cash"). In transactions where the Buyer does not obtain mortgage financing, the closing attorney shall represent the:  Buyer OR  Seller. If the closing attorney declines to represent the party selected, the party may select a different closing attorney.

**8. Seller's Property Disclosure.** Seller's Property Disclosure Statement is attached hereto and incorporated herein. Seller warrants that to the best of Seller's knowledge and belief, the information contained therein is accurate and complete as of the date this Agreement is last signed or initialed by Seller.

**9. Inspection.**

**A. Right of Buyer to Inspect Property:** Buyer and/or Buyer's representatives shall have the right to enter Property at Buyer's expense and at reasonable times (including immediately prior to closing) to inspect, examine, test and survey Property. Seller shall cause all utility services and any pool, hot tub and similar items to be operational so that Buyer may complete all inspections under this agreement. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries, and damages arising out of or related to the exercise of these rights.

**B. Duty of Buyer to Inspect Neighborhood:** Buyer acknowledges that: (1) in every neighborhood there are conditions which different buyers may find objectionable and (2) Buyer has had the full opportunity to become acquainted with any present or future neighborhood conditions which could affect the Property including without limitation land-fills, quarries, high-voltage power lines, cemeteries, airports, prisons, stadiums, odor producing factories, crime, schools serving the Property, political jurisdictional maps and land use and transportation maps and plans. It shall be Buyer's sole duty to become familiar with neighborhood conditions of concern to buyer. **If Buyer is concerned about the possibility of a registered sex offender residing in a neighborhood in which Buyer is interested, Buyer should review the Georgia Violent Sex Offender Registry available on the Georgia Bureau of Investigation Website at [www.state.ga.us/gbi/disclaim.html](http://www.state.ga.us/gbi/disclaim.html).**

**C. Termites:** Buyer shall be solely responsible for inspecting for any wood destroying organisms and obtaining any Official Georgia Wood Infestation Report that may be of interest to Buyer or required by Buyer's mortgage lender(s).

**10. Property Sold with Right to Request Repairs, Subject to Due Diligence Period or "As-Is".**

*[Select Section A, B or C below. The sections not marked shall not be a part of this Agreement.]*

**A. Property Sold with Right to Request Repairs.**

- Buyer shall have the right to request that Seller repair and/or replace Defects, if any, in Property identified by Buyer's Inspector(s) in a written report(s). Within \_\_\_\_\_ days from Binding Agreement Date, Buyer shall provide Seller with: (a) a signed written amendment to this Agreement requesting Defects to be repaired and/or replaced and (b) a copy of all reports of Inspectors describing those Defects. If Buyer does not timely present the written amendment and inspection report(s), Buyer shall be deemed to have accepted Property "as is."
- If Buyer timely submits the written amendment and accompanying inspection reports, Buyer and Seller shall have \_\_\_\_\_ days from the Binding Agreement Date (hereinafter "Defect Resolution Period") to attempt to negotiate the Defects to be repaired

and/or replaced, sign an amendment to the Agreement regarding the same and have it delivered to Buyer and Seller. If the requirements of the preceding sentence have not occurred before the end of the Defect Resolution Period, then within one day thereafter: (a) Buyer or Seller may accept in writing the other party's last written offer or counteroffer regarding the repair and/or replacement of Defects (regardless of whether the same has expired, or has previously been rejected, it being the express intent of the parties to override any common law to the contrary); or (b) Buyer may accept Property in "as-is" condition. A final agreement regarding the Defects to be repaired and/or replaced shall be formed by the first party to give such notice of acceptance to the other party. All parties shall then promptly execute an amendment to the Agreement reflecting the accepted offer or counteroffer. If neither party timely accepts the other party's last offer or counteroffer or Buyer does not elect to buy Property "as-is", this Agreement shall terminate.

3. Notwithstanding any other provision to the contrary, in the event the Inspector, in a written report provided to Seller, recommends any additional test, study, inspection or evaluation of any product, item or condition in Property, then the time period to inspect Property and the Defect Resolution Period may be extended once by Buyer, upon notice to Seller, delivered prior to the expiration of the original period to inspect Property, for up to 7 additional days. The date of closing shall also be extended for the same number of days but only if the original closing date would, as a result of the above time periods being extended, fall within the new Defect Resolution Period.
4. Nothing herein shall require Seller to replace a product or item (or portion thereof) in Property if it can be repaired such that at closing it is reasonably fit for the purpose(s) for which it was intended.
5. Definitions:
  - (a) Inspector – The term "Inspector" shall mean a person or company with specific, professional expertise in property inspections or in an item, building product or condition contained therein for which the Inspector is inspecting, examining, testing and/or surveying. With respect to inspections for termites and other wood destroying organisms the term "Inspector" shall mean a licensed Georgia pest control operator.
  - (b) Defects – The term "Defects" shall mean any infestation by termites, insects or other wood destroying organisms or any condition, building product or item in Property, or portion thereof identified by an Inspector in a written report, which: (1) is in a condition which represents a significant health risk (including lead-based paint and/or lead-based paint hazards) or an imminent risk of injury or damage to persons or property; (2) constitutes a violation of current laws, governmental codes or regulations except if it is "grandfathered" because it was initially installed or constructed prior to or in accordance with all applicable laws, codes or regulations; or (3) is not at the present time in good working order and repair (including damage caused by termites, infiltrating pests, and any other wood destroying organisms), excepting other normal wear and tear. All parties acknowledge that certain building products are or have been the subject of class action lawsuits and are generally considered by Inspectors to be defective ("Defective Product"). Notwithstanding the above, all parties agree that if the existence of a particular Defective Product has been disclosed by Seller to Buyer in the Seller's Property Disclosure Statement prior to Buyer contracting to purchase Property, then that Defective Product, or any portion thereof, as the case may be, shall not be considered to be a Defect if at the time of the inspection it is functioning in accordance with manufacturer's specifications and is reasonably fit for the purposes for which it was intended. However, if a particular building product is identified by the Inspector in a written report as generally being a Defective Product and the particular building product is not disclosed in the Seller's Property Disclosure Statement as set forth above, all parties agree that such a Defective Product shall be considered a Defect which Buyer can request Seller to repair and/or replace.

**B. Property Sold Subject to Due Diligence Period.** For and in consideration of the additional payment of \$10.00 by the Buyer to the Seller, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby grant Buyer the option of terminating this Agreement, for any reason, for a \_\_\_\_\_ day period from the Binding Agreement Date ("Due Diligence Period"). During the Due Diligence Period, Buyer may conduct at Buyer's sole expense whatever evaluations, inspections, examinations, surveys, and testing, if any, Buyer deems appropriate to determine whether Buyer's option to terminate this Agreement should be exercised. This shall include but not be limited to testing for lead-based paint and/or lead-based paint hazards, inspecting for active infestation of and/or damage from termites and other wood destroying organisms and determining if the Property or the improvements thereon are in a flood plain. During the Due Diligence Period, Buyer may also propose an amendment(s) to this Agreement to address any concerns of Buyer with the Property. If Buyer decides to exercise Buyer's option to terminate this Agreement, Buyer must give notice of the same to Seller prior to the end of the Due Diligence Period. If Buyer fails to give such notice in a timely manner, the Due Diligence Period shall expire and terminate and Buyer shall be deemed to have accepted the Property "as-is". The expiration of the Due Diligence Period shall not terminate any other contingencies to which this Agreement may be subject. Buyer is  or is not  currently under contract (including option contracts) to purchase other real property. Buyer shall  or shall not  have the right to enter into other such contracts during the Due Diligence Period. This Agreement shall be an option contract until the Due Diligence Period has ended without the Buyer terminating the same.

**C. Property Sold "As Is".** All parties agree that Property is being sold "as is," with all faults including but not limited to damage from termites and other wood destroying organisms and lead-based paint and lead-based paint hazards. Seller shall have no obligation to make any repairs or replacements to Property.

**11. Waiver of Certain Rights Regarding Lead-Based Paint.** Other than the rights set forth in the Property Sold With Right to Request Repairs, Subject to Due Diligence Period or "As-Is" paragraph above, Buyer expressly waives the right afforded buyers under federal law: a) to inspect and test for lead-based paint and/or lead-based paint hazards and b) not to be obligated under this Agreement for at least 10 days from the Binding Agreement Date.

**12. Title.**

**A. Warranty:** Seller warrants that, at the time of closing, Seller will convey good and marketable title to said Property by general warranty deed subject only to: (1) zoning; (2) general utility, sewer, and drainage easements of record as of the Binding Agreement Date and

upon which the improvements do not encroach; (3) subdivision and/or condominium declarations, covenants, restrictions, and easements of record on the Binding Agreement Date; and (4) leases and other encumbrances specified in this Agreement. Buyer agrees to assume Seller's responsibilities in any leases specified in this Agreement. The deed of conveyance and owner's affidavit in this transaction shall be prepared by the closing attorney referenced herein and the cost thereof shall be treated as a closing cost.

**B. Examination:** Buyer may, prior to closing, examine title and furnish Seller with a written statement of objections affecting the marketability of said title. If Seller fails to satisfy valid title objections prior to closing or any extension thereof, then Buyer may terminate the Agreement upon written notice to Seller. Good and marketable title as used herein shall mean title which a title insurance company licensed to do business in Georgia will insure at its regular rates, subject only to standard exceptions.

**C. Survey:** A survey of Property is  OR is not  attached to this Agreement. Buyer shall have the right to terminate this Agreement upon written notice to Seller if a new survey performed by a surveyor licensed in Georgia is obtained which is materially different from any attached survey with respect to Property. The term "materially different" shall not apply to any improvements constructed by Seller in their agreed-upon locations subsequent to Binding Date Agreement. Matters revealed in said survey shall not relieve the warranty of title obligations of Seller referenced above.

**13. Taxes and Prorations.** Real estate taxes, and any community association dues and assessments for the calendar year in which the sale is closed shall be prorated as of the date of closing. Seller shall pay the state of Georgia property transfer tax. Seller and Buyer agree to prorate all utility bills between themselves, as of the date of closing (or the day of possession of Property by Buyer, whichever is later) which are issued after closing and include service for any period of time Property was owned/occupied by Seller or Seller's invitees.

**14. Risk of Damage to Property.** Seller warrants that at the time of closing or upon the granting of possession if at a time other than at closing, Property will be in substantially the same condition (including conditions disclosed in the Seller's Property Disclosure Statement) as on the Binding Agreement Date, except for normal wear and tear, and changes made to the condition of Property pursuant to the written agreement of Buyer and Seller. Seller shall deliver Property clean and free of trash and debris at time of possession. Notwithstanding the above, if the Property is destroyed or substantially damaged prior to closing, Seller shall promptly give notice to Buyer of the same and provide Buyer with whatever information Seller has regarding the availability of insurance and the disposition of any insurance claim. Buyer or Seller may terminate this Agreement not later than 14 days from receipt of the above notice except that any party who causes the Property to be destroyed or substantially damaged as the result of that party's criminal conduct shall forfeit the right to terminate this Agreement and shall be in default hereunder. If Buyer or Seller do not terminate this Agreement, Seller shall cause Property to be restored to substantially the same condition as on the Binding Agreement Date. The date of closing shall be extended until the earlier of 1 year from the original date of closing, or 7 days from the date that Property has been restored to substantially the same condition as on the Binding Agreement Date and a new certificate of occupancy (if required) is issued.

**15. Entitlement to and Disbursement of Earnest Money.**

**A. Entitlement to Earnest Money:** Subject to the Disbursement of Earnest Money paragraph below:

1. Buyer shall be entitled to the earnest money upon: a) failure of the parties to enter into a binding agreement; b) failure of any contingency or condition to which this Agreement is subject; c) termination of this Agreement due to the default of Seller; d) the termination of this Agreement in accordance with a specific right to terminate set forth in the Agreement; or e) upon the closing of Property; and
2. Seller shall be entitled to the earnest money if this Agreement is terminated due to the default of Buyer. In such event, Holder may pay the earnest money to Seller by check, which if accepted and deposited by Seller, shall constitute liquidated damages in full settlement of all claims of Seller. It is agreed to by the parties that such liquidated damages are not a penalty and are a reasonable pre-estimate of Seller's actual damages, which damages are difficult to ascertain.

**B. Disbursement of Earnest Money:** Holder shall disburse the earnest money upon: (1) the closing of Property; (2) a subsequent written agreement of Buyer and Seller; (3) an order of a court or arbitrator having jurisdiction over any dispute involving the earnest money; or (4) the failure of the parties to enter into a binding agreement (where there is no dispute over the formation or enforceability of the Agreement). In addition, Holder may disburse the earnest money upon a reasonable interpretation of the Agreement, provided that Holder first gives all parties 15 days notice stating to whom and why the disbursement will be made. Any party may object to the proposed disbursement by giving written notice of the same to Holder within the 15 day notice period. Objections not timely made in writing shall be deemed waived. If Holder receives an objection and, after considering it, decides to disburse the earnest money as originally proposed, Holder may do so and send notice to the parties of Holder's action. If Holder decides to modify its proposed disbursement, Holder shall first send a new 15 day notice to the parties stating the rationale for the modification and to whom the disbursement will now be made.

**C. Interpleader:** If there is a dispute over the earnest money which the parties cannot resolve after a reasonable period of time, and where Holder has a bona fide question as to who is entitled to the earnest money, Broker may interplead the earnest money into a court of competent jurisdiction. Holder shall be reimbursed for and may deduct from any funds interpleaded, its costs and expenses, including reasonable attorney's fees actually incurred. The prevailing defendant in the interpleader lawsuit shall be entitled to collect its attorney's fees and court costs and the amount deducted by Holder from the non-prevailing defendant.

**D. Hold Harmless:** All parties hereby agree to indemnify and hold Holder harmless from and against all claims, causes of action, suits and damages arising out of or related to the performance by Holder of its duties hereunder. All parties further covenant and agree not to sue Holder for damages relating to any decision of Holder to disburse earnest money made in accordance with the requirements of this Agreement.

**16. Agency and Brokerage.**

**A. Agency Disclosure:** In this Agreement, the term "Broker" shall mean a licensed Georgia real estate broker or brokerage firm and, where the context would indicate, the broker's affiliated licensees. No Broker in this transaction shall owe any duty to Buyer or Seller greater than what is set forth in their brokerage engagements and the Brokerage Relationships in Real Estate Transactions

Act, O.C.G.A. § 10-6A-1 et. seq.;

1. **No Agency Relationship.** Buyer and Seller acknowledge that, if they are not represented by a Broker, they are each solely responsible for protecting their own interests, and that Broker's role is limited to performing ministerial acts for that party.
2. **Listing Broker.** Broker working with the Seller is identified on the signature page as the "Listing Broker"; and said Broker is , **OR**, is NOT  representing Seller;
3. **Selling Broker.** Broker working with Buyer is identified on the signature page as "Selling Broker"; and said Broker is , **OR**, is NOT  representing Buyer; and
4. **Dual Agency or Designated Agency.** If Buyer and Seller are both being represented by the same Broker, a relationship of either designated agency , **OR**, dual agency  shall exist.

a. **Dual Agency Disclosure.** *[Applicable only if dual agency has been selected above]*

Buyer and Seller are aware that Broker is acting as a dual agent in this transaction and consent to the same. Buyer and Seller have been advised that:

- (1) In serving as a dual agent, Broker is representing two clients whose interests are or at times could be different or even adverse;
- (2) Broker will disclose all adverse, material facts relevant to the transaction and actually known to the dual agent to all parties in the transaction except for information made confidential by request or instructions from each client which is not otherwise required to be disclosed by law;
- (3) Buyer and Seller do not have to consent to dual agency and, the consent of Buyer and Seller to dual agency has been given voluntarily and the parties have read and understand their brokerage engagement agreements.
- (4) Notwithstanding any provision to the contrary contained herein, Buyer and Seller each hereby direct Broker, while acting as a dual agent, to keep confidential and not reveal to the other party any information which could materially and adversely affect their negotiating position.

b. **Designated Agency Assignment.** *[Applicable only if the designated agency has been selected above]*

Broker has assigned \_\_\_\_\_ to work exclusively with Buyer as Buyer's designated agent and \_\_\_\_\_ to work exclusively with Seller as Seller's designated agent. Each designated agent shall exclusively represent the party to whom each has been assigned as a client and shall not represent in this transaction the client assigned to the other designated agent.

**B. Brokerage:** Broker(s) identified herein have performed valuable brokerage services and are to be paid a commission pursuant to a separate agreement or agreements. Unless otherwise provided for herein, Listing Broker will be paid a commission by Seller, and the Selling Broker will receive a portion of the Listing Broker's commission pursuant to a cooperative brokerage agreement. The closing attorney is directed to pay the commission of the Broker(s) at closing out of the proceeds of the sale. If the sale proceeds are insufficient to pay the full commission, the party owing the commission will pay any shortfall at closing. If more than one Broker is involved in the transaction, the closing attorney is directed to pay each Broker its respective portion of said commission. In the event the sale is not closed because of Buyer's and/or Seller's failure or refusal to perform any of their obligations herein, the non-performing party shall immediately pay the Broker(s) the full commission the Broker(s) would have received had the sale closed, and the Selling Broker and Listing Broker may jointly or independently pursue the non-performing party for their portion of the commission.

**C. Material Relationship Disclosure:** Broker and/or affiliated licensees have no material relationship with either Buyer or Seller except as follows: \_\_\_\_\_.

**17. Disclaimer.**

Buyer and Seller acknowledge that they have not relied upon any advice, representations or statements of Brokers and waive and shall not assert any claims against Brokers involving the same. Buyer and Seller agree that Brokers shall not be responsible to advise Buyer and Seller on any matter including but not limited to the following: any matter which could have been revealed through a survey, title search or inspection of Property; the condition of Property, any portion thereof, or any item therein; building products and construction techniques; the necessity or cost of any repairs to Property; mold; hazardous or toxic materials or substances; termites and other wood destroying organisms; the tax or legal consequences of this Agreement and transaction; the availability and cost of utilities or community amenities; the appraised or future value of Property; any condition(s) existing off Property which may affect Property; the terms, conditions and availability of financing; and the uses and zoning of Property whether permitted or proposed. Buyer and Seller acknowledge that Brokers are not experts with respect to the above matters and that, if any of these matters or any other matters are of concern to them, they should seek independent expert advice relative thereto. Buyer and Seller acknowledge that Brokers shall not be responsible to monitor or supervise any portion of any construction or repairs to Property and that such tasks clearly fall outside the scope of real estate brokerage services.

**18. Notices.**

**A. All Notices Must Be In Writing.** All notices, including but not limited to offers, counteroffers, acceptances, amendments, demands, notices of termination and other notices, required or permitted hereunder shall be in writing, signed by the party giving the notice.

**B. Method of Delivery of Notice.** Subject to limitations and conditions set forth herein, notices may only be delivered: (1) in person; (2) by an overnight delivery service, prepaid; (3) by facsimile transmission (FAX); (4) by registered or certified U. S. mail, pre-paid, return receipt requested, or (5) by e-mail.

**C. When Notice is Deemed Received.** Except as may be provided herein, a notice shall not be deemed to be given, delivered or received until it is actually received. Notwithstanding the above, a notice sent by FAX shall be deemed to be received by the party to whom it was sent as of the date and time it is transmitted provided that the sending FAX produces a written confirmation showing the correct date and the time of the transmission and the telephone number referenced herein to which the notice should have been sent.

**D. When Notice to Broker is Notice to Broker's Client.** Except in cases where the Broker is practicing designated agency, notice to

the Broker or the affiliated licensee of Broker representing a party in the transaction shall for all purposes herein be deemed to be notice to that party. In any transaction where the Broker is practicing designated agency, only notice to the affiliated licensee designated by Broker to represent the party in the transaction shall be notice to that party. Personal delivery of notice may only be delivered to the person intended to receive the same.

- E. Notice by Fax or E-Mail to a Broker or Affiliated Licensee of a Broker.** Notices by fax or e-mail to a Broker or the affiliated licensee of a Broker may only be sent to the e-mail address or fax number, if any, of the Broker or the affiliated licensee of the Broker set forth in the Broker/Licensee Information section of the signature page of this Agreement or subsequently provided by the Broker or the affiliated licensee of Broker following the notice procedures set forth herein. If no fax number or e-mail address is included in the Broker/Licensee Contact Information section of the signature page of this Agreement (or is subsequently provided by the Broker or the affiliated licensee of Broker following the notice procedures) then notice by the means of communication not provided shall not be valid for any purpose herein. Notice to a Broker or the affiliated licensee of Broker who is working with, but not representing a party, shall not be deemed to be notice to that party. Any party sending notice by FAX or email shall send an original copy of the notice if so requested by the other party. A faxed or emailed signature of a party shall constitute an original signature binding upon that party.
- F. Notice to Unrepresented Party.** A party who is not represented by a Broker in the transaction may receive notices by Fax or e-mail at the e-mail address or fax number, if any, of the party set forth below or at such other fax number or e-mail address as the party may provide following the notice procedures set forth herein. If no e-mail address or fax number is provided for below, or is subsequently provided by the party following the notice procedures set forth herein, then notice through the means of communication not provided shall not be valid for any purpose herein.

Unrepresented Buyer:

Unrepresented Seller

Fax No. \_\_\_\_\_

Fax No. \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**19. Other Provisions.**

- A. Warranties Transfer:** Seller agrees to transfer to Buyer, at closing, subject to Buyer's acceptance thereof, (and at Buyer's expense, if there is any cost associated with said transfer) Seller's interest in any existing manufacturer's warranties, service contracts, termite bond or treatment guarantee and/or other similar warranties which, by their terms, may be transferable to Buyer.
- B. Repairs:** All agreed upon repairs and replacements shall be performed in a good and workmanlike manner prior to closing.
- C. Binding Effect, Entire Agreement, Modification, Assignment:** This Agreement constitutes the sole and entire agreement between the parties and shall be binding upon the parties and their successors, heirs and permitted assigns. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto. This Agreement may not be amended, modified or waived except by the written agreement of Buyer and Seller. This Agreement may not be assigned by Buyer except with the written agreement of Seller. Any assignee shall fulfill all the terms and conditions of this Agreement.
- D. Survival of Agreement:** The following shall survive the closing of this Agreement: 1) the obligation of a party to pay a real estate commission, 2) any warranty of title, and 3) any obligation which the parties agree shall or may be performed or fulfilled after closing.
- E. Governing Law and Interpretation:** This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original and shall be interpreted in accordance with the laws of the State of Georgia. No provision herein, by virtue of the party who drafted it, shall be interpreted less favorably against one party than another. All references to time shall mean the time in Georgia.
- F. Time of Essence:** Time is of the essence of this Agreement.
- G. Terminology:** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa; and (2) all pronouns shall mean and include the person, entity, firm, or corporation to which they relate.
- H. Binding Agreement Date:** The Binding Agreement Date in this Agreement shall be the date when the party making the last Offer receives notice that the Offer has been accepted. This party (or the Broker representing this party) shall fill in the Binding Agreement Date below and promptly give notice of this date to the other party. Filling in the Binding Agreement Date shall not be deemed a counteroffer.
- I. Responsibility to Cooperate:** All parties agree to take all actions and do all things reasonably necessary to fulfill in good faith and in a timely manner the terms and conditions of this Agreement. Buyer and Seller shall execute and deliver such certifications, affidavits, and statements as are required at closing to meet the requirements of the lender(s) and of federal and state law.
- J. GAR Forms:** This Georgia Association of REALTORS®, Inc. (GAR) form is provided as a courtesy to the parties. It may only be used in accordance with the licensing agreement of GAR or as may be approved in writing by GAR. It is not required to be used in any transaction, may not fit the needs, goals and purposes of the parties and was not written to provide specific legal protection to the parties. Parties seeking legal advice should consult an attorney. While this form may be altered or modified by the parties, at their own risk, to a specific real estate transaction, this form may not be reproduced with sections removed, altered or modified unless the changes are visible on the form itself or in a stipulation, addendum, exhibit or amendment thereto.

- 20. Exhibits and Addenda.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement. If any such exhibit or addendum conflicts with any preceding paragraph (including any changes thereto made by the parties), said exhibit or addendum shall control:

**SPECIAL STIPULATIONS:** The following Special Stipulations, if conflicting with any exhibit, addendum, or preceding paragraph (including any changes thereto made by the parties), shall control:

Mark box if additional Special Stipulations are attached.

**Time Limit:** The terms of this Agreement shall constitute an offer ("Offer") which shall be open for acceptance until \_\_\_\_\_ o'clock \_\_\_\_\_m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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**Acceptance:** This Offer is hereby accepted, without change, at \_\_\_\_\_ o'clock \_\_\_\_\_m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Buyer's Signature

\_\_\_\_\_  
Seller's Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Buyer's Signature

\_\_\_\_\_  
Seller's Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Selling Broker

\_\_\_\_\_  
Listing Broker

By: \_\_\_\_\_  
Broker or Broker's Affiliated Licensee

By: \_\_\_\_\_  
Broker or Broker's Affiliated Licensee

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
MLS Office Code

\_\_\_\_\_  
Brokerage Firm License Number

\_\_\_\_\_  
MLS Office Code

\_\_\_\_\_  
Brokerage Firm License Number

Multiple Listing Number \_\_\_\_\_

Selling Broker/Licensee Contact Information:

Listing Broker/Licensee Contact Information:

Phone# \_\_\_\_\_

Phone# \_\_\_\_\_

Fax# \_\_\_\_\_

Fax# \_\_\_\_\_

E-Mail \_\_\_\_\_

E-Mail \_\_\_\_\_

\_\_\_\_\_  
Selling Agent's Georgia Real Estate License Number

\_\_\_\_\_  
Listing Agent's Georgia Real Estate License Number

**Binding Agreement Date:** The Binding Agreement Date in this transaction is the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and has been filled in by \_\_\_\_\_.