

# Contract for the Purchase and Sale of Residential Real Property

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

This **Contract for the Purchase and Sale of Real Property** (the "Contract") is made on \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, hereinafter called "Buyer" and \_\_\_\_\_, hereinafter called "Seller," for the hereinafter described Property, and in consideration of the mutual promises contained herein.

## 1. PROPERTY DESCRIPTION

The undersigned Seller agrees to sell and the undersigned Buyer agrees to buy that entire tract or parcel of property located in \_\_\_\_\_ County, Georgia, and being known as \_\_\_\_\_ (the "Property"), and being more particularly described as that tract or parcel of land lying and being in Land Lot \_\_\_\_\_ of the \_\_\_\_\_ District, \_\_\_\_\_ Section, \_\_\_\_\_ County, Georgia, being Lot \_\_\_\_\_, Block \_\_\_\_\_, Phase \_\_\_\_\_ of \_\_\_\_\_ Subdivision, as more particularly set out in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, of the official records of \_\_\_\_\_ County, Georgia, Tax ID # \_\_\_\_\_ **or, in the alternative, as set out on an Exhibit attached hereto and made a part hereof by this reference.**

Seller shall convey to Buyer good and marketable title to the Property by general warranty deed, free and clear of all mortgages and liens, except the Property shall be subject to the taxes not yet due and payable and all other encumbrances, zoning ordinances, easements and restrictions of record as of the Acceptance date of this Contract. 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.

## 2. PURCHASE PRICE

Buyer covenants that Buyer has adequate financial resources to purchase the Property. The Purchase Price shall be \_\_\_\_\_ US Dollars (US\$ \_\_\_\_\_). The Purchase Price, as adjusted by the prorations and adjustments provided herein, shall be payable in full at Closing in cash by wire transfer of immediately available federal funds to a bank account designated by Closing Attorney (as hereinafter defined).

## 3. EARNEST MONEY

A good faith deposit of \_\_\_\_\_ US Dollars (US\$ \_\_\_\_\_) (the "Earnest Money") shall be payable to \_\_\_\_\_ (Escrow Agent) in the form of a  check;  certified funds;  money order; or,  cash. Said funds shall be deposited into Escrow Agent's trust account as set out below. If the trust account is an interest bearing account, Escrow Agent shall be entitled to the interest. The amount of the good faith Earnest Money deposit identified above, if any, shall be applied toward the Purchase Price at closing.

### 3.1. Payment of Earnest Money - [check one]

- Buyer has remitted the Earnest Money to Escrow Agent, and Escrow Agent shall deposit same into a trust account within three (3) banking days from the date Escrow Agent receives an original or copy of the Accepted (as hereinafter defined) Contract; or
- Buyer has not remitted the Earnest Money to Escrow Agent, but shall remit same to Escrow Agent within \_\_\_\_\_ days from the date of Acceptance of this contract and Escrow Agent shall deposit same into a trust account within three (3) banking days from the date of receipt of the deposit and a copy or original of the Accepted Contract. In the event said payment is not timely remitted, Seller shall be promptly notified by Escrow Agent and Seller shall have the rights and remedies set out in this section.

**3.2. Buyer's Failure to Remit Earnest Money** - Regardless of whether the payment was remitted prior to Acceptance or on or before an agreed upon date thereafter, if the method of presentation is not honored by the institution upon which it was drawn, Escrow Agent shall promptly notify Buyer and Seller and the amount of the agreed upon Earnest Money deposit shall be paid by certified check or other collected funds to Escrow Agent within three (3) days of notice from Escrow Agent. If Buyer fails to do so, Seller shall have the rights and remedies set out in this section.

Notwithstanding the above, in the event the Earnest Money is not remitted to Escrow Agent as set out above, the Earnest Money is no longer a part of this Contract and Seller may:

- i. Unilaterally terminate this contract within three (3) days of receipt of notice from Escrow Agent, thereby releasing Buyer and Seller from any further obligations or responsibilities to the other; or,
- ii. Demand full performance of all other terms and conditions of the Contract and proceed to Closing

**3.3. Disbursement of Earnest Money:** After receiving reasonable assurance that the bank has credited the deposit to the account where the Earnest Money is being held, the Escrow Agent may (i) disburse the Earnest Money to Buyer if contract is not accepted, unless that issue is disputed; (ii) disburse the Earnest Money for credit to Buyer at Closing; (iii) disburse the Earnest Money to Buyer after Closing if it is not credited towards the purchase price at Closing; (iv) disburse the Earnest Money pursuant to a separate written agreement signed by the parties, agreeing to the terms of disbursement of the Earnest Money; (v) disburse the Earnest Money upon order of a court or arbitrator which has jurisdiction over the matter; or (vi) if Escrow Agent has received notice from any party that the Contract has been terminated or Closing has failed to occur, no more than thirty (30) days after said notice has been received notify all parties of Escrow Agent's disbursement decision. Upon receipt of Escrow Agent's notification of disbursement, a party shall have ten (10) days to object to the disbursement. After receipt of a party's objection, Escrow Agent may change its decision or proceed according to Escrow Agent's original notification, but shall, in any event, notify the parties of said final disbursement.

In addition, if the disbursement of the Earnest Money is in dispute, Escrow Agent may file an action to interplead the Earnest Money to allow a court of competent jurisdiction to decide how it is to be disbursed, and Escrow Agent may disburse Earnest Money as part of the required procedures related to this filing. Additionally, Escrow Agent may deduct any attorney's fees, court costs and other related expenses from the Earnest Money as necessary to reimburse Escrow Agent for costs related to the interpleader action, and Escrow Agent shall be entitled to recover additional costs as described above if Escrow Agent's expenses exceed the amount of the Earnest Money. The party that the court deems to be entitled to the Earnest Money may seek to recover its attorney's fees, court costs and the amount deducted by the Escrow Agent from the party that was not deemed to be entitled to the Earnest Money. In performing any of its duties under this Agreement, Escrow Agent shall not be liable for any loss, cost or damage which may incur as a result of serving as Escrow Agent hereunder, except for any loss, cost or damages arising out of its willful default or gross negligence. The parties agree to release Broker from liability for any costs, fees, or damages resulting from Escrow Agent's duties described herein.

If no objection to the disbursement of the Earnest Money is received by Escrow Agent prior to the disbursement of the Earnest Money, the right to object to said disbursement shall be deemed waived by the parties.

**4. CLOSING**

Unless amended mutually by the parties, the closing of this transaction shall take place on \_\_\_\_\_, 20\_\_\_\_, at a mutually agreed upon time (the "Closing"). Said Closing shall be at the office of \_\_\_\_\_ located at/in \_\_\_\_\_, Georgia (the "Closing Attorney"). If Closing Attorney is unavailable or unacceptable to Buyer's lender or title insurance company, then \_\_\_\_\_ shall have the right to select a different Closing Attorney. Possession of the Property shall be granted [check one]  at Closing or  \_\_\_\_\_ days after the Closing at \_\_\_\_\_ o'clock \_\_\_\_\_.m.

At Closing each party shall execute and deliver such deeds, certifications, affidavits, and statements as are required to fulfill the terms of this Contract, comply with federal and state law, and meet the requirements of any title insurance company or lender involved in this transaction. These documents shall include, but not be limited to, those necessary to effectuate a party's IRS §1031 exchange, if applicable, consent to which is hereby given by each party to the other.

**5. EXPENSES RELATING TO CLOSING**

**5.1. Closing Cost Allowance for Buyer** - Seller shall contribute a maximum of [check one]  \_\_\_\_\_% of the purchase price, or  US\$ \_\_\_\_\_ (the "Closing Cost Allowance"), subject to FNMA/FHLMC,



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FHA, USDA, VA or other Lender's underwriting criteria as may be applicable, to be used for any purpose whatsoever to offset closing costs incurred by Buyer, such as title insurance, costs of financing, homeowners association dues, etc. (regardless of whether said cost is required by law, the Lender, or merely at the discretion of the Buyer) to close this transaction. In the event the Buyer's lender does not allow the Seller to contribute the full amount of the Closing Cost Allowance on the closing statement, this paragraph shall be deemed amended to reflect the actual closing cost allowance allowed by the Lender, and the Seller shall have no further obligation to Buyer therefor.

**5.2. Seller Closing Costs** - Seller shall bear the cost of Seller's attorney's fees and expenses, unless said attorney is also acting in the capacity of Closing Attorney representing a Lender. If Seller's attorney is acting in such a capacity, then Seller's obligation relates only to the charges and/or fees for services rendered directly to the Seller or not otherwise incurred as a result of (or as it relates to) usual and customary services provided by a Closing Attorney for a closing.

**5.3. Clearance of "Title Defects"** - "Title defects" are those defects required to be remedied by the title insurance company insuring title to the Lender, if any, or to the Buyer, if an owner's policy is requested by Buyer. Seller shall be responsible for the removal of any liens encumbering the title and any legal fees, recording or other costs associated with title curative work. Seller shall also bear the cost of any other document, instrument, advice, or other services rendered primarily for the benefit of the Seller, including, but not limited to: powers-of-attorney, costs associated with a mail-out or multiple counterpart closing, the preparation of corporate resolutions for Seller, or other similar expenses.

**5.4. Prorations** - Unless prohibited by any Buyer's lender, taxes, homeowner's dues, utilities, garbage or other solid waste disposal fees, rent, and other similar costs, fees or amounts shall be prorated as of the date of closing, unless the parties expressly agree in writing (i) that said item or items shall not be prorated or (ii) that the proration of an item or items shall be based on the date of possession (or some other date) and not the date of closing. If the estimate upon which the prorations were based is found to be inaccurate after closing because the actual amount of the charge exceeded or was less than the estimate, the parties agree to re-prorate, between themselves, any difference resulting from said change.

**5.5. Buyer Expenses** - Buyer shall be responsible for payment of all other costs, fees, and expenses if not otherwise provided for herein, including, but not limited to Georgia transfer tax, deed recording fees and title insurance.

## 6. CONTINGENCIES

[Check all that are applicable]

**6.1.  Buyer's General Right to Terminate** - *This contingency shall expire at 11:59 p.m. on the day that is \_\_\_\_\_ days after the Acceptance Date.* In consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, Seller grants to Buyer the right to terminate this Contract by delivering written notice to Seller and receive a full refund of the Earnest Money for any reason whatsoever. Buyer shall also have the right, but not the obligation, prior to the expiration of this contingency to propose to Seller an amendment to the Contract addressing any concerns Buyer has regarding the Property; provided, however, that Seller shall have no obligation to accept Buyer's proposed amendment. If Seller fails to accept Buyer's proposal to amend the Contract, if any, prior to the expiration of this contingency, Buyer shall have the option to either terminate this Contract prior to the expiration of this contingency, or accept the property "as is." If Seller does not receive timely written notice of Buyer's termination of this Contract as provided hereunder, this contingency shall be deemed waived.

**6.2.  Appraisal Contingency** - *This contingency shall expire at 11:59 p.m. on the day that is \_\_\_\_\_ days after the Acceptance Date.* Buyer's obligation to purchase the Property is contingent upon Buyer's receipt of an appraisal of the Property, performed by a licensed Georgia real estate appraiser, showing the value of the Property to be equal to or greater than the Purchase Price. If the Property does not appraise for a minimum of the Purchase Price, Buyer, at Buyer's sole discretion, shall have the right to terminate this Contract and receive a full refund of the Earnest Money by providing Seller a copy of the appraisal and written notice of Buyer's intent to terminate this Contract prior to the expiration of this contingency.

If the Property fails to appraise for a minimum of the Purchase Price, either party shall also have the right, but not the obligation, prior to the expiration of this contingency to propose to the other an amendment to the Contract reducing the Purchase Price; provided, however, that neither party shall have the obligation to accept said proposed amendment.

If Seller does not receive notice of Buyer's termination of this Contract as provided hereunder, this contingency shall be deemed waived.

**6.3.  Financing Contingency** - *This contingency shall expire at 11:59 p.m. on the day that is \_\_\_\_\_ days after the Acceptance Date.* If Buyer and Seller agree to a financing contingency involving financing other than a new first or second mortgage from a third party institutional lender under the terms described below, such as a loan assumption or seller financing, an additional exhibit or special stipulation shall be attached hereto providing the additional terms of that financing.

If Buyer chooses to terminate this Contract based on an inability to obtain financing as described hereunder, Buyer must give Seller written notice of termination of this Contract along with a written statement from Buyer's lender (or lenders, if applicable), indicating the reason for the lender's denial of loan approval. This contingency shall be deemed waived by Buyer under the following circumstances:

- i. If Buyer fails to provide proof of a lender's denial of loan approval prior to the deadline set forth in this section; or
- ii. If the lender's denial of loan approval is based on Buyer's lack of sufficient funds to pay for the down payment and closing costs, lack of timely loan application, Buyer's failure to sell or lease Buyer's current home, or Buyer's conduct after the Acceptance Date but prior to the expiration of this contingency.

**[In the event the Financing Contingency is selected, check all of the following that are applicable:]**

**First Mortgage Loan Proceeds:** This Contract is contingent upon Buyer's ability to obtain a third party first mortgage loan to be secured by the Property, in a principal amount of no less than [check one]  US\$ \_\_\_\_\_ or  \_\_\_\_\_% of the purchase price, being amortized over a term of \_\_\_\_\_ years, at an interest rate per annum that is [check one]  fixed at a rate not to exceed \_\_\_\_\_%; or  adjustable beginning at a rate not to exceed \_\_\_\_\_% with the interest rate never to exceed \_\_\_\_\_%, pursuant to an institutional lender's standard and customary underwriting criteria. The balance of the purchase price shall be paid by Buyer in cash, or in such other form as may be required by the Closing Attorney listed below, at time of Closing.

If Buyer chooses FHA or VA financing, a FHA or VA Exhibit shall be attached hereto. If FNMA/FHLMC, FHA, USDA, or VA underwriting guidelines mandate compliance with any underwriting criteria expressly contrary to the provisions of this Contract, those provisions shall prevail and be binding upon the parties hereto, provided, however, that if any of these guidelines result in an increase in costs or expenses to the Seller, or affect the date of closing, then Seller, at Seller's sole discretion, shall have the right to unilaterally terminate this contract, thereby releasing Buyer and Seller from any further obligations or responsibilities to the other. If Seller does not terminate this Contract, Seller is deemed to consent to those changes that are mandated by the underwriting guidelines.

**Second Mortgage Loan Proceeds:** This Contract is contingent upon Buyer's ability to obtain a third party second mortgage loan to be secured by the Property, in a principal amount of no less than [check one]  US\$ \_\_\_\_\_ or  \_\_\_\_\_% of the purchase price, being amortized over a term of \_\_\_\_\_ years, at an interest rate per annum that is [check one]  fixed at a rate not to exceed \_\_\_\_\_%; or  adjustable beginning at a rate not to exceed \_\_\_\_\_% with the interest rate never to exceed \_\_\_\_\_%, pursuant to an institutional lender's standard and customary underwriting criteria. The balance of the purchase price shall be paid by Buyer in cash, or in such other form as may be required by the Closing Attorney listed below, at time of Closing.

If FNMA/FHLMC, FHA, USDA, or VA underwriting guidelines mandate compliance with any underwriting criteria expressly contrary to the provisions of this Contract, those provisions shall prevail and be binding

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upon the parties hereto, provided, however, that if any of these guidelines result in an increase in costs or expenses to the Seller, or affect the date of closing, then Seller, at Seller's sole discretion, shall have the right to unilaterally terminate this contract within three (3) days of receipt of notice, thereby releasing Buyer and Seller from any further obligations or responsibilities to the other. If Seller does not terminate this Contract, Seller is deemed to consent to those changes that are mandated by the underwriting guidelines.

## 7. CONDITION OF PROPERTY

**7.1. Duty to Inspect** - Seller and Buyer have been advised and expressly acknowledge their obligation to conduct a thorough investigation, or to obtain independent professional advice, with respect to any concerns they may have regarding the this Contract or the condition of the Property and the surrounding neighborhood, including, but not limited to, any structural, safety, title, environmental, financial, tax, legal or health concerns, or issues regarding the surrounding community, future or current real estate development, or municipal services offered to local residents. Buyer has the right and obligation, with reasonable notice to Seller, to inspect the property (and all improvements located thereon) for defects and other issues including, but not limited to: air conditioning, electrical, fireplace, heating, lead/lead-based paint, mold, plumbing, radon, roof, structure, wood destroying organisms, environmental hazards, or other similar issues at any time and from time to time, either:

i. From the hours of 9:00 a.m. to 7:00 p.m. after the time and date of Acceptance of the Contract, through and including the Closing; or,

ii. As follows: \_\_\_\_\_ after the time and date of Acceptance of the Contract, through and including the Closing.

In order to facilitate the inspection of the Property [check one]  Buyer or  Seller shall make all required utilities operational and available on the Property through and including the day of Closing.

**7.2. Property Condition** - Seller warrants and represents that, at Closing, Property shall be in the same condition on date of Closing as it is on date of Acceptance, normal wear and tear excepted and "broom clean." If the Seller has agreed in writing, by Contract amendment, exhibit or otherwise, to perform any repairs to the Property, any repairs performed by Seller shall be done in a "good and workmanlike" manner and shall be completed no later than three (3) days prior to Closing.

**7.3. Damage to Property Before Closing** - Seller shall keep in force sufficient hazard insurance on the property to protect all interests until this sale is closed and the deed delivered. If the Property is destroyed or materially damaged between the date hereof and the Closing and Seller is unable or unwilling to restore it to its previous condition prior to closing, Buyer shall have the option of canceling the Contract and receiving back the Earnest Money, or accepting the Property in its damaged condition, any insurance proceeds otherwise payable to Seller by reason of such damage shall be applied to the balance of the purchase price or otherwise be payable to Buyer.

Buyer shall indemnify, hold harmless and defend Seller from and against any and all claims, demands, causes of action, liabilities, losses, costs, damages and expenses (including reasonable attorneys' fees and expenses and court costs incurred in defending any such claim or in enforcing this indemnity) that may be incurred by Seller arising out of or in connection with the acts or omissions of Buyer and its agents, representatives, contractors and consultants, or any of them, including but not limited to claims arising out of or in connection with personal injury or death of persons, loss, destruction or damage to property, or liens or claims of lien filed against the Property, excluding, however, any claims to the extent such claims arise out of the discovery of, or the non-negligent, accidental or inadvertent actual or threatened release or movement of, any Hazardous Materials resulting from Buyer's inspections and other activities (unless the Hazardous Materials are brought onto the Property by Buyer or Buyer's authorized agents, employees, consultants or contractors).

## 8. BROKERAGE

By signing below, all parties represented by a Broker acknowledge that 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 and further:

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**8.1.** Seller and Buyer each hereby represents and warrants to the other that he/she/they have not dealt with any real estate Broker, agent or salesperson (other than Seller's Broker or Buyer's Broker, as hereinafter defined) so as to create any legal right or claim in any such Broker, agent or salesperson for a commission or similar fee or compensation with respect to the negotiation and/or consummation of this Contract. Buyer and Seller acknowledge that they are not represented by a Broker unless they have signed a brokerage agreement with said Broker. If any party hereto is not represented by a Broker, that party acknowledges full responsibility for protecting his/ her/their own interests.

**8.2.** Any commission or other compensation due to a Broker shall be paid according to the terms of a separate agreement between Broker and Buyer, Broker and Seller, or both.

**8.3.** Buyer and Seller expressly acknowledge that Broker is not an expert in matters relating to the condition of the Property and the surrounding neighborhood, including, but not limited to, any structural, safety, title, environmental, financial, tax, legal or health concerns, or issues regarding the surrounding community, future or current real estate development, or municipal services offered to local residents, and has given no advice nor made any representations in regard thereto upon which Buyer or Seller have relied. All parties hereby release any Broker and any affiliated agent and employee from any cost, expense or liability that may result from their reliance on any perceived advice given with respect to the foregoing. If liability is found to exist under the standard of care or conduct required of Broker or its affiliated licensee, their liability is limited to the amount of commission actually received in this particular transaction.

**8.4. Material Relationships** - Neither the Broker nor Broker's affiliated licensees have a material relationship with Seller or Buyer except as follows: \_\_\_\_\_

**8.5. Buyer's Broker** - The Buyer's Broker identified on the signature page of this Contract is the Broker assisting the Buyer, regardless of whether the Buyer is a customer or a client as defined under Georgia law. It includes the agent or agents of the Broker who are involved in this particular transaction. The Buyer's Broker is [check one]:

- i.  representing the Buyer as a client under a written brokerage agreement; or
- ii.  representing the Buyer as a customer, performing only ministerial acts; or
- iii.  acting as a dual agent, with responsibilities to both Seller and Buyer, as described more fully below; or
- iv.  acting as a designated agent, with responsibilities to both Seller and Buyer, as described more fully below.

**8.6. Seller's Broker** - The Seller's Broker identified on the signature page of this Contract shall refer collectively to all persons assisting the Seller, regardless of whether the Seller is a customer or client as defined under Georgia law. It includes the agent or agents of the Broker who are involved in this particular transaction. The Seller's Broker is [check one]:

- i.  representing the Seller as a client under a written brokerage agreement; or
- ii.  representing the Seller as a customer, performing only ministerial acts; or
- iii.  acting as a dual agent, with responsibilities to both Seller and Buyer, as described more fully below; or
- iv.  acting as a designated agent, with responsibilities to both Seller and Buyer, as described more fully below.

**8.7. Dual Agent** - "Dual agent" means a Broker who simultaneously has a client relationship with both Seller and Buyer in the same real estate transaction. O.C.G.A. §10-6A-3(10). By checking the dual agent box above, the parties acknowledge that they have consented to a dual agency and acknowledge that their interests may sometimes be adverse. If the parties have agreed to allow a Broker to act as a dual agent, that Broker will not disclose to another party any information a client has asked the Broker to keep confidential, or which would negatively affect that party's bargaining position, unless the disclosure is required by law.

**8.8. Designated Agent** - "Designated agent" means one or more licensees affiliated with a Broker who are assigned by the Broker to represent solely one client to the exclusion of all other clients in the same

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transaction and to the exclusion of all other licensees affiliated with the Broker. O.C.G.A. §10-6A-3(9). By checking the designated agent box above, the parties acknowledge that they have consented to a designated agency and acknowledge that \_\_\_\_\_ will work exclusively with Buyer as Buyer's designated agent and \_\_\_\_\_ will work exclusively with the Seller as Seller's designated agent.

## 9. DEFAULT

A party shall be in default if he or she breaches any term of this Contract. Except in the event of a party's failure to close or as otherwise stated herein, neither Seller nor Buyer shall be deemed to be in default hereunder, however, until and unless such party has been given written notice of its failure to comply with the terms of this Contract and thereafter does not cure such failure within three (3) banking days after receipt of such notice.

**9.1. Buyer's Default** - Buyer's default under any of the terms of this Contract may result in Seller's termination of this Contract, together with Seller's exercise of all rights and remedies available under the law, including, but not limited to, Buyer's forfeiture of earnest money deposits and law suits for damages. Seller may either accept the Earnest Money as full liquidated damages or bring legal action for actual damages, it being agreed by the parties that the actual damages are impossible to calculate. Seller's right to retain the Earnest Money is intended not as penalty, but as full liquidated damages pursuant to Official Code of Georgia Annotated, §13-6-7.

**9.2. Seller's Default** - If this transaction shall not be closed because of default of Seller, the Earnest Money shall, at Buyer's election, be refunded to Buyer, and, after repayment of the Earnest Money to Buyer, this Contract shall be null and void and neither Seller nor Buyer shall have any further rights or obligations hereunder; or Buyer shall have the right to sue for specific performance of this Contract, provided that such specific performance remedy shall be available to Buyer only upon Buyer's full satisfaction of each of Buyer's obligations under this Contract, including without limitation Buyer's obligation to deliver the Earnest Money and delivering sufficient proof to the Closing Attorney and Seller that Buyer is ready, willing and able to close this transaction. The option selected by Buyer shall be Buyer's sole and exclusive remedy, and in no event shall Buyer be entitled to damages.

**9.3. Broker's Commission** - By signing this Contract Buyer and Seller acknowledge and agree that Broker has performed a valuable third party service to Buyer and Seller. The terms of this Contract shall in no way alter or amend the terms of any separate written brokerage or other agreement between a Broker and Seller or Broker and Buyer, and Broker's remedy against a defaulting party with whom Broker has a separate written agreement shall be governed by the terms of that agreement. If, however, a defaulting party does not have a written agreement with a Broker, and that Broker is involved in this transaction as evidenced by a signed written agreement between Broker and the party they represent, each such Broker shall be entitled to collect from the defaulting party the full amount of commission to which the Broker would have been entitled had the Closing taken place. The defaulting party's payment of commission is intended not as penalty, but as full liquidated damages pursuant to Official Code of Georgia Annotated, §13-6-7.

## 10. NOTICES

Any notice, request or other communication required or permitted to be given hereunder shall be in writing and shall be delivered by hand or overnight courier (such as United Parcel Service or Federal Express), sent by facsimile, sent by electronic mail ("email") or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party at its address as set forth below. Any such notice shall be considered given on the date of such hand or courier delivery, confirmed facsimile transmission, deposit with such overnight courier for next business day delivery, or deposit in the United States mail, but the time period (if any is provided herein) in which to respond to such notice shall commence on the date of hand or overnight courier delivery or on the date received following deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice. By giving at least five (5) banking days' prior written notice thereof, any party may from time to time and at any time change its mailing address hereunder. Any notice of any party may be given by or to such party's counsel or Broker as long as it is signed by the appropriate party. The parties' respective mailing and email addresses for notice purposes are indicated after the parties' signatures below. Telephone numbers are given for convenience of reference only. Notice by telephone shall not be effective.

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## 11. MISCELLANEOUS

The Buyer and Seller covenant and agree with each other that:

- 11.1.** The provisions of this Contract shall extend to and be binding on the respective heirs, executors, administrators and successors of each party hereto;
- 11.2.** If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall nonetheless remain in full force and effect;
- 11.3.** The section headings appearing in this Contract are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof;
- 11.4.** This Contract, including any Exhibits attached hereto, contain the entire agreement between the parties pertaining to the subject matter hereof and fully supersede all prior written or oral agreements and understandings between the parties pertaining to such subject matter;
- 11.5.** This Contract shall be governed by and interpreted under the laws of the State of Georgia;
- 11.6.** Time is of the essence of this Contract.
- 11.7.** Unless expressly agreed otherwise in this Contract or unless provided otherwise in any other document executed by Seller and Buyer at or prior to closing, the provisions of this Contract shall survive closing.
- 11.8.** The form of this Contract is provided as a convenience. All parties to this Contract have the obligation to seek independent legal advice as to whether this form protects their rights and fulfills their expectations.

### 11.9. Definitions:

- 11.9.1. Acceptance (Accepted):** Prior to an Offer being withdrawn, revoked or terminated, in writing and in accordance with any provision of this Contract, if the receiver of an Offer accepts it exactly as presented, without modification, provided Acceptance is communicated, in writing, to the party making the Offer;
- 11.9.2. Banking Days:** Monday through Friday, excluding federal holidays;
- 11.9.3. Broker:** "Broker" means any individual or entity issued a broker's real estate license by the Georgia Real Estate Commission pursuant to O.C.G.A. § 43-40. The term "Broker" includes the Broker's affiliated licensees except where the context would otherwise indicate;
- 11.9.4. Buyer:** The term "Buyer" used herein shall refer collectively to all persons named above and signing this Contract as Buyer, and the liability of each such person shall be joint and several. Notice given by Seller to any person named as Buyer, or by any such person to Seller, shall bind all persons signing this Contract as Buyer;
- 11.9.5. Buyer's Broker:** Broker assisting the Buyer regardless of whether the Buyer is a customer or a client in accordance with Georgia law. It includes the agent or agents of the Broker who are involved with this particular transaction;
- 11.9.6. Inspection:** Includes any and all inspections regardless of whether by the Buyer individually or by a licensed (where required by law) or other third party inspector selected by Buyer; it includes all types of land surveys relating to real property; and, it includes any and all other types of borings, examinations, samplings, testings, and other reviews;
- 11.9.7. Offer:** A proposal to purchase or sell the Property which, upon Acceptance, will result in a binding contract. An Offer includes any counteroffer made in result of an Offer. Any counteroffer automatically terminates the Offer being countered;
- 11.9.8. Party:** The term "Party" as used herein shall refer to each person named herein as Buyer or Seller and shall not include any Broker or other third party named in this Contract.
- 11.9.9. Seller:** The term "Seller" used herein shall refer collectively to all persons named above and signing this Contract as Seller, and their successors and/or assigns. Notice given by Buyer to any person named as Seller, or by any such person to Buyer, shall bind all persons signing this Contract as Seller;



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**11.9.10. Seller's Broker:** Brokers assisting the Seller regardless of whether the Seller is a customer or client in accordance with Georgia law. It includes the agent or agents of the Broker who are involved with this particular transaction.

**11.9.11. Terminate or Termination:** "Terminate" or "Termination" shall mean the termination of this Contract pursuant to a right to do so provided herein. Upon Termination, the Earnest Money shall be disbursed as provided herein, and the Parties shall have no further rights or duties under this Contract except as expressly provided herein.

**12. EXHIBITS**

**The following exhibits are attached to and made a part of this offer.** The provisions of any exhibit attached to this contract and referenced below, shall prevail if in conflict with the provisions of the Contract:

- Legal Description
- Disclosure of Information on Lead-Based Paint and/or Lead Based Paint Hazards
- Short Sale Exhibit
- FHA Exhibit
- VA Exhibit
- Lease for Lease/Purchase Agreement Only
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**Special Stipulations** (provisions of any stipulation included in this contract shall prevail if in conflict with the provisions of this Contract, including any exhibit attached hereto):

Substantive provisions continued on additional page.



This **Offer** is open for **Acceptance** until \_\_\_\_\_ o'clock \_\_\_\_ m. on \_\_\_\_\_, 20\_\_\_\_. An **Acceptance** after that time shall be considered a counteroffer.

The **Offer** is hereby **Accepted**, with notice in the form of an executed contract being properly delivered to the party making the last offer, at \_\_\_\_\_ o'clock \_\_\_\_ m. on \_\_\_\_\_, 20\_\_\_\_.

All Names should be both signed and printed.

**Buyer:**

➤ \_\_\_\_\_

Buyer Printed Name

➤ \_\_\_\_\_

Buyer Printed Name

Buyer Phone Number / Buyer Fax Number

Buyer Email Address

Buyer Address

Buyer City State Zip

**Seller:**

➤ \_\_\_\_\_

Seller Printed Name

➤ \_\_\_\_\_

Seller Printed Name

Seller Phone Number / Seller Fax Number

Seller Email Address

Seller Address

Seller City State Zip

**Buyer's Broker**

Name of Brokerage Firm / Broker Code

Brokerage Phone Number / Brokerage Fax Number

➤ \_\_\_\_\_

Agent Printed Name

Agent Phone Number / Agent Fax Number

Agent Email Address

Required License Number(s):

Broker's License Number / Agent's License Number

MLS Listing # \_\_\_\_\_

**Seller's Broker**

Name of Brokerage Firm / Broker Code

Brokerage Phone Number / Brokerage Fax Number

➤ \_\_\_\_\_

Agent Printed Name

Agent Phone Number / Agent Fax Number

Agent Email Address

Required License Number(s):

Broker's License Number / Agent's License Number

MLS Listing # \_\_\_\_\_