

# PURCHASE AND SALE AGREEMENT



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

2005 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, all being hereinafter collectively referred to as the "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 made a part of this Agreement by reference.

**2. Purchase Price and Method of Payment.** Buyer warrants that Buyer will have sufficient cash at closing, which when combined with the loan(s), if any, referenced herein, 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 purchase price of Property to be paid by Buyer at closing is: \_\_\_\_\_ U.S. Dollars, \$\_\_\_\_\_

subject to the following: *[Select sections A, B, C and/or D below. The sections not marked are not a part of this Agreement.]*

**A. All Cash at Closing:** Buyer shall pay the purchase price to Seller in cash, or its equivalent. Buyer's obligation to close shall not be subject to any financial contingency. Buyer shall pay all closing costs.

**B. Loan to be Assumed:** See Exhibit "\_\_\_\_\_."

**C. New Loan to be Obtained:**

1. **Type of Loan:** This Agreement is conditioned upon Buyer's ability to obtain a loan to be repaid in consecutive monthly payments with the terms described below, (hereinafter "the Primary Loan") secured by a first priority security deed on Property:

- Loan Amount: \_\_\_\_\_ percent (%) of the purchase price of Property
- Term: \_\_\_\_\_ years
- Interest rate at par of \_\_\_\_\_ percent (%) per annum
- Loan Type:  Conventional  FHA (see exhibit)  VA (see exhibit)  Other (see exhibit)
- Rate Type:  Fixed Rate Mortgage  Adjustable Rate Mortgage  Interest Only Mortgage

"Ability to obtain" as used herein shall mean that Buyer, as of the closing date, is qualified to obtain the loan based upon the lender's customary and standard underwriting criteria. If the basis of the loan denial is either or both of the following, Buyer shall still be deemed to have the ability to obtain the Primary Loan: (1) Buyer lacks sufficient funds to close; or (2) Buyer is required to lease or sell other real property as a condition of obtaining the Primary Loan.

2. **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:

- preparation of the warranty deed and owner's affidavit by the closing attorney;
- 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.

Buyer shall pay all other costs, fees, and amounts for the above referenced items and to fulfill lender requirements to otherwise close this transaction.

3. **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.

4. **Loan Obligations:** Buyer shall: (a) make application for the Primary Loan within \_\_\_\_\_ days from the Binding Agreement Date; (b) immediately give notice to Seller of having applied for such loan (or any subsequent loan), and provide the name and telephone number of the lender and the name and telephone number of the loan originator; and (c) pursue qualification for and approval of such loan diligently and in good faith. Buyer hereby authorizes Buyer's lender to release information to Seller and Seller's Broker verifying the amount and terms of any loan for which Buyer has applied. Should Buyer not timely apply for the Primary Loan, Seller may terminate this Agreement if Buyer does not cure the default within five days after receiving written notice thereof by providing Seller with written evidence of having applied for such loan. Notwithstanding the above, Buyer may fulfill the obligation to apply for the Primary Loan by applying for any other available loan with terms for which Buyer may more easily qualify. Buyer shall be obligated to close this transaction if Buyer has the ability to obtain the Primary Loan or any other loan for which Buyer has applied and been approved. Prior to closing, Buyer shall not intentionally make any material changes in Buyer's financial condition which would adversely affect Buyer's ability to obtain the Primary Loan or any other loan referenced herein. In the event any application of Buyer for a loan on Property is denied, Buyer shall immediately give notice of the same to Seller and promptly thereafter provide Seller with a letter from the lender denying the loan detailing all of the reasons for the denial.

**D. Second Loan to be Obtained:** see Exhibit "\_\_\_\_\_."

**3. Earnest Money.**

- A. Receipt:** 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 five 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, for any reason, by the bank upon which it is drawn, Holder shall promptly give notice to Buyer and Seller. Buyer shall have three banking days after 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 written notice to Buyer.
- B. 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 good faith estimate of Seller's actual damages, which damages are difficult to ascertain.
- C. Disbursement of Earnest Money:** Holder shall disburse the earnest money upon: a) the closing of Property; b) a subsequent written agreement of Buyer and Seller; c) an order of a court or arbitrator having jurisdiction over any dispute involving the earnest money; or d) 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.
- D. 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.
- E. 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.

**4. Closing and Possession.**

- A. Property Condition:** 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 debris at time of possession. If 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 fourteen days from receipt of the above notice. 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. one year from the original date of closing, or
  2. seven 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.
- B. Taxes:** Real estate taxes on said Property for the calendar year in which the sale is closed shall be prorated as of the date of closing. Seller shall pay State of Georgia property transfer tax.
- C. Timing of Closing:** 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 the loan described herein is unable to be closed on or before said date or Seller fails to satisfy valid title objections, 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 and the date for surrender of occupancy up to seven days.
- D. Possession:** Buyer agrees to allow Seller to retain possession of Property through: *[Select sections 1, 2, or 3 below. The sections not marked are not a part of this Agreement.]*
1. the closing; or  2. \_\_\_\_\_ hours after the closing; or  3. \_\_\_\_\_ days after the closing at \_\_\_\_\_ o'clock \_\_\_\_\_m.
- E. 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.
- F. Prorations:** 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 the later) which are issued after closing and include service for any period of time Property was owned/occupied by Seller or any other person prior to Buyer.

**G. Closing Certifications:** Buyer and Seller shall execute and deliver such certifications, affidavits, and statements as are required at closing to meet the requirements of the lender and of federal and state law.

**5. 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 Binding Agreement Date.

**6. 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.

**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:** Any survey of Property attached hereto by agreement of the parties prior to the Binding Agreement Date shall be a part of 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.

**7. Termite Letter.**

**A. Report:** An official Georgia Wood Infestation Report (the "Report") prepared by a licensed pest control operator, covering each dwelling (including attachments thereto) and garage on Property and dated within 180 days of the Binding Agreement Date is  **OR**, is NOT  attached to this Agreement as an exhibit. If the Report is not attached, Seller shall provide such Report to Buyer within seven days from the Binding Agreement Date. Buyer shall have the right to terminate this Agreement within ten days from the Binding Agreement Date if either of the following events occur:

1. The Report is not timely provided to Buyer; or
2. The Report provided after the Binding Agreement Date indicates present infestation of, or damage to, Property from termites or other wood destroying organisms.

**B. Rights:** If Buyer does not timely give Seller notice of Buyer's decision to terminate this Agreement, Buyer's right to terminate the Agreement pursuant to this paragraph shall be waived. Notwithstanding the above, Buyer shall continue to have whatever other rights to terminate this Agreement, if any, that exist elsewhere in this Agreement. Unless otherwise noted on the Seller's Property Disclosure Statement, to the best of Seller's knowledge, the information contained in any attached or later provided Report is accurate and complete, and no other termite inspections have been performed or reports issued, the findings of which are inconsistent with the Report attached hereto.

**C. Closing:** Prior to closing, Seller shall treat active infestation of termites and other wood destroying organisms, if any. At closing, Seller shall provide Buyer with a Report prepared by a licensed pest control operator dated within 30 days of the closing, stating that each dwelling and garage has been found to be free from active infestation of termites and other wood destroying organisms.

**8. Inspection.**

**A. Right to Inspect:** 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 thoroughly inspect, examine, test and survey Property. This shall include the right to inspect and test for lead-based paint and lead-based paint hazards for not less than ten days from the Binding Agreement Date. Seller shall cause all utility services and any pool, spa, 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. Rights of Buyer in Addition to Inspection:** *[Select Section 1, 2 or 3 below. The sections not marked are not a part of this Agreement.]*

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

a. 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: (1) a signed written amendment to this Agreement requesting Defects to be repaired and/or replaced, and (2) 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."

b. 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: (1) 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 (2) 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 buy Property "as-is", this Agreement shall terminate.

- c. 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 seven 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.
- d. All agreed upon repairs and replacements shall be completed in a good and workmanlike manner prior to closing. 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.
- e. Definitions:
  - (1) 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.
  - (2) Defects – The term "Defects" shall mean any condition, building product or item in Property, or portion thereof identified by an Inspector in a written report, which: (a) is in a condition which represents a significant health risk or an imminent risk of injury or damage to persons or property; (b) 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 (c) is not at the present time in good working order and repair, excepting 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.

**OR**

**2. Property Sold with Right to Terminate.**

- a. In consideration of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby grant Buyer a \_\_\_\_\_ day right ("Termination Right") from Binding Agreement Date during which Buyer may do any or all of the following: (1) conduct at Buyer's sole expense whatever due diligence, inspections, examinations, surveys and testing, if any, Buyer deems appropriate; (2) seek to amend this Agreement to address any concerns with Property; (3) terminate this Agreement without penalty.
- b. If Buyer decides to exercise Buyer's right to terminate this Agreement, Buyer must give notice of the same to Seller prior to the expiration of the Termination Right. If Buyer fails to give such notice timely, the Termination Right shall automatically expire and shall no longer be a part of this Agreement and Buyer shall be deemed to have accepted Property "as-is". The expiration of the Termination Right shall not, however, remove or terminate any other contingencies to which this Agreement may be subject or limit any other rights which Buyer may have under this Agreement. All parties agree that the Binding Agreement Date shall not be affected by Buyer's Termination Right.
- c. Buyer warrants that Buyer is not currently under contract (including option contracts) to purchase other real property and agrees not to enter into any other such contracts during the time period that Buyer has a Termination Right. All parties agree that this Agreement shall constitute an option agreement until such time as the Termination Right has expired, lapses or has otherwise been terminated.

**OR**

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

- 9. 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 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. Buyer further acknowledges that in every neighborhood there are conditions which different buyers may find objectionable. Buyer shall therefore be responsible to become fully acquainted with neighborhood and other off site conditions which could affect Property.

**10. 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. Disclosure of Commission, Rebate, or Direct Profit:** Broker hereby discloses that Broker may receive a commission, rebate or direct profit for procuring a mortgage loan, insurance or other services on behalf of Buyer or Seller.

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

**11. Other Provisions.**

**A. 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.

**B. Survival of Agreement:** All conditions and stipulations in this Agreement, which the parties agree shall be performed or fulfilled after the closing, shall survive closing until such time as said conditions or stipulations are performed or fulfilled.

**C. Governing Law:** This Agreement may be signed in multiple counterparts and shall be interpreted in accordance with the laws of the State of Georgia.

**D. Time of Essence:** Time is of the essence of this Agreement.

**E. 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.

**F. 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.

**G. Notices:**

1. **All Notices Must Be In Writing.** All notices, including, but not limited to, offers, counteroffers, acceptances, amendments, notices to terminate and demands, required or permitted hereunder shall be in writing, signed by the party giving the notice and delivered either: (a) in person; (b) by an overnight delivery service, prepaid; (c) by facsimile transmission (FAX); or (d) by the United States Postal Service, postage prepaid, registered or certified return receipt requested.
2. **When Notice to Broker Is Notice to Client.** Except in transactions where Broker is practicing designated agency, notice to Broker shall for all purposes be deemed to be notice to the party being represented by Broker as a client. In transactions where Broker is practicing designated agency, notice to the designated agent shall be deemed to be notice to the party being represented by the designated agent. Notice to Broker shall not be deemed to be notice to any party who is only a customer of Broker.
3. **Faxed Notices.** All FAX notices to Listing Broker or Selling Broker shall be sent to their respective FAX numbers identified on the signature page of this Agreement. FAX notices to the designated agent for Buyer shall be sent to the FAX number of Selling Broker. FAX notices to the designated agent for Seller shall be sent to the FAX number of Listing Broker. All FAX notices to an unrepresented Buyer or unrepresented Seller shall be sent to the following facsimile numbers:

Unrepresented Buyer: \_\_\_\_\_; Unrepresented Seller: \_\_\_\_\_.

Notice sent by FAX shall be deemed to be given and received as of the date and time it is transmitted provided that the sending FAX produces a written conformation showing the correct date and the time of the transmission and the telephone number referenced herein to which the notice should have been sent. Any notice sent by FAX shall be sent to such other FAX number as the receiving party may from time to time specify by notice to the party sending the FAX. Any party sending notice by FAX shall send an original copy of the notice if so requested by the other party. A faxed signature of a party shall constitute an original signature binding upon that party.

4. **Miscellaneous.** Except as may be provided herein, notices shall be deemed to be given as of the date and time they are received. The notice requirements referenced herein shall be strictly construed.

**H. Binding Agreement Date:** The Binding Agreement Date 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.

12. **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 proceeding paragraph, said exhibit or addendum shall control:

**SPECIAL STIPULATIONS:** The following Special Stipulations, if conflicting with any exhibit, addendum, or preceding paragraph, 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\_\_\_\_\_.

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

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

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

\_\_\_\_\_  
MLS Office Code      Brokerage Firm License Number

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

\_\_\_\_\_  
Broker's Phone#      & FAX#

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

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

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

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

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

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

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

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

\_\_\_\_\_  
MLS Office Code      Brokerage Firm License Number

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

\_\_\_\_\_  
Broker's Phone#      & FAX#

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

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

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

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

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

**Binding Agreement Date:** The Binding Agreement Date 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 and promptly give notice of this date to the other party. The Binding Agreement Date in this transaction is the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.