

First Assignment
Real Estate Finance
Course # E-355
Fall Semester 2013
Professor Haunson

Read Chapter 1

The Nature of Modern Real Estate Transactions

Review the attached Georgia Association of REALTORS®:

- Residential Contract.
- Commercial Contract.

What are the differences and how are they similar? Why?

***Basic* research to determine what is meant by a "Wrap-Around Mortgage" and what a "Due-On-Sale Clause" provides.**

Bring contact/background information (Preferred typed)

Contact Information:

- Full Name
- Preferred name to be used in class
- Telephone number
- Email Address

Background Information:

- Do you plan to practice Real Property Law? If so, in what area of practice (commercial, residential, title, finance)?
- Do you have any experience in real property transactions (title examinations, real estate finance, appraisal, sales, etc.)?
- Do you plan to practice in Georgia? If not, what state?

Student Information

Name: _____

Name preferred in class: _____

Telephone number: _____

Email address: _____

In what states to you plan to practice?

Do you plan to practice real property law? If so, in what area (i.e. commercial, residential, title, finance)?

Do you have any experience in real property transactions (i.e. title examinations, real estate finance, appraisals, sales, etc.)?

PURCHASE AND SALE AGREEMENT

Offer Date: _____



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1. **Purchase and Sale.** The undersigned buyer(s) ("Buyer") agree to buy and the undersigned seller(s) ("Seller") agree to sell the real property described below including all fixtures, improvements and landscaping therein ("Property") on the terms and conditions set forth in this Agreement.

A. Property Identification: Address: _____
City _____, County _____, Georgia, Zip Code _____
MLS Number: _____ Tax I.D. Number: _____

B. Legal Description: The legal description of the Property is [select one of the following below]:
 1. attached as an exhibit hereto;
 2. the same as described in Deed Book _____, Page _____ of the land records of the above county; **OR**
 3. Land Lot(s) _____ of the _____ District, _____ Section/ GMD, Lot _____, Block _____, Unit _____, Phase/Section _____ of _____ Subdivision/Development, according to the plat recorded in Plat Book _____, Page _____, et. seq., of the land records of the above county.

C. Purchase Price of Property to be Paid by Buyer:
\$ _____

D. Seller's Monetary Contribution at Closing:
\$ _____

E. Closing Date: _____

F. Seller Retains Possession of Property Through: _____

G. Holder of Earnest Money ("Holder"): _____

H. Closing Law Firm: _____

I. Earnest Money: Earnest Money shall be paid by check cash wire transfer of immediately available funds as follows:
 1. \$ _____ as of the Offer Date.
 2. \$ _____ within _____ days from the Binding Agreement Date.
 3. _____

J. Property is being sold subject to a Due Diligence Period of _____ days from the Binding Agreement Date.

K. A survey of Property is **OR** is not attached to this Agreement as an exhibit.

L. To the best of Seller's knowledge, the residential dwelling(s) on the Property (including any portion thereof or painted fixture therein) was **OR** was not built prior to 1978 (If it was, a Lead-Based Paint Exhibit must be attached to this Agreement).

M. Buyer has **OR** has not received a copy of the GAR brochure entitled "Protect Yourself When Buying a Home".

N. Time Limit of Offer: The Offer set forth herein expires at _____ o'clock _____ m. on the date _____.

2. Brokerage Relationships in this Transaction.

A. Selling Broker is _____ and is:
1. representing Buyer as a client.
2. not representing Buyer (Buyer is a customer).
3. acting as a dual agent representing both Buyer and Seller.
4. acting as a designated agent where _____
_____ has been assigned to exclusively represent Buyer.

B. Listing Broker is _____ and is:
1. representing Seller as a client.
2. not representing Seller (Seller is a customer).
3. acting as a dual agent representing both Buyer and Seller.
4. acting as a designated agent where _____
_____ has been assigned to exclusively represent Seller.

C. Material Relationship Disclosure: Broker and/or their affiliated licensees disclose the following material relationships:

Buyer(s) Initials _____ / _____ Seller(s) Initials _____ / _____

- 3. Purchase Price and Method of Payment.** The Purchase Price shall be paid in U.S. Dollars at closing in cash or its equivalent which shall only include the wire transfer of immediately available funds, or a cashier's check issued for the closing by a federally insured bank, savings bank, savings and loan association or credit union where the funds are immediately available.
- 4. Deposit of Earnest Money.** The earnest money shall be deposited into Holder's escrow/trust account (with Holder being permitted to retain the interest if the account is interest bearing) not later than five (5) banking days from the Binding Agreement date hereunder; or the date it is actually received by Holder if it is received after 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 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, or earnest money is not timely paid, Holder shall promptly give notice of the same to Buyer and Seller. Buyer shall have three (3) banking days from the date of receiving the notice to cure the default and if Buyer does not do so, Seller may within seven (7) days thereafter terminate this Agreement upon notice to Buyer. If Seller fails to terminate the Agreement timely, Seller's right to terminate based on the default shall be waived.
- 5. Closing Costs, Prorations, Right to Extend Closing Date and Closing Law Firm.**
- A. Items Paid By Buyer:** At closing, Buyer shall pay: (1) Georgia property transfer tax; (2) the cost to search title and tax records and prepare the warranty deed; and (3) all other costs, fees and charges to close this transaction, except as they relate to the clearance of title encumbrances and/or defects necessary for Seller to be able to convey good and marketable title to the Property.
- B. Items Paid By Seller:** At closing, Seller shall make the referenced Seller's Monetary Contribution which Buyer may use to pay any cost or expense of Buyer related to this transaction. Buyer acknowledges that Buyer's mortgage lender(s) may not allow the Seller's Monetary Contribution, or the full amount thereof, to be used for some costs or expenses. In such event, any unused portion of the Seller's Monetary Contribution shall remain the property of the Seller. In addition, Seller shall pay all costs, fees and charges necessary to clear title encumbrances and/or defects necessary to allow Seller to be able to convey good and marketable title to the Property and any extra costs, fees and charges resulting from Seller not being able to attend the closing in person.
- C. Prorations:** Ad valorem property taxes, community association fees, solid waste and governmental fees and utility bills for which service cannot be terminated as of the date of closing shall be prorated as of the date of closing. In the event ad valorem property taxes are based upon an estimated tax bill or tax bill under appeal, Buyer and Seller shall, upon the issuance of the actual tax bill or the appeal being resolved, promptly make such financial adjustments between themselves as are necessary to correctly prorate the tax bill. In the event there are tax savings resulting from a tax appeal, third party costs to handle the appeal may be deducted from the savings for that tax year before re-prorating. Any pending tax appeal shall be deemed assigned to Buyer at closing.
- D. Extending the Closing Date:** Buyer or Seller may unilaterally extend the closing date for seven (7) days upon notice to the other party given prior to or on the date of closing if: (1) Seller cannot satisfy valid title objections (excluding title objections that: (a) can be satisfied through the payment of money or by bonding off the same, and (b) do not prevent Seller from conveying good and marketable title, as that term is defined herein, to the Property); or (2) Buyer's mortgage lender, if any, (including in "all cash" transactions) or the closing attorney cannot fulfill their respective obligations by the date of closing, provided that the delay is not caused by Buyer. The party unilaterally extending the closing date shall state the basis for the delay in the notice of extension. If the right to unilaterally extend the closing date is exercised once by either the Buyer or Seller, the right shall thereafter terminate.
- E. Closing Law Firm:** 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 the law firm referenced in this Agreement. 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. If the closing attorney declines such representation, the Buyer may select a different closing attorney.
- 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) declarations of condominium and declarations of covenants, conditions and restrictions 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 examine title and furnish Seller with a written statement of title objections at or prior to the closing. If Seller fails or is unable to satisfy valid title objections at or prior to the closing or any unilateral extension thereof, which would prevent the Seller from conveying good and marketable title to the Property, then Buyer, among its other remedies, may terminate the Agreement without penalty 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:** Notwithstanding any other provision to the contrary contained herein, Buyer shall have the right to terminate this Agreement upon notice to Seller if a new survey of the Property performed by a licensed Georgia surveyor is obtained that is materially different from any survey of the Property provided by Seller and attached hereto as an exhibit. The term "materially different" shall not apply to any improvements or repairs constructed by Seller in their agreed-upon locations subsequent to Binding Date Agreement. Matters revealed in any survey, including a survey attached hereto may be raised by Buyer as title objections.

7. **Risk of Damage to Property.** Seller warrants that at the time of closing the Property and all items remaining with the Property, if any, 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 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 fourteen (14) 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 one year from the original date of closing, or seven (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.

8. **Inspection.**

A. **Right to Inspect Property:** Buyer and/or Buyer's representatives shall have the right to enter the Property at Buyer's expense and at reasonable times (including immediately prior to closing) to inspect, examine, test, appraise and survey Property. Seller shall cause all utilities, systems and equipment to be on so that Buyer may complete all inspections. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages relating to the exercise of these rights.

B. **Duty to Inspect Neighborhood:** In every neighborhood there are conditions which different buyers may find objectionable. Buyer shall have the sole duty to become familiar with neighborhood conditions that could affect the Property such as landfills, quarries, power lines, airports, cemeteries, prisons, stadiums, odor and noise producing activities, crime and school, land use, government 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.qbi.georgia.gov.**

9. **Property Sold "As-Is" Unless this Agreement is Subject to Due Diligence Period.**

A. **General.** Unless the Property is being sold subject to a Due Diligence Period referenced herein, the Property shall be sold "as-is" with all faults. The inclusion of a Due Diligence Period herein shall: (1) during its term make this Agreement an option contract in which Buyer may decide to proceed or not proceed with the purchase of the Property for any or no reason; and (2) be an acknowledgement by Seller that Buyer has paid separate valuable consideration of \$10 for the granting of the option.

B. **Purpose of Due Diligence Period.** During the Due Diligence Period, Buyer shall determine whether or not to exercise Buyer's option to proceed or not proceed with the purchase of the Property. If Buyer has concerns with the Property, Buyer may during the Due Diligence Period seek to negotiate an amendment to this Agreement to address such concerns.

C. **Notice of Decision Not To Proceed.** Buyer shall have elected to exercise Buyer's option to purchase the Property unless prior to the end of any Due Diligence Period, Buyer notifies Seller of Buyer's decision not to proceed by delivering to Seller a notice of termination of this Agreement. In the event Buyer does not terminate this Agreement prior to the end of the Due Diligence Period, then: (1) Buyer shall have accepted the Property "as-is" subject to the terms of this Agreement; and (2) Buyer shall no longer have any right to terminate this Agreement based upon the Due Diligence Period.

10. **Return and Disbursement of Earnest Money**

A. **Entitlement to Earnest Money:** Subject to the paragraph below, Buyer shall be entitled to the earnest money upon the: (1) failure of the parties to enter into a binding agreement; (2) failure of any contingency or condition to which this Agreement is subject; (3) termination of this Agreement due to the default of Seller; or (4) termination of this Agreement in accordance with a specific right to terminate set forth in the Agreement. Otherwise, the earnest money shall be applied towards the purchase price of the Property at closing or if other funds are used to pay the purchase price then the earnest money shall be returned to Buyer.

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 at least ten (10) 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 ten (10) 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 ten (10) day notice to the parties stating the rationale for the modification and to whom the disbursement will now be made. Holder shall offer to disburse the earnest money to Seller by check in the event Holder: (1) makes a reasonable interpretation of the Agreement that the Agreement has been terminated due to Buyer's default; and (2) sends the required ten (10) day notice of the proposed disbursement to Buyer and Seller. If the check is accepted and deposited by Seller, it shall constitute liquidated damages in full settlement of all claims of Seller against Buyer and the Brokers in this transaction. Such liquidated damages are a reasonable pre-estimate of Seller's actual damages, which damages are difficult to ascertain and are not a penalty. Nothing herein shall prevent the Seller from declining the tender of the earnest money by the Holder. In such event, Holder, after giving Buyer and Seller the required ten (10) day notice of the proposed disbursement, shall disburse the earnest money to Buyer.

C. **Interpleader:** If an earnest money dispute cannot be resolved after a reasonable time, Holder may interplead the earnest money into a court of competent jurisdiction if Holder is unsure who is entitled to the earnest money. Holder shall be reimbursed for and may deduct its costs, expenses and reasonable attorney's fees from any funds interpleaded. The prevailing defendant in the interpleader lawsuit shall be entitled to collect its attorney's fees, court costs and the amount deducted by Holder to cover Holder's costs and expenses from the non-prevailing defendant.

D. Hold Harmless: All parties hereby covenant and agree to: (1) indemnify and hold Holder harmless from and against all claims, injuries, suits and damages arising out of the performance by Holder of its duties; (2) not to sue Holder for any decision of Holder to disburse earnest money in accordance with this Agreement.

11. 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 Brokers in a client relationship, 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. Consent to Dual Agency. If Broker is acting as dual agent in this transaction, Buyer and Seller consent to the same and acknowledge having been advised of the following:

a. Dual Agency Disclosure. *[Applicable only if Broker is acting as a dual agent in this transaction].*

- (1) 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 Disclosure. If Broker in this transaction is acting as a designated agent, Buyer and Seller consent to the same and acknowledge that 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: Seller has agreed to pay Listing Broker(s) a commission pursuant to a separate brokerage engagement agreement entered into between the parties and incorporated herein by reference ("Listing Agreement"). The Listing Broker has agreed to share that commission with the Selling Broker. The closing attorney is hereby authorized and directed to pay the Broker(s) at closing, their respective portions of the commissions out of the proceeds of the sale. If the sale proceeds are insufficient to pay the full commission, the party owing the commission shall pay any shortfall at closing. The acceptance by the Broker(s) of a partial real estate commission at the closing shall not relieve the party owing the same from paying the remainder after the closing (unless the Broker(s) have expressly and in writing agreed to accept the amount paid in full satisfaction of the Broker(s) claim to a commission).

12. Disclaimer. Buyer and Seller have not relied upon any advice or representations of Brokers other than what is included in this Agreement. Brokers shall have no duty to advise Buyer and Seller on any matter relating to the Property which could have been revealed through a survey, title search, Official Georgia Wood Infestation Report, inspection by a professional home inspector or construction expert, utility bill review, an appraisal, inspection by an environmental engineering inspector, consulting governmental officials or a review of this Agreement and transaction by an attorney, financial planner, mortgage consultant or tax planner. Buyer and Seller should seek independent expert advice regarding any matter of concern to them relative to the Property and this Agreement.

13. Lead-Based Paint. If any portion of a residential dwelling on the Property was built prior to 1978, the Lead-Based Paint Exhibit is hereby attached as an exhibit to this Agreement. The term "residential dwelling" includes any painted fixture or material used therein that was built or manufactured prior to 1978.

14. Notices.

A. 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. It is the intent of the parties that the requirements of this Notice paragraph shall apply even prior to this Agreement becoming binding.

B. 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, prepaid, return receipt requested; or (5) by e-mail.

C. When Notice Is Received: A notice shall not be deemed to be given, delivered or received until it is actually received by the party to whom the notice was intended or that person's authorized agent. 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 to either the party or the party's authorized agent provided that the sending FAX produces a written confirmation showing the date and the time of the actual transmission and the telephone number referenced herein to which the notice should have been sent. Additionally, if the sender of a notice by e-mail receives an automatic reply indicating that the e-mail has been opened ("Read Receipt"), the e-mail notice shall be deemed received at that time.

D. Notices Sent to Broker: Except in transactions where the Broker is practicing designated agency, notice to the Broker, the Broker's employees or the affiliated licensee of Broker representing a party in the transaction shall for all purposes herein be deemed to be notice to that the party and such persons shall be authorized agents of the party for the purpose of receiving notice. 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 party intended to receive the same or that party's authorized agent. 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.

- 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 on 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 on 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.
- F. Address, E-Mail or Number for Receiving Notices:** Notices to a signatory to this Agreement shall only be effective if sent to the FAX number, e-mail address and/or physical address of the signatory listed on the signature page of this Agreement or subsequently provided by the signatory to the other signatories hereto in accordance with the notice provisions herein.

15. Default.

- A. Rights of Buyer or Seller:** A party defaulting under this Agreement shall be liable for the default. The non-defaulting party may pursue any lawful remedy against the defaulting party.
- B. Rights of Broker:** In the event a party defaults under this Agreement, the defaulting party shall pay as liquidated damages to every broker involved in this transaction with whom the defaulting party does not have a brokerage engagement agreement an amount equal to the share of the commission the broker would have received had the transaction closed. For purposes of determining the amount of liquidated damages to be paid by the defaulting party, the written offer(s) of compensation to such broker and/or other written agreements establishing such broker's commission are incorporated herein by reference. The liquidated damages referenced above are a reasonable pre-estimate of the Broker(s) actual damages and are not a penalty. In the event a Broker referenced herein either has a brokerage engagement agreement or other written agreement for the payment of a real estate commission with a defaulting party, the Broker shall only have such remedies against the defaulting party as are provided for in such agreement.

16. 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 treatment and/or repair 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. Keys and Openers:** At closing, Seller shall provide Buyer with all keys, door openers, codes and other similar equipment pertaining to the Property.
- D. Entire Agreement, Modification and Assignment:** This Agreement constitutes the sole and entire agreement between all of the parties, supersedes all of their prior written and verbal agreements 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 or waived except upon 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.
- E. 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; (3) all representations of Seller regarding the Property; and (4) any obligations which the parties herein agree shall survive the closing or may be performed or fulfilled after the closing.
- F. 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 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.
- G. Time of Essence:** Time is of the essence of this Agreement.
- H. 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.
- I. Binding Agreement Date:** The Binding Agreement Date in this Agreement shall be the date when the party making the last offer, or the Broker (except in a designated agency transaction) the Broker's employees or affiliated licensee of Broker representing that party as a client, receives notice that the offer has been accepted. This party (or the Broker or affiliated licensee representing this party as a client) 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 to be a counteroffer.
- J. Duty to Cooperate:** All parties agree to do all things reasonably necessary to timely and in good faith fulfill the terms of this Agreement. Buyer and Seller shall execute and deliver such certifications, affidavits, and statements required by law or reasonably requested by the closing attorney, mortgage lender and/or the title insurance company to meet their respective requirements.
- K. Electronic Signatures:** For all purposes herein, an electronic or facsimile signature shall be deemed the same as an original signature; provided, however, that all parties agree to promptly re-execute a conformed copy of this Agreement with original signatures if requested to do so by, the buyer's mortgage lender or the other party.
- L. GAR Forms:** The Georgia Association of REALTORS®, Inc. ("GAR") issues certain standard real estate forms. These GAR forms are frequently provided to the parties in real estate transactions. No party is required to use any GAR form. Since these forms are generic and written with the interests of multiple parties in mind, they may need to be modified to meet the specific needs of the parties using them. If any party has any questions about his or her rights and obligations under any GAR form he or she should consult an attorney. The parties hereto agree that the GAR forms may only be used in accordance with the licensing agreement of GAR. While GAR forms may be modified by the parties, no GAR form may 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.
- M. Time Limit of Offer:** The referenced Time Limit of the Offer shall be the date and time on which the Offer expires if both of the following have not occurred: (1) the Offer has not been accepted by the party to whom the Offer was made; and (2) notice of acceptance of the Offer has not been delivered to the party who made the Offer.

17. **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:

- Appraisal Contingency as Exhibit "_____"
- Back-up Agreement Contingency as Exhibit "_____"
- Community Association Disclosure as Exhibit "_____"
- FHA Loan Exhibit **OR** VA Loan Exhibit **OR** Conventional Loan Exhibit **OR** USDA-RD Loan Exhibit as Exhibit "_____"
- Lead-Based Paint Exhibit as Exhibit "_____"
[If any portion of a residential dwelling was built prior to 1978, a Lead-Based Paint Exhibit must under federal law be attached as an exhibit to this Agreement.]
- Legal Description of the Property as Exhibit "_____"
- Sale or Lease of Buyer's Property Contingency as Exhibit "_____"
- Seller's Property Disclosure Statement as Exhibit "_____"
- Source of Buyer's Funds as Exhibit "_____"
- Survey of Property as Exhibit "_____"
- Temporary Occupancy Agreement as Exhibit "_____"
- Other _____
- Other _____
- Other _____
- Other _____

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:

Additional Special Stipulations are or are not attached.

Buyer Acceptance and Contact Information

1. _____
 Buyer's Signature

 Print or Type Name

 Buyer's Address

 Buyer's E-mail Address

 Buyer's Phone # Fax #

2. _____
 Buyer's Signature

 Print or Type Name

 Buyer's Address

 Buyer's E-mail Address

 Buyer's Phone # Fax #

Selling Broker/Affiliated Licensee Contact Information:

 Selling Broker

By: _____
 Broker or Broker's Affiliated Licensee

 Print or Type Name

 MLS Office Code Brokerage Firm License Number

 Phone # Fax #

 E-Mail

 Selling Agent's Georgia Real Estate License Number

 License Number

Member of: _____ of REALTORS®

Seller Acceptance and Contact Information

1. _____
 Seller's Signature

 Print or Type Name

 Seller's Address

 Seller's E-mail Address

 Seller's Phone # Fax #

2. _____
 Seller's Signature

 Print or Type Name

 Seller's Address

 Seller's E-mail Address

 Seller's Phone # Fax #

Listing Broker/Affiliated Licensee Contact Information:

 Listing Broker

By: _____
 Broker or Broker's Affiliated Licensee

 Print or Type Name

 MLS Office Code Brokerage Firm License Number

 Phone # Fax #

 E-Mail

 Listing Agent's Georgia Real Estate

 License Number

Member of: _____ of REALTORS®

Copyright© 2013
 by Georgia
 Association of
 REALTORS®,
 Inc.
 F20, Purchase
 and Sale
 of Real Estate
 7 of 7, 04/01/13

Binding Agreement Date: The Binding Agreement Date in this transaction is the date of _____
 and has been filled in by _____.

COMMERCIAL PURCHASE AND SALE AGREEMENT



Offer Date: _____

2013 Printing

1. **Purchase and Sale.** The undersigned buyer(s) ("Buyer") agree to buy and the undersigned seller(s) ("Seller") agree to sell the real property described below including all fixtures, improvements and landscaping therein ("Property") on the terms and conditions set forth in this Agreement.

A. Property Identification: Address: _____
City _____, County _____, Georgia, Zip Code _____
MLS Number: _____ Tax I.D. Number: _____

B. Legal Description: The legal description of the Property is [select one of the following below]:
 1. attached as an exhibit hereto;
 2. the same as described in Deed Book _____, Page _____ of the land records of the above county; **OR**
 3. Land Lot(s) _____ of the _____ District, _____ Section/ GMD, Lot _____, Block _____, Unit _____, Phase/Section _____ of _____ Subdivision/Development, according to the plat recorded in Plat Book _____, Page _____, et. seq., of the land records of the above county.

C. Purchase Price of Property to be Paid by Buyer:
\$ _____

D. Seller's Monetary Contribution at Closing:
\$ _____

E. Closing Date: _____

F. Seller Retains Possession of Property Through: _____

G. Holder of Earnest Money ("Holder"): _____

H. Closing Law Firm: _____

I. Earnest Money: Earnest Money shall be paid by check cash wire transfer of immediately available funds as follows:
 1. \$ _____ as of the Offer Date.
 2. \$ _____ within _____ days from the Binding Agreement Date.
 3. _____

J. Property is being sold subject to a Due Diligence Period of _____ days from the Binding Agreement Date.

K. Buyer shall have _____ days from the Binding Agreement Date in which to furnish written title objections to Seller.

L. Seller shall deliver Due Diligence Materials to Buyer within _____ days from Binding Agreement Date.

M. Buyer may **OR** may not assign this Agreement in accordance with the terms of this Agreement.

N. Disputes regarding earnest money shall be resolved by a reasonable interpretation by Holder; **OR** arbitration.

O. Time Limit of Offer: The Offer set forth herein expires at _____ o'clock _____ m. on the date _____.

2. Brokerage Relationships in this Transaction.

A. Selling Broker is _____ and is:
1. representing Buyer as a client.
2. not representing Buyer (Buyer is a customer).
3. acting as a dual agent representing both Buyer and Seller.
4. acting as a designated agent where _____
_____ has been assigned to exclusively represent Buyer.

B. Listing Broker is _____ and is:
1. representing Seller as a client.
2. not representing Seller (Seller is a customer).
3. acting as a dual agent representing both Buyer and Seller.
4. acting as a designated agent where _____
_____ has been assigned to exclusively represent Seller.

C. Material Relationship Disclosure: Broker and/or their affiliated licensees disclose the following material relationships:

Buyer(s) Initials _____ / _____

Seller(s) Initials _____ / _____

- 3. Purchase Price and Method of Payment.** The Purchase Price shall be paid in U.S. Dollars at closing in cash or its equivalent which shall only include the wire transfer of immediately available funds, or a cashier's check issued for the closing by a federally insured bank, savings bank, savings and loan association or credit union where the funds are immediately available.
- 4. Due Diligence.** Buyer has paid Seller the sum of \$25, the receipt of which is hereby acknowledged by Seller, as option money for Buyer having the right to terminate this agreement during the Due Diligence Period. Prior to closing, Buyer and Buyer's agents shall have the right to enter upon Property at Buyer's expense, and at reasonable times, to inspect, survey, examine, and test Property as Buyer may deem necessary as part of Buyer's acquisition of Property. Buyer shall indemnify and hold Seller and all Brokers harmless from and against any and all claims, injuries, and damages to persons and/or property arising out of or related to the exercise of Buyer's rights hereunder. During the Due Diligence Period Buyer may evaluate Property, the feasibility of the transaction, the availability and cost of financing, and any other matter of concern to Buyer. During the Due Diligence Period, Buyer shall have the right to terminate this Agreement upon notice to Seller if Buyer determines, based on an evaluation of the above, that it is not desirable to proceed with the transaction. In such event, Holder shall promptly refund Buyer's earnest money in accordance with the earnest money paragraph below.
- 5. Earnest Money.**
- A. Receipt:** In the event Buyer terminates this Agreement during the Due Diligence Period or does not otherwise close this transaction, Buyer shall promptly return all Due Diligence materials to Seller. 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 (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 for any reason by the bank upon which it is drawn, Holder shall promptly give notice to Buyer and Seller. Buyer shall have 3 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.
 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 Earnest Money only as follows: (a) at Closing; (b) upon a subsequent written agreement signed by Buyer and Seller; (c) as set forth below in the event of a dispute regarding 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). No party shall seek damages from Holder, nor shall Holder be liable for any such damages, for any matter arising out of or related to the performance of Holder's duties hereunder.
- D. Disputes Regarding Earnest Money:** In the event Buyer or Seller notifies Holder of a dispute regarding the disposition of Earnest Money that Holder cannot resolve, Holder shall settle the dispute in accordance with method selected on the cover page of this Agreement.
1. **Reasonable Interpretation by Holder.** In the event earnest money disputes are to be resolved by Holder herein, Holder may disburse the earnest money upon a reasonable interpretation of the Agreement, provided that Holder first gives all parties 10 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 fifteen (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 ten (10) day notice to the parties stating the rationale for the modification and to whom the disbursement will now be made. 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.
 2. **Arbitration.** In the event arbitration is selected as the method to resolve earnest money disputes, such disputes shall be resolved by arbitration in accordance with the Federal Arbitration Act 9 U.S.C. § 1 et. seq. and the rules and procedures of the arbitration company selected to administer the arbitration. Upon making or receiving a demand for arbitration, the parties shall work together in good faith to select a mutually acceptable arbitration company with offices in Georgia to administer and conduct the arbitration. If the parties cannot mutually agree on an arbitration company, the company shall be selected as follows. Each party shall simultaneously exchange with the other party a list of three arbitration companies with offices in Georgia acceptable to that party to administer and conduct the arbitration. If there is only one (1) arbitration company that is common to both lists, that company shall administer and conduct the arbitration. If there is more than one arbitration company that is common to both lists, the parties shall either mutually agree on which arbitration company shall be selected or flip a coin to select the arbitration company. If there is not initially a common arbitration company on the lists, the parties shall repeat the process by expanding their lists by two each time until there is a common name on the lists selected by the parties. The decision of the arbitrator shall be final and the arbitrator shall have authority to award attorneys' fees and allocate the costs of arbitration as part of any final award.

6. Seller's Obligations at Closing: At Closing, Seller shall deliver to Buyer: (a) a Closing Statement; (b) Limited Warranty Deed; (c) FIRPTA Affidavit (indicating that Seller is not a "foreign person" or "foreign corporation" as that term is defined in Section 1445(f)(3) of the Internal Revenue Code of 1986); (d) an Affidavit of Seller's Residence Regarding Georgia Withholding Tax, establishing that Seller is exempt from the requirements of O.C.G.A. § 48-7-128, the Georgia Withholding Statute (or Affidavit of Exemption or Affidavit of Seller's Gain, if withholding is required); (e) a transfer tax declaration form properly signed and executed by Seller; and, (f) all documents which Seller must execute under the terms of this Agreement to cause the Title Company to deliver to Buyer the Title Policy, including, without limitation, a title affidavit from Seller to Buyer and to the Title Company in the form customarily used in Georgia commercial real estate transactions so as to enable the Title Company to issue Buyer the Title Policy with all standard exceptions deleted and subject only to the Permitted Exceptions and evidence reasonably satisfactory to Title Company of its due and proper authority and power to perform its obligations hereunder. In addition, Seller shall deliver to Buyer at Closing all documents/items indicated in Exhibit "C" if any. (All documents to be delivered by Seller under this paragraph, including all documents/items indicated in Exhibit "C" are collectively "Seller's Closing Documents".)

7. Conditions to Closing.

A. Conditions in Favor of Buyer: The obligation of Buyer to consummate the transaction contemplated herein is conditioned upon the following conditions precedent as of the Closing Date:

1. All representations and warranties of Seller made herein shall remain true and correct;
2. Seller shall have performed all of the covenants undertaken by Seller in this Agreement to be performed by Seller at or prior to Closing;
3. Seller shall have delivered to the Buyer properly executed originals of Seller's Closing Documents;
4. There shall have been no material adverse change in the physical condition of Property, except as otherwise provided for in this Agreement; and
5. The issuance at Closing of the Title Policy (or marked binder), with all standard exceptions deleted and subject only to the Permitted Exceptions.

B. Conditions in Favor of Seller: The obligation of Seller to consummate the transaction contemplated herein is conditioned upon the following conditions precedent as of the Closing Date:

1. All representations and warranties of Buyer made herein shall remain true and correct;
2. Buyer shall have performed all of the covenants undertaken by Buyer in this Agreement to be performed by Buyer at or prior to Closing; and
3. Buyer shall have: (a) delivered to the Seller properly executed originals of the transfer tax declaration form, title policy documents, closing statement, and any other documents identified in Exhibit "C" that require Buyer's signature; and (b) paid the Purchase Price, plus or minus prorations and adjustments, to Seller.

8. Costs.

A. Seller's Costs: Seller shall pay the cost of recording any title curative document, including, without limitation, satisfactions of deeds to secure debt, quitclaim deeds and financing statement terminations; all transfer taxes; all deed recording fees and the fees of Seller's counsel.

B. Buyer's Costs: Buyer shall pay the cost of Buyer's counsel and consultants; any costs in connection with Buyer's inspection of Property and any costs associated with obtaining financing for the acquisition of Property (including any intangibles tax, all deed recording fees and the cost of recording Buyer's loan documents); and the cost of any title examination, survey of the Property obtained by Buyer and any owner's or lender's title insurance.

9. Taxes and Prorations. Ad valorem property taxes, community association fees, solid waste and governmental fees and utility bills for which service cannot be terminated as of the date of closing; rents, tenant improvements costs and leasing commissions on Property for the calendar year in which the Closing takes place shall be prorated as of 12:01 a.m. on the Closing Date. In the event ad valorem property taxes are based upon an estimated tax bill or tax bill under appeal, Buyer and Seller shall, upon the issuance of the actual tax bill or the appeal being resolved, promptly make such financial adjustments between themselves as are necessary to correctly prorate the tax bill. In the event there are tax savings resulting from a tax appeal, third party costs to handle the appeal may be deducted from the savings for that tax year before re-prorating. Any pending tax appeal shall be deemed assigned to Buyer at closing.

10. Title.

A. Warranties of Seller. Seller warrants that at Closing, Seller shall convey good and marketable, fee simple title to Property to Buyer, subject only to the following exemptions:

1. Liens for ad valorem taxes not yet due and payable;
2. Those exceptions to which Buyer does not object or which Buyer waives in accordance with the Title Objections paragraph below.
3. Those Permitted Exceptions attached hereto and incorporated herein as an exhibit to which Buyer has agreed not to object. For all purposes under this Agreement, "Good and marketable, fee simple title" with respect to Property shall be such title: (a) as is classified as "marketable" under the Title Standards of the State Bar of Georgia; and (b) as is acceptable to and insurable by a title insurance company doing business in Georgia ("Title Company"), at standard rates on an American Land Title Association Owner's Policy ("Title Policy").

B. Title Objections. Seller shall have until the Closing to cure all valid title objections ("Title Cure Period"). Seller shall satisfy any existing liens or monetary encumbrances identified by Buyer as title objections which may be satisfied by the payment of a sum certain prior to or at Closing. Except for Seller's obligations in the preceding sentence, if Seller fails to cure any other valid title objections of Buyer within the Title Cure Period (and fails to provide Buyer with evidence of Seller's cure satisfactory to Buyer and to the Title Company), Buyer may, as Buyer's sole remedies: (1) rescind the transaction contemplated hereby, in which case, Buyer shall be entitled to the return of Buyer's earnest money; (2) waive any such objections and elect to close the transaction contemplated hereby irrespective of such title objections and without reduction of the Purchase Price; or (3) extend the Closing Date for a period of time not to exceed fifteen (15) days to allow Seller further time to cure such valid title objections. Failure to act in a timely manner under this paragraph shall constitute a waiver of Buyer's rights hereunder. Buyer shall have the right to re-examine title prior to Closing and notify Seller at Closing of any title objections which appear of record after the date of Buyer's initial title examination and before Closing.

11. Destruction of Property Prior to Closing. If the Property is destroyed or substantially destroyed prior to Closing, Seller shall give Buyer prompt notice thereof, which notice shall include Seller's reasonable estimate of: (1) the cost to restore and repair the damage; (2) the amount of insurance proceeds, if any, available for the same; and (3) whether the damage will be repaired prior to Closing. Upon notice to Seller, Buyer may terminate this Agreement within 7 days of receiving such notice from Seller. If Buyer does not terminate this Agreement, Buyer shall be deemed to have accepted Property with the damage and shall receive at Closing: (1) any insurance proceeds which have been paid to Seller but not yet spent to repair the damage; and (2) an assignment of all unpaid insurance proceeds on the claim.

12. Representations and Warranties.

A. Seller's Representations and Warranties: As of the Binding Agreement Date and the Closing Date, Seller makes the representations and warranties to Buyer, if any, as indicated in Exhibit "D", if attached.

B. Buyer's Representations and Warranties: As of the Binding Agreement Date and the Closing Date, Buyer represents and warrants to Seller that Buyer has the right, power and authority to enter into this Agreement and to consummate the transaction contemplated by the terms and conditions of this Agreement; and the persons executing this Agreement on behalf of Buyer have been duly and validly authorized by Buyer to execute and deliver this Agreement and shall have the right, power and authority to enter into this Agreement and bind Buyer.

13. Brokerage. Seller has agreed to pay Listing Broker(s) a real estate commission pursuant to that certain brokerage engagement agreement entered into between the parties and incorporated herein by reference ("Listing Agreement"). Pursuant to the terms of the Listing Agreement, the Listing Broker has agreed to share that commission with the Selling Broker.

The closing attorney is hereby authorized and directed to pay the Broker(s) at closing, their respective commissions out of the proceeds of the sale. If the sale proceeds are insufficient to pay the full commission, the party owing the commission shall 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. The acceptance by the Broker(s) of a partial real estate commission at the closing shall not relieve the Seller of the obligation to pay the remainder thereof after the closing unless the Broker(s) have expressly and in writing agreed to accept the lesser amount in full satisfaction of the Broker(s) claim to a commission.

14. Disclaimer. Buyer and Seller have not relied upon any advice or representations of Brokers other than what is included in this Agreement. Brokers shall have no duty to advise Buyer and Seller on any matter relating to the Property which could have been revealed through a survey, title search, Official Georgia Wood Infestation Report, inspection by a professional home inspector or construction expert, utility bill review, an appraisal, inspection by an environmental engineering inspector, consulting governmental officials or a review of this Agreement and transaction by an attorney, financial planner, mortgage consultant or tax planner. Buyer and Seller should seek independent expert advice regarding any matter of concern to them relative to the Property and this Agreement.

15. Assignment. If Buyer does not have the right to assign this Agreement, then Buyer cannot assign this Agreement without the prior written permission of Seller. Any such approved assignment shall not release the original Buyer from any liabilities or obligations herein. Notice of such assignment shall be delivered to the Seller within 2 working days of execution, but not less than 5 days from closing. If Buyer has the right to assign this Agreement, then this Agreement may be assigned by the Buyer to any legal entity of which the Buyer or a principal or principals of Buyer own at least a 25% interest.

16. 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. It is the intent of the parties that the requirements of this Notice paragraph shall apply even prior to this Agreement becoming binding.

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, prepaid, return receipt requested; or (5) by e-mail.

C. When Notice Is Received. Except as may be provided herein, a notice shall not be deemed to be given, delivered or received until it is actually received by the party to whom the notice was intended or that person's authorized agent. 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 to either the party or the party's authorized agent 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. Additionally, if the sender of a notice by e-mail receives an automatic reply indicating that the e-mail has been opened ("Read Receipt"), the e-mail notice shall be deemed received at that time.

- D. Notices Sent to Broker:** Except in transactions where the Broker is practicing designated agency, notice to the Broker, the Broker's employees or the affiliated licensee of Broker representing a party in the transaction shall for all purposes herein be deemed to be notice to that the party and such persons shall be authorized agents of the party for the purpose of receiving notice. 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 party intended to receive the same or that party's authorized agent. 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.
- 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 on 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 on 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.
- F. Address, E-Mail or Number for Receiving Notices:** Notices to a signatory to this Agreement shall only be effective if sent to the FAX number, e-mail address and/or physical address of the signatory listed on the signature page of this Agreement or subsequently provided by the signatory to the other signatories hereto in accordance with the notice provisions herein.

17. Default.

- A. Rights of One Party Against Another Party:** A party defaulting under this Agreement shall be liable for the default. The non-defaulting party may pursue any lawful remedy against the defaulting party.
- B. Rights of Broker Against Defaulting Party:** In the event a party defaults under this Agreement, the defaulting party shall pay as liquidated damages to every broker involved in this transaction with whom the defaulting party does not have a brokerage engagement agreement an amount equal to the share of the commission the broker would have received had the transaction closed. For purposes of determining the amount of liquidated damages to be paid by the defaulting party, the written offer(s) of compensation to such broker and/or other written agreements establishing such broker's commission are incorporated herein by reference. The liquidated damages referenced above are a reasonable pre-estimate of the Broker(s) actual damages and are not a penalty. In the event a Broker referenced herein either has a brokerage engagement agreement or other written agreement for the payment of a real estate commission with a defaulting party, the Broker shall only have such remedies against the defaulting party as are provided for in such agreement.

18. 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 treatment and/or repair 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. Entire Agreement, Modification and Assignment:** This Agreement constitutes the sole and entire agreement between all of the parties, supersedes all of their prior written and verbal agreements 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 or waived except upon 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; (3) all representations of Seller regarding the Property; and (4) any obligations which the parties herein agree shall survive the closing or may be performed or fulfilled after the 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 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, or the Broker (except in a designated agency transaction) the Broker's employees or affiliated licensee of Broker representing that party as a client, receives notice that the offer has been accepted. This party (or the Broker or affiliated licensee representing this party as a client) shall fill in the Binding Agreement Date below and promptly give notice of this date to the other party. Filing in the Binding Agreement Date shall not be deemed to be a counteroffer.
- I. Duty to Cooperate:** All parties agree to do all things reasonably necessary to timely and in good faith fulfill the terms of this Agreement. Buyer and Seller shall execute and deliver such certifications, affidavits, and statements required by law or reasonably requested by the closing attorney, mortgage lender and/or the title insurance company to meet their respective requirements.
- J. Electronic Signatures:** For all purposes herein, an electronic or facsimile signature shall be deemed the same as an original signature; provided, however, that all parties agree to promptly re-execute a conformed copy of this Agreement with original signatures if requested to do so by, the buyer's mortgage lender or the other party.

K. GAR Forms: The Georgia Association of REALTORS®, Inc. ("GAR") issues certain standard real estate forms. These GAR forms are frequently provided to the parties in real estate transactions. No party is required to use any GAR form. Since these forms are generic and written with the interests of multiple parties in mind, they may need to be modified to meet the specific needs of the parties using them. If any party has any questions about his or her rights and obligations under any GAR form he or she should consult an attorney. The parties hereto agree that the GAR forms may only be used in accordance with the licensing agreement of GAR. While GAR forms may be modified by the parties, no GAR form may 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.

L. Time Limit of Offer: The referenced Time Limit of the Offer shall be the date and time on which the Offer expires if both of the following have not occurred: (1) the Offer has not been accepted by the party to whom the Offer was made; and (2) notice of acceptance of the Offer has not been delivered to the party who made the Offer.

19. 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, said exhibit or addendum shall control:

- Exhibit "A" Legal Description
- Exhibit "B" Due Diligence Materials
- Exhibit "C" Addition to Seller's Closing Documents
- Exhibit "D" Seller's Warranties and Representations
- Exhibit "E" Permitted Title Exceptions
- Other _____
- Other _____
- Other _____
- Other _____

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:

Additional Special Stipulations are or are not attached.

Buyer Acceptance and Contact Information

1. _____
Buyer's Signature

Print or Type Name

Buyer's Address

Buyer's E-mail Address

Buyer's Phone # Fax #

2. _____
Buyer's Signature

Print or Type Name

Buyer's Address

Buyer's E-mail Address

Buyer's Phone # Fax #

Selling Broker/Affiliated Licensee Contact Information:

Selling Broker
By: _____
Broker or Broker's Affiliated Licensee

Print or Type Name

MLS Office Code Brokerage Firm License Number

Phone # Fax #

E-Mail _____

Selling Agent's Georgia Real Estate License Number

Member of: _____ of REALTORS®

Seller Acceptance and Contact Information

1. _____
Seller's Signature

Print or Type Name

Seller's Address

Seller's E-mail Address

Seller's Phone # Fax #

2. _____
Seller's Signature

Print or Type Name

Seller's Address

Seller's E-mail Address

Seller's Phone # Fax #

Listing Broker/Affiliated Licensee Contact Information:

Listing Broker
By: _____
Broker or Broker's Affiliated Licensee

Print or Type Name

MLS Office Code Brokerage Firm License Number

Phone # Fax #

E-Mail _____

Listing Agent's Georgia Real Estate License Number

Member of: _____ of REALTORS®

Binding Agreement Date: The Binding Agreement Date in this transaction is the date of _____
and has been filled in by _____.