

2023 GAR Contract Dissection

GREC Course #75553

Instructor:

Dana Sparks, Qualifying Broker, Maximum One Greater Atlanta,
REALTORS®

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CE Course Sponsored by: Maximum One Realty Companies

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Question on 2023 NEW Assignment Amendment (GAR F735)

I have a question on the NEW FORM F735 - Amendment to Assign Agreement...

When working with an Investor, Buyer's Agent would include GAR Special Stip #611 - Seller Consents to Buyer Assigning Contract - in the Binding Purchase & Sale.

Then Investor (= Buyer #1) finds an Assignee (= Buyer #2) & those two sign GAR F279 - Assignment of Purchase & Sale Agreement Rights. Then we go to the NEW for 2023 Form - F735 - Amendment to Assign Agreement.

On the NEW (2023) F735 - Amendment to Assign Agreement, at the top the form refers to "Another Buyer" as "Assignee" who then becomes "Buyer." At the bottom under "Buyer's Signature" - is this signed by Buyer #1 - the original investor or Assignee (Buyer #2) who is now the NEW Buyer?

If this is signed by Buyer #1 (original Investor) - then is this in case the parties forgot to include the Special Stipulation to make the contract Assignable? In the big blank space would you name the Assignee = Buyer #2?

If this is signed by Buyer #2 (Assignee) then I respectfully request that the GAR Forms Committee makes that a bit more clear on the signature line for "Buyer" on the bottom by perhaps changing it to "Buyer/Assignee."

Question Asked of GAR - 2/27/23 – Awaiting Answer

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Notice to Students for Classroom or Virtual Broadcast of Continuing Education (CE) Classes of GREC-Approved Classroom Classes

- ▶ **Real Estate Academy of America (GREC School #6915)** with end date of renewal being December 31, 2026, presents to you the following course of study:
 - ▶ **2023 GAR Contract Dissection – GREC Course #75553**
 - ▶ This is a Virtual / Remote Broadcast of an approved in-class course, is 3 hours in duration, and is approved by the Georgia Real Estate Commission for the purpose of Continuing Education (CE.) There are no pre-requisites to receive credit for this course. You may ONLY take one Virtual CE class at a time or with overlapping times regardless of the school offering the course in order to get CE credit for either course.
 - ▶ Your instructor(s) for this course will be: **Dana Sparks, Qualifying Broker of Maximum One Greater Atlanta, REALTORS®**
 - ▶ This course does NOT have required homework not any required written examination.

Notice to Students Cont'd.

- ▶ **Attendance policy:**
- ▶ All students must be on-time and present for all remote / virtual broadcast instruction hours in order to receive credit for this course. Roll call and documentation of Student's Real Estate License Number will be conducted via a "Chat Function" at the beginning and end of each session, and after all breaks.

- ▶ **Continuing Education Notice:**
- ▶ Students may only receive credit for a specific course number once every twelve months. If you have already received credit for this course within the last twelve months, you are invited to attend but will not receive additional credits.

- ▶ **Prohibition of Recruitment:**
- ▶ No recruiting for employment opportunities for any real estate brokerage firm is allowed in this class or on the school premises. Report promptly any effort to recruit on behalf of a brokerage firm by anyone including a fellow student to the Director of Georgia Real Estate Academy, Dana Sparks (Dana@MaximumOneRealty.com) 678-580-6880, the Coordinator of Georgia Real Estate Academy, Heidi Kelly (RosterCEadmin@eAGENTweb.com) 770-919-8825 ext. 306, or the Georgia Real Estate Commission.

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General Information

- GAR's intent is to keep transactions together
- Changes made for consistency among forms
- Changes made based on market & practice
- GAR revises forms at beginning of year & then Mid-year Review - 5/1/22 last year!
- Universal changes apply across forms
- GAR's forms are licensed & agents must pay each year to use - either in REALTOR® dues or paying GAR directly
- GAR forms may NOT simply be given to public to use

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GAR Legal Helpline

- ▶ <http://garealtor.com/LawEthics/LegalHelpline/tabid/569/Default.aspx>
- ▶ Will need your NRDS number
- ▶ Access this link from GAR website

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General Contract Reminders

- ▶ Legal Description is required – Street Address alone is not a sufficient legal description (per License Law)
- ▶ Parties must get a copy of everything they sign (per License Law)
- ▶ Make sure Closing Attorneys get copies of ALL Exhibits & Amendments
- ▶ Do not leave any blanks
- ▶ Use “N/A” or “\$0” or “N/C” on Counter Offer
- ▶ Do NOT use “TBD” – does not reflect “Meeting of the Minds” which is required for enforceability

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General Contract Reminders

- ▶ If contract is subject to financing, all the terms of the financing **MUST** be completed (per License Law)
- ▶ As an Agent, do not hold Earnest Money – must get to Broker “as soon after receipt as practically possible” (per License Law)
- ▶ Complete Brokerage address on signature page – may be your Branch Office vs. Corporate Address

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General Contract Reminders

- ▶ Complete your license number & Firm License Number (per License Law)
- ▶ Complete Agency Representation Disclosures in contract (per License Law)
- ▶ Follow up on Earnest Money **DEPOSIT** – request proof of deposit – regardless of who is named Holder is in the contract & of which side you represent
- ▶ All Buyer & Seller Signatures Required
- ▶ Do not miss any initial spaces
- ▶ Contact Information for Customers

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General Contract Reminders

- ▶ Limit Special Stipulations
 - Use the pre-printed Stipulations available from GAR in the Special Stipulation library
 - Consult with the Special Stipulation Library in the RE Forms contract package as well
 - Do Not write/use a Special Stipulation for an issue already addressed elsewhere in the contract
 - Consult with your Broker &/or an Attorney before writing any Special Stipulations on your own
- ▶ Peruse the GAR Library for Other Useful Forms & Special Stipulations

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Other Pertinent Classes

- ▶ 2023 GAR Contract Changes
- ▶ 2023 Contracts Review: GAR vs. RE Forms
- ▶ 2023 RE Forms Contract Dissection
- ▶ 2023 GAR Brokerage Agreements, Other Useful Forms & Special Stipulations
- ▶ 2023 RE Forms Brokerage Agreements, Other Useful Forms & Special Stipulations
- ▶ Contracts: Offer & Acceptance (How to fill in a GAR contract = “Contracts 101”)

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Online CE Calendar & Handouts

- ▶ Go to: www.eAGENTweb.com or
- ▶ www.registerforREclasses.com
- ▶ Select “Marietta” for Master Training Calendar
- ▶ Handouts, if any, available at:
- ▶ www.eAGENTweb.com
- ▶ Select “Training Videos”
- ▶ Scroll down page for Class & Handouts

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Forms Covered in THIS Class

- ▶ Purchase & Sale Agreement – Slide 14 – 95
- ▶ Counter Offer – Slide 96 – 100
- ▶ Financing Contingency Exhibits – Slide 100 – 127
- ▶ Community Association Disclosure – Slide 128 – 131
- ▶ Closing Attorney as Holder of EM Exhibit – Slide 132 – 136
- ▶ Agreement of Closing Attorney to Be Holder – Slide 137

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Forms Covered in THIS Class

- ▶ Back-Up Contingency Exhibit – Slide 138
- ▶ Addendum to Back-Up Agreement – Slide 139
- ▶ Unilateral Notice to Extend Closing Date – Slide 140 – 142
- ▶ Termination & Release Agreement – Slide 143–146
- ▶ Agreement to Reinstate Contract – Slide 147
- ▶ Notes about Earnest Money – Slide 148 – 152
- ▶ Consumer Brochures – Throughout
- ▶ Common Special Stipulations – Throughout & Email Instructor for Many More – or Dana@RealEstateAcademyofAmerica.com

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F201 – Purchase & Sale Agreement

- ▶ Paragraph A – Fill in the Blanks
- ▶ Page 1 of 9 F201, Purchase and Sale Agreement, Page 1 of 9, 11/01/23
 - Must therefore include ALL pages when sending – NOT just signature page
- ▶ Legal Description – Required in addition to an address
 - Online County Records
 - Closing Attorney
 - www.GSCCCA.org
- ▶ Closing Date – Must be Specific – not “on or before”
 - For a “meeting of the minds” between the parties

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F201 – Purchase & Sale Agreement

- ▶ **Holder of Earnest Money**
 - Brokerage or Closing Attorney
 - If Closing Attorney, MUST attach F510 – Closing Attorney Acting as Holder EXHIBIT to the contract
 - If Closing Attorney, Closing Attorney MUST sign F511 – Agreement of Closing Attorney to be Holder – within 3 Days AFTER Binding Contract

- ▶ **Check with Holder of Earnest Money**
 - Policies on Form of funds
 - Holds on personal checks
 - Amounts accepted per form
 - Allow LONGER time frame if Wire

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F510 & F511 – Closing Attorney as Holder of Earnest Money

- ▶ See More Information on F510 & F511
- ▶ Time Frames
- ▶ Must Name Alternate Holder – one of Brokers
- ▶ Form of Earnest Money
- ▶ All Cash Transaction – handling of dispute over Earnest Money

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F201 – Purchase & Sale Agreement

- ▶ Form of Earnest Money – See Notes on “EM Points of Practice” that follow
 - Personal Check
 - Certified Funds
 - ACH – many attorneys & Brokers do NOT accept
 - Wire Transfer
- ▶ Time Frame for Buyer to “remit” = send/deliver Earnest Money to Holder
 - Buyer’s Agent is in possession when writing offer
 - Holder has on deposit from a previously terminated contract
 - OR
 - ____ days from Binding Agreement Date

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Earnest Money Points of Practice

- ▶ Time Frame for Buyer to REMIT/SEND Earnest Money
 - If Wire, consider the time frame – Do NOT Email Wire Instructions – so mail, overnight, courier, hand-deliver – CyberFraud & Contract also states
- ▶ BOTH agents should follow up with Holder on receipt & deposit of funds
- ▶ Check on policy of Holder for form of funds
 - Many do not accept ACH
 - Many do not accept app – i.e. Zele, Venmo, Paypal, Cash App, etc.
- ▶ Do NOT accept cash as Earnest Money

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Earnest Money Points of Practice

- ▶ Do not co-mingle funds
 - i.e. Don't take client's cash & change the form for Earnest (i.e. digital app, check, wire, etc.)
- ▶ Earnest Money in certified funds or wire or money order may be released faster than a personal check
- ▶ Buyer can stop payment on a personal check
- ▶ Buyer can rescind an ACH payment
- ▶ If Buyer remits funds to Holder directly – make sure they include a note of property address & agent's name

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Earnest Money Points of Practice

- ▶ If Earnest Money is OVER \$10,000, then Buyer will have to complete an IRS Form 8300 (per Homeland Security Act) UNLESS funds are wired
- ▶ Earnest Money as liquidated damages is ONLY remedy for Seller if Buyer defaults
- ▶ Earnest Money is NOT required for a Binding Contract between a Buyer & Seller

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Earnest Money Points of Practice

- ▶ Agents' (Selling & Listing) responsibility to follow-up with Holder
 - Both Buyer & Seller have contractual rights to those funds so it's important to know if they were deposited
- ▶ Did Holder RECEIVE & did Holder DEPOSIT?
- ▶ Did agent deliver to Holder?
- ▶ Did Buyer mail in? Deliver? Wire?
- ▶ Address Buyer used? Name on envelope?
- ▶ What memo was written on check?
- ▶ Was there a note in envelope?
- ▶ How will staff at Brokerage know what transaction to attribute the EM to?

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F201 – Purchase & Sale Agreement

8. **Inspection and Due Diligence.** Buyer's **OPTION to Terminate for ANY / NO reason - Binding Agreement Date=Day 0**
a. **Due Diligence Period:** Property is being sold subject to a **Due Diligence Period** of _____ days from the Binding Agreement Date.
b. **Option Payment for Due Diligence Period:** In consideration of Seller granting Buyer the option to terminate this Agreement, Buyer:
(1) has paid Seller \$10.00 in nonrefundable option money, the receipt and sufficiency of which is hereby acknowledged; plus
(2) shall pay directly to Seller additional option money of \$ _____ by check ACH or wire transfer of immediately available funds either as of the Offer Date; OR within _____ days from the Binding Agreement Date. Any additional option money paid by Buyer to Seller shall (subject to lender approval) or shall not be applied toward the purchase price at closing and shall not be refundable to Buyer unless the closing fails to occur due to the default of the Seller.

- ▶ Due Diligence Period = Buyer Right to Terminate
 - Never put 0 days – at least give Buyer time to sleep on it
 - = Buyer right to terminate for any or no reason
 - ONLY a Buyer right to terminate – NOT Seller right to terminate

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F201 – Purchase & Sale

ADDITIONAL Option Money ONLY - HIGH competitive

8. Inspection and Due Diligence. Buyer's OPTION to Terminate for ANY / NO reason - Binding Agreement Date=Day 0
a. Due Diligence Period: Property is being sold subject to a Due Diligence Period of _____ days from the Binding Agreement Date.
b. Option Payment for Due Diligence Period: In consideration of Seller granting Buyer the option to terminate this Agreement, Buyer:
(1) has paid Seller \$10.00 in nonrefundable option money, the receipt and sufficiency of which is hereby acknowledged; plus
(2) shall pay directly to Seller additional option money of \$_____ by check ACH or wire transfer of immediately available funds either as of the Offer Date; OR within _____ days from the Binding Agreement Date. Any additional option money paid by Buyer to Seller shall (subject to lender approval) or shall not be applied toward the purchase price at closing and shall not be refundable to Buyer unless the closing fails to occur due to the default of the Seller.

- ▶ “ADDITIONAL” Option Money
- ▶ Only in a highly competitive market
- ▶ Goes DIRECTLY from Buyer to Seller
- ▶ NONREFUNDABLE (unless Seller defaults)
- ▶ May be credited to Purchase Price if close with Lender approval

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F201 – Purchase & Sale Agreement

- Many things a Buyer will investigate to help make the decision to terminate or go through with contract
- Buyer may ask Seller to address some concerns with the property
- Buyer may have Due Diligence Period even if Seller is selling “as-is”

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F201 – Purchase & Sale Agreement

- ▶ Due Diligence = Mini Option Contract
 - Because Buyer may terminate, this creates a mini option contract within the broader context of the Purchase & Sale
 - Therefore the \$10 consideration is for that reason but never changes hands
- ▶ “Additional” Option Money
 - In addition to the \$10
 - NOT Earnest Money
 - Non-Refundable (unless Seller defaults)
 - Goes directly from Buyer to Seller
 - Negotiate if it’s accounted for as part of Buyer’s cash to close (i.e. Buyer get credit for this amount on Closing Statement)
 - Only use in a competitive situation to entice Seller to take Buyer’s offer over competing offers

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F201 – Purchase & Sale Agreement

10. Brokerage Relationships in this Transaction.

<p>a. Buyer's Broker is <u>Brokerage Firm</u> and is:</p> <p>(1) <input type="checkbox"/> representing Buyer as a <u>client</u>.</p> <p>(2) <input type="checkbox"/> working with Buyer as a <u>customer</u>.</p> <p>(3) <input type="checkbox"/> acting as a <u>dual agent</u> representing Buyer and Seller.</p> <p>(4) <input type="checkbox"/> acting as a <u>designated</u> agent where: <u>Name of Agent working with Buyer</u> has been assigned to exclusively represent Buyer</p>	<p>b. Seller's Broker is <u>Brokerage Firm</u> and is:</p> <p>(1) <input type="checkbox"/> representing Seller as a <u>client</u>.</p> <p>(2) <input type="checkbox"/> working with Seller as a <u>customer</u>.</p> <p>(3) <input type="checkbox"/> acting as a <u>dual agent</u> representing Buyer and Seller.</p> <p>(4) <input type="checkbox"/> acting as a <u>designated</u> agent where: <u>Name of Agent working with Seller</u> has been assigned to exclusively represent Seller</p>
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- ▶ Brokerage Relationships
 - REQUIRED to be disclosed by License Law
 - If found listing in FMLS then Listing Broker MUST have Client relationship with Seller (per FMLS rules)
 - Dual Agency – Check with Broker’s Policy
 - Designated Agency
 - Customer Relationship

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Review: Types of Agency

Single Agency – Public has signed a separate Brokerage Agreement

- * Broker has Client Relationship with Buyer or Seller

Dual Agency – Legal with Disclosure & Consent but MUST check your Broker's Policy (One Broker & One Agent)

- * Broker has Client Relationship with BOTH Buyer & Seller
- * only ONE agent is working with both sides

Designated Agency – One Broker & Two Agents

- * Broker has Client Relationship with BOTH Buyer & Seller
- * TWO agents are working one with each side

Both Sides – NOT Dual Agency – Can be tricky – check your Broker's Policy

- * Broker has Client Relationship with one side & Customer Relationship with other side

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F201 – Purchase & Sale Agreement

c. **Material Relationship Disclosure:** The material relationships required to be disclosed by either Broker are as follows:
Relative, Business Partner, Past Client, etc.

- ▶ **Material Relationship**
 - Relationship between Principal & Agent/Broker
 - Regardless if working with principal as Client or Customer
 - Examples: Related, Business relationship, Past Client, etc.

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F201 – Purchase & Sale Agreement ¶B – FURTHER EXPLANATIONS

- ▶ Paragraph B – “Further Explanations” to Corresponding Paragraphs in Section A
 - Do NOT skip this part when creating / presenting an offer to a client/customer
- ▶ Point of Practice: Send your Party a Blank Purchase & Sale Agreement When you First Meet them and ask them to review so when you get or write an offer, they will have familiarity

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Title – Purchase & Sale – B1

B. FURTHER EXPLANATIONS TO CORRESPONDING PARAGRAPHS IN SECTION A.

- GAR F816 - "Notice"
1. Purchase and Sale.
 - a. Warranty: Seller warrants that at the time of closing Seller will convey good and marketable title to said Property by limited 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 (other than any driveway or walkway) 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/or obtain a survey of the Property 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. Title Insurance: Buyer hereby directs any mortgage lender involved in this transaction to quote the cost of title insurance based upon the presumption that Buyer will be obtaining an enhanced title insurance policy since such a policy affords Buyer greater coverage.
 - ▶ **Good & Marketable Title**
 - = insured by title company at regular rates
 - ▶ **Limited Warranty Deed**
 - ▶ **Buyer must assume any leases**
 - Include / Reference copy of lease in contract
 - Negotiate to transfer security deposit to New Owner
 - Notify Tenant of new account of Security Deposit
 - ▶ **Buyer Title Objections**
 - Notice (GAR F816 – SIGNED by Buyer) Cure, Termination rights

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Closing Costs – Purchase & Sale – B3

3. Closing Costs.

a. **Seller's Contribution at Closing:** 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, including without limitation, any commission obligations of Buyer. 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. The Seller shall pay the fees and costs of the closing attorney: (1) to prepare and record title curative documents; (2) for Seller not attending the closing in person; and (3) pay off and proceeds handling and delivery.

▶ Seller Pays

- Negotiated contribution to Buyer's Closing Costs (¶A3)
 - Buyer's Lender will use for costs
 - Buyer may ALSO use if Buyer required to pay their own Broker Commission (new 5/1/22)
 - Agent: In Seller Net Sheet, just subtract entire contribution
- Seller-Side attorney's fees
- Cost to cure title
- Costs if not attending
- Costs for pay-off of proceeds

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Closing Costs – Purchase & Sale – B3

b. **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 limited warranty deed; (3) all other costs, fees and charges to close this transaction, except as otherwise provided herein; and (4) all other title fees and post-closing fees.

▶ Buyer Pays

- Transfer Tax
- Cost to search title & tax records
- Cost to prepare deeds
- All other costs related / required to close transaction
- Any other title fees
- Post-Closing fees

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Closing Costs – Purchase & Sale – B3

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. Notwithstanding any provision to the contrary, 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 professional costs to handle the appeal may be deducted from the savings for that tax year before re-prorating. Any pending tax appeal for the year in which the Property is sold shall be deemed assigned to Buyer at closing. The liability to the county and if applicable, city, in which the Property is located for ad valorem real property taxes for the year in which the Property is sold shall be assumed by Buyer upon the Closing of the Property. Buyer agrees to indemnify Seller against any and all claims of the county and if applicable, city, for unpaid ad valorem real property taxes for the year in which the Property is sold.

- ▶ Prorations
 - Closing Attorney bases taxes & all fees based on information available at time of closing (MAY be last year's property tax bills)
 - If THIS year's taxes or other fees are different, Buyer & Seller agree to settle up between themselves

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Closing & Possession – Purchase & Sale Agreement – B4

4. **Closing Date and Possession. Unilateral Extension for these 3 reasons ONLY**
a. **Right to Extend the Closing Date:** Buyer or Seller may unilaterally extend the closing date for eight (8) 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); (2) Buyer's mortgage lender (including in transactions where the financing contingency has expired) or the closing attorney is delayed and cannot fulfill their respective obligations by the date of closing, provided that the delay is not caused by Buyer, or (3) Buyer has not received required estimates or disclosures and Buyer is prohibited from closing under federal regulations. 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.

- ▶ 8 Day Unilateral Extension –
 - 8 Days from contract closing date – not from date Notice is given
 - Never schedule a Closing on a Friday in the GAR Contract due to this provision – Wait for next slide!
- ▶ ONLY Specific Reasons to Use 8 Day Unilateral

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Closing & Possession – Purchase & Sale Agreement – B4

- ▶ Title Objections – as long as
 - Can't be satisfied with \$\$ (i.e. a lien)
 - Doesn't prevent good & marketable title conveyance
- ▶ Lender or Attorney can't complete their responsibilities
- ▶ Lender Issues
 - Can't fulfill obligation by closing as long as delay is not caused by Buyer
 - Buyer has not received "TRID" disclosures
- ▶ Can Only be used ONE TIME per contract
 - EITHER party may use for any of the above reasons

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Caution About 8 Day Unilateral Extension of Closing

- ▶ When is 8 Days NOT really 8 days???
- ▶ ONLY when original or amended closing date is a FRIDAY
- ▶ 8 days from a Friday is a SATURDAY

- ▶ Purchase & Sale paragraph C4f

f. **Extension of Deadlines:** No time deadline under this Agreement shall be extended by virtue of it falling on a Saturday, Sunday or federal holiday except for the date of closing.

- ▶ So closing AUTOMATICALLY extends to next business day
- ▶ Therefore 8 days from a Friday closing = Monday (10 days) or Tuesday if Mon is holiday (11 days)

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Closing Law Firm – Purchase & Sale – B5

5. **Closing Law Firm.** Buyer shall have the right to select the closing attorney to close this transaction, and hereby selects the closing attorney referenced herein. In all cases where an individual closing attorney is named in this Agreement but the closing attorney is employed by or an owner, shareholder, or member in a law firm, the law firm shall be deemed to be the closing attorney. If Buyer's mortgage lender refuses to allow that closing attorney to close this transaction, Buyer shall select a different closing attorney acceptable to the mortgage lender. The closing attorney shall represent the mortgage lender in any transaction in which the Buyer obtains mortgage financing. In transactions where the Buyer does not obtain mortgage financing, the closing attorney shall represent the Buyer in preparing the Closing documents, attempting to clear title of the Property to the satisfaction of the title insurance company, conducting the Closing, disbursing funds according to the settlement statement signed by the parties and closing attorney, timely recording deeds and issuing an owner's title insurance policy. Other than those services specifically listed above, nothing herein shall obligate the closing attorney to perform other legal services, including, but not limited to, certifying or warranting title of the Property, for the Buyer, except pursuant to a separate engagement agreement signed by the closing attorney and the Buyer.

- ▶ Buyer shall choose Closing Attorney
- ▶ Closing Attorney represents Lender
- ▶ Closing Attorney must be acceptable to Lender

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Closing Law Firm – Purchase & Sale – B5

- ▶ Cash or No Financing, Attorney shall “represent” Buyer
 - Not in terms of “legal representation” if there is a dispute between Buyer & Seller or dispute over Title issues
- ▶ Attorney Represents Buyer in terms of:
 - Preparing Closing docs
 - Clearing Title
 - Conducting Closing
 - Disbursing Funds
 - Recording Deeds
 - Issuing Owner's Title Policy
- ▶ Georgia requires Closing Attorney disclose which party they represent – most have own document signed at closing
- ▶ Any other issues – Party must sign separate Agreement to “hire” attorney

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Remittance & Deposit of Earnest Money – Purchase & Sale – B6

6. **Holder of Earnest Money.** The earnest money will be paid to Holder in a method of payment acceptable to the Holder. Holder has the right to charge Buyer for any cost associated with receiving of earnest money. Such charge shall be collected separately from the payment of earnest money. The earnest money will 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: (a) five (5) banking days after the Binding Agreement Date hereunder or (b) five (5) banking days after the date it is actually received if it is received after the Binding Agreement Date. If Buyer writes a check or pays with an ACH for earnest money and the same is deposited into Holder's escrow/trust account, Holder shall not return the earnest money until the check or ACH has cleared the account on which the check was written or from which the ACH was sent. 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.

- ▶ Remittance Time Frame – Negotiated by Buyer & Seller – A7
 - Add additional time if wire – to get wire instructions to Buyer via US Mail – NEVER email wire instructions!

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Remittance & Deposit of Earnest Money – Purchase & Sale – B6

- ▶ Form of Earnest Money
 - Holder must approve regardless of what Buyer & Seller negotiated
 - Holder may charge Buyer an additional banking fee if incurred by Holder
- ▶ Holder to Deposit – 5 Banking days
- ▶ Holder makes sure time to clear bank
 - Note that Holder may have policy on acting on personal checks or specific amounts for certified funds or wires

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Remittance & Deposit of Earnest Money – Purchase & Sale – B6

- ▶ Not received of NSF
 - Holder send Notice of Default to Buyer & Seller
 - Buyer has 3 Banking days to cure
 - If no Cure, Seller has 7 days to Terminate

- ▶ If Seller does NOT terminate, then transaction continues with \$0 Earnest Money
 - Make sure Lender knows
 - Make sure Closing Attorney knows

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Disbursement of Earnest Money – Purchase & Sale – B7

- 7. 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 unexpired 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 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. The above-referenced check shall constitute liquidated damages in full settlement of all claims of Seller against Buyer and the Brokers in this transaction. Holder may require Seller to sign a W-9 before issuing a check to Seller for liquidated damages of \$600 or more. Such liquidated damages are a reasonable pre-estimate of Seller's actual damages, which damages the parties agree are difficult to ascertain and are not a penalty.
 - 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.

"10 Day
Letter"

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Disbursement of Earnest Money – Purchase & Sale – B7

- ▶ NO ISSUES:
- ▶ Buyer entitled to Earnest Money
 - Buyer never goes under contract
 - Buyer fails to meet an agreed-upon contingency & sends notice prior to expiration of contingency time frame
 - Termination by Seller default
 - Upon closing
- ▶ Written agreement signed by Buyer & Seller directing Holder how to disburse
 - “T& R” – GAR F522 – Unilateral Notice to Terminate & Proposed Agreement to Disburse Earnest Money
 - Parties may agree to divvy up the funds in any manner (i.e. 100% to one party, 50% / 50% to each party, 70%/30%, etc.)

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Disbursement of Earnest Money – Purchase & Sale – B7

- ▶ ISSUES: (if contract terminates & both DON'T sign the release portion of the T&R)
- ▶ Reasonable Interpretation of contract by Holder = “10 Day Letter”
 - Holder send Notice to both parties of intent to disburse
 - Must wait 10 days from date of Notice sent to parties for any objections
 - These funds are TIED UP during this time & may NOT be used for another contract
 - Funds disbursed AFTER the 10 days

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Disbursement of Earnest Money – Purchase & Sale – B7

- ▶ Interpleader Action = Lawsuit between the Parties
 - Holder may interplead if too much money or too complicated of an issue
 - Costs money to hire an attorney to interplead
 - Court costs to interplead
 - These costs are deducted from the earnest money
 - Loser must pay winner's legal fees & cover any amount deducted from EM to cover Holder's costs
 - Gets expensive and may be more than the earnest money (approx. \$750 – \$3,000+ ... depends on attorney's fees, county, attorney cost to send Notice, etc.)

- ▶ Court Order

- ▶ “Hold Harmless” agreement to not sue Holder for decision

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Inspection & Due Diligence – Purchase & Sale – B8

8. **Inspection and Due Diligence. Re-organized, tweaked for clarification & expanded in 2023**
- a. **Buyer's Right to Inspect Property:** Unless otherwise specified herein, the Property is being sold in "as-is" condition with any and all faults. Therefore, Buyer and/or Buyer's representative(s) have the right to carefully inspect the Property to make sure it meets the needs of the Buyer. If Buyer is concerned that the Property may have been used as a laboratory for the production of methamphetamine, or as a dumpsite for the same, Buyer should review the National Clandestine Laboratory Register – Georgia at www.dea.gov.
 - b. **Buyer's Right to Inspect Neighborhood:** In every neighborhood there are conditions which different buyers may find objectionable. Buyer is solely responsible for becoming familiar with neighborhood conditions of concern to Buyer 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. 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.gbi.georgia.gov.
 - c. **Buyer's Inspection Rights Continue through Closing:** Upon prior notice to Seller, Buyer and/or Buyer's representatives shall have the continuing right through Closing to enter the Property at Buyer's expense and at reasonable times to, among other things, and without limitation, conduct inspections, examinations, evaluations, appraisals, surveys and tests, meet contractors and vendors, measure for renovations, determine the condition of the Property and confirm that any agreed upon repairs have been made. Seller shall cause all utilities, systems and equipment to be on so that Buyer may complete all inspections.
 - d. **Buyer's Inspection Indemnification Obligations:** Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages related to the exercise of the above inspection rights by Buyer and Buyer's representatives, and Buyer shall promptly pay Seller the actual cost to restore any portion of the Property damaged or disturbed from testing or other evaluations to a condition equal to or better than the condition it was prior to such testing or evaluations.

NEW
2023

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Inspection & Due Diligence – Purchase & Sale – B8 Cont'd

- e. **Lead-Based Paint Hazard Evaluation:** If any portion of the Property was built prior to 1978, the Lead-Based Paint Exhibit (F316) is hereby attached as an Exhibit to the Agreement. Buyer shall have the right to conduct a lead hazard evaluation within ten (10) days from the Binding Agreement Date (or other mutually agreed upon time period) and to terminate this Agreement without penalty upon notice to Seller if lead-based paint and/or lead hazards are found (unless these rights are waived by Buyer in the Lead-Based Paint Exhibit (F316)). If the Lead-Based Paint Exhibit (F316) gives Buyer the right to terminate this Agreement if lead-based paint or lead hazards are found and such notice of termination is not given within ten (10) days from Binding Agreement Date (or other mutually agreed upon time period), the right to terminate for lead-based paint and/or lead hazards shall be waived.
- f. **Due Diligence Period:** If the Property is being sold subject to a Due Diligence Period, then: a) this Agreement shall be an option contract during which time Buyer shall have the option, for any reason or for no reason, to terminate this Agreement upon notice to the Seller given prior to the expiration of the Due Diligence Period, in which case Buyer shall be entitled to a return of Buyer's earnest money without penalty; b) Buyer may, during the Due Diligence Period, seek to amend this Agreement to address any concerns Buyer has with the Property or this Agreement; and c) if Buyer has not terminated this Agreement as set forth above, Buyer shall accept the Property in "as-is" condition, subject to any amendment to this Agreement to address concerns agreed to by the parties.
- g. **Seller's Duty to Disclose:** Seller shall disclose to Buyer any and all known latent or hidden defects in the Property that could not be discovered by the Buyer during a reasonably careful inspection of the Property.
- h. **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, limited treatment and/or repair guarantee and/or other similar warranties which, by their terms, may be transferable to Buyer.
- i. **Repairs:** All agreed upon repairs and replacements shall be performed in a good and workmanlike manner prior to Closing unless otherwise agreed to in writing by the Buyer and Seller. Consider negotiating ___ days PRIOR to Closing

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Inspection & Due Diligence – Purchase & Sale – B8

- ▶ Buyer has right to inspect property (even if Seller is selling "as-is") & neighborhood
- ▶ Buyer & Buyer's Representatives have rights to enter property through closing – with prior notice to Seller
- ▶ Buyer agrees to hold Seller & Both Brokers harmless should there be any damage to property or injuries – Buyer to repair property to condition it was prior to inspecting
- ▶ Lead Paint Evaluation – Buyer has this right per the EPA – BUT LBP Disclosure (GAR F316) MUST be available to Buyer PRIOR to going Under Contract

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Lead-Based Paint Disclosures

- ▶ Federal law requires that before being obligated under a contract to buy housing built prior to 1978, buyers must receive the following from the homeseller: (Forms also available at www.EPA.gov)
 - Lead-Based Paint Informational Pamphlet / Disclosure
 - CB04 – Lead Based Paint Pamphlet
 - CB13 – Protect Yourself When Buying a Home
 - F319 – Disclosure Information Concerning Lead Upon Transfer of Residential Property 42 U.S.C. §4852(d)
 - Seller's Disclosure regarding knowledge of Lead-Based Paint in property
 - F316 – Lead Based Paint Exhibit
 - F918 – Lead Based Paint Exhibit (Leases)
 - Seller must sign & make these available to prospective Buyer PRIOR to entering into a contract
- ▶ Seller must allow Buyer (if desired by Buyer) a 10 day risk assessment of LBP

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Lead-Based Paint Resources

- ▶ EPA – www.EPA.gov
- ▶ GA Environmental Protection Division – <https://epd.georgia.gov/about-us/land-protection-branch/recovered-materials-and-abatement/lead-based-paint>
- ▶ GA Department of Community Affairs – <https://www.dca.ga.gov/housing/homeless-special-needs-housing/emergency-solutions-grants/esg-resources-current-3>

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Inspection & Due Diligence – Purchase & Sale – B8

- ▶ Due Diligence = Buyer’s option to terminate the contract with NO penalty (i.e. keep Earnest Money) for any or no reason
 - Must send Termination Notice (GAR F522 – Unilateral Notice to Terminate) prior to expiration of DD period
- ▶ Termination vs. Release of Earnest Money
 - These are TWO SEPRATE contractual issues
 - Termination may be Unilateral
 - Release of Earnest Money requires BOTH Buyer & Seller signatures agreeing to terms of Release
 - If no Agreement, see previous sections regarding disbursement of Earnest Money

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Inspection & Due Diligence – Purchase & Sale – B8

- ▶ Seller must disclose “latent material defects” EVEN if selling “as is”
 - Defects in property
 - Seller (or Agent) aware of defects
 - Defects could NOT have been discovered by Buyer by “reasonable inspection”
 - Difficult to prove

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Inspection & Due Diligence – Purchase & Sale – B8

- ▶ Georgia is a “Caveat Emptor” state
- ▶ Buyer may do all kinds of inspections to help make decision to proceed or terminate
 - Home inspection / Roof inspection / Foundation inspection
 - Survey
 - Commute to work
 - School district / Zoning
 - Neighborhood / Area / Sex Offender Registry
 - Etc.
- ▶ Buyer may ask Seller to address concerns
 - GAR F704 – Amendment to Address Concerns w/ Property
 - MUST have Buyer & Seller signatures prior to end of DD for the Amendment to be enforceable
- ▶ If not agreed to, Buyer is buying property AS-IS
Just means Seller will not address any issues

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Inspection & Due Diligence – Purchase & Sale – B8

- ▶ May only be extended by Agreement
 - GAR F710 – Amendment to the Due Diligence Period
- ▶ How to Protect Buyer’s Due Diligence Time Frame if... (i.e. utilities not on, Seller hasn’t provided Community Association Disclosure, etc.)
 - DD to “START” upon that being corrected? – NO!
 - Then Buyer could never terminate if Seller doesn’t correct because DD would not have even started!
 - Special Stipulation: “Due Diligence to begin upon binding agreement date & extend for 10 days (or any number) after Buyer’s receipt of written notice of _____”

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Negotiated Repairs

- ▶ Repairs – “Good & workmanlike manner Prior to closing” – Purchase & Sale B8e
- ▶ What if Seller agrees to perform repairs but doesn’t do them?
 - May Buyer terminate without defaulting?
 - May Buyer close & sue Seller for contract breach?
- ▶ NO CLEAR ANSWER – WOULD BE UP TO A JUDGE
- ▶ No termination rights for Buyer in contract
- ▶ Repair issues don’t survive closing – so Buyer may not have grounds for suing Seller after closing

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Negotiated Repairs

- ▶ So what do you do as an agent?
- ▶ Point of Practice: Address potential issue of Seller Non-performance when negotiating for repairs on the Amendment
- ▶ Magic Phrase = “This provision shall survive closing.”
 - Gives Buyer grounds to sue Seller after closing
- ▶ Seller to pay vendor at closing from proceeds (Seller pays vendor so doesn’t impact loan)
 - “At Closing from Seller’s proceeds, Seller to pay _____(vendor name)_____ \$_____.”
 - Then Buyer in possession of check payable to vendor & can schedule themselves

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Negotiated Repairs

- ▶ Seller to escrow funds & take care of repairs
- ▶ See specific stipulations to consider:
 - www.eAGENTweb.com – click “Training Videos” – find this class for hyperlink to these “Special Stipulations to Consider”
- ▶ Many repair Special Stipulations in GAR Special Stipulation library
- ▶ Check with your own Broker prior to using any special stipulations in a contract

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Repair Issues: – authored by Ameer Davis of Davis & Associates

- ▶ “All parties agree that the repair work contemplated and agreed upon herein shall be completed not less than five business days prior to the closing dated of _____. All work shall be completed by vendors Licensed, in the State of Georgia, through the proper state licensing board, to complete the work required herein. Seller shall provide to buyer at least five days prior to closing, evidence of vendors license to do repair work, invoices and paid receipts for all work completed. Should seller not complete the work required herein at least five days in advance of closing, buyer shall have the right to either (1) immediately hire vendors of buyer's choice and have work completed at seller's expense to be paid at time of closing from seller's proceeds or (2) terminate the contract agreement with full refund of all earnest money deposits.”

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Repair Issues – Alternative: (from the RE Forms Special Stipulations)

- ▶ The parties agree that the repairs Seller has agreed to complete under the Contract may not be complete as of the date of Closing. In that event, no later than _____ days after Closing (the "Repair Completion Date") Seller shall complete all repairs to the property herein. It is understood and agreed that Seller, in showing of good faith, shall deposit at Closing \$_____ (the "Repair Funds") with _____ (the "Security Holder") as security for completion of said repairs. As long as Seller completes or causes to complete all repairs no later than midnight of the Repair Completion Date, the Repair Funds shall be returned to Seller within _____ days of the Repair Completion Date or submission of proof of the repairs to Buyer, whichever comes first. Should Seller fail to timely complete said repairs, Buyer shall be entitled to Repair Funds as liquidated damages. Should a dispute arise as to the disbursement of the Repair Funds, the Security Holder shall be entitled to the same rights, remedies, indemnities, etc. As any escrow agent or holder of Earnest Money described in the Contract.

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Brokerage Relationships – Purchase & Sale – B10

- ▶ Must disclose Agency relationship – A10
- ▶ Public is Client – MUST sign Brokerage Agreement – OCGA 10-6A-1 (BRETТА)
 - Seller signs Listing Agreement
 - F101 – Exclusive or F104 – Non-Exclusive
 - Buyer signs Buyer Brokerage Agreement
 - F110 – Exclusive or F113 – Non-Exclusive
- ▶ Public is Customer – Agreements Describe Relationship
 - Seller signs Authorization to Show Unlisted Property
 - F107
 - Buyer signs Agreement to work with Buyer as Customer
 - F116

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Brokerage Relationships – Purchase & Sale – B10

- ▶ Dual Agency
 - 1 Broker
 - 1 Agent
 - CLIENT relationship with BOTH Buyer & Seller
 - Legal with disclosure & written consent of parties
 - Check your Broker's Policy
- ▶ Designated Agency
 - 1 Broker
 - 2 Agents each with a CLIENT relationship with public
- ▶ Having Both Sides
 - Client relationship with Buyer OR Seller
 - Customer relationship with the other party
 - NOT Dual agency but tricky
 - Check your Broker's policy
 - Get consent of parties in writing to protect you, your Broker & the parties

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Brokerage Relationships – Purchase & Sale – B10

- ▶ Consumer Brochures – ALWAYS USE

CBs	GAR CONSUMER BROCHURES
CB01	The ABC's of Agency
CB04	Lead-Based Paint Pamphlet
CB07	Mold Pamphlet
CB08	EPA Home Buyer's and Seller's Guide to Radon Pamphlet
CB10	Protect Yourself When Selling a House
CB13	Protect Yourself When Buying a Home
CB16	What to Consider When Buying a Home in a Community with a Homeowners Association (HOA)
CB19	What to Consider When Buying a Home in a Condominium
CB22	Protect Yourself When Buying a Home to be Constructed
CB25	What Buyers Should Know About Flood Hazard Areas and Flood Insurance
CB28	What Buyers and Sellers Should Know About Short Sales and Distressed Properties
CB31	What New Landlords Need to Know About Leasing Property

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Brokerage Relationships – Purchase & Sale – B10b

b. **Brokerage:** Unless otherwise specified herein, the real estate commissions owing to the Seller's Broker and Buyer's Broker, if any, are being paid pursuant to separate brokerage engagement agreements. Buyer and Seller agree that any commissions to be paid to Broker(s) shall be shown on the settlement statement and collected by closing attorney as a pre-condition to Buyer and Seller closing on the Property so long as the same is permitted by Buyer's mortgage lender, if any. The closing attorney is hereby authorized and directed to pay the Broker(s) at closing, their respective commissions pursuant to written instructions from the Broker(s) at closing, their respective commissions pursuant to written instructions from the Broker(s). 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 agreed in writing to accept the amount paid in full satisfaction of the Broker(s) claim to a commission). The Brokers herein are signing this Agreement to reflect their role in this transaction and consent to act as Holder if either of them is named, as such. This Agreement and any amendment thereto shall be enforceable even without the signature of any Broker referenced herein. The broker(s) are express third-party beneficiaries to this Agreement.

- ▶ Commission earned by Brokers is pursuant to another Agreement
 - Brokerage or Customer Agreements signed between Public & Brokerage
 - Instructions to Closing Attorney signed between Seller's Broker & Buyer's Broker
- ▶ What document describes / outlines how YOU the agent get paid?

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Brokerage Relationships – Purchase & Sale – B10b

- ▶ Are Broker/Agent signatures required? ... NO
- ▶ What do these signatures mean relative to contract?
 - Affirm agency relationship indicated in A10
 - Confirm that if Holder is Broker, Broker will perform contractual responsibilities outlined in contract
 - YOU are "Affiliated Licensee" of your Broker
- ▶ HOWEVER...
 - Some Lenders REQUIRE Agent/Broker signatures to sell loan

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Brokerage Relationships – Purchase & Sale – B10c “Disclaimer”

- c. **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 inspect the Property or to advise Buyer or Seller on any matter relating to the Property which could have been revealed through a survey, appraisal, title search, Official Georgia Wood Infestation Report, utility bill review, septic system inspection, well water test, tests for radon, asbestos, mold, methamphetamine, and lead-based paint; moisture test of stucco or synthetic stucco, inspection of the Property by a professional, construction expert, structural engineer or environmental engineer; review of this Agreement and transaction by an attorney, financial planner, mortgage consultant or tax consultant; and consulting appropriate governmental officials to determine, among other things and without limitation, the zoning of Property, the propensity of the Property to flood, flood zone certifications, whether any condemnation action is pending or has been filed or other nearby governmental improvements are planned. Buyer and Seller acknowledge that Broker does not perform or have expertise in any of the above tests, inspections, and reviews or in any of the matters handled by the professionals referenced above. Buyer and Seller should seek independent expert advice regarding any matter of concern to them relative to the Property and this Agreement. Buyer and Seller acknowledge that Broker shall not be responsible to monitor, supervise, or inspect any construction or repairs to Property and such tasks clearly fall outside the scope of real estate brokerage services. If Broker has written any special stipulations herein, the party for whom such special stipulations were written: a) confirms that each such stipulation reflects the party's complete understanding as to the substance and form of the special stipulations; b) hereby adopts each special stipulation as the original work of the party; and c) hereby agrees to indemnify and hold Broker who prepared the stipulation harmless from any and all claims, causes of action, suits, and damages arising out of or relating to such special stipulation. Buyer acknowledges that when and if Broker answers a question of Buyer or otherwise describes some aspect of the Property or the transaction, Broker is doing so based upon information provided by Seller rather than the independent knowledge of Broker (unless Broker makes an independent written disclosure to the contrary).

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Brokerage Relationships – Purchase & Sale – B10c

- ▶ Brokerage Relationship Disclaimer – “Nothing is an issue until it’s an issue”
- ▶ Parties have not relied on agent advice
- ▶ Buyer needs to check out anything that is important
- ▶ Seller needs to seek independent information regarding their position per the contract

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Brokerage Relationships – Purchase & Sale – B10c

- ▶ Parties to understand Special Stipulations written
- ▶ Buyer acknowledges that answers to questions are from information from Seller
- ▶ Contract Tip: Use GAR F325 “Broker’s Information Disclosure”
 - Fill in the Question & Answer & SOURCE of the answer

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Time Limit – Purchase & Sale – A11 & B11

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

11. **Time Limit of Offer.** The Time Limit of the Offer shall be the date and time referenced herein when the Offer expires unless prior to that date and time both of the following have occurred: (a) the Offer has been accepted by the party to whom the Offer was made; and (b) notice of acceptance of the Offer has been delivered to the party who made the Offer.

- ▶ NOT a time frame for the party or agent to respond
- ▶ ONLY a time frame for the receiving party to accept with NO changes & send notice of acceptance for a Binding Contract
- ▶ If party makes a Counter Offer then the time limit is of no consequence
 - i.e. Seller may make a counter offer prior to end of time limit, hours after end of time limit or days after end of time limit

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Time Limit – Purchase & Sale – A11 & B11

- ▶ What if Party signs offer or counter offer with no changes but it's AFTER the time limit???
- ▶ If NO time limit, then party must withdraw offer or counter offer to take it off the table
 - F285 – Notice to Withdraw Offer or Counter Offer
 - NOT – F288 – Notice to REJECT Offer or Counter Offer

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Notice – Purchase & Sale – C1

1. Notices.

a. **Generally:** All notices given hereunder shall be in writing, legible and signed by the party giving the notice. In the event of a dispute regarding notice, the burden shall be on the party giving notice to prove delivery. The requirements of this notice paragraph shall apply even prior to this Agreement becoming binding. Notices shall only be delivered: (1) in person; (2) by courier, overnight delivery service or by certified or registered U.S. mail (hereinafter collectively "Delivery Service"); or (3) by e-mail or facsimile. The person delivering or sending the written notice signed by a party may be someone other than that party.

- ▶ In writing & Signed by Buyer or Seller
- ▶ In person, delivery, certified / registered US mail, fax or email
- ▶ NO phone calls & NO text

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Notice – Purchase & Sale – C1

b. **Delivery of Notice:** A notice to a party shall be deemed to have been delivered and received upon the earliest of the following to occur: (1) the actual receipt of the written notice by a party; (2) in the case of delivery by a Delivery Service, when the written notice is delivered to an address of a party set forth herein (or subsequently provided by the party following the notice provisions herein), provided that a record of the delivery is created; (3) in the case of delivery electronically, on the date and time the written notice is electronically sent to an e-mail address or facsimile number of a party herein (or subsequently provided by the party following the notice provisions herein) even if it is not opened by the recipient. Notice to a party shall not be effective unless the written notice is sent to an address, facsimile number or e-mail address of the party set forth herein (or subsequently provided by the party following the notice provisions herein).

- ▶ Email is “received” when Sender can prove they sent it – regardless of when receiver opens/reads it
- ▶ Must be emailed / faxed to address on signature page
- ▶ Make sure your email / fax number on signature page is what you actually use to conduct business

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Notice – Purchase & Sale – C1

- ▶ If Client Relationship – Broker or agent or staff may accept Notice for Buyer or Seller
 - So public email not needed on purchase & sale but IS needed on Listing Agreement or Buyer Brokerage Agreement for your Broker
- ▶ If Dual Agency – Notice must also be sent to clients themselves
- ▶ If Designated Agency – Notice must be sent to specific agent representing party

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Notice – Purchase & Sale – C1

- ▶ If Customer Relationship – Notice must also be sent to Buyer or Seller directly
 - So that info required to be on contract (address OR fax OR email)
 - Must ALSO communicate with agent with whom the Customer has chosen to work (i.e. still can't “cross a sign”)
 - GAR F816 – “Notice” – for general Notice – only one siggy
- ▶ NOTE: Agent may NOT sign Notice on behalf of Buyer or Seller – see ¶C4j “No Authority to Bind”

j. **No Authority to Bind:** No Broker or affiliated licensee of Broker, by virtue of this status, shall have any authority to bind any party hereto to any contract, provisions therein, amendments thereto, termination thereof or to notices signed by Broker but not the party. However, if authorized in this Agreement, Broker shall have the right to accept notices on behalf of a party (but not send notices from Broker on behalf of a party unless they are signed by the party). Additionally, any Broker or real estate licensee involved in this transaction may perform the ministerial act of filing in the Binding Agreement Date. In the event of a dispute over the Binding Agreement Date, it shall be resolved by a court or arbitrator having jurisdiction over the dispute, by the written agreement of the Buyer and Seller, or by the Holder but only in making a reasonable interpretation of the Agreement in disbursing earnest money.

Default – Purchase & Sale – C2

2. **Default.**
- a. **Remedies of Seller:** In the event this Agreement fails to close due to the default of Buyer, Seller's sole remedy shall be to retain the earnest money as full liquidated damages. Seller expressly waives any right to assert a claim for specific performance. The parties expressly agree that the earnest money is a reasonable pre-estimate of Seller's actual damages, which damages the parties agree are difficult to ascertain. The parties expressly intend for the earnest money to serve as liquidated damages and not as a penalty.
 - b. **Remedies of Buyer:** In the event this Agreement fails to close due to the default of Seller, Buyer may either seek the specific performance of this Agreement or terminate this Agreement upon notice to Seller and Holder, in which case all earnest money deposits and other payments Buyer has paid towards the purchase of the Property shall be returned to Buyer following the procedures set forth elsewhere herein.
 - c. **Rights of Broker:** In the event this Agreement is terminated or fails to close due to the default of a party hereto, the defaulting party shall pay as liquidated damages to every broker involved in this Agreement 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, all written agreements establishing the amount of commission to be paid to any broker involved in this transaction 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.
 - d. **Attorney's Fees:** In any litigation or arbitration arising out of this Agreement, including but not limited to breach of contract claims between Buyer and Seller and commission claims brought by a broker, the non-prevailing party shall be liable to the prevailing party for its reasonable attorney's fees and expenses.

- ▶ If Buyer Defaults – Seller may ONLY get Earnest money
- ▶ If Seller Defaults – Buyer may terminate & get Earnest Money or sue for specific performance

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Default – Purchase & Sale – C2

- ▶ Brokers may pursue defaulting party for commission they would have earned had contract closed
- ▶ Parties may NOT sue each other for “damages”
 - i.e. may not sue for expenses incurred, moving fees, emotional distress, etc.
- ▶ If there is a lawsuit, Loser may also have to pay winner’s legal fees & expenses

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Risk of Damage to Property – Purchase & Sale – C3

3. **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 of the Offer Date, except for changes made to the condition of Property pursuant to the written agreement of Buyer and Seller. At time of possession, Seller shall deliver Property clean and free of trash, debris, and personal property of Seller not identified as remaining with the Property. 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 without penalty 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 Offer 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 Offer Date and a new certificate of occupancy (if required) is issued.

- ▶ “Substantially Same Condition” at closing as it was on Offer date (including items staying)
- ▶ Clean & free of trash, debris & items not negotiated to stay with property
- ▶ If substantial damage
 - Seller must send Notice to Buyer
 - Either party may terminate
 - Seller may repair & must close within 1 year

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Other Provisions – Purchase & Sale – C4

- ▶ Entire Agreement, Modification (C4e) – After contract is binding it may ONLY be changed in writing & signed by the parties – Amendments & Termination
- ▶ **Contract Tip: Use GAR Form: F519 Mutual Agreement to Terminate Purchase & Sale & Disburse Earnest Money** (includes negotiated payment to Brokers)

A. Selling Broker: 1. Amount to be Paid by Seller to the Selling Broker under the Agreement: \$ _____ 2. Amount to be Paid by Buyer to the Selling Broker under the Agreement: \$ _____	B. Listing Broker: 1. Amount to be Paid by Seller to the Listing Broker under the Agreement: \$ _____ 2. Amount to be Paid by Buyer to the Listing Broker under the Agreement: \$ _____
--	--

- ▶ Or Use GAR Form: **F522 Unilateral Notice to Terminate Purchase & Sale Agreement & Proposed Disbursement of Earnest Money**

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Other Provisions – Purchase & Sale – C4

- ▶ Assignment – (C4e) – Seller MUST agree in writing if Buyer wants to assign contract (i.e. Investor)
- ▶ Contract Must Include Seller’s Written Permission for Buyer to Assign contract
 - **SS 611 SELLER CONSENTS TO ASSIGNMENT OF PURCHASE AND SALE AGREEMENT** Seller consents to Buyer assigning this Agreement to another buyer (“Assignee”) and having Assignee become the buyer thereunder.
- ▶ Then when Buyer #1 finds Buyer #2 to Assign the Contract to use:

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Note on Assignment

- ▶ Assignor & Assignee then Sign an Agreement
 - GAR F279 – Assignment of Purchase & Sale Agreement Rights = Agreement between Assignor (i.e. Original Investor Buyer who has signed contract with Seller) and Assignee (i.e. end Buyer who will live in property)
 - Seller does not sign this
- ▶ Buyer & Seller also Sign an Agreement
 - GAR 735 – Amendment to Assign Agreement (NEW in 2023)

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Other Provisions – Purchase & Sale – C4

- ▶ Extension of Deadlines (C4f) – addressed with 8 Day Unilateral Extension
 - If Closing date falls on weekend or Federal Holiday it automatically gets extended to next business day
- ▶ FIRPTA Affidavit (C4g – NEW in 2023) – deals with US taxes & foreign Buyer
- ▶ GAR Forms (C4h) – No party is required to use GAR forms & Courts may interpret contract differently from the contract or intentions of the Buyer & Seller
 - License Law: Must present ALL written offers
 - GREC Rule 520-1-.10
 - OCGA 43-40-25
 - OCGA 10-6A

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Other Provisions – Purchase & Sale – C4

- ▶ No Authority to Bind (C4j) – Brokers / Agents may not sign anything or send emails that will bind the public to the terms of this contract – Need the Buyer / Seller signatures
- ▶ Broker MAY fill in Binding Agreement Date as a ministerial act

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Dispute Over Binding Agreement Date

- ▶ C4j – Resolved by Court Arbitrator or written Agreement between Buyer & Seller or Holder making reasonable interpretation to disburse Earnest Money
- ▶ C4k – Notice of Binding Agreement Date = Accepting Party send Notice of Acceptance to Offering Party
 - Generally speaking... If using Offer & Counter Offer Forms, the agent whose name is pre-printed at bottom would be side that binds
- ▶ FYI Binding Agreement Date = Day 0 for counting days for contingency time frames

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Dispute Over Binding Agreement Date

- ▶ C4l – Objection to Binding Agreement Date = POTENTIALLY CHANGES THE BINDING AGREEMENT DATE
 - Party who object has 1 day to send Notice of Objection to the other Party (GAR F816 – Notice)
 - To be resolved by written agreement of parties
 - Point of Practice – Get your Brokers involved
 - If NO objection then the date entered on Purchase & Sale is agreed to be the Binding Agreement Date
- ▶ NEW in 2022 GAR F733 – Binding Agreement Date Confirmation Amendment
- ▶ If none entered, then contract is still enforceable

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Other Provisions – Purchase & Sale – C4

- ▶ C4m – Rules for Interpreting Agreement
 - i.e. hierarchy of terms governing transaction
 - Formerly spelled out under “Exhibits & Special Stipulations” sections
- ▶ Pre-Printed → Typed → Handwritten →
- ▶ Exhibits → Special Stipulations
 - So do NOT write a Special Stipulation that addresses an issue already covered in P&S or in an Exhibit
- ▶ FHA & VA Amendatory Clause (= Appraisal Contingency) shall CONTROL over any Exhibit or Special Stipulation
 - i.e. an “Appraisal Gap” stipulation in a contract where Buyer is getting FHA or VA loan has NO bearing on the contract

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Other Provisions – Purchase & Sale – C4

- ▶ Survival (C4o) – Very Specific – i.e. obligations legally continue after closing
 - 8 Specific Issues

2023
Added #4

o. 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 written representations of Seller in this Agreement regarding the Property or neighborhood in which the Property is located; (4) Buyer's indemnification obligations arising out of the inspection of the Property by Buyer and Buyer's representatives; (5) the section on condemnation; (6) the section on attorney's fees; (7) the obligations of the parties regarding ad valorem real property taxes; and (8) any obligations which the parties herein agree shall survive the closing or may be performed or fulfilled after the Closing.

- ▶ Point of Practice: Use the “Magic Phrase” when needed
 - See item #8

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Other Provisions – Purchase & Sale – C4 – Survival Cont'd

- ▶ Commission
- ▶ Warranty of Title
 - Limited Warranty Deed (time of Seller's ownership)
- ▶ Seller's written representations of property & Neighborhood
 - Many Sellers won't complete Seller's Property Disclosure – but must still legally disclose known latent material defects – but does not have to be on any specific form
- ▶ Buyer's indemnification obligations arising out of inspections

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Other Provisions – Purchase & Sale – C4 – Survival Cont'd

- ▶ If property has been Condemned
- ▶ Attorney's Fees
- ▶ Property Taxes

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Other Provisions – Purchase & Sale – C4 – Survival Cont'd

- ▶ And now for the “Magic Phrase”...
- ▶ Any obligations parties agree will survive
 - Remember the “Magic Phrase” = “This provision shall survive closing”
 - i.e. if Seller agrees to purchase home warranty for Buyer & it doesn't get on Closing Statement, must use “This Provision Shall Survive Closing” for Seller to be legally obligated to pay for it after closing
 - Also for repairs not completed by Seller prior to closing

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Definitions – Purchase & Sale – C5

- ▶ Banking Day (C5a) – Mon – Fri excluding Federal Holidays
- ▶ Binding Agreement Date (C5b) – NOTICE of Acceptance
 - Party making the last offer or counter offer is the party who BINDS the contract
 - Party making offer (or counter offer) may WITHDRAW offer prior to receiving notice of acceptance (i.e. contract form with both Buyer & Seller signatures)
 - Binding Agreement Date can be proven per the Notice section discussed earlier
- ▶ Broker (C5c) = Qualifying Broker, Firm, Affiliated Licensee

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Definitions – Purchase & Sale – C5

- ▶ Business Days (C5d) – Monday – Friday and no Federal Holidays
 - Same as “Banking Days” in the GAR contract
 - If contract just says “Days” = Calendar days (Saturdays & Sundays & Federal Holiday are included)
- ▶ Day (C5e) – Calendar Day through 11:59pm
- ▶ Material Relationship (C5f) – must disclose
 - i.e. family, business relationship, past client, etc.
 - If you have to ask yourself if it is a “material relationship” then you should probably disclose

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Cyber-Fraud – Purchase & Sale – c6

- ▶ Warning to Buyers & Sellers to not trust emails with wire instructions
- ▶ Cross-check & verify with a third party source (i.e. Google)
- ▶ So DON'T email wire instructions from your Broker or Closing Attorney
- ▶ Never put “Wire Instructions” in subject line of email
- ▶ Send via US Mail
- ▶ So if Earnest Money is to be wired, negotiate for a longer time frame (A7b) for Buyer to remit funds to Holder

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Contract Tip: “Beware of Cyber Fraud”

- ▶ Agent should NEVER share wiring instructions from Closing Attorney to Public
- ▶ Agent should NEVER email wiring instructions (i.e. for Earnest Money to Broker)
Agent should have wire fraud disclaimer on email signature
- ▶ Wire instructions should be delivered to public by hand, US mail, analog fax
- ▶ Agent should have wire instructions for their Broker & Closing Attorney & HAND to client at first meeting – to avoid any delays & getting these instructions to the public once under contract
- ▶ Agent should warn client about not trusting any changes they get to wire instructions via email or text

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Limit of Broker's Liability – Purchase & Sale – C7

7. **LIMIT ON BROKER'S LIABILITY.** BUYER AND SELLER ACKNOWLEDGE THAT BROKER(S):
- SHALL, UNDER NO CIRCUMSTANCES, HAVE ANY LIABILITY GREATER THAN THE AMOUNT OF THE REAL ESTATE COMMISSION PAID HEREUNDER TO BROKER (EXCLUDING ANY COMMISSION AMOUNT PAID TO A COOPERATING REAL ESTATE BROKER, IF ANY) OR, IF NO REAL ESTATE COMMISSION IS PAID TO BROKER, THAN A SUM NOT TO EXCEED \$100; AND
 - NOTWITHSTANDING THE ABOVE, SHALL HAVE NO LIABILITY IN EXCESS OF \$100 FOR ANY LOSS OF FUNDS AS THE RESULT OF WIRE OR CYBER FRAUD.

- ▶ Limited to commission paid or \$100 if no commission

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Exhibits & Special Stipulations – Purchase & Sale – C8

- ▶ Exhibits supersede Purchase & Sale
- ▶ Are included if attached, listed or even if just referenced here

8. **Exhibits and Addenda.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement.

All Cash Sale Exhibit (F401) *

~~Removed hierarchy language due to new paragraph C4k~~

- ▶ Special Stipulations supersede Purchase & Sale & Exhibits
 - DON'T write Special Stips that address an item already addressed in contract or Exhibit

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Signatures & Binding Agreement Date

- ▶ Must have ALL Buyers / Sellers sign
- ▶ Agents must include License Number & Firm Number
- ▶ Agents must include:
 - Mailing Address – for Closing Attorney
 - For Notice: Address OR Email OR Fax
- ▶ If Public is Customer, you must include their:
 - Address OR Email OR Fax for Notice
 - Also true if Dual Agency or Designated Agency contract
 - See ¶C1c
- ▶ Binding Agreement Date
 - Fill in so all are on same page
 - Can be determined per Notice section Unless an Objection was never raised within 1 day – see ¶ C4k

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Counter Offer – F249

This is a Counteroffer to or modification of, as the case may be, (hereinafter collectively "Counteroffer") the unaccepted original offer set forth in the Purchase and Sale Agreement dated _____ including all exhibits attached hereto or incorporated by reference therein ("Original Offer") for property located at: _____, Georgia _____ ("Property").

- A. **Previous Counteroffers Rejected.** The party making this Counteroffer acknowledges that in doing so: 1) it constitutes a rejection of the Original Offer as presented and all previous counteroffers; 2) the Original Offer and all previous counteroffers are no longer available for acceptance; 3) no previous counteroffer(s) shall be considered a part of any agreement between the parties; and 4) nothing requires the other party to continue the negotiations.
- B. **Relationship between Original Offer and This Counteroffer.** The Original Offer is hereby incorporated by reference into this Counteroffer. However, the terms of this Counteroffer shall modify and control over any conflicting or inconsistent provisions contained in the Original Offer.
- C. **Effect of Accepting This Counteroffer.** When this Counteroffer is signed by the Buyer and Seller and a copy of the same is delivered to both parties, the Original Offer as modified by this Counteroffer constitutes a legally binding agreement. Since the Original Offer (including all exhibits thereto) is incorporated by reference into this Counteroffer, only this Counteroffer needs to be signed to create a legally binding agreement between the parties.
- D. **Clean Copy of Agreement.** At any time prior to closing, either party if so requested by the other shall sign a conformed or "clean" copy of the Agreement combining the terms of Original Offer with the controlling and supplemental provisions of this Counteroffer into one (1) document, including initialing or signing, as the case may be, all exhibits. (Include SS622 Conformed Copy of Agreement in conformed or "clean" copy of Agreement)
- E. **Terms and Conditions.** The following terms and conditions of the Original Offer are modified as follows: [The sections not filled in or marked N/C (for "no change" which shall mean that no change is being proposed to that section of the agreement) shall not be a part of this Counteroffer and shall remain the same as set forth in the Original Offer.]

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Counter Offer – F249

- ▶ Binding Contract = Original Offer + ONE Counter Offer that has Buyer & Seller signatures
- ▶ Binding Contract = Terms of original + anything in Counter that contradicts original
- ▶ Counter Offer references Original (including Exhibits & Special Stipulations) so ONLY Counter Offer needs to be signed by Seller
- ▶ If a party or Lender requires Seller signatures on Exhibits, then do a “clean copy”

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Counter Offer – F249

- ▶ **Contract Tip:** Exhibits that Should Have Seller Initials & Be Available to Potential Buyers for Writing an Offer:
 - F301 – Seller’s Property Disclosure Statement OR
 - F302 – Seller’s Disclosure of Latent Defects & Fixtures Checklist
 - F322 – Community Association Disclosure Exhibit
 - F316 – Lead Based Paint Exhibit – 2023 GAR Seller Brokerage Agreement requires Seller complete this at time of signing Brokerage Agreement
- ▶ See previous Notes on EPA & Lead-Based Paint:
- ▶ Also use CB04 – Lead Based Paint Pamphlet (EPA)
- ▶ EPA fines Brokers / Agents \$18,000 per missing initial/signature

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Counter Offer – F249

- ▶ Note: If a Lender wants the Financing Contingency Exhibit signed, best way to handle this is by creating a Conformed Copy
 - Also if any party (or Lender or Closing Attorney) wants a Conformed “clean” copy
 - Complete a Purchase & Sale Agreement & all Exhibits with terms that reflect the actual final agreement

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Counter Offer – F249

- ADD THIS SPECIAL STIPULATION: SS 622 CONFORMED COPY OF AGREEMENT
- “Buyer and Seller acknowledge that the above Agreement is a conformed copy of an Agreement between the parties dated

In the event of any conflict between this conformed Agreement and the original thereof, all parties agree that the original Agreement shall control.”

- Write “CONFORMED” on front page of Purchase & Sale

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Conventional Loan Contingency – F404

- ▶ Must fill out type of loan for application
 - Per License Law
 - For any Loan Denial Letter
 - Get information from Buyer's Lender

1. **Application.** Buyer shall promptly apply for and in good faith seek to obtain the conventional loan or loans described below ("Loan(s)") such that Buyer can fulfill Buyer's obligations hereunder prior to the expiration of this Conventional Loan Contingency. [Select A. or A. and B. below. Any box not selected shall not be a part of this Agreement. All Loan terms must be filled in.]

<input type="checkbox"/> A.	FIRST MORTGAGE LOAN	Loan Amount	Term	Interest Rate (at par)	Rate Type	Source Of Loans Term
		_____% of purchase price	____ years	Not greater than _____% per annum (or initial rate on adjustable loan)	<input type="checkbox"/> Fixed <input type="checkbox"/> Adjustable <input type="checkbox"/> Interest Only	<input type="checkbox"/> Institutional <input type="checkbox"/> Seller <input type="checkbox"/> Other
<input type="checkbox"/> B.	SECOND MORTGAGE LOAN	_____% of purchase price	____ years	Not greater than _____% per annum (or initial rate on adjustable loan)	<input type="checkbox"/> Fixed <input type="checkbox"/> Adjustable <input type="checkbox"/> Interest Only	<input type="checkbox"/> Institutional <input type="checkbox"/> Seller <input type="checkbox"/> Other

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Conventional Loan Contingency – F404

- ▶ Approved Mortgage Lender

2. **Use of Particular Mortgage Lender.** Unless an Approved Mortgage Lender is identified below, Buyer may apply for approval of the Loan(s) with any institutional mortgage lender licensed to do business in Georgia. If an Approved Mortgage Lender(s) is identified below, Buyer shall apply for approval of the Loan(s) with at least one such Approved Mortgage Lender. Nothing herein shall require Buyer to obtain mortgage financing from an Approved Mortgage Lender.

Approved Mortgage Lender(s)

- ▶ Not Required
- ▶ If one is identified, Buyer MUST apply for loan with one of those identified
- ▶ Buyer not required to get loan from this lender
- ▶ Comes in to play if Loan Denied

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Conventional Loan Contingency – F404

3. **Length of the Financing Contingency Period** The length of the Financing Contingency Period in Section 7 below shall be ___ days from the Binding Agreement Date.
4. **Length of Time for Buyer to Request a Reduction in the Sales Price Based Upon a Low Appraisal** The time period for Buyer to request a reduction in the sales price of the Property, if it appraises for less than the purchase price of the Property, as set forth in Section 13 below, shall be ___ days from the Binding Agreement Date.

- ▶ **TIME FRAMES FOR FINANCING CONTINGENCY & Appraisal Contingency – separate paragraph – NEW in 2023**
- ▶ **Financing Contingency = Seller gives Buyer ___ days from BAD to convince a Lender to lend them money to buy the house**
- ▶ **Appraisal Contingency = Buyer has __ days from BAD to propose Amendment to Seller for Lower Appraised Sale Price**

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Conventional Loan Contingency – F404

- ▶ **Buyer may apply for a different loan BUT**

5. **Buyer May Apply for Different Loan(s).** A Loan Denial Letter (as that term is defined below) must be for the Loan(s) described above. Buyer may also apply for different conventional loans than the Loan(s) described above. However, the denial of such other loans shall not be a basis for Buyer to terminate this Agreement. Notwithstanding the above, Buyer shall not have a right to apply for a FHA, VA or USDA loan unless the parties agree to amend this Agreement to add a FHA, VA or USDA loan contingency exhibit meeting FHA, VA or USDA requirements, as the case may be (in which event this Conventional Loan Contingency shall no longer be part of this Agreement). Nothing herein shall require the Seller to agree to amend this Agreement.

- Denial of a different conventional loan will NOT protect Buyer's Earnest Money if denied for the other loan
- Must get Seller's written approval if switching to FHA, VA or USDA
- Seller does not have to agree

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Conventional Loan Contingency – F404

7. **Financing Contingency.** Buyer shall have a financing contingency period equal to the number of days set forth in Section 3 above to determine if Buyer has the ability to obtain the Loan(s) described above ("Financing Contingency Period"). Buyer shall be deemed to have the ability to obtain the Loan(s) unless prior to the end of the Financing Contingency Period, Buyer: a) notifies Seller that Buyer is terminating the Agreement because Buyer has been turned down for the Loan(s) and b) provides Seller within seven (7) days from the date of such notice a letter of loan denial from a mortgage lender based upon the mortgage lender's customary and standard underwriting criteria ("Loan Denial Letter"). The Loan Denial Letter and mortgage lender issuing the Loan Denial Letter must meet all of the requirements set forth elsewhere in this Exhibit but may be provided to Seller after the Financing Contingency Period has ended if the above-referenced seven (7) day period to provide the Loan Denial Letter falls outside of the Financing Contingency Period. Notwithstanding the above, the end of the Financing Contingency Period shall not limit Buyer's rights under the Appraisal Contingency section of this Agreement, provided that the same has not expired. **Financing Contingency is DIFFERENT from Appraisal Contingency.**

8. **Use of Approved Mortgage Lender and Loan Denial Letter.** If Buyer has agreed to apply for the Loan(s) with an Approved Mortgage

- ▶ If Buyer can't convince Lender to lend them money, they must terminate the contract prior to 11:59pm on the last day of time frame
- ▶ AND prove it with a Loan Denial Letter – see following information
- ▶ Financing Contingency – based on Buyer
- ▶ Appraisal Contingency – based on property

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Conventional Loan Contingency –

8. **Use of Approved Mortgage Lender and Loan Denial Letter.** **Contingency.** If Buyer has agreed to apply for the Loan(s) with an Approved Mortgage Lender, the Loan Denial Letter must be from an Approved Mortgage Lender. If Buyer is not required to apply for the Loan(s) with an Approved Mortgage Lender, the Loan Denial Letter may be from any institutional mortgage lender licensed to do business in Georgia. A Loan Denial Letter from a non-institutional mortgage lender shall not be the basis for Buyer to terminate this Agreement.

Notwithstanding any provision to the contrary contained herein, the Loan Denial Letter may not be based solely upon one or more of the following: (a) Buyer lacking sufficient funds other than the amount of the Loan(s) to close; (b) Buyer not having leased or sold other real property (unless such a contingency is expressly provided for in this Agreement); (c) Buyer not having provided the lender(s) in a timely fashion with all information required by lender, including but not limited to, loan documentation, Official Wood Infestation Reports, structural letters, well tests, septic system certifications, flood plain certifications and any other similar information required by lender (hereinafter collectively "Required Information"); (d) Buyer making purchases that adversely affect Buyer's debt to income ratio; (e) the Property not appraising for at least the purchase price unless this Agreement is subject to an appraisal contingency and an appraisal meeting the requirements of this Agreement has been performed; or (f) the lender not having completed underwriting the loan request.

Buyer may terminate this Agreement without penalty based upon an inability to obtain the Loan(s) only if Buyer fulfills all of the applicable requirements set forth in this Exhibit.

- ▶ **Loan Denial Letter**
 - Must be sent to Seller within 7 days of Notice of Termination even if those 7 days fall AFTER the contingency time frame
 - Must be from one of the identified "Approved Mortgage Lenders" if one was named
 - If no lender identified, then loan denial letter may be from any lender approved to do business in GA

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Conventional Loan Contingency – F404

- ▶ Denial Letter may NOT be based solely on the following – i.e. Buyer's EM is NOT protected if the loan denial letter is based solely on
 - a. Buyer not having cash for down payment or closing costs
 - b. Buyer not having sold/leased current home (if no exhibit included)
 - c. Not having sent Lender request documents timely
 - d. Buyer's actions AFTER Binding (i.e. buying stuff & damaging credit or losing job, etc.)
 - e. Property not appraising for Sale Price unless subject to appraisal contingency (i.e. 0 days for appraisal contingency)
 - f. Lender not having completed underwriting

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Conventional Loan Contingency – F404

- d. Buyer's actions AFTER Binding (i.e. buying stuff & damaging credit or losing job, etc.)
- e. Property not appraising for Sale Price unless subject to appraisal contingency
 - * Financing Contingency & Appraisal Contingency are SEPARATE contingencies (Financing assesses person & Appraisal assess property as collateral)
 - * But if 0 days for appraisal contingency, then it now (in 2022) falls under Financing Contingency
- f. Lender not having completed underwriting
 - * Buyers need to choose Lender wisely

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Conventional Loan Contingency – F404

9. **Right of Seller to Request Evidence of Buyer's Ability to Close.** If the Financing Contingency ends without Buyer terminating this Agreement, Seller shall have the right, but not the obligation, to request that Buyer provide Seller with written evidence of Buyer's financial ability to purchase the Property ("Evidence"). A copy of a loan commitment from each institutional mortgage lender from whom Buyer is seeking mortgage financing to purchase the Property stating the type, amount and terms of the loan(s) and the conditions for funding the loan(s), shall be deemed sufficient Evidence. The provision of such Evidence is not a guarantee that the mortgage loan(s) will be funded or that Buyer will close on the purchase of the Property. Buyer shall have seven (7) days from the date Seller delivers notice to Buyer requesting such Evidence to produce the same. No request for such Evidence shall be made by Seller less than seven (7) days from the date of Closing.
10. **Seller's Right to Terminate.** In the event Buyer fails to provide Seller with the Evidence of Buyer's Ability to Close within the timeframe set forth above, Seller shall notify Buyer of the default and give Buyer three (3) days from the date of the delivery of the notice to cure the same. If Buyer does not timely cure the default, Seller may terminate this Agreement within seven (7) days thereafter due to Buyer's default upon notice to Buyer. In the event Seller does not terminate this Agreement within that timeframe, the right to terminate on this basis shall be waived.

Right of Seller to Request Evidence of Buyer's Ability to Close

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Conventional Loan Contingency – F404

- ▶ Financing Contingency Time frame has passed & Buyer did not terminate, the Seller may request Proof of ability to close = Loan Commitment Letter
 - Seller send Notice to Buyer with this request
 - Buyer has 7 days to produce
 - If not, then Seller notifies Buyer of Default
 - Buyer has 3 days to cure default (i.e. produce commitment letter)
 - If no cure, then Seller has 7 days to Terminate
 - WATCH YOUR TIME FRAMES – if Financing contingency is 2 days & closing date is 30 days then these above time frames don't make sense – you'll be out of contract

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Conventional Loan Contingency – F404 – Appraisal Contingency ¶13

13. **Appraisal Contingency.** In addition to Buyer's other rights herein, this Agreement shall be subject to the following appraisal contingency. Buyer shall cause the Lender to: (a) select an appraiser to perform one or more appraisals of the Property and (b) provide Seller with a copy of any appraisal that is for less than the purchase price of the Property. If any such appraisal is for less than the purchase price, Buyer shall, not later than by the end of the time period set forth in Section 4 above, have the right to request that Seller reduce the sales price of the Property to a price not less than the appraised price by submitting an Amendment to Sales Price (F713) (ATSP) to Seller along with a copy of the appraisal supporting the lower price. In the event that Buyer does not timely submit an ATSP to Seller, Buyer shall be deemed to have waived Buyer's right to do so and this Agreement shall no longer be subject to an appraisal contingency.

Seller shall, not later than three (3) days from the date of an ATSP is delivered to Seller (but not later than two (2) days prior to Closing), accept or reject the ATSP or seek to negotiate with Buyer a lesser reduction in the sales price of the Property than what is reflected in the ATSP. If, within the above timeframe, an ATSP has not been signed and accepted by the Buyer and Seller and timely delivered to create a legally enforceable amendment, Buyer shall have an additional three (3) days (but not later than one (1) day prior to Closing) to terminate this Agreement without penalty. If Buyer does not terminate the Agreement within this timeframe, Buyer's right to terminate due to the failure to agree to an ATSP shall be waived and Buyer shall close on the Property for the purchase price set forth in this Agreement. Nothing herein shall require Buyer to seek a reduction in the sales price of the Property.

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Conventional Loan Contingency – F404 – Appraisal Contingency ¶11

- ▶ If property does NOT appraise for sale price or more then Buyer has ____ days from Binding Agreement Date to send an Amendment to Seller asking Seller to sell at appraised price
 - F713 – Amendment to Sale Price “ATSP”
- ▶ Buyer MUST give Seller the option to sell at the lower appraised price OR agree to buy for higher price
 - Buyer may NOT simply terminate on a low appraisal
- ▶ Must provide Seller with copy of appraisal

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Conventional Loan Contingency – F404 – Appraisal Contingency ¶13

- ▶ After Buyer sends Seller ATSP, then Seller has 3 days to accept, reject or negotiate new sale price
- ▶ If Buyer & Seller don't come to terms within these 3 days, the Buyer has an additional 3 days to terminate with no penalty (i.e. get EM back) as long as those 3 days fall at least 1 day prior to contracted closing date
- ▶ If Buyer does NOT terminate within that time frame, then Buyer is obligated to buy property at higher contract price regardless of appraisal price

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Conventional Loan Contingency – F404 – Appraisal Contingency ¶13

- ▶ Buyer not required to ask Seller to reduce Sale Price based on low appraisal BUT.... If Buyer does not send Seller copy of Low Appraisal & propose Amendment to Reduce Sale Price, then Buyer MUST BUY at the contract sale price regardless of the low appraisal
- ▶ i.e. Buyer would bring additional cash for the difference between low appraisal & contract price

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NOTE about Conventional Loan Contingency – F404

- ▶ ¶12 – Lender Required Repairs – Eliminated from Exhibit in 2020
- ▶ Instead made this a Special Stipulation 524
- ▶ “Any repairs required by lender are to be completed and paid for by _____ prior to Closing provided such repairs do not exceed \$_____ in total costs. In the event the anticipated costs exceed the amount listed above, an itemized estimate shall be provided to all parties from third-party contractor(s), selected by Seller, of the total costs of repairs to be made to the Property.
- ▶ Seller or Buyer shall have the option to pay the excess amount. If the parties do not agree in writing who shall pay the excess amount, then this Agreement shall terminate within three (3) days of written notice of itemized estimate.”

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FHA Loan – F407

- ▶ Same as Conventional up to....
- ▶ NO time frame for “Appraisal Contingency”
- ▶ Loan Denial information in Financing Contingency paragraph
 - No reference to a Low Appraisal
 - i.e. a Low Appraisal is covered in the Amendatory Clause and not an issue for a Buyer to terminate under “Financing Contingency”
- ▶ Then the Same until Amendatory Clause Paragraph – ¶12

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FHA Loan – F407

12. **Amendatory Clause.** It is expressly agreed that, notwithstanding any other provisions of this Agreement, Buyer shall not be obligated to complete the purchase of Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless Buyer has been given in accordance with HUD/FHA requirements a written statement by the Federal Housing Commissioner or a Direct Endorsement lender setting forth the appraised value of Property of not less than \$ Fill in with Numbers. Buyer shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or condition of the property. The purchaser should satisfy himself/herself that the price and condition of the property are acceptable. If the written statement by the Federal Housing Commissioner or a Direct Endorsement lender sets forth an appraised value of the Property that is less than the minimum appraised value set forth in this amendatory clause, Seller may reduce the purchase price to an amount equal to such actual appraised value, and the parties shall close at such lower purchase price with appropriate adjustments to the sales Agreement. This amendatory clause shall apply even when the Financing Contingency Period has terminated.

- ▶ MUST fill in dollar amount in numerals for Sale Price
- ▶ REMEMBER to address this paragraph if the Sale Price gets changed in a Counter Offer

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FHA Loan – F407

- ▶ Amendatory Clause = Appraisal
 - No time frame so appraisal contingency protection for Buyer's Earnest Money in FHA goes THROUGH day of closing
 - MUST fill in dollar amount – remember to counter this if sale price gets changed in a counter offer
 - “Amendatory Clause paragraph 11 of FHA Loan Exhibit shall read \$_____.”
 - If low appraisal, Buyer may terminate & get Earnest Money back
 - Remember that Amendatory Clause SUPERSEDES any Special Stipulation (i.e. Appraisal Gap Stip)
 - Buyer MAY ask Seller to sell for lower appraised value but it's not required like it is in Conventional

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FHA Loan – F407

▶ FHA–Appraisal Required Repairs

16 Repairs Required in FHA Commitment. Any repairs required in the FHA Commitment shall be completed and paid for by _____ prior to closing provided such repairs do not exceed \$_____ in total costs.

In the event the anticipated costs exceed the amount listed above, Seller shall provide Buyer with an itemized written statement of the total costs of the repairs required in the FHA Commitment from third-party contractor(s) selected by Seller. Seller or Buyer shall have the option to agree to pay the excess amount upon notice to the other party, which shall constitute an amendment to this Agreement. If neither party provides such notice to the other within three (3) days of the date Seller provides Buyer with the written estimate of the above-referenced cost of the repairs (or the parties otherwise fail to agree in writing within this timeframe as to how the excess repair costs will be paid), then this Agreement shall automatically terminate without penalty to the Buyer. If Buyer agrees to pay the excess amount, the same shall be paid by Buyer to Seller at Closing. = Buyer gets Earnest Money back

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FHA Loan – F407

- ▶ Appraisal / Lender required repairs – paragraph 16
- ▶ Negotiate who will pay & amount that party is willing to pay
- ▶ If actual repairs exceed the amount negotiated
 - Seller must get 3rd party estimate & send to Buyer
 - Buyer & Seller must agree who will pay overage within 3 days of when Seller sent Estimate
 - If no written agreement (via Amendment) within that time frame, then this contract terminates

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FHA Loan – F407

- ▶ Seller Required Fees
 - Tax Service Fees – paragraph 15
 - Lender–required inspection of Septic & well – paragraph 17
 - Lender–required Home warranty if less than 1 year old – paragraph 18
- ▶ Property MAY be required by FHA to be connected to public Sewer – amount & obligation negotiated by Buyer & Seller – paragraph 19
- ▶ Arm’s Length Transaction = no relationship between Buyer & Seller – paragraph 21

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VA Loan – F410

- ▶ Same as Conventional & FHA through Loan Denial Paragraph & then paragraph 12 = **Amendatory Clause = Appraisal Contingency**

12. **Amendatory Clause.** It is expressly agreed that, notwithstanding any other provisions of this Agreement, the Buyer shall not incur any penalty by forfeiture of earnest money deposits or otherwise be obligated to complete the purchase of the property described herein, if the Agreement purchase price or costs exceeds the reasonable value of the property established by the Veterans Administration ("VA"). The Buyer shall, however, have the privilege and option of proceeding with the consummation of this Agreement without regard to the amount of the reasonable value established by VA. If Buyer elects to complete the purchase at an amount in excess of the reasonable value established by VA, Buyer shall pay such excess amount in cash from a source which Buyer agrees to disclose to VA and which Buyer represents will not be borrowed funds except as approved by VA. If the VA reasonable value of the property is less than the purchase price, Seller may reduce the purchase price to an amount equal to the VA reasonable value, and the parties to the sale shall close at such lower purchase price with appropriate adjustments to the sales Agreement. This amendatory clause shall apply even when the Financing Contingency Period has terminated.

- ▶ Same as FHA but no price identified so must appraise for Contracted Sale Price
- ▶ Remember that Amendatory Clause SUPERSEDES any Special Stipulation (i.e. Appraisal Gap Stip)

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VA Loan – F410

- ▶ Lender-Required Repairs – paragraph 14
 - Must be paid for by Seller
 - Amount negotiated in Exhibit
 - If price exceeds this, same process as in FHA Exhibit

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VA Loan – F410

15.VA Rules and Regulations; Termite Letter. An Official Georgia Wood Infestation Report ("Termite Report") meeting the requirements of Georgia law and dated within 90 days prior to Closing, indicating that the Property is free of infestation from termites and other wood destroying organisms shall be obtained by and at the sole expense of Buyer or Seller. The VA Notice of Value will be conditioned upon the preparation of the above-referenced Termite Report meeting the above requirements. In the event the Property is not free of infestation from termites and/or other wood destroying organisms, Seller shall immediately cause the Property to be treated or retreated such that a Termite Report meeting the requirements of Georgia law indicating that the Property is free of infestation from termites and other wood destroying organisms can be issued within 90 days prior to the Closing. Any reinspection fee necessitated by Seller correcting infestation from termites and/or other wood destroying organisms shall be paid for by Seller. Buyer and Seller acknowledge that the Property may not meet VA's Minimum Property Requirements if it contains damage from a previous infestation of termites and/or other wood destroying organisms. In such event, Seller shall obtain a written estimate from a contractor to repair such damage and provide a copy of the same to Buyer. If the parties are unable to reach a written agreement as to the repair of this damage within three (3) days of the date that the contractor's estimate is provided by Seller to Buyer, then this Agreement shall automatically terminate.

- ▶ REQUIRED Termite Letter
 - Buyer or Seller (NEW in 2023) must provide termite clearance letter
 - Letter dated within 90 days of closing
 - If active infestation, then Seller must treat or retreat in order to provide this clearance letter

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VA Loan – F410

- If property is damaged from PREVIOUS infestation, Lender may require that damage to be repaired
 - Seller to get estimate & send Notice of amount to Buyer
 - Buyer & Seller must decide who will pay
 - If they don't agree in writing on an Amendment within 3 day of Seller's Notice, then contract terminates

- ▶ The rest is same as FHA Exhibit
- ▶ May be required to be connected to public water & sewer

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Special Stipulations – Especially if Condo / Townhouse Community

- ▶ **SS 526 FHA/VA Development Approval**

- ▶ “Notwithstanding any other provision to the contrary, if it is determined the Property is in a real estate development that is not FHA/VA approved, Buyer may terminate this Agreement upon Notice to Seller and receive a full refund of Buyer's earnest money.”

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No Financing Contingency – F401

- ▶ 2023 – Removed “All Cash”
- ▶ Use if Buyer using cash
- ▶ OR getting loan but willing to risk earnest money if they don’t get loan OR Hard-Money Loan
- ▶ BUT.... If Buyer is getting loan, there is NO right to use 8 Day Unilateral Extension if Lender is delayed or Attorney delayed due to Lender delay
- ▶ Verification of Funds time frame
- ▶ Options to negotiate between Buyer & Seller
- ▶ Option to include Appraisal Contingency

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Community Association Disclosure – F322

- ▶ Seller must complete info & Update form with any changes & confirm with Association
- ▶ Buyer responsible for researching & agreeing to Covenants
- ▶ All Fill-In-The-Blanks now in Paragraph A
- ▶ Additional Explanations now in Paragraph B
- ▶ Seller MUST disclose all fees of HOA / Management Company to Buyer in this Form
 - Any fees NOT disclosed or not accurate, Seller will pay at closing (EVEN if it is a Buyer-related fee such as initiation)
 - Seller must pay these additional fees EVEN if Seller updates this form (paragraph B5b)
 - Reason is that in most cases, the Seller is ONLY one who can get these figures
 - These “Seller-paid” fees do not count as “contribution to Buyer”
- ▶ Both parties SIGN (used to be initial)

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Community Association Disclosure – F322

- ▶ **Seller Fees**
 - Closing / Clearance Statement (i.e. Seller all paid up)
 - Fees already in place due prior to closing date
 - Move-Out fees
- ▶ **Buyer Fees**
 - Transfer, Initiation, Admin Fees
 - Move-In Fees
 - Pre-Paid Special Assessments

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Community Association Disclosure – F322

- ▶ **Special Assessments Already Passed On by HOA**
 - Seller must disclose
 - Seller pays any portion due prior to closing date
 - Buyer responsible for any portion due after closing date
- ▶ **Special Assessments Under Consideration but Not yet Passed (i.e. addressed at a meeting)**
 - Seller must disclose
 - Seller pays any portion due prior to closing date
 - Buyer responsible for any portion due after closing date

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Community Association Disclosure – F322

- ▶ Special Assessments that Come up by HOA BETWEEN Binding Date & Closing Date
 - i.e. HOA has meeting between BAD & Closing & assessments are discussed
 - Seller must disclose
 - Any voted in & due prior to closing – Seller must pay
 - Any voted in & due after closing – Buyer must pay
 - BUT, since Buyer & Seller go under contract now & these will be fees discussed in the future, then....
 - IF these unknown fees become adopted & due & they EXCEED \$_____, Buyer may terminate & get EM back (3Diic) – within 5 days of receipt of notice from Seller

- ▶ Note to Seller: MUST stay aware of HOA Minutes from previous meetings & Current Meetings

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Closing Attorney as Holder of EM EXHIBIT– F510

- ▶ This form is exhibit & is included in Binding Contract
- ▶ Parties identify the Closing Attorney who will be Holder
- ▶ Buyer must deliver contract to attorney within 2 days of Binding Agreement Date

Buyer Must Timely Deliver Certain Documents to Closing Attorney Acting as Holder of Earnest Money. When the Closing Attorney has been named as Holder in the Agreement, Buyer must deliver to Closing Attorney within two (2) business days from the Binding Agreement Date: a) the fully-signed and executed Agreement in its entirety (Entire Contract); and b) a copy or copies of the Escrow Agreement (F511) for the Closing Attorney to sign agreeing to become the Holder. Buyer must similarly deliver to Holder all amendments to the Entire Contract within two (2) business days of the date that the Amendment becomes binding.

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2

Closing Attorney as Holder of EM EXHIBIT- F510

- ▶ Closing Attorney must agree to become Holder within 3 business days of receiving contract – by signing F511

3. **Closing Attorney Must Agree to Become Holder Within Three (3) Business Days of Receiving Entire Contract.** The Closing Attorney named as Holder shall not become the Holder unless within three (3) business days from the date that the Closing Attorney receives the Entire Contract, the Closing Attorney has: a) countersigned the Agreement of Closing Attorney to serve as Holder (GAR Form F511, and sometimes referred to as "Escrow Agreement") without change or modification so except for filling in the blanks contained therein; and b) delivered the same to Buyer and Seller. When this occurs, Closing Attorney's rights and duties as Holder and the timeframe for completing the same shall commence.

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Closing Attorney as Holder of EM EXHIBIT- F510

- ▶ If Closing Atty doesn't agree or doesn't sign in time, then Alternate Holder is Holder
- ▶ Must Name Alternate Holder
 - Default is Buyer's Broker

6. **Failure of Closing Attorney to Become Holder.** If the Closing Attorney named as Holder has not become Holder because the Closing Attorney rejects being the Holder or fails to timely become Holder, then: a) the Alternate Holder named below, who must be a broker in this transaction, shall automatically become the Holder instead of the Closing Attorney; b) all parties consent to the earnest money being paid or transferred to the Alternate Holder, and c) all parties shall cooperate with one another to sign any documents required to accomplish the same. The signature of the Alternate Holder to the Agreement at the time it is first signed shall be deemed consent of the Alternate Holder to serve as Holder. The Alternate Holder's duties and the timeline for performing those duties shall commence when the Alternate Holder becomes the Holder.
7. **Alternate Holder.** The Buyer must immediately notify all parties if the Closing Attorney fails to become Holder. The Alternate Holder, who must be a broker in this transaction, shall be Fill In Name of Either Brokerage. In the event an Alternate Holder is not named, the Alternate Holder shall be the Buyer's Broker.

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Closing Attorney as Holder of EM EXHIBIT- F510

- ▶ In All Cash Transaction, if contract terminates & there is a dispute regarding disbursement of Earnest Money (i.e. both parties won't sign "Release" portion of T&R), Attorney MUST interplead the funds into a court – may not do the "10 day letter"

Closing Attorney Holding Earnest Money in All-Cash Transaction. In an all-cash transaction where the Closing Attorney is representing the Buyer or Seller, the Closing Attorney can hold the earnest money (and other trust funds), but in the event of a dispute between the parties regarding the disbursement of the funds, the Closing Attorney shall not disburse the funds based upon a reasonable interpretation of the Agreement. Instead and notwithstanding any provision to the contrary contained in this agreement, in the event of a dispute regarding the earnest money in an all-cash transaction where the Closing Attorney is representing the Buyer or Seller, the only remedy available to the Closing Attorney to resolve the dispute regarding the disbursement of earnest money shall be to interplead the funds into a court of competent jurisdiction.

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Closing Attorney as Holder of EM EXHIBIT- F510

- ▶ Notes
 - Many attorneys won't hold EM based on amount
 - Many attorneys won't hold if they have a previous relationship with one of the parties (Buyer or Seller)
 - Many attorneys won't sign F511 without earnest money in hand
 - Attorneys are not held to license law like Brokers

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Agreement of Closing Attorney to be Holder – F511

- ▶ Not an Exhibit
- ▶ Only signed by Closing attorney agreeing to fulfill contractual responsibilities of “Holder”
- ▶ These responsibilities include:
 - Depositing Earnest Money
 - Sending notice to parties if not received
 - Interpreting contract & writing “10 Day Letter” if contract terminates & there is a dispute over disbursement of EM – unless all cash
 - Interplead EM into court if dispute upon termination
 - & more!

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Back-Up Agreement Contingency – F604

- ▶ Lots of changes in 2023 to reference MULTIPLE Back-Up Binding Contracts

1. Buyer and Seller acknowledge that this Agreement is a “back-up” Agreement in _____ place behind the Primary Agreement with a Binding Agreement Date of _____ for the purchase and sale of the Property between Seller and Primary Buyer identified as _____ (last name of Primary Buyer or authorized signatory) represented by or working with _____ (“Primary Buyer’s Broker”) and that back-up Buyer has no right to purchase the Property unless the Primary Agreement and other higher priority back-up agreements, if any and which are more specifically identified on Addendum to Back-Up Contingency Exhibit (F605), attached hereto and incorporated herein, are terminated and Seller gives notice to Buyer of the same.

- ▶ EACH is identified by
 - its place behind the primary contract
 - Buyer Last Name
 - Buyer’s Broker
- ▶ After 1 Back-Up, must Use GAR F605 – Addendum to Back Up Agreement


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2023 NEW FORM – Addendum to Back-Up Agreement – F605

- ▶ Use this if there is MORE THAN ONE Back-Up Contract to identify the hierarchy of each Back-Up

**ADDENDUM TO BACK-UP AGREEMENT
CONTINGENCY EXHIBIT**


2023 Printing

This Addendum is part of the Back-Up Agreement Contingency Exhibit "_____" of the Agreement with an Offer Date of _____ for the purchase and sale of that certain Property known as _____, Georgia _____.

The following back-up agreements are in higher position than this Back-Up Agreement.

The Primary Back-Up Agreement has a Binding Agreement Date of _____ for the purchase and sale of the Property Between Seller and Primary Buyer identified as _____ (last name of Primary Buyer or authorized signatory) Represented by or working with _____ ("Primary Buyer's Broker").

The Second Back-Up Agreement has a Binding Agreement Date of _____ for the purchase and sale of the Property Between Seller and Second Buyer identified as _____ (last name of Second Buyer or authorized signatory) Represented by or working with _____ ("Second Buyer's Broker").

The Third Back-Up Agreement has a Binding Agreement Date of _____ for the purchase and sale of the Property Between Seller and Third Buyer identified as _____ (last name of Third Buyer or authorized signatory) Represented by or working with _____ ("Third Buyer's Broker").

The Fourth Back-Up Agreement has a Binding Agreement Date of _____ for the purchase and sale of the Property Between Seller and Fourth Buyer identified as _____ (last name of Fourth Buyer or authorized signatory) Represented by or working with _____ ("Primary Buyer's Broker").

Slides courtesy of Dana Sparks, Maximum One Greater Atlanta

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Notice to Unilaterally Extend Closing for 8 Days – F270

- ▶ Closing Extended for 8 days from closing date on purchase & sale or on any subsequent Amendment
- ▶ May ONLY extend for one of the specific reasons

- Buyer(s) OR Sellers(s) hereby gives notice to the other parties to the above-referenced purchase and sale Agreement that the closing date is extended for eight (8) days for the following reason(s):
- A. Seller(s) cannot satisfy valid title objections; excluding: (a) liens, judgments, and deeds to secure debt that can be satisfied through the payment of money or by bonding off the same; and (b) title objections which do not prevent Seller from conveying good and marketable title to the Property.
 - B. 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 due to no fault of Buyer.
 - C. Buyer(s) has not received required estimates or disclosures, and Buyer is prohibited from closing under federal regulations. = TRID Disclosures 3 Days Prior to Closing per Federal Regulation

Dana believes Options B & C will be changed in 2023 Mid-Year Revision due to Revised 2023 "No Finance Contingency Exhibit"

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Notice to Unilaterally Extend Closing for 8 Days – F270

- ▶ May only be used ONCE per contract
- ▶ Buyer or Seller may use for ANY of the specific reasons stated
- ▶ Never schedule a closing date on a Friday or this 8 Day Unilateral Extension turns in to 10 days or 11 days if that Monday is a Federal Holiday
 - See GAR Purchase & Sale paragraph C4f – “Extension of Deadlines”
- ▶ This unilateral Extension is provided for in the GAR Purchase & Sale Agreement ¶B4a

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Notice to Unilaterally Extend Closing for 8 Days – F270

- ▶ This is ONLY a GAR Contract provision – NOT a law in Georgia
- ▶ Remember parties may extend closing date by Amendment for as many times as they agree
 - “Amendment to Change Closing & Possession Date” – F716

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Unilateral Notice to Terminate Contract & Proposed Agreement to Disburse EM - "T&R" - F522

- ▶ Notice of Termination is Unilateral (only ONE party needs to sign)
 - Once a contract is terminated, it's terminated
 - Unless revived in writing - GAR F290 "Agreement to Reinstate Contract"

Unilateral Notice to Terminate

Buyer OR Seller does hereby give notice to the other parties to the above-referenced purchase and sale agreement that he or she is terminating the Agreement effective immediately based upon the following:

a. Buyer's right to terminate during the Due Diligence Period set forth in the Agreement;

b. the failure of the following contingency to which the Agreement is subject: _____

c. the following default under the Agreement by Buyer Seller: _____

d. other lawful reason: _____

1 Buyer _____ Date _____ **OR** 1 Seller _____ Date _____

2 Buyer _____ Date _____ 2 Seller _____ Date _____

Additional Signature Page (F267) is attached. Additional Signature Page (F267) is attached.

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Unilateral Notice to Terminate Contract & Proposed Agreement to Disburse EM - "T&R" - F522

- ▶ Agreement to Disburse Earnest Money requires BOTH Buyer & Seller signatures
 - If both DON'T sign, then agent must notify Holder that the EM is in dispute
 - Holder may interpret & write "10 day letter"
 - Holder may interplead the funds for a judge to decide - fees are deducted from Earnest Money

Unilateral Notice to Terminate Contract & Proposed Agreement to Disburse EM - "T&R" - F522

Proposed Disbursement of Earnest Money

The party unilaterally terminating this Agreement proposes that the earnest money and any other funds currently being held by Holder (collectively "Earnest Money") be disbursed as follows:

Name of Party & Amount of Earnest Money (& Holder would like address for remittance of funds)

This disbursement of Earnest Money shall only become effective upon this form being signed by and delivered to Buyer and Seller with a fully executed copy of the same then being delivered to the Buyer, Seller and Holder. Upon the happening of such event, Buyer and Seller further agree to release each other and all real estate brokerage firms, brokers and their affiliated licensees (all of whom shall be express third party beneficiaries to this Agreement) working with or representing the parties to the Agreement from any and all claims, causes of action, damages and suits arising out of or related to the Agreement. This shall not relieve any party who has defaulted under the Agreement or any brokerage engagement agreement to which they are a party from any claim, cause of action or suit for damages brought by the Broker(s) involved in the transaction. All terms referenced herein shall have the same meaning as in the Agreement.

1 Buyer	Date	AND	1 Seller	Date
2 Buyer	Date		2 Seller	Date
<input type="checkbox"/> Additional Signature Page (F267) is attached.			<input type="checkbox"/> Additional Signature Page (F267) is attached.	

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Unilateral Notice to Terminate Contract & Proposed Agreement to Disburse EM - "T&R" - F522

- ▶ The Termination of a Contract is a completely separate issue from the Release / Disbursement of the Earnest Money
- ▶ Once a contract is terminated & not reinstated mutually, the Seller may go back on the market & sell to another Buyer (unless Seller defaulted & there is a pending lawsuit for specific performance)
- ▶ The release of the EM may come at a later date if the parties don't agree

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Agreement to Reinstate Contract – F290

AGREEMENT TO REINSTATE CONTRACT


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_____, (“Buyer”) and _____ (“Seller”)
entered into an Agreement for the purchase and sale of that certain real property known as _____,
_____, Georgia _____ with a Binding Agreement date of _____, 20____ (“Agreement”).

WHEREAS, the above-referenced Agreement was terminated by one or both of the parties referenced above.

WHEREAS, Buyer and Seller now desire to reinstate the Agreement and have it be in full force and effect;

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller do hereby agree as follows:

- Buyer and Seller mutually agree to reinstate the last fully agreed upon version of the above-referenced Agreement such that it shall again be a legally enforceable contract and binding upon the parties as if it had never been terminated.
- All of the terms, conditions and time periods set forth in the above-referenced Agreement, including the Binding Agreement Date, shall remain in full force and effect except for any changes thereto set forth below which shall control over any conflicting or inconsistent provisions set forth in the above-referenced Agreement.

Not to amend contract but perhaps change date of closing or address Earnest Money if disbursed.

Check here if any additional pages are attached and incorporated herein.

- This Agreement to Reinstate Contract shall only be effective when it has been signed by Buyer and Seller and a fully executed copy of this Agreement to Reinstate Contract has been delivered to Buyer and Seller in accordance with the Notice section of the above-referenced Agreement.

By signing this Agreement to Reinstate Contract, Buyer and Seller acknowledge that they have each read and understood this Agreement to Reinstate Contract and agree to its terms.

1 Buyer's Signature _____ 1 Seller's Signature _____

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Earnest Money & Termination

- ▶ When you tell a Buyer their “Earnest Money” is “safe” because they have a Due Diligence period & they can get it back upon termination, when does Buyer think they’ll get it back?
- ▶ If Buyer’s EM was personal check, Holder may not release until a certain time frame has passed
- ▶ It is responsibility of BOTH agents to follow up with Holder on the receipt & DEPOSIT of Earnest Money

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Earnest Money & Termination

- ▶ Parties really want proof of Deposit – NOT just a photo of a check
- ▶ Holder to send Notice if never received EM or deposit was not honored by the bank
- ▶ If Seller doesn't sign "Release" portion of T&R, then it is in dispute & tied up
- ▶ If Buyer wants to write an offer on another house, what will Seller #2 want as part of the contract?

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Earnest Money & Termination

- ▶ If Earnest Money is "in dispute" then it is NOT available to use for another contract
- ▶ Buyer may NOT get the funds if Buyer defaulted
 - Sent Termination after end of contingency period
 - Terminated under Financing Contingency but didn't send Loan Denial letter
 - Loan Denial letter has reason that does not protect EM
- ▶ If Buyer is entitled to funds, Holder may not disburse until at least 10 days AFTER date of Notice send to parties
 - 1 – 5 days may pass before Holder interprets contract & send Notice
 - Holder can't disburse until at least 10 days have passed from date of Notice

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Earnest Money & Termination

- ▶ Holder may interplead into a court for a judge to decide
- ▶ If Holder DOES disburse to Buyer (per 10 day letter) Holder may not automatically apply those funds to another contract
- ▶ Agent MUST get Buyer's signature directing the Holder to keep the funds on deposit & apply to a new contract (identify property address)
- ▶ Find out method Holder disburses funds
 - Via mail
 - To Agent
 - Via Bank "bill pay"
 - Etc.

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Earnest Money & Termination

- ▶ If Earnest Money is addressed in the CREATION of a contract, it must also be addressed in the TERMINATION of a contract
- ▶ Regardless if the Buyer has remitted the funds or not
- ▶ In "Release" portion of T&R
- ▶ "Buyer to retain Earnest Money not yet remitted per paragraph A7b."

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Thank you!

- ▶ Remember to Confirm all Contract Questions with your Broker!
- ▶ Please attend Additional Courses:
www.registerforREclasses.com – select a geographic area
- ▶ Course Offered through: Real Estate Academy of America (GREC School #6915)
- ▶ VIRTUAL Class Credits to be recorded within 3 – 5 Business Days

- ▶ Contract Tip Videos: YouTube Channel:
“Real Estate Made Crystal Clear”

- ▶ **Have a joyous & prosperous & healthy year helping others with their real estate needs!**

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2023 Printing

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CBs GAR CONSUMER BROCHURES

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CB04 Lead-Based Paint Pamphlet
CB07 Mold Pamphlet
CB08 EPA Home Buyer's and Seller's Guide to Radon Pamphlet
CB10 Protect Yourself When Selling Real Property
CB13 Protect Yourself When Buying Real Property
CB16 What to Consider When Buying a Home in a Community with a Homeowners Association (HOA)
CB19 What to Consider When Buying a Home in a Condominium
CB22 Protect Yourself When Buying a Home to be Constructed
CB25 What Buyers Should Know About Flood Hazard Areas and Flood Insurance
CB28 What Buyers and Sellers Should Know About Short Sales and Distressed Properties
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F302	Seller's Disclosure of Latent Defects and Fixtures Checklist
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F319	Disclosure Information Concerning Lead Upon Transfer of Residential Property – 42 U.S.C. § 4852(d)
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CFs **COMMERCIAL FORMS**

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CF10	Commercial Purchase and Sale of Business Along with Real Property Exhibit "B1"
CF11	Commercial Purchase and Sale of a Residential, Office, Retail or Industrial Building Exhibit "B2"
CF12	Commercial Purchase and Sale of Equipment and/or Other Personal Property Exhibit "B3"
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SPECIAL STIPULATIONS INDEX

SPECIAL STIPULATIONS (See Special Stipulations Index)

2022 GAR FORMS INDEX

2022 GAR FORMS CHANGES

PURCHASE AND SALE AGREEMENT

Offer Date: _____



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A KEY TERMS AND CONDITIONS

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 Parcel I.D. Number: _____

b. **Legal Description:** The legal description of the Property is [select one of the following below]: **REQUIRED**
 (1) attached as an exhibit hereto; **Warranty Deed (from Seller, Online County Records, www.GSCCCA.org, Atty)**
 (2) Condominium (attach F204 Condominium Resale Purchase and Sale Exhibit)
 (3) the same as described in Deed Book _____, Page _____, et. seq., of the land records of the above county; **OR**
 (4) 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.

2. **Purchase Price of Property to be Paid by Buyer.**
\$ _____

3. **Closing Costs.**
Seller's Contribution at Closing: \$ _____

4. **Closing Date and Possession.** **actual date NOT "on or before" (date) _____**
Closing Date shall be _____ with possession of the Property transferred to Buyer
 upon Closing **OR** _____ days after Closing at _____ o'clock AM **OR** PM (attach F219 Temporary Occupancy Agreement).

5. **Closing Law Firm.** _____ **Phone Number:** _____

6. **Holder of Earnest Money ("Holder").** (If Holder is Closing Attorney, F510 must be attached as an exhibit hereto, and F511 must be signed by Closing Attorney.) **Brokerage Firm - IF Closing Atty see above - IF Cash Beware if Attorney holds!**

7. **Earnest Money.** Earnest Money shall be paid by check ACH cash or wire transfer of immediately available funds as follows:
 a. \$ _____ as of the Offer Date. **MANY Attorneys & Brokers will NOT accept ACH**
 b. \$ _____ within _____ days from the Binding Agreement Date.
 c. _____

ADDITIONAL Option Money ONLY in HIGH competition
8. **Inspection and Due Diligence.** **Buyer's OPTION to Terminate for ANY / NO reason - Binding Agreement Date=Day 0**
a. **Due Diligence Period:** Property is being sold subject to a Due Diligence Period of _____ days from the Binding Agreement Date.
b. **Option Payment for Due Diligence Period:** In consideration of Seller granting Buyer the option to terminate this Agreement, Buyer:
(1) has paid Seller \$10.00 in nonrefundable option money, the receipt and sufficiency of which is hereby acknowledged; plus
(2) shall pay directly to Seller **additional option money** of \$ _____ by check ACH or wire transfer of immediately available funds either as of the Offer Date; **OR** within _____ days from the Binding Agreement Date. Any additional option money paid by Buyer to Seller shall (subject to lender approval) or shall not be applied toward the purchase price at closing and shall **not be refundable to Buyer** unless the closing fails to occur due to the default of the Seller.

9. **Lead-Based Paint.** To the best of Seller's knowledge, the residential dwelling(s) on the Property (**including any portion thereof or painted fixture therein**) was (attach F316 Lead-Based Paint Exhibit) **OR** was not built prior to 1978.

10. Brokerage Relationships in this Transaction.

a. **Buyer's Broker is** Brokerage Firm **and is:**

- (1) representing Buyer as a client.
- (2) working with Buyer as a customer.
- (3) acting as a dual agent representing Buyer and Seller.
- (4) acting as a designated agent where:
Name of Agent working with Buyer
has been assigned to exclusively represent Buyer

b. **Seller's Broker is** Brokerage Firm **and is:**

- (1) representing Seller as a client.
- (2) working with Seller as a customer.
- (3) acting as a dual agent representing Buyer and Seller.
- (4) acting as a designated agent where:
Name of Agent working with Seller
has been assigned to exclusively represent Seller

c. **Material Relationship Disclosure:** The material relationships required to be disclosed by either Broker are as follows:
Relative, Business Partner, Past Client, etc.

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

Buyer(s) Initials

Seller(s) Initials

B. FURTHER EXPLANATIONS TO CORRESPONDING PARAGRAPHS IN SECTION A.

GAR F816 - "Notice"

1. Purchase and Sale.

- a. **Warranty:** Seller warrants that at the time of closing Seller will convey good and marketable title to said Property by limited 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 (other than any driveway or walkway) 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/or obtain a survey of the Property 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. **Title Insurance:** Buyer hereby directs any mortgage lender involved in this transaction to quote the cost of title insurance based upon the presumption that Buyer will be obtaining an enhanced title insurance policy since such a policy affords Buyer greater coverage.

2. Purchase Price to be Paid by Buyer. The Purchase Price shall be paid in U.S. Dollars at closing by wire transfer of immediately available funds, or such other form of payment acceptable to the closing attorney.

3. Closing Costs.

- a. **Seller's Contribution at Closing:** 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, including without limitation, any commission obligations of Buyer. 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. The Seller shall pay the fees and costs of the closing attorney: (1) to prepare and record title curative documents; (2) for Seller not attending the closing in person; and (3) pay off and proceeds handling and delivery.
- b. **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 limited warranty deed; (3) all other costs, fees and charges to close this transaction, except as otherwise provided herein; and (4) all other title fees and post-closing fees.
- 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. Notwithstanding any provision to the contrary, 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 professional costs to handle the appeal may be deducted from the savings for that tax year before re-prorating. Any pending tax appeal for the year in which the Property is sold shall be deemed assigned to Buyer at closing. The liability to the county and if applicable, city, in which the Property is located for ad valorem real property taxes for the year in which the Property is sold shall be assumed by Buyer upon the Closing of the Property. Buyer agrees to indemnify Seller against any and all claims of the county and if applicable, city, for unpaid ad valorem real property taxes for the year in which the Property is sold.

4. Closing Date and Possession. Unilateral Extension for these 3 reasons ONLY

- a. **Right to Extend the Closing Date:** Buyer or Seller may unilaterally extend the closing date for eight (8) 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); (2) Buyer's mortgage lender (including in transactions where the financing contingency has expired) or the closing attorney is delayed and cannot fulfill their respective obligations by the date of closing, provided that the delay is not caused by Buyer; or (3) Buyer has not received required estimates or disclosures and Buyer is prohibited from closing under federal regulations. 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.
- b. **Keys and Openers:** At Closing, Seller shall provide Buyer with all keys, door openers, codes and other similar equipment pertaining to the Property.

5. Closing Law Firm. Buyer shall have the right to select the closing attorney to close this transaction, and hereby selects the closing attorney referenced herein. In all cases where an individual closing attorney is named in this Agreement but the closing attorney is employed by or an owner, shareholder, or member in a law firm, the law firm shall be deemed to be the closing attorney. If Buyer's mortgage lender refuses to allow that closing attorney to close this transaction, Buyer shall select a different closing attorney acceptable to the mortgage lender. The closing attorney shall represent the mortgage lender in any transaction in which the Buyer obtains mortgage financing. In transactions where the Buyer does not obtain mortgage financing, the closing attorney shall represent the Buyer in preparing the Closing documents, attempting to clear title of the Property to the satisfaction of the title insurance company, conducting the Closing, disbursing funds according to the settlement statement signed by the parties and closing attorney, timely recording deeds and issuing an owner's title insurance policy. Other than those services specifically listed above, nothing herein shall obligate the closing attorney to perform other legal services, including, but not limited to, certifying or warranting title of the Property, for the Buyer, except pursuant to a separate engagement agreement signed by the closing attorney and the Buyer.

Buyer does NOT have legal representation should there be any dispute - with other parties or with Title issues

6. **Holder of Earnest Money.** The earnest money will be paid to Holder in a method of payment acceptable to the Holder. Holder has the right to charge Buyer for any cost associated with receiving of earnest money. Such charge shall be collected separately from the payment of earnest money. The earnest money will 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: (a) five (5) banking days after the Binding Agreement Date hereunder or (b) five (5) banking days after the date it is actually received if it is received after the Binding Agreement Date. If Buyer writes a check or pays with an ACH for earnest money and the same is deposited into Holder's escrow/trust account, Holder shall not return the earnest money until the check or ACH has cleared the account on which the check was written or from which the ACH was sent. 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.

7. **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 unexpired 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 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. The above-referenced check shall constitute liquidated damages in full settlement of all claims of Seller against Buyer and the Brokers in this transaction. Holder may require Seller to sign a W-9 before issuing a check to Seller for liquidated damages of \$600 or more. Such liquidated damages are a reasonable pre-estimate of Seller's actual damages, which damages the parties agree are difficult to ascertain and are not a penalty.
- 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 (collectively, "Claims") arising out of the performance by Holder of its duties, including Claims caused, in whole or in part, by the negligence of the Holder; (2) not to sue Holder for any decision of Holder to disburse earnest money in accordance with this Agreement.


8. **Inspection and Due Diligence.** Re-organized, tweaked for clarification & expanded in 2023

- a. **Buyer's Right to Inspect Property:** Unless otherwise specified herein, the Property is being sold in "as-is" condition with any and all faults. Therefore, Buyer and/or Buyer's representative(s) have the right to carefully inspect the Property to make sure it meets the needs of the Buyer. If Buyer is concerned that the Property may have been used as a laboratory for the production of methamphetamine, or as a dumpsite for the same, Buyer should review the National Clandestine Laboratory Register – Georgia at www.dea.gov.
- b. **Buyer's Right to Inspect Neighborhood:** In every neighborhood there are conditions which different buyers may find objectionable. Buyer is solely responsible for becoming familiar with neighborhood conditions of concern to Buyer 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. 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.gbi.georgia.gov.
- c. **Buyer's Inspection Rights Continue through Closing:** Upon prior notice to Seller, Buyer and/or Buyer's representatives shall have the continuing right through Closing to enter the Property at Buyer's expense and at reasonable times to, among other things, and without limitation, conduct inspections, examinations, evaluations, appraisals, surveys and tests, meet contractors and vendors, measure for renovations, determine the condition of the Property and confirm that any agreed upon repairs have been made. Seller shall cause all utilities, systems and equipment to be on so that Buyer may complete all inspections.
- d. **Buyer's Inspection Indemnification Obligations:** Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages related to the exercise of the above inspection rights by Buyer and Buyer's representatives, and Buyer shall promptly pay Seller the actual cost to restore any portion of the Property damaged or disturbed from testing or other evaluations to a condition equal to or better than the condition it was prior to such testing or evaluations.

"10 Day Letter"

NEW
2023

- e. **Lead-Based Paint Hazard Evaluation:** If any portion of the Property was built prior to 1978, the Lead-Based Paint Exhibit (F316) is hereby attached as an Exhibit to the Agreement. Buyer shall have the right to conduct a lead hazard evaluation within ten (10) days from the Binding Agreement Date (or other mutually agreed upon time period) and to terminate this Agreement without penalty upon notice to Seller if lead-based paint and/or lead hazards are found (unless these rights are waived by Buyer in the Lead-Based Paint Exhibit (F316)). If the Lead-Based Paint Exhibit (F316) gives Buyer the right to terminate this Agreement if lead-based paint or lead hazards are found and such notice of termination is not given within ten (10) days from Binding Agreement Date (or other mutually agreed upon time period), the right to terminate for lead-based paint and/or lead hazards shall be waived.
- f. **Due Diligence Period:** If the Property is being sold subject to a Due Diligence Period, then: a) this Agreement shall be an option contract during which time Buyer shall have the option, for any reason or for no reason, to terminate this Agreement upon notice to the Seller given prior to the expiration of the Due Diligence Period, in which case Buyer shall be entitled to a return of Buyer's earnest money without penalty; b) Buyer may, during the Due Diligence Period, seek to amend this Agreement to address any concerns Buyer has with the Property or this Agreement; and c) if Buyer has not terminated this Agreement as set forth above, Buyer shall accept the Property in "as-is" condition, subject to any amendment to this Agreement to address concerns agreed to by the parties.
- g. **Seller's Duty to Disclose:** Seller shall disclose to Buyer any and all known latent or hidden defects in the Property that could not be discovered by the Buyer during a reasonably careful inspection of the Property.
- h. **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.
- i. **Repairs:** All agreed upon repairs and replacements shall be performed in a good and workmanlike manner prior to Closing unless otherwise agreed to in writing by the Buyer and Seller. Consider negotiating ___ days PRIOR to Closing
9. **Lead-Based Paint.** If any portion of a residential dwelling on the Property was built prior to 1978, the Lead-Based Paint Exhibit (F316) 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.
10. **Brokerage Relationships in this Transaction.** 2023 - Added reference to Broker having Both Sides - Client & Customer
- a. **Agency Disclosure:** 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: a) 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; and b) if the same brokerage firm is representing one party as a client and working with the other party as a customer, the Broker and all of Broker's affiliated licensees are representing the client.
- (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:
- i. **Dual Agency Disclosure:** [Applicable only if Broker is acting as a dual agent in this transaction.]
- (a) As a dual agent, Broker is representing two clients whose interests are or at times could be different or even adverse;
- (b) 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;
- (c) 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.
- (d) 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.
- ii. **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:** Unless otherwise specified herein, the real estate commissions owing to the Seller's Broker and Buyer's Broker, if any, are being paid pursuant to separate brokerage engagement agreements. Buyer and Seller agree that any commissions to be paid to Broker(s) shall be shown on the settlement statement and collected by closing attorney as a pre-condition to Buyer and Seller closing on the Property so long as the same is permitted by Buyer's mortgage lender, if any. The closing attorney is hereby authorized and directed to pay the Broker(s) at closing, their respective commissions pursuant to written instructions from the Broker(s) at closing, their respective commissions pursuant to written instructions from the Broker(s). 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 agreed in writing to accept the amount paid in full satisfaction of the Broker(s) claim to a commission). The Brokers herein are signing this Agreement to reflect their role in this transaction and consent to act as Holder if either of them is named as such. This Agreement and any amendment thereto shall be enforceable even without the signature of any Broker referenced herein. The broker(s) are express third-party beneficiaries to this Agreement.


 c. **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 inspect the Property or to advise Buyer or Seller on any matter relating to the Property which could have been revealed through a survey, appraisal, title search, Official Georgia Wood Infestation Report, utility bill review, septic system inspection, well water test, tests for radon, asbestos, mold, methamphetamine, and lead-based paint; moisture test of stucco or synthetic stucco, inspection of the Property by a professional, construction expert, structural engineer or environmental engineer; review of this Agreement and transaction by an attorney, financial planner, mortgage consultant or tax consultant; and consulting appropriate governmental officials to determine, among other things and without limitation, the zoning of Property, the propensity of the Property to flood, flood zone certifications, whether any condemnation action is pending or has been filed or other nearby governmental improvements are planned. Buyer and Seller acknowledge that Broker does not perform or have expertise in any of the above tests, inspections, and reviews or in any of the matters handled by the professionals referenced above. Buyer and Seller should seek independent expert advice regarding any matter of concern to them relative to the Property and this Agreement. Buyer and Seller acknowledge that Broker shall not be responsible to monitor, supervise, or inspect any construction or repairs to Property and such tasks clearly fall outside the scope of real estate brokerage services. If Broker has written any special stipulations herein, the party for whom such special stipulations were written: a) confirms that each such stipulation reflects the party's complete understanding as to the substance and form of the special stipulations; b) hereby adopts each special stipulation as the original work of the party; and c) hereby agrees to indemnify and hold Broker who prepared the stipulation harmless from any and all claims, causes of action, suits, and damages arising out of or relating to such special stipulation. Buyer acknowledges that when and if Broker answers a question of Buyer or otherwise describes some aspect of the Property or the transaction, Broker is doing so based upon information provided by Seller rather than the independent knowledge of Broker (unless Broker makes an independent written disclosure to the contrary).


11. **Time Limit of Offer.** The Time Limit of the Offer shall be the date and time referenced herein when the Offer expires unless prior to that date and time both of the following have occurred: (a) the Offer has been accepted by the party to whom the Offer was made; and (b) notice of acceptance of the Offer has been delivered to the party who made the Offer.

C. OTHER TERMS AND CONDITIONS


1. Notices.

a. **Generally:** All notices given hereunder shall be in writing, legible and signed by the party giving the notice. In the event of a dispute regarding notice, the burden shall be on the party giving notice to prove delivery. The requirements of this notice paragraph shall apply even prior to this Agreement becoming binding. Notices shall only be delivered: (1) in person; (2) by courier, overnight delivery service or by certified or registered U.S. mail (hereinafter collectively "Delivery Service"); or (3) by e-mail or facsimile. The person delivering or sending the written notice signed by a party may be someone other than that party.

 b. **Delivery of Notice:** A notice to a party shall be deemed to have been delivered and received upon the earliest of the following to occur: (1) the actual receipt of the written notice by a party; (2) in the case of delivery by a Delivery Service, when the written notice is delivered to an address of a party set forth herein (or subsequently provided by the party following the notice provisions herein), provided that a record of the delivery is created; (3) in the case of delivery electronically, on the date and time the written notice is electronically sent to an e-mail address or facsimile number of a party herein (or subsequently provided by the party following the notice provisions herein) even if it is not opened by the recipient. Notice to a party shall not be effective unless the written notice is sent to an address, facsimile number or e-mail address of the party set forth herein (or subsequently provided by the party following the notice provisions herein).

 c. **When Broker Is Authorized to Accept Notice for Client:** Except where the Broker is acting in a dual agency capacity, the Broker and any affiliated licensee of the Broker representing a party in a client relationship shall be authorized agents of the party for the limited purpose of receiving notice and such notice to any of them shall for all purposes herein be deemed to be notice to the party. Notice to an authorized agent shall not be effective unless the written notice is sent to an address, facsimile number or e-mail address of the authorized agent set forth herein (or subsequently provided by the authorized agent following the notice provisions herein) even if it is not opened by the recipient. Except as provided for herein, the Broker's staff at a physical address set forth herein of the Broker or the Broker's affiliated licensees are authorized to receive notices delivered by a Delivery Service. The Broker, the Broker's staff and the affiliated licensees of the Broker shall not be authorized to receive notice on behalf of a party in any transaction in which a brokerage engagement has not been entered into with the party or in which the Broker is acting in a dual agency capacity. In the event the Broker is practicing designated agency, only the designated agent of a client shall be an authorized agent of the client for the purposes of receiving notice. Also see C4j - Agent may NOT sign Notice on behalf of Buyer / Seller

2. Default.

 a. **Remedies of Seller:** In the event this Agreement fails to close due to the default of Buyer, Seller's sole remedy shall be to retain the earnest money as full liquidated damages. Seller expressly waives any right to assert a claim for specific performance. The parties expressly agree that the earnest money is a reasonable pre-estimate of Seller's actual damages, which damages the parties agree are difficult to ascertain. The parties expressly intend for the earnest money to serve as liquidated damages and not as a penalty.

b. **Remedies of Buyer:** In the event this Agreement fails to close due to the default of Seller, Buyer may either seek the specific performance of this Agreement or terminate this Agreement upon notice to Seller and Holder, in which case all earnest money deposits and other payments Buyer has paid towards the purchase of the Property shall be returned to Buyer following the procedures set forth elsewhere herein.

c. **Rights of Broker:** In the event this Agreement is terminated or fails to close due to the default of a party hereto, the defaulting party shall pay as liquidated damages to every broker involved in this Agreement 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, all written agreements establishing the amount of commission to be paid to any broker involved in this transaction 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.

d. **Attorney's Fees:** In any litigation or arbitration arising out of this Agreement, including but not limited to breach of contract claims between Buyer and Seller and commission claims brought by a broker, the non-prevailing party shall be liable to the prevailing party for its reasonable attorney's fees and expenses.

3. **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 or Seller's Disclosure of Latent Defects and Fixtures Checklist) as of the Offer Date, except for changes made to the condition of Property pursuant to the written agreement of Buyer and Seller. At time of possession, Seller shall deliver Property clean and free of trash, debris, and personal property of Seller not identified as remaining with the Property. Notwithstanding the above, if the Property is destroyed or substantially destroyed 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 without penalty 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 Offer 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 Offer Date and a new certificate of occupancy (if required) is issued.

4. **Other Provisions.**

a. **Condemnation:** Seller shall: (1) immediately notify Buyer if the Property becomes subject to a condemnation proceeding; and (2) provide Buyer with the details of the same. Upon receipt of such notice, Buyer shall have the right, but not the obligation for 7 days thereafter, to terminate this Agreement upon notice to Seller in which event Buyer shall be entitled to a refund of all earnest money and other monies paid by Buyer toward the Property without deduction or penalty. If Buyer does not terminate the Agreement within this time frame, Buyer agrees to accept the Property less any portion taken by the condemnation and if Buyer closes, Buyer shall be entitled to receive any condemnation award or negotiated payment for all or a portion of the Property transferred or conveyed in lieu of condemnation.

b. **Consent to Share Non-Public Information:** Buyer and Seller hereby consent to the closing attorney preparing and distributing an American Land Title Association ("ALTA") Estimated Settlement Statement-Combined or other combined settlement statement to Buyer, Seller, Brokers and Brokers' affiliated licensees working on the transaction reflected in this Agreement for their various uses.

c. **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.

d. **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.

e. **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. Any agreement to terminate this Agreement or any other subsequent agreement of the parties relating to the Property must be in writing and signed by the parties. This Agreement may not be assigned by Buyer except with the written approval of Seller (SS611) which may be withheld for any reason or no reason. Any assignee shall fulfill all the terms and conditions of this Agreement. 2023 - Added SS # reference

f. **Extension of Deadlines:** No time deadline under this Agreement shall be extended by virtue of it falling on a Saturday, Sunday or federal holiday except for the date of closing.

New 2023 g. **FIRPTA Affidavit:** Unless Seller is a "foreign person", as that term is defined in Section 1445(f)(3) of the Internal Revenue Code, Seller shall deliver to the closing attorney at Closing a FIRPTA (Foreign Investment in Real Property Tax Act) Affidavit indicating that Seller is not a "foreign person". If Seller is a "foreign person", additional taxes may need to be withheld at Closing.

h. **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. Provisions in the GAR Forms are subject to differing interpretations by our courts other than what the parties may have intended. At times, our courts may strike down or not enforce provisions in our GAR Forms, as written. No representation is made that the GAR Forms will protect the interests of any particular party or will be fit for any specific purpose. 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.

i. **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. If any provision herein is held to be unenforceable, it shall be severed from this Agreement while the remainder of the Agreement shall, to the fullest extent permitted by law, continue to have full force and effect as a binding contract.

j. **No Authority to Bind:** No Broker or affiliated licensee of Broker, by virtue of this status, shall have any authority to bind any party hereto to any contract, provisions therein, amendments thereto, termination thereof or to notices signed by Broker but not the party. However, if authorized in this Agreement, Broker shall have the right to accept notices on behalf of a party (but not send notices from Broker on behalf of a party unless they are signed by the party). Additionally, any Broker or real estate licensee involved in this transaction may perform the ministerial act of filing in the Binding Agreement Date. In the event of a dispute over the Binding Agreement Date, it shall be resolved by a court or arbitrator having jurisdiction over the dispute, by the written agreement of the Buyer and Seller, or by the Holder but only in making a reasonable interpretation of the Agreement in disbursing earnest money.

k. **Notice of Binding Agreement Date:** The Binding Agreement Date shall be the date when a party to this transaction who has accepted an offer or counteroffer to buy or sell real property delivers notice of that acceptance to the party who made the offer or counteroffer in accordance with the Notices section of the Agreement. Notice of the Binding Agreement Date may be delivered by either party (or the Broker working with or representing such party) to the other party. If notice of accurate Binding Agreement Date is delivered, the party receiving notice shall sign the same and immediately return it to the other party. Notwithstanding any other provision to the contrary contained in this Agreement, it is the express intent of this section that (1) a broker or licensee involved in the real estate transaction may perform the ministerial task of filling in the Binding Agreement Date and (2) sending a fully signed purchase and sale agreement with a specific Binding Agreement Date included, that one of the parties has agreed to, constitutes notice of the Binding Agreement Date to the other party.

l. **Objection to Binding Agreement Date:** If the Buyer or Seller objects to the date entered as the Binding Agreement Date, then within one (1) day from receiving notice of Binding Agreement Date, the party objecting shall send notice of the objection to the other party. The objection shall be resolved by the written amendment between the Buyer and Seller by executing a binding agreement date confirmation (F733). The absence of an agreement on the Binding Agreement Date shall not render this Agreement unenforceable. The failure of a party to timely object will result in the parties accepting the Binding Agreement Date as entered.

m. **Rules for Interpreting This Agreement:** In the event of internal conflicts or inconsistencies in this Agreement, the following rules for how those conflicts or inconsistencies shall be resolved will apply:

- (1) Handwritten changes shall control over pre-printed or typed provisions;
- (2) Exhibits shall control over the main body of the Agreement;
- (3) Special Stipulations shall control over both exhibits and the main body of the Agreement;
- (4) Notwithstanding the above, any amendatory clause in an FHA or VA exhibit shall control over inconsistent or conflicting provisions contained in a special stipulation, another exhibit or the main body of the Agreement.

n. **Statute of Limitations:** All claims of any nature whatsoever against Broker(s) and/or their affiliated licensees, whether asserted in litigation or arbitration and sounding in breach of contract and/or tort, must be brought within two (2) years from the date any claim or cause of action arises. Such actions shall thereafter be time-barred.

o. **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 written representations of Seller in this Agreement regarding the Property or neighborhood in which the Property is located; (4) Buyer's indemnification obligations arising out of the inspection of the Property by Buyer and Buyer's representatives; (5) the section on condemnation; (6) the section on attorney's fees; (7) the obligations of the parties regarding ad valorem real property taxes; and (8) any obligations which the parties herein agree shall survive the closing or may be performed or fulfilled after the Closing.

p. **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.

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

5. Definitions.

a. **Banking Day:** A "Banking Day" shall mean a day on which a bank is open to the public for carrying out substantially all of its banking functions. For purposes herein, a "Banking Day" shall mean Monday through Friday excluding federal holidays.

b. **Binding Agreement Date:** The "Binding Agreement Date" shall be the date when a party to this transaction who has accepted an offer or counteroffer to buy or sell real property delivers notice of that acceptance to the party who made the offer or counteroffer in accordance with the Notices section of the Agreement. Once that occurs, this Agreement shall be deemed a Binding Agreement.

c. **Broker:** In this Agreement, the term "Broker" shall mean a licensed Georgia real estate broker or brokerage firm and its affiliated licensees unless the context would indicate otherwise.

d. **Business Day:** A "Business Day" shall mean a day on which substantially all businesses are open for business. For all purposes herein, a "Business Day" shall mean Monday through Friday excluding federal holidays.

e. **Day:** For the purposes of this Agreement, the term "Day" shall mean a full calendar day ending at 11:59 p.m., except as may be provided for elsewhere herein. For the purposes of counting days for determining deadlines, the specific date referenced as either the Binding Agreement Date or the date from which the deadline shall be counted will be day zero.

f. **Material Relationship:** A material relationship shall mean any actually known personal, familial, social, or business relationship between the broker or the broker's affiliated licensees and any other party to this transaction which could impair the ability of the broker or affiliated licensees to exercise fair and independent judgment relative to their client.

g. **Use of Initials "N/A":** The use of the initials "N/A" or "N.A." in filling out a blank in this Agreement shall mean "not applicable".

6. **WARNING TO BUYERS AND SELLERS: BEWARE OF CYBER-FRAUD.** Fraudulent e-mails attempting to get the buyer and/or seller to wire money to criminal computer hackers are increasingly common in real estate transactions. Specifically, criminals are impersonating the online identity of the actual mortgage lender, closing attorney, real estate broker or other person or companies involved in the real estate transaction. In that role, the criminals send fake wiring instructions attempting to trick buyers and/or sellers into wiring them money related to the real estate transaction, including, for example, the buyer's earnest money, the cash needed for the buyer to close, and/or the seller's proceeds from the closing. These instructions, if followed, will result in the money being wired to the criminals. In many cases, the fraudulent email is believable because it is sent from what appears to be the email address/domain of the legitimate company or person responsible for sending the buyer or seller wiring instructions. The buyer and/or seller should verify wiring instructions sent by email by independently looking up and calling the telephone number of the company or person purporting to have sent them. Buyers and sellers should never call the telephone number provided with wiring instructions sent by email since they may end up receiving a fake verification from the criminals. Buyer and sellers should be on special alert for: 1) emails directing the buyer and/or seller to wire money to a bank or bank account in a state other than Georgia; and 2) emails from a person or company involved in the real estate transaction that are slightly different (often by one letter, number, or character) from the actual email address of the person or company.

2023
Added #4

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7. LIMIT ON BROKER'S LIABILITY. BUYER AND SELLER ACKNOWLEDGE THAT BROKER(S):

- a. SHALL, UNDER NO CIRCUMSTANCES, HAVE ANY LIABILITY GREATER THAN THE AMOUNT OF THE REAL ESTATE COMMISSION PAID HEREUNDER TO BROKER (EXCLUDING ANY COMMISSION AMOUNT PAID TO A COOPERATING REAL ESTATE BROKER, IF ANY) OR, IF NO REAL ESTATE COMMISSION IS PAID TO BROKER, THEN THE SUM OF \$100; AND
- b. NOTWITHSTANDING THE ABOVE, SHALL HAVE NO LIABILITY IN EXCESS OF \$100 FOR ANY LOSS OF FUNDS AS THE RESULT OF WIRE OR CYBER FRAUD.

8. Exhibits and Addenda. All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement.

- All Cash Sale Exhibit (F401) " _____ "
- Back-up Agreement Contingency Exhibit (F604) " _____ "
- Closing Attorney Acting as Holder of Earnest Money Exhibit (F510) " _____ "
- Community Association Disclosure Exhibit (F322) " _____ "
- Condominium Resale Purchase and Sale Exhibit (F204) " _____ "
- Conventional Loan Contingency Exhibit (F404) " _____ "
- FHA Loan Contingency Exhibit (F407) " _____ "
- Lead-Based Paint Exhibit (F316) " _____ "
- Lease Purchase and Sale Exhibit (F207) (to be used with F916) " _____ "
- Lease for Lease/Purchase Agreement (F916) (to be used with F207) " _____ "
- Legal Description Exhibit (F807 or other) " _____ "
- Loan Assumption Exhibit (F416) " _____ "
- Sale or Lease of Buyer's Property Contingency Exhibit (F601) " _____ "
- Seller's Property Disclosure Statement Exhibit (F301, F302, F304, F307 or F310) " _____ "
- Survey of Property as Exhibit " _____ "
- Temporary Occupancy Agreement for Seller after Closing Exhibit (F219) " _____ "
- USDA-RD Loan Contingency Exhibit (F413) " _____ "
- VA Loan Contingency Exhibit (F410) " _____ "
- Other _____

SPECIAL STIPULATIONS: The following Special Stipulations are made a part of this Agreement.

Additional Special Stipulations (F246) are attached.

By signing this Agreement, Buyer and Seller acknowledge that they have each read and understood this Agreement and agree to its terms.

Buyer Acceptance and Contact Information

Seller Acceptance and Contact Information

1 Buyer's Signature

Print or Type Name _____ Date _____

CLIENT contact (if Single Agency) information not needed on contract but make sure your BROKER has it

Buyer's Address for Receiving Notice _____

CUSTOMER contact information IS needed on contract for Notice Purposes

Buyer's Phone Number: Cell Home Work _____

CLIENT contact ONLY needed on contract if Dual or Designated Agency

Buyer's E-mail Address _____

1 Seller's Signature

Print or Type Name _____ Date _____

Seller's Address for Receiving Notice _____

Seller's Phone Number: Cell Home Work _____

Seller's E-mail Address _____

2 Buyer's Signature

Print or Type Name _____ Date _____

Buyer's Address for Receiving Notice _____

Buyer's Phone Number: Cell Home Work _____

Buyer's E-mail Address _____

Additional Signature Page (F267) is attached.

2 Seller's Signature

Print or Type Name _____ Date _____

Seller's Address for Receiving Notice _____

Seller's Phone Number: Cell Home Work _____

Seller's E-mail Address _____

Additional Signature Page (F267) is attached.

Buyer's Broker/Affiliated Licensee Contact Information

Seller's Broker/Affiliated Licensee Contact Information

Buyer Brokerage Firm _____

Seller Brokerage Firm _____

Broker/Affiliated Licensee Signature _____ Date _____

Broker/Affiliated Licensee Signature _____ Date _____

Print or Type Name _____ **Required by License Law**
GA Real Estate License # _____

Print or Type Name _____ **Required by License Law**
GA Real Estate License # _____

Licensee's Phone Number _____ Fax Number _____

Licensee's Phone Number _____ Fax Number _____

Licensee's E-mail Address _____

Licensee's Email Address _____

REALTOR® Membership _____

REALTOR® Membership _____

For convenience & if Attorney needs to mail Commission Check & Closing Settlement Statement

Broker's Address _____

Broker's Address _____

Broker's Phone Number _____ Fax Number _____

Broker's Phone Number _____ Fax Number _____

Required by License Law

Required by License Law

MLS Office Code _____ Brokerage Firm License Number _____

MLS Office Code _____ Brokerage Firm License Number _____

Binding Agreement Date: The Binding Agreement Date in this transaction is the date of **MUST BE COMPLETED OR F733 -**
and has been filled in by _____ **"Binding Agreement Date Notification"**

ASSIGNMENT OF PURCHASE AND SALE AGREEMENT RIGHTS



2023 Printing

THIS ASSIGNMENT OF RIGHTS ("Assignment"), made and entered into as of this date of _____, by and between _____, the original Buyer(s) ("Assignor") and _____, the new Buyer(s) ("Assignee").

WHEREAS, Assignor entered into a certain Purchase and Sale Agreement ("Agreement") with a Binding Agreement Date of Buyer #1 - typically Investor, for the purchase and sale of real property located at: _____, Georgia _____ with Seller / Owner of Property, ("Seller"), a copy of said Agreement being attached hereto as Exhibit "A", and by reference made a part hereof;

AND WHEREAS, Assignor wishes to sell and Assignee wishes to purchase all of Assignor's rights, title and interest in and to the Agreement;

NOW THEREFORE, for and in consideration of the above promises, the mutual benefits to inure to each of the parties hereto, the sum of Ten Dollars (\$10.00), in hand paid by Assignee to Assignor, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties hereby warrant, covenant and agree as follows:

- 1. Assignment.** Assignor does hereby sell, assign, set over and transfer to Assignee, all of Assignor's rights, title and interest in and to the Agreement.
- 2. Assignment Price.** The purchase price for said Assignment ("Assignment Price") paid to Assignor by Assignee shall be: \$ See Note to Side to be paid as follows: Price Buyer #1 sells to Buyer #2 - Typically NOT same price on P&S
 In cash, or its equivalent, on the date hereof, receipt of which is hereby acknowledged;
OR
 In cash, or its equivalent, at the closing of the sale contemplated by the Agreement.
- 3. Acceptance of Assignment.** ~~Assignee agrees that Assignee shall stand in the place of Assignor with respect to Assignor's rights and obligation under the Agreement, and agrees to indemnify and hold Assignor harmless from and against any claim, cause of action or lawsuit which may hereafter be brought or asserted by Seller or Broker against Assignor arising under or by virtue of the Agreement.~~
- 4. Warranty of Parties.** Assignor and Assignee warrant and represent that they have the power and authority to enter into this Assignment, that there are no defaults under the terms of the Agreement of which the parties are aware, and that Assignor has not previously assigned, transferred, pledged or hypothecated its interest in the Agreement. Assignor warrants that Assignor has the right to assign this Agreement.
- 5. Entire Agreement.** This Assignment 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 Assignment shall be binding upon any party hereto. This Assignment may not be amended or waived except upon the written agreement of the parties hereto. This Assignment shall be construed under Georgia law.
- 6. Assignment Commission.** In the event that a licensed real estate broker, other than Seller's Broker or Buyer's Broker, is the procuring cause of the assignment of the Purchase and Sale Agreement from Assignor to Assignee, the following terms and conditions shall control the disposition of real estate commissions:

In consideration of the payment by Assignee to Broker working with Buyer #1 (typically investor) ("Assignor's Broker"), a licensed real estate broker and Buyer's Broker under the Purchase and Sale Agreement, the amount of \$ _____, which amount ("Assignment Commission") is in full satisfaction of commission payable to Assignor's Broker under the Purchase and Sale Agreement, Assignor's Broker does hereby transfer and assign its rights as Buyer's Broker under the Purchase and Sale Agreement to Broker working with Buyer #2 gets Commission ("Assignee's Broker"). The Assignment Commission shall be due and payable at the same time the Assignment Purchase Price is paid. from Listing Broker
- 7. Earnest Money.** Earnest money deposited by Assignor shall be applied to the purchase price. In the event the Agreement is terminated without penalty, the earnest money shall be returned to the Assignee.

8. **Contact Information for Notice**

Assignee's Address for Receiving Notice

Assignee's Broker Address for Receiving Notice

Assignee's Phone Number

Assignee's Broker Phone Number

Assignee's Email Address

Assignee's Broker Email Address

Assignee's Address for Receiving Notice

Assignee's Broker GA Real Estate License #

Assignee's Phone Number

Assignee's Broker Brokerage Firm License #

Assignee's Email Address

Assignee's Broker MLS Office Code

Assignee's Broker REALTOR® Membership

IN WITNESS WHEREOF, the parties hereto have executed this instrument, as of the day and year first above written.

Assignee: Buyer #2 - Agreement with Buyer #1

Assignee: _____

Assignee's Broker: _____

By: _____

Assignor: Buyer #1 - in contract with Seller

Assignor: _____

Assignor's Broker: _____

By: _____

Seller does NOT sign THIS Agreement.

Acceptance Date. This Assignment is hereby accepted, _____ o'clock _____ .m. on the date of _____, ("Acceptance Date"). This Assignment will become binding upon the parties when notice of the acceptance of the Assignment and written consent of Seller has been received by all parties.

**AMENDMENT TO ASSIGN AGREEMENT
AMENDMENT # _____**

NEW FORM in 2023



Date: _____

2023 Printing

Whereas, the undersigned parties have entered into a certain Agreement between _____
_____ (“Buyer”) and _____ (“Seller”),
with a Binding Agreement Date of _____ for the purchase and sale of real property located at:
_____, _____, Georgia _____; and

Whereas, the undersigned parties desire to amend the aforementioned Agreement, it being to the mutual benefit of all parties to do so;

Now therefore, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations paid by each to the other, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that Seller consents to Buyer assigning this Agreement to another buyer (“Assignee”) and having Assignee become the buyer thereunder.

GAR Contract is NOT Assignable without Seller's written permission.

In Original Offer/Contract from Buyer #1 (usually an Investor) to Seller, make sure to include Special Stip #611 SELLER CONSENTS TO ASSIGNMENT OF PURCHASE AND SALE AGREEMENT - "Seller consents to Buyer assigning this Agreement to another buyer (“Assignee”) and having Assignee become the buyer thereunder."

Then when Buyer #1 finds Buyer #2 to Assign the Contract to use:

- * GAR F279 - Assignment of Purchase & Sale Agreement Rights - Signed by Buyer #1 & Buyer #2
- * This NEW Amendment - GAR F735 - Amendment to Assign Agreement - Signed by Buyer #1 & Seller

It is agreed by the parties hereto that all of the other terms and conditions of the aforementioned Agreement shall remain in full force and effect other than as modified herein. Upon execution by all parties, this Amendment shall be attached to and form a part of said Agreement.

By signing this Amendment, Buyer and Seller acknowledge that they have each read and understood this Amendment and agree to its terms.

1 Buyer’s Signature

1 Seller’s Signature

2 Buyer’s Signature

2 Seller’s Signature

Additional Signature Page (F267) is attached.

Additional Signature Page (F267) is attached.

Buyer Brokerage Firm

Seller Brokerage Firm

Broker/Affiliated Licensee Signature

Broker/Affiliated Licensee Signature

REALTOR® Membership

REALTOR® Membership

Acceptance Date. The above Amendment is hereby accepted, _____ o'clock _____ m. on the date of _____, (“Acceptance Date”). This Amendment will become binding upon the parties when notice of the acceptance of the Amendment has been received by offeror. The offeror shall promptly notify offeree when acceptance has been received.

COUNTEROFFER TO OR MODIFICATION OF THE UNACCEPTED ORIGINAL OFFER



This Counteroffer is made at _____ o'clock _____ m. on the date of _____.

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This is a Counteroffer to or modification of, as the case may be, (hereinafter collectively "Counteroffer") the unaccepted original offer set forth in the Purchase and Sale Agreement dated _____ including all exhibits attached hereto or incorporated by reference therein ("Original Offer") for property located at: _____, Georgia _____ ("Property").

- A. Previous Counteroffers Rejected.** The party making this Counteroffer acknowledges that in doing so: 1) it constitutes a rejection of the Original Offer as presented and all previous counteroffers; 2) the Original Offer and all previous counteroffers are no longer available for acceptance; 3) no previous counteroffer(s) shall be considered a part of any agreement between the parties; and 4) nothing requires the other party to continue the negotiations.
- B. Relationship between Original Offer and This Counteroffer.** The Original Offer is hereby incorporated by reference into this Counteroffer. However, the terms of this Counteroffer shall modify and control over any conflicting or inconsistent provisions contained in the Original Offer.
- C. Effect of Accepting This Counteroffer.** When this Counteroffer is signed by the Buyer and Seller and a copy of the same is delivered to both parties, the Original Offer as modified by this Counteroffer constitutes a legally binding agreement. Since the Original Offer (including all exhibits thereto) is incorporated by reference into this Counteroffer, only this Counteroffer needs to be signed to create a legally binding agreement between the parties.
- D. Clean Copy of Agreement.** At any time prior to closing, either party if so requested by the other shall sign a conformed or "clean" copy of the Agreement combining the terms of Original Offer with the controlling and supplemental provisions of this Counteroffer into one (1) document, including initialing or signing, as the case may be, all exhibits. (Include SS622 Conformed Copy of Agreement in conformed or "clean" copy of Agreement)
- E. Terms and Conditions.** The following terms and conditions of the Original Offer are modified as follows: *[The sections not filled in or marked N/C (for "no change" which shall mean that no change is being proposed to that section of the agreement) shall not be a part of this Counteroffer and shall remain the same as set forth in the Original Offer.]*

Purchase Price of Property to be Paid by Buyer: \$ _____	Closing Costs: Seller's Contribution at Closing: \$ _____
Closing and Possession. Closing Date shall be _____ with possession of the Property transferred to Buyer at <input type="checkbox"/> Closing OR <input type="checkbox"/> _____ days after Closing at _____ o'clock <input type="checkbox"/> AM <input type="checkbox"/> PM (attach F219 Temporary Occupancy Agreement).	
Holder of Earnest Money ("Holder"): (If Holder is Closing Attorney, F510 must be attached as an exhibit hereto, and F511 must be signed by Closing Attorney.)	Closing Law Firm:
Earnest Money: Earnest Money shall be paid by <input type="checkbox"/> check <input type="checkbox"/> ACH <input type="checkbox"/> cash or <input type="checkbox"/> wire transfer of immediately available funds as follows: <input type="checkbox"/> 1. \$ _____ as of the Offer Date. <input type="checkbox"/> 2. \$ _____ within _____ days from the Binding Agreement Date. <input type="checkbox"/> 3. _____	
Inspection and Due Diligence. Property is being sold subject to a Due Diligence Period of _____ days from the Binding Agreement Date.	
Time Limit of this Counter Offer: This Counteroffer, which incorporates and controls over the Original Offer, shall expire at _____ o'clock _____ m. on the date of _____ unless prior to that time it is accepted in writing and notice (as that term is defined in the Original Offer) is delivered to the party who made the Counteroffer.	

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

F. Other Modifications to the Original Offer:

FOR TRAINING ONLY

Additional pages are attached.

Buyer(s) Initials _____

Seller(s) Initials _____

This Counteroffer is made at _____ o'clock _____ m. on the date of _____.

By signing this Counteroffer, Buyer and Seller acknowledge that they have each read and understood this Counteroffer and agree to its terms.

Buyer Acceptance and Contact Information

1 Buyer's Signature

Print or Type Name _____ Date _____

Buyer's Address for Receiving Notice _____

Buyer's Phone Number: Cell Home Work

Buyer's E-mail Address _____

2 Buyer's Signature

Print or Type Name _____ Date _____

Buyer's Address for Receiving Notice _____

Buyer's Phone Number: Cell Home Work

Buyer's E-mail Address _____

Additional Signature Page (F267) is attached.

Buyer's Broker/Affiliated Licensee Contact Information

Buyer Brokerage Firm _____

Broker/Affiliated Licensee Signature _____ **Date** _____

Print or Type Name _____ GA Real Estate License # _____

Licensee's Phone Number _____ Fax Number _____

Licensee's E-mail Address _____

REALTOR® Membership _____

Broker's Address _____

Broker's Phone Number _____ Fax Number _____

MLS Office Code _____ Brokerage Firm License Number _____

Seller Acceptance and Contact Information

1 Seller's Signature

Print or Type Name _____ Date _____

Seller's Address for Receiving Notice _____

Seller's Phone Number: Cell Home Work

Seller's E-mail Address _____

2 Seller's Signature

Print or Type Name _____ Date _____

Seller's Address for Receiving Notice _____

Seller's Phone Number: Cell Home Work

Seller's E-mail Address _____

Additional Signature Page (F267) is attached.

Seller's Broker/Affiliated Licensee Contact Information

Seller Brokerage Firm _____

Broker/Affiliated Licensee Signature _____ **Date** _____

Print or Type Name _____ GA Real Estate License # _____

Licensee's Phone Number _____ Fax Number _____

Licensee's Email Address _____

REALTOR® Membership _____

Broker's Address _____

Broker's Phone Number _____ Fax Number _____

MLS Office Code _____ Brokerage Firm License Number _____

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

CONVENTIONAL LOAN CONTINGENCY EXHIBIT " _____ "



2023 Printing

This Exhibit is part of the Agreement with an Offer Date of _____ for the purchase and sale of that certain Property known as: _____, Georgia _____.

1. **Application.** Buyer shall promptly apply for and in good faith seek to obtain the conventional loan or loans described below ("Loan(s)") such that Buyer can fulfill Buyer's obligations hereunder prior to the expiration of this Conventional Loan Contingency. *[Select A. or A. and B. below. Any box not selected shall not be a part of this Agreement. All Loan terms must be filled in.]*

<input type="checkbox"/>		Loan Amount	Term	Interest Rate <u>(at par)</u>	Rate Type	Source Of Loans Term
<input type="checkbox"/>	FIRST MORTGAGE LOAN	_____ % of purchase price	_____ years	Not greater than _____ % per annum (or initial rate on adjustable loan)	<input type="checkbox"/> Fixed <input type="checkbox"/> Adjustable <input type="checkbox"/> Interest Only	<input type="checkbox"/> Institutional <input type="checkbox"/> Seller <input type="checkbox"/> Other
<input type="checkbox"/>	SECOND MORTGAGE LOAN	_____ % of purchase price	_____ years	Not greater than _____ % per annum (or initial rate on adjustable loan)	<input type="checkbox"/> Fixed <input type="checkbox"/> Adjustable <input type="checkbox"/> Interest Only	<input type="checkbox"/> Institutional <input type="checkbox"/> Seller <input type="checkbox"/> Other

2. **Use of Particular Mortgage Lender.** Unless an Approved Mortgage Lender is identified below, Buyer may apply for approval of the Loan(s) with any institutional mortgage lender licensed to do business in Georgia. If an Approved Mortgage Lender(s) is identified below, Buyer shall apply for approval of the Loan(s) with at least one such Approved Mortgage Lender. Nothing herein shall require Buyer to obtain mortgage financing from an Approved Mortgage Lender.

Approved Mortgage Lender(s)

(hereinafter singularly "Approved Mortgage Lender" and collectively "Approved Mortgage Lender(s)")

3. **Length of the Financing Contingency Period.** The length of the Financing Contingency Period in Section 7 below shall be _____ days from the Binding Agreement Date.

4. **Length of Time for Buyer to Request a Reduction in the Sales Price Based Upon a Low Appraisal.** The time period for Buyer to request a reduction in the sales price of the Property, if it appraises for less than the purchase price of the Property, as set forth in Section 13 below, shall be _____ days from the Binding Agreement Date.

5. **Buyer May Apply for Different Loan(s).** A Loan Denial Letter (as that term is defined below) must be for the Loan(s) described above. Buyer may also apply for different conventional loans than the Loan(s) described above. However, the denial of such other loans shall not be a basis for Buyer to terminate this Agreement. Notwithstanding the above, Buyer shall not have a right to apply for a FHA, VA, or USDA loan unless the parties agree to amend this Agreement to add a FHA, VA, or USDA loan contingency exhibit meeting FHA, VA or USDA requirements, as the case may be (in which event this Conventional Loan Contingency shall no longer be part of this Agreement). Nothing herein shall require the Seller to agree to amend this Agreement.

6. **Buyer to Notify Seller of Intent to Proceed.** When it is known, Buyer shall promptly notify seller of any mortgage lender to whom Buyer has sent a notice of intent to proceed with loan application and the name and contact information for the loan originator.

7. Financing Contingency. Buyer shall have a financing contingency period equal to the number of days set forth in Section 3 above to determine if Buyer has the ability to obtain the Loan(s) described above ("Financing Contingency Period"). Buyer shall be deemed to have the ability to obtain the Loan(s) unless prior to the end of the Financing Contingency Period, Buyer: a) notifies Seller that Buyer is terminating the Agreement because Buyer has been turned down for the Loan(s) and b) provides Seller within seven (7) days from the date of such notice a letter of loan denial from a mortgage lender based upon the mortgage lender's customary and standard underwriting criteria ("Loan Denial Letter"). The Loan Denial Letter and mortgage lender issuing the Loan Denial Letter must meet all of the requirements set forth elsewhere in this Exhibit but may be provided to Seller after the Financing Contingency Period has ended if the above-referenced seven (7) day period to provide the Loan Denial Letter falls outside of the Financing Contingency Period. Notwithstanding the above, the end of the Financing Contingency Period shall not limit Buyer's rights under the Appraisal Contingency section of this Agreement, provided that the same has not expired. **Financing Contingency is DIFFERENT from Appraisal Contingency**

8. Use of Approved Mortgage Lender and Loan Denial Letter. If Buyer has agreed to apply for the Loan(s) with an Approved Mortgage Lender, the Loan Denial Letter must be from an Approved Mortgage Lender. If Buyer is not required to apply for the Loan(s) with an Approved Mortgage Lender, the Loan Denial Letter may be from any institutional mortgage lender licensed to do business in Georgia. A Loan Denial Letter from a non-institutional mortgage lender shall not be the basis for Buyer to terminate this Agreement.

Notwithstanding any provision to the contrary contained herein, the Loan Denial Letter may not be based solely upon one or more of the following: (a) Buyer lacking sufficient funds other than the amount of the Loan(s) to close; (b) Buyer not having leased or sold other real property (unless such a contingency is expressly provided for in this Agreement); (c) Buyer not having provided the lender(s) in a timely fashion with all information required by lender, including but not limited to, loan documentation, Official Wood Infestation Reports, structural letters, well tests, septic system certifications, flood plain certifications and any other similar information required by lender (hereinafter collectively "Required Information"); (d) Buyer making purchases that adversely affect Buyer's debt to income ratio; (e) the Property not appraising for at least the purchase price unless this Agreement is subject to an appraisal contingency and an appraisal meeting the requirements of this Agreement has been performed; or (f) the lender not having completed underwriting the loan request.

Buyer may terminate this Agreement without penalty based upon an inability to obtain the Loan(s) only if Buyer fulfills all of the applicable requirements set forth in this Exhibit.

9. Right of Seller to Request Evidence of Buyer's Ability to Close. If the Financing Contingency ends without Buyer terminating this Agreement, Seller shall have the right, but not the obligation, to request that Buyer provide Seller with written evidence of Buyer's financial ability to purchase the Property ("Evidence"). A copy of a loan commitment from each institutional mortgage lender from whom Buyer is seeking mortgage financing to purchase the Property stating the type, amount and terms of the loan(s) and the conditions for funding the loan(s), shall be deemed sufficient Evidence. The provision of such Evidence is not a guarantee that the mortgage loan(s) will be funded or that Buyer will close on the purchase of the Property. Buyer shall have seven (7) days from the date Seller delivers notice to Buyer requesting such Evidence to produce the same. No request for such Evidence shall be made by Seller less than seven (7) days from the date of Closing.

10. Seller's Right to Terminate. In the event Buyer fails to provide Seller with the Evidence of Buyer's Ability to Close within the timeframe set forth above, Seller shall notify Buyer of the default and give Buyer three (3) days from the date of the delivery of the notice to cure the same. If Buyer does not timely cure the default, Seller may terminate this Agreement within seven (7) days thereafter due to Buyer's default upon notice to Buyer. In the event Seller does not terminate this Agreement within that timeframe, the right to terminate on this basis shall be waived.

11. Authorization of Buyer to Release Information to Seller and Brokers. Buyer does hereby authorize Seller and the Brokers identified herein to communicate with the lenders with whom Buyer is working to determine and receive from said lenders any or all of the following information: (a) the status of the loan application; (b) Buyer's financial ability to obtain the Loan(s) or other loans for which Buyer has applied; (c) whether and when Buyer provided the lenders with Required Information; (d) whether and what conditions may remain to complete the loan application process and issue of a loan commitment; and (e) the basis for any Loan Denial Letter.

12. Miscellaneous. For the purposes of this Exhibit, the term "mortgage loan" shall refer to a secured lending transaction where the loan or promissory note is secured by a deed to secure debt on the Property. Whether such mortgage loan is a first or second mortgage loan is a reference to the legal priorities of the deeds to secure debt relative to each other and other liens and encumbrances.

13. Appraisal Contingency. In addition to Buyer's other rights herein, this Agreement shall be subject to the following appraisal contingency. Buyer shall cause the Lender to: (a) select an appraiser to perform one or more appraisals of the Property and (b) provide Seller with a copy of any appraisal that is for less than the purchase price of the Property. If any such appraisal is for less than the purchase price, Buyer shall, not later than by the end of the time period set forth in Section 4 above, have the right to request that Seller reduce the sales price of the Property to a price not less than the appraised price by submitting an Amendment to Sales Price (F713) ("ATSP") to Seller along with a copy of the appraisal supporting the lower price. In the event that Buyer does not timely submit an ATSP to Seller, Buyer shall be deemed to have waived Buyer's right to do so and this Agreement shall no longer be subject to an appraisal contingency.

Seller shall, not later than three (3) days from the date of an ATSP is delivered to Seller (but not later than two (2) days prior to Closing), accept or reject the ATSP or seek to negotiate with Buyer a lesser reduction in the sales price of the Property than what is reflected in the ATSP. If, within the above timeframe, an ATSP has not been signed and accepted by the Buyer and Seller and timely delivered to create a legally enforceable amendment, Buyer shall have an additional three (3) days (but not later than one (1) day prior to Closing) to terminate this Agreement without penalty. If Buyer does not terminate the Agreement within this timeframe, Buyer's right to terminate due to the failure to agree to an ATSP shall be waived and Buyer shall close on the Property for the purchase price set forth in this Agreement. Nothing herein shall require Buyer to seek a reduction in the sales price of the Property.

BUT.... If Buyer does not send Seller copy of Low Appraisal & propose Amendment to Reduce Sale Price, then Buyer MUST BUY at the contract sale price regardless of the low appraisal

FOR TRAINING ONLY

1 Buyer's Signature

Print or Type Name

2 Buyer's Signature

Print or Type Name

Additional Signature Page (F267) is attached.

Buyer Brokerage Firm

Broker/Affiliated Licensee Signature

Print or Type Name

REALTOR® Membership

1 Seller's Signature

Print or Type Name

2 Seller's Signature

Print or Type Name

Additional Signature Page (F267) is attached.

Seller Brokerage Firm

Broker/Affiliated Licensee Signature

Print or Type Name

REALTOR® Membership

FHA LOAN CONTINGENCY EXHIBIT “ _____ ”



2023 Printing

This Exhibit is part of the Agreement with an Offer Date of _____ for the purchase and sale of that certain Property known as: _____, Georgia _____.

1. Application. Buyer shall promptly apply for and in good faith seek to obtain the Federal House Administration (FHA) loan or loan(s) described below (“Loan(s)”) such that Buyer can fulfill Buyer’s obligations hereunder prior to the expiration of this FHA Loan Contingency.

[Select A. or A. and B .below. Any box not selected shall not be a part of this Agreement. All Loan terms must be filled in.]

<input type="checkbox"/> A.	FIRST MORTGAGE LOAN	Loan Amount	Term	Interest Rate <u>(at par)</u>	Rate Type	Source Of Loans Term
		_____ % of purchase price	_____ years	Not greater than _____% per annum (or initial rate on adjustable loan)	<input type="checkbox"/> Fixed <input type="checkbox"/> Adjustable	<input type="checkbox"/> Institutional
<input type="checkbox"/> B.	SECOND MORTGAGE LOAN	_____ % of purchase price	_____ years	Not greater than _____% per annum (or initial rate on adjustable loan)	<input type="checkbox"/> Fixed <input type="checkbox"/> Adjustable <input type="checkbox"/> Interest Only	<input type="checkbox"/> Institutional <input type="checkbox"/> Seller <input type="checkbox"/> Other

2. Use of Particular Mortgage Lender. Unless an Approved Mortgage Lender is identified below, Buyer may apply for approval of the Loan(s) with any institutional mortgage lender licensed to do business in Georgia. If an Approved Mortgage Lender(s) is identified below, Buyer shall apply for approval of the Loan(s) with at least one such Approved Mortgage Lender. Nothing herein shall require Buyer to obtain mortgage financing from an Approved Mortgage Lender.

Approved Mortgage Lender(s)

(hereinafter singularly “Approved Mortgage Lender” and collectively “Approved Mortgage Lender(s)”)

3. Length of the Financing Contingency Period. The length of the Financing Contingency Period in Section 6 below shall be _____ days from the Binding Agreement Date.

4. Buyer May Apply for Different Loan(s). A Loan Denial Letter (as that term is defined below) must be for the Loan(s) described above. Buyer may also apply for different loans than the Loan(s) described above. However, the denial of such other loans shall not be a basis for Buyer to terminate this Agreement.

5. Buyer to Notify Seller of Intent to Proceed. When it is known, Buyer shall promptly notify seller of any mortgage lender to whom Buyer has sent a notice of intent to proceed with loan application and the name and contact information for the loan originator.

6. Financing Contingency. Buyer shall have a financing contingency period equal to the number of days set forth in Section 3 above to determine if Buyer has the ability to obtain the Loan(s) described above (“Financing Contingency Period”). Buyer shall be deemed to have the ability to obtain the Loan(s) unless prior to the end of the Financing Contingency Period, Buyer: a) notifies Seller that Buyer is terminating the Agreement because Buyer has been turned down for the Loan(s) and b) provides Seller within seven (7) days from the date of such notice a letter of loan denial from a mortgage lender based upon the mortgage lender’s customary and standard underwriting criteria (“Loan Denial Letter”). The Loan Denial Letter and mortgage lender issuing the Loan Denial Letter must meet all of the requirements set forth elsewhere in this Exhibit but may be provided to Seller after the Financing Contingency Period has ended if the above-referenced seven (7) day period to provide the Loan Denial Letter falls outside of the Financing Contingency Period. Notwithstanding the above, Buyer’s right under the Amendatory Clause shall exist even after the Financing Contingency Period has expired. **Removed Time Frame, clarified that 7 Days for Loan Denial Letter can be after time frame, clarified separation of Financing Contingency vs. Appraisal Contingency via "Amendatory Clause"**

7. Use of Approved Mortgage Lender and Loan Denial Letter. If Buyer has agreed to apply for the Loan(s) with an Approved Mortgage Lender, the Loan Denial Letter must be from an Approved Mortgage Lender. If Buyer is not required to apply for the Loan(s) with an Approved Mortgage Lender, the Loan Denial Letter may be from any institutional mortgage lender licensed to do business in Georgia. A Loan Denial Letter from a non-institutional mortgage lender shall not be the basis for Buyer to terminate this Agreement.

Notwithstanding any provision to the contrary contained herein, the Loan Denial Letter may not be based solely upon one or more of the following: (a) Buyer lacking sufficient funds other than the amount of the Loan(s) to close; (b) Buyer not having leased or sold other real property (unless such a contingency is expressly provided for in this Agreement); (c) Buyer not having provided the lender(s) in a timely fashion with all information required by lender, including but not limited to, loan documentation, Official Wood Infestation Reports, structural letters, well tests, septic system certifications, flood plain certifications and any other similar information required by lender (hereinafter collectively "Required Information"); (d) Buyer making purchases that adversely affect Buyer's debt to income ratio; or (e) the lender not having completed underwriting the loan request.

Buyer may terminate this Agreement without penalty based upon an inability to obtain the Loan(s) only if Buyer fulfills all of the applicable requirements set forth in this Exhibit.

8. Right of Seller to Request Evidence of Buyer's Ability to Close. If the Financing Contingency ends without Buyer terminating this Agreement, Seller shall have the right, but not the obligation, to request that Buyer provide Seller with written evidence of Buyer's financial ability to purchase the Property ("Evidence"). A copy of a loan commitment from each institutional mortgage lender from whom Buyer is seeking mortgage financing to purchase the Property stating the type, amount and terms of the loan(s) and the conditions for funding the loan(s), shall be deemed sufficient Evidence. The provision of such Evidence is not a guarantee that the mortgage loan(s) will be funded or that Buyer will close on the purchase of the Property. Buyer shall have seven (7) days from the date Seller delivers notice to Buyer requesting such Evidence to produce the same. No request for such Evidence shall be made by Seller less than seven (7) days from the date of Closing.

9. Seller's Right to Terminate. In the event Buyer fails to provide Seller with the Evidence of Buyer's Ability to Close within the timeframe set forth above, Seller shall notify Buyer of the default and give Buyer three (3) days from the date of the delivery of the notice to cure the same. If Buyer does not timely cure the default, Seller may terminate this Agreement within seven (7) days thereafter due to Buyer's default upon notice to Buyer. In the event Seller does not terminate this Agreement within that timeframe, the right to terminate on this basis shall be waived.

10. Authorization of Buyer to Release Information to Seller and Brokers. Buyer does hereby authorize Seller and the Brokers identified herein to communicate with the lenders with whom Buyer is working to determine and receive from said lenders any or all of the following information: (a) the status of the loan application; (b) Buyer's financial ability to obtain the Loan(s) or other loans for which Buyer has applied; (c) whether and when Buyer provided the lenders with Required Information; (d) whether and what conditions may remain to complete the loan application process and issue of a loan commitment; and (e) the basis for any Loan Denial Letter.

11. Miscellaneous. For the purposes of this Exhibit, the term "mortgage loan" shall refer to a secured lending transaction where the loan or promissory note is secured by a deed to secure debt on the Property. Whether such mortgage loan is a first or second mortgage loan is a reference to the legal priorities of the deeds to secure debt relative to each other and other liens and encumbrances.

12. Amendatory Clause. It is expressly agreed that, notwithstanding any other provisions of this Agreement, Buyer shall not be obligated to complete the purchase of Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless Buyer has been given in accordance with HUD/FHA requirements a written statement by the Federal Housing Commissioner or a Direct Endorsement lender setting forth the appraised value of Property of not less than \$ Fill in with Numbers. Buyer shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or condition of the property. The purchaser should satisfy himself/herself that the price and condition of the property are acceptable. If the written statement by the Federal Housing Commissioner or a Direct Endorsement lender sets forth an appraised value of the Property that is less than the minimum appraised value set forth in this amendatory clause, Seller may reduce the purchase price to an amount equal to such actual appraised value, and the parties shall close at such lower purchase price with appropriate adjustments to the sales Agreement. This amendatory clause shall apply even when the Financing Contingency Period has terminated.

13. Mortgage Insurance Premium. The FHA up-front _____ percent (%) mortgage insurance premium shall be paid by Buyer as follows: *[select one]*

A. in full at closing,

OR

B. added to the loan amount and financed. (If this box is checked, then the term "loan amount" as used herein shall mean the amount set forth in the Purchase and Sale Agreement plus the FHA mortgage insurance premium so financed; the monthly payments will increase accordingly.)

14. When Mortgage Insurance Premium Is Paid. Buyer is aware that a monthly mortgage insurance premium shall be included in the regular monthly mortgage payments.

15. Seller shall pay the following lender fees: Tax Service Fees.

(These costs are included OR are in addition to any closing costs that Seller may have agreed to pay in accordance with the Seller's Contributions at Closing paragraph.)

16. Repairs Required in FHA Commitment. Any repairs required in the FHA Commitment shall be completed and paid for by _____ prior to closing provided such repairs do not exceed \$ _____ in total costs.

In the event the anticipated costs exceed the amount listed above. Seller shall provide Buyer with an itemized written statement of the total costs of the repairs required in the FHA Commitment from third-party contractor(s) selected by Seller. Seller or Buyer shall have the option to agree to pay the excess amount upon notice to the other party, which shall constitute an amendment to this Agreement. If neither party provides such notice to the other within three (3) days of the date Seller provides Buyer with the written estimate of the above-referenced cost of the repairs (or the parties otherwise fail to agree in writing within this timeframe as to how the excess repair costs will be paid), then this Agreement shall automatically terminate without penalty to the Buyer. If Buyer agrees to pay the excess amount, the same shall be paid by Buyer to Seller at Closing. = Buyer gets Earnest Money back

17. Seller Pays for Certain Inspections. Seller shall pay the cost of any lender-imposed inspections of the septic tank and/or well systems.

18. Home Warranty. If the improvements on Property are less than one year old at the time of closing, Seller shall, if required by FHA, provide a home warranty certificate acceptable to FHA.

19. May Be Obligated to Connect to Public Sewer. As required by FHA, both Buyer and Seller agree that if public water or a public sewer system is available at the street, Property must be connected, and that [select one]: _____ agrees to pay the cost of said connection not to exceed \$ _____ OR Buyer to pay \$ _____ and Seller to pay \$ _____ for the cost of connection. At the time of closing, Seller shall provide certification from the proper authority that Property is connected to and serviced by the public system.

20. Certification of Truthfulness and Completeness. Seller, Buyer, and Broker (and its Affiliated Licensees) certify that the above referenced Purchase and Sale Agreement is true and complete to the best of our knowledge and fully represents the transaction between them. No agreements exist outside this Purchase and Sale Agreement, and any agreements made from this date until closing, shall be revealed to lender.

21. Certification of Arms Length Transaction. Buyer and Seller certify that [select one]:
 This is an arms length transaction as there is no relationship between the Buyer and Seller OR this is not an arms length transaction because _____.

22. If the Property is a condominium unit, the purchase of the Property shall be contingent upon the condominium in which the unit is located being eligible for and approved by FHA. In the event the Property is not a condominium unit, this paragraph shall not be deemed a part of this Exhibit.

1 Buyer's Signature

Print or Type Name

2 Buyer's Signature

Print or Type Name

Additional Signature Page (F267) is attached.

Buyer Brokerage Firm

Broker/Affiliated Licensee Signature

Print or Type Name

REALTOR® Membership

1 Seller's Signature

Print or Type Name

2 Seller's Signature

Print or Type Name

Additional Signature Page (F267) is attached.

Seller Brokerage Firm

Broker/Affiliated Licensee Signature

Print or Type Name

REALTOR® Membership

VA LOAN CONTINGENCY EXHIBIT “ _____ ”



2023 Printing

This Exhibit is part of the Agreement with an Offer Date of _____ for the purchase and sale of that certain Property known as: _____, Georgia _____.

1. **Application.** Buyer shall promptly apply for and in good faith seek to obtain the Veterans Administration (VA) loan or loans described below (“Loan(s)”) such that Buyer can fulfill Buyer’s obligations hereunder prior to the expiration of this VA Loan Contingency.

[Select A. or A. and B. below. Any box not selected shall not be a part of this Agreement. All Loan terms must be filled in.]

<input type="checkbox"/> A.	FIRST MORTGAGE LOAN	Loan Amount	Term	Interest Rate (at par)	Rate Type	Source Of Loans Term
		_____ % of purchase price	_____ years	<u>Not greater than</u> _____ % per annum (or initial rate on adjustable loan)	<input type="checkbox"/> Fixed <input type="checkbox"/> Adjustable	<input type="checkbox"/> Institutional
<input type="checkbox"/> B.	SECOND MORTGAGE LOAN	_____ % of purchase price	_____ years	Not greater than _____ % per annum (or initial rate on adjustable loan)	<input type="checkbox"/> Fixed <input type="checkbox"/> Adjustable <input type="checkbox"/> Interest Only	<input type="checkbox"/> Institutional <input type="checkbox"/> Seller <input type="checkbox"/> Other

2. **Use of Particular Mortgage Lender.** Unless an Approved Mortgage Lender is identified below, Buyer may apply for approval of the Loan(s) with any institutional mortgage lender licensed to do business in Georgia. If an Approved Mortgage Lender(s) is identified below, Buyer shall apply for approval of the Loan(s) with at least one such Approved Mortgage Lender. Nothing herein shall require Buyer to obtain mortgage financing from an Approved Mortgage Lender.

Approved Mortgage Lender(s)

(hereinafter singularly “Approved Mortgage Lender” and collectively “Approved Mortgage Lender(s)”)

3. **Length of the Financing Contingency Period.** The length of the Financing Contingency Period in Section 6 below shall be _____ days from the Binding Agreement Date.

4. **Buyer May Apply for Different Loan(s).** A Loan Denial Letter (as that term is defined below) must be for the Loan(s) described above. Buyer may also apply for different loans than the Loan(s) described above. However, the denial of such other loans shall not be a basis for Buyer to terminate this Agreement.

5. **Buyer to Notify Seller of Intent to Proceed.** When it is known, Buyer shall promptly notify seller of any mortgage lender to whom Buyer has sent a notice of intent to proceed with loan application and the name and contact information for the loan originator.

6. **Financing Contingency.** Buyer shall have a financing contingency period equal to the number of days set forth in Section 3 above to determine if Buyer has the ability to obtain the Loan(s) described above (“Financing Contingency Period”). Buyer shall be deemed to have the ability to obtain the Loan(s) unless prior to the end of the Financing Contingency Period, Buyer: a) notifies Seller that Buyer is terminating the Agreement because Buyer has been turned down for the Loan(s) and b) provides Seller within seven (7) days from the date of such notice a letter of loan denial from a mortgage lender based upon the mortgage lender’s customary and standard underwriting criteria (“Loan Denial Letter”). The Loan Denial Letter and mortgage lender issuing the Loan Denial Letter must meet all of the requirements set forth elsewhere in this Exhibit but may be provided to Seller after the Financing Contingency Period has ended if the above-referenced seven (7) day period to provide the Loan Denial Letter falls outside of the Financing Contingency Period. Notwithstanding the above, Buyer’s right under the Amendatory Clause shall exist even after the Financing Contingency Period has expired.

Removed fill-in-the blank, modified, clarified separation of Financing vs. Amendatory clause (appraisal)

7. Use of Approved Mortgage Lender and Loan Denial Letter. If Buyer has agreed to apply for the Loan(s) with an Approved Mortgage Lender, the Loan Denial Letter must be from an Approved Mortgage Lender. If Buyer is not required to apply for the Loan(s) with an Approved Mortgage Lender, the Loan Denial Letter may be from any institutional mortgage lender licensed to do business in Georgia. A Loan Denial Letter from a non-institutional mortgage lender shall not be the basis for Buyer to terminate this Agreement.

Notwithstanding any provision to the contrary contained herein, the Loan Denial Letter may not be based solely upon one or more of the following: (a) Buyer lacking sufficient funds other than the amount of the Loan(s) to close; (b) Buyer not having leased or sold other real property (unless such a contingency is expressly provided for in this Agreement); (c) Buyer not having provided the lender(s) in a timely fashion with all information required by lender, including but not limited to, loan documentation, Official Wood Infestation Reports, structural letters, well tests, septic system certifications, flood plain certifications and any other similar information required by lender (hereinafter collectively "Required Information"); (d) Buyer making purchases that adversely affect Buyer's debt to income ratio; or (e) the lender not having completed underwriting the loan request.

Buyer may terminate this Agreement without penalty based upon an inability to obtain the Loan(s) only if Buyer fulfills all of the applicable requirements set forth in this Exhibit.

8. Right of Seller to Request Evidence of Buyer's Ability to Close. If the Financing Contingency ends without Buyer terminating this Agreement, Seller shall have the right, but not the obligation, to request that Buyer provide Seller with written evidence of Buyer's financial ability to purchase the Property ("Evidence"). A copy of a loan commitment from each institutional mortgage lender from whom Buyer is seeking mortgage financing to purchase the Property stating the type, amount and terms of the loan(s) and the conditions for funding the loan(s), shall be deemed sufficient Evidence. The provision of such Evidence is not a guarantee that the mortgage loan(s) will be funded or that Buyer will close on the purchase of the Property. Buyer shall have seven (7) days from the date Seller delivers notice to Buyer requesting such Evidence to produce the same. No request for such Evidence shall be made by Seller less than seven (7) days from the date of Closing.

9. Seller's Right to Terminate. In the event Buyer fails to provide Seller with the Evidence of Buyer's Ability to Close within the timeframe set forth above, Seller shall notify Buyer of the default and give Buyer three (3) days from the date of the delivery of the notice to cure the same. If Buyer does not timely cure the default, Seller may terminate this Agreement within seven (7) days thereafter due to Buyer's default upon notice to Buyer. In the event Seller does not terminate this Agreement within that timeframe, the right to terminate on this basis shall be waived.

10. Authorization of Buyer to Release Information to Seller and Brokers. Buyer does hereby authorize Seller and the Brokers identified herein to communicate with the lenders with whom Buyer is working to determine and receive from said lenders any or all of the following information: (a) the status of the loan application; (b) Buyer's financial ability to obtain the Loan(s) or other loans for which Buyer has applied; (c) whether and when Buyer provided the lenders with Required Information; (d) whether and what conditions may remain to complete the loan application process and issue of a loan commitment; and (e) the basis for any Loan Denial Letter.

11. Miscellaneous. For the purposes of this Exhibit, the term "mortgage loan" shall refer to a secured lending transaction where the loan or promissory note is secured by a deed to secure debt on the Property. Whether such mortgage loan is a first or second mortgage loan is a reference to the legal priorities of the deeds to secure debt relative to each other and other liens and encumbrances.

12. Amendatory Clause. It is expressly agreed that, notwithstanding any other provisions of this Agreement, the Buyer shall not incur any penalty by forfeiture of earnest money deposits or otherwise be obligated to complete the purchase of the property described herein, if the Agreement purchase price or costs exceeds the reasonable value of the property established by the Veterans Administration ("VA"). The Buyer shall, however, have the privilege and option of proceeding with the consummation of this Agreement without regard to the amount of the reasonable value established by VA. If Buyer elects to complete the purchase at an amount in excess of the reasonable value established by VA, Buyer shall pay such excess amount in cash from a source which Buyer agrees to disclose to VA and which Buyer represents will not be borrowed funds except as approved by VA. If the VA reasonable value of the property is less than the purchase price, Seller may reduce the purchase price to an amount equal to the VA reasonable value, and the parties to the sale shall close at such lower purchase price with appropriate adjustments to the sales Agreement. This amendatory clause shall apply even when the Financing Contingency Period has terminated.

13. VA Funding Fee. The VA Funding fee shall be paid as follows: [select one]

- A. In full at closing by _____; OR
- B. Added to the loan amount and financed [If this box is checked, then the term "loan amount" as used herein shall mean the amount set forth in the Purchase and Sale Agreement plus the VA Funding fee so financed; the monthly payments will increase accordingly.]; OR
- C. No VA Funding fee required for this veteran per the certificate of eligibility.

14. Certain Repairs Paid by Seller. Any repairs required in the VA Certificate of Reasonable Value shall be completed and paid for by Seller prior to closing, provided such repairs do not exceed \$ _____ in total costs. In the event the anticipated costs exceed the amount listed above, an itemized estimate shall be provided to all parties from third-party contractor(s), selected by Seller, of the total costs of repairs to be made to the Property.

Seller or Buyer shall have the option to pay the excess amount. If the parties do not agree in writing who shall pay the excess amount, then this Agreement shall terminate within three (3) days of written notice of itemized estimate, and Buyer shall be entitled to the return of Buyer's earnest money.

15. VA Rules and Regulations: Termite Letter. An Official Georgia Wood Infestation Report ("Termite Report") meeting the requirements of Georgia law and dated within 90 days prior to Closing, indicating that the Property is free of infestation from termites and other wood destroying organisms shall be obtained by and at the sole expense of Buyer or Seller. The VA Notice of Value will be conditioned upon the preparation of the above-referenced Termite Report meeting the above requirements. In the event the Property is not free of infestation from termites and/or other wood destroying organisms, Seller shall immediately cause the Property to be treated or retreated such that a Termite Report meeting the requirements of Georgia law indicating that the Property is free of infestation from termites and other wood destroying organisms can be issued within 90 days prior to the Closing. Any reinspection fee necessitated by Seller correcting infestation from termites and/or other wood destroying organisms shall be paid for by Seller. Buyer and Seller acknowledge that the Property may not meet VA's Minimum Property Requirements if it contains damage from a previous infestation of termites and/or other wood destroying organisms. In such event, Seller shall obtain a written estimate from a contractor to repair such damage and provide a copy of the same to Buyer. If the parties are unable to reach a written agreement as to the repair of this damage within three (3) days of the date that the contractor's estimate is provided by Seller to Buyer, then this Agreement shall automatically terminate.

16. Home Warranty. If the improvements on Property are less than one (1) year old at the time of closing, Seller shall, if required by VA, provide a home warranty certificate acceptable to VA at Seller's Cost

17. Public Water and Sewer. As required by VA, both Buyer and Seller agree that if public water or a public sewer system is available at the street, and the local authority requires it, the Property must be connected, and that Seller agrees to pay the cost of said connection not to exceed \$_____. In the event the anticipated costs exceed the amount listed above, an estimate shall be provided to all parties from third-party contractor(s), selected by Seller, of the total cost to connect to public water or public sewer system to Property.

Seller or Buyer shall have the option to pay the excess amount. If the parties do not agree in writing who shall pay the excess amount, then this Agreement shall terminate within three (3) days of written notice of cost to connect public water or public sewer system to the Property, and Buyer shall be entitled to a refund of Buyer's earnest money.

The responsible party shall provide at or before Closing with a certification from the proper authority that the Property is connected to and serviced by the public system.

1 Buyer's Signature

 Print or Type Name

2 Buyer's Signature

 Print or Type Name

Additional Signature Page (F267) is attached.

 Buyer Brokerage Firm

Broker/Affiliated Licensee Signature

 Print or Type Name

 REALTOR® Membership

1 Seller's Signature

 Print or Type Name

2 Seller's Signature

 Print or Type Name

Additional Signature Page (F267) is attached.

 Seller Brokerage Firm

Broker/Affiliated Licensee Signature

 Print or Type Name

 REALTOR® Membership

This Exhibit is part of the Agreement with an Offer Date of _____ for the purchase and sale of that certain Property known as: _____, Georgia _____.

1. Method of Purchase All New Paragraph - "Method of Purchase"

A. **All Cash Purchase:** Buyer has sufficient liquid assets to purchase the Property in this transaction for "all cash". The Buyer has no right to unilaterally extend the Closing date for eight (8) days for reason of mortgage lender delay. Notwithstanding the above, Buyer shall have the right to extend the closing date for eight (8) days if the closing attorney is not ready except if the basis for the closing attorney not being ready is due to or related to the mortgage lender delay.

OR

B. **Financed Purchase with No Financing Contingency:** Buyer intends to obtain mortgage financing to pay for all or a portion of the sales price of the Property; provided, however, this Agreement shall not be subject to a financing contingency. Even though Buyer is obtaining a mortgage loan, the Buyer has no right to unilaterally extend the Closing date for eight (8) days for reason of mortgage delay. Notwithstanding the above, Buyer shall have the right to extend the closing date for eight (8) days if the closing attorney is not ready except if the basis for the closing attorney not being ready is due to or related to the mortgage lender delay.

2. **Verification of Funds.** Within _____ days from the Binding Agreement Date, Buyer shall be obligated to provide or cause to be provided to Seller information describing in specific detail the source of all Buyer's funds necessary to purchase the Property ("Required Information"). The Required Information shall consist of one or more of the following:

A. A letter or letters from a trust, stock brokerage firm and/or financial institution holding funds, stocks, bonds and/or other assets (hereinafter collectively referred to as "Assets") of or on behalf of Buyer and dated subsequent to the Binding Agreement Date stating that Buyer has funds in US Dollars of at least an amount specified in the letter and/or Assets on deposit with the institution of a value specified in the letter, that are sufficient to allow Buyer to complete the purchase of the Property;

B. An account statement or statements from the trust, stock brokerage firm and/or financial institution(s) holding funds and/or Assets confirming a specific amount of funds in US Dollars on deposit with the institution. Such account statement must be for the regular time period that such statements are issued immediately preceding the Binding Agreement Date.

C. If Option 1(B) is selected above, a loan commitment letter from a mortgage lender.

3. **Authorization and Security.** Buyer does hereby authorize Seller and Listing Broker to communicate with any person providing information regarding Buyer's source of funds to purchase the Property to verify such information and to answer any questions Seller or Listing Broker may have regarding the source of Buyer's funds to purchase the Property. In providing any account statement to Seller, Buyer shall be entitled to delete or otherwise shield account numbers, social security numbers, telephone numbers and other information the release of which could jeopardize the security of the account or put the Buyer at greater risk of identity theft.

4. **Seller's Right to Terminate.** In the event Buyer fails to provide Seller with the Required Information within the timeframe set forth above, Seller shall notify Buyer of the default and give Buyer three (3) days from the date of the delivery of the notice to cure the same. If Buyer does not timely cure the default, Seller may terminate this Agreement within seven (7) days thereafter due to Buyer's default upon notice to Buyer. In the event Seller does not terminate this Agreement within that timeframe, the right to terminate on this basis shall be waived.

5. **Appraisal Contingency.** In addition to the other rights of Buyer set forth herein, this Agreement shall or shall not be subject to the Property appraising for at least the purchase price. Buyer shall have the rights set forth in this exhibit in the event the Property does not appraise for at least the purchase price in accordance with the terms and conditions set forth below:

A. **Type of Appraisal:** The appraisal shall be a "certified appraisal" of the Property (as that term is defined in O.C.G.A. § 43-39A-2) performed or signed off by a licensed or certified appraiser (as those terms are defined in the rules and regulations of the Georgia Real Estate Appraiser's Board) and include a statement that the appraiser performed an "independent appraisal assignment" (as that term is defined in O.C.G.A. § 43-39A-2(24)) with respect to the Property.

B. **Selection of Appraiser:** The appraiser shall be selected by [Select one. The sections not selected shall not be a part of this Agreement.]: Buyer, Seller, OR Other (_____); and all parties agree that this appraiser shall only perform a single certified appraisal of the Property.

C. Rights of Buyer If Property Does Not Appraise: If any appraisal performed pursuant to and in accordance with this exhibit is for less than the purchase price of the Property, the Buyer shall have the right to request within _____ days from the Binding Agreement Date that Seller reduce the sales price of the Property to a price not less than the appraisal price by submitting an Amendment to Sales Price ("ATSP") to Seller along with a complete copy of the appraisal which is for less than the purchase price. In the event that Buyer does not submit an ATSP within the time frame referenced above, Buyer shall be deemed to have waived Buyer's right to request a reduction in the sales price and this Agreement shall no longer be subject to an appraisal contingency. The time limit of the offer for the Seller to accept or reject the ATSP shall run through the earlier of: (1) three (3) days from the date that the ATSP is delivered to Seller; or (2) the time of closing (excluding any extensions of the closing resulting from the unilateral extension of the closing date).

If Seller does not accept the ATSP, Buyer shall have the right, but not the obligation, to terminate this Agreement without penalty upon notice to Seller, provided that such notice is given within three (3) days of the earlier of: (a) the date that Buyer receives notice that Seller has not accepted the ATSP; or (b) the last date Seller could have accepted the ATSP. In neither circumstance shall the Buyer's right to terminate extend beyond the time of closing.

D. Buyer Not Obligated to Seek Price Reduction: Nothing herein shall require Buyer to seek any reduction in the sales price of the Property. If Buyer does not seek a reduction in the sales price, Buyer shall be obligated to purchase the Property for the price agreed to by the parties in the Agreement.

FOR TRAINING ONLY

Buyer's Initials: _____

Seller's Initials: _____

COMMUNITY ASSOCIATION DISCLOSURE

EXHIBIT “ _____ ”



2023 Printing

This Exhibit is part of the Agreement with an Offer Date of _____ for the purchase and sale of that certain Property known as: _____, Georgia _____ (“Property”).

Directions for Filling Out This Community Association Disclosure (“Disclosure”). Seller must fill out this Disclosure accurately and completely. If new information is learned by Seller which materially changes the answers herein, Seller must immediately update and provide Buyer with a revised copy of this Disclosure up until Closing (see Section B for Seller’s payment obligations related to initial and updated Disclosures). Seller should ensure the disclosures being made are accurate by confirming the same with the Community Association (“Association”) and/or Association Manager(s).

Buyer’s Use of Disclosure. While this Disclosure is intended to give the Buyer basic information about the community in which Buyer is purchasing, Buyer should read the covenants and other legal documents for the community (“Covenants”) to fully understand Buyer’s rights and obligations therein. This Disclosure does not address all issues that may affect Buyer as the owner of a residence in the community. Assessments in community associations tend to increase over time. The Covenants can normally be amended to reflect the changing preferences in the community.

A. KEY TERMS AND CONDITIONS

1. TYPE OF ASSOCIATION IN WHICH BUYER WILL OR MAY BECOME A MEMBER (Select all that apply. The boxes not selected shall not be a part of this Exhibit)

- | | |
|---|---|
| <input type="checkbox"/> Mandatory Membership Condominium Association | <input type="checkbox"/> Mandatory Membership Age Restricted Community |
| <input type="checkbox"/> Mandatory Membership Community Association | <input type="checkbox"/> All units are occupied by person 62 or older. |
| <input type="checkbox"/> Mandatory Membership Master Association | <input type="checkbox"/> At least 80% of the occupied units are occupied by at least one person who is 55 years of age or older |
| <input type="checkbox"/> Optional Voluntary Association | <input type="checkbox"/> Voluntary Transitioning to Mandatory (Buyer shall be a
<input type="checkbox"/> voluntary or <input type="checkbox"/> mandatory member) |

2. CONTACT INFORMATION FOR ASSOCIATION(S)

a. Name of Association: _____
Contact Person / Title: _____
Association Management Company: _____
Telephone Number: _____ Email Address: _____
Mailing Address: _____ Website: _____

b. Name of Master Association: _____
Contact Person / Title: _____
Association Management Company: _____
Telephone Number: _____ Email Address: _____
Mailing Address: _____ Website: _____

3. ASSESSMENTS

The total annual assessments paid to all the above selected Association(s) is \$ _____ per year and paid as follows: (Select all of that apply. The boxes not selected shall not be a part of this Agreement)

Monthly Quarterly Semi-Annually Annually Other: _____

4. SPECIAL ASSESSMENTS

a. Buyer’s total portion of all special assessments Under Consideration is \$ _____.

b. Buyer’s total portion of all approved special assessments is \$ _____.

c. Approved Special Assessments shall be paid as follows: (Select all that apply. The boxes not selected shall not be a part of this Agreement) Monthly Quarterly Semi-Annually Annually Other: _____

d. Notwithstanding the above, if the Buyer’s portion of any and all special assessment(s) that are passed or Under Consideration after the Binding Agreement Date is \$ _____ or more, Buyer shall have the right, but not the obligation to terminate the Agreement upon notice to Seller, provided that Buyer terminates the Agreement within five (5) days from being notified of the above, after which Buyer’s right to terminate shall be deemed waived.

5. TRANSFER, INITIATION, AND ADMINISTRATIVE FEES

To the extent Transfer, Initiation, and Administrative Fees are fully and accurately disclosed by Seller, Buyer shall pay \$_____ for all Transfer, Initiation, and Administrative Fees.

6. UTILITY EXPENSES

Buyer is required to pay for utilities which are billed separately by the Association and are in addition to any other Association assessments. The Association bills separately for: Electric Water/Sewer Natural Gas Cable TV Internet Other: _____

7. ASSESSMENTS PAY FOR FOLLOWING SERVICES, AMENITIES, AND COSTS. The following services, amenities, and costs are included in the Association annual assessment. (Select all which apply. Items not selected in Section 7.a. and/or Section 7.b. shall not be part of this Agreement).

a. For Property costs include the following:

- Cable TV Natural Gas Pest Control Other: _____
- Electricity Water Termite Control Other: _____
- Heating Hazard Insurance Dwelling Exterior Other: _____
- Internet Service Flood Insurance Yard Maintenance Other: _____

b. Common Area / Element Maintenance costs include the following:

- Concierge Pool Hazard Insurance Road Maintenance
- Gate Attendant Tennis Court Flood Insurance Other: _____
- All Common Area Utilities Golf Course Pest Control Other: _____
- All Common Area Playground Termite Control Other: _____
- All Common Area Maintenance Exercise Facility Dwelling Exterior Other: _____
- Internet Service Equestrian Facility Grounds Maintenance Other: _____
- Marina/Boat Storage Trash Pick-Up Other: _____

8. LITIGATION. There IS or IS NOT any threatened or existing litigation relating to alleged construction defects in the Association in which the Association is involved. If there is such threatened or existing litigation, please summarize the same below:

Check if additional pages are attached.

9. VIOLATIONS. Seller HAS or HAS NOT received any notice or lawsuit from the Association(s) referenced herein alleging that Seller is in violation of any rule, regulation, or Covenant of the Association. If Seller has received such a notice of violation or lawsuit, summarize the same below and the steps Seller has taken to cure the violation.

Check if additional pages are attached.

B. FURTHER EXPLANATIONS TO CORRESPONDING PARAGRAPHS IN SECTION A

1. TYPE OF ASSOCIATION IN WHICH BUYER WILL OR MAY BECOME A MEMBER

- a. **Defined:** The primary purpose of a Community Association is to provide for the community, business, and governance aspects of the Association. The Association administers and maintains operation of the community as provided in the deed, Covenants and restrictions, rules and regulations, declaration, and/or other Community Association documents.
- b. **Examination:** Buyer acknowledges that ownership of the Property is subject to declarations, certain restrictions (including the ability to rent the Property), and by-laws, which may include additional costs as a member of a mandatory membership Association. Restrictions are subject to change by actions of the Association.
- c. **Owner Limitations:** If repairs and/or replacement of defects in any common element(s) are the exclusive responsibility of the Association, the owner of the Property is unable to make such replacements and/or repairs.

2. CONTACT INFORMATION FOR ASSOCIATION(S)

a. **Consent of Buyer to Reveal Information to Association(s).** Buyer hereby authorizes closing attorney to reveal to the Association from whom the closing attorney is seeking a Closing Letter the Buyer's name and any contact information the closing attorney has on the Buyer such as telephone numbers, e-mail address, etc. The closing attorney may rely on this authorization.

3. ASSESSMENTS

- a. **Disclosure Regarding Fees.** Owners of property in communities where there is a Mandatory Membership Community Association are obligated to pay certain recurring fees, charges, and assessments (collectively "Fee") to the Association. Fees can and do increase over time and, on occasion, there may be the need for a special assessment. The risk of paying increased Fees is assumed by the Buyer in living in a community with a Mandatory Membership Community Association.
- b. **Buyer shall pay** a) any pre-paid regular assessment (excluding Special Assessments) due at Closing for a period of time after Closing; and b) move-in fees, including fees and security deposits to reserve an elevator as these fees are not considered Transfer, Initiation, and Administrative Fees.
- c. **Seller shall pay** a) all Fees owing on the Property which come due before the Closing so that the Property is sold free and clear of liens and monies owed to the Association; and b) any Seller move-out Fees, foreclosure Fees or other fees specifically intended by the Association to be paid by Seller.
- d. **Account Statement or Clearance Letter.** Seller shall pay the cost of any Association account statement or clearance letter ("Closing Letter") including all amounts required by the Association or management company to be pre-paid in order to obtain such Closing Letter. Seller shall not be reimbursed at Closing for any amounts prepaid in order to obtain the Closing Letter. Within two (2) days of notice from the closing attorney, Seller shall pay for the Closing Letter as instructed by the closing attorney. Seller's failure to follow the instructions of the closing attorney may cause a delay in Closing and/or result in additional fees being charged to Seller.

4. SPECIAL ASSESSMENTS

- a. **Under Consideration:** For all purposes herein, the term "Under Consideration" with reference to a special assessment shall mean that a notice of a meeting at which a special assessment will be voted upon, has been sent to the members of the Association. If a special assessment(s) has been voted upon and rejected by the members of the Association, it shall not be deemed to be Under Consideration by the Association. Seller warrants that Seller has accurately and fully disclosed all special assessment(s) passed or Under Consideration to Buyer. This warranty shall survive the Closing.
- b. **Liability for Undisclosed Special Assessments:** With respect to special assessment(s) Under Consideration or approved before Binding Agreement Date that are either not disclosed or are not disclosed accurately by Seller to Buyer, Seller shall be liable for and shall reimburse Buyer for that portion of the special assessment(s) that was either not disclosed or was not disclosed accurately.
- c. **Who Pays for Disclosed Special Assessments:** With respect to special assessments, Under Consideration or approved and accurately disclosed above, if an unpaid special assessment is due but may be paid in installments, it shall be deemed to be due in installments for purposes of determining whether it is to be paid by Buyer or Seller. If the special assessment(s) is adopted and due in whole or being paid by installment, installment payments due prior to or on Closing shall be paid by the Seller; and installment payments due subsequent to Closing shall be paid by the Buyer.
- d. **Special Assessments Arising after Binding Agreement Date:** With respect to special assessments that are only Under Consideration after the Binding Agreement Date and are promptly disclosed by Seller to Buyer:
 - i. If the special assessment(s) is adopted and due, in whole or in part, prior to or on Closing, that portion due prior to or on Closing shall be paid by the Seller; and
 - ii. If the special assessment(s) is adopted and due in whole or part subsequent to Closing, that portion due subsequent to Closing shall be paid by Buyer.

5. TRANSFER, INITIATION, AND ADMINISTRATIVE FEES

- a. **Buyer Pays:** Buyer shall pay any initial fee, capital contribution, new member fee, transfer fee, new account set-up fee, fees similar to the above but which are referenced by a different name, one-time fees associated with closing of the transaction and fees to transfer keys, gate openers, fobs and other similar equipment (collective, "Transfer, Initiation, and Administrative Fees) to the extent the total amount due is accurately disclosed above. Advance assessments due at Closing for a period of time after Closing, shall not be Transfer, Initiation, and Administrative Fees and shall be paid by Buyer.
- b. **Seller Pays:** Seller shall pay any amount in excess of the sum disclosed in Section A(5), even in the event of any later disclosures made by the Seller of increase in such Transfer, Initiation, and Administrative Fees. In the event Seller fills in the above blank with "N/A", or anything other than a dollar amount, or is left empty, it shall be the same as Seller filling in the above blank with \$0.00.
- c. **Fees Defined:** All Transfer, Initiation, and Administrative Fees paid by Seller pursuant to this section are considered actual Seller fees and are not a Seller concession or contribution to the Buyer's cost to close.

1 Buyer's Signature

Print or Type Name

Date

2 Buyer's Signature

Print or Type Name

Date

Additional Signature Page (F267) is attached.

1 Seller's Signature

Print or Type Name

Date

2 Seller's Signature

Print or Type Name

Date

Additional Signature Page (F267) is attached.

**CLOSING ATTORNEY ACTING AS
HOLDER OF EARNEST MONEY
EXHIBIT “ _____ ”**



[Closing Attorney must still consent to serve as Holder using F511]

2023 Printing

This Exhibit is part of the Agreement with an Offer Date of _____ for the purchase and sale of that certain property known as: _____, Georgia _____ (“Agreement”).

1. **Closing Attorney Shall Act as Holder.** The Closing Attorney named in this Agreement shall be the Holder of the earnest money and other trust funds referenced in this Agreement subject to the Closing Attorney timely: a) agreeing to serve; b) signing the appropriate documents; and c) timely delivering the same to Buyer and Seller as more particularly described below.
2. **Buyer Must Timely Deliver Certain Documents to Closing Attorney Acting as Holder of Earnest Money.** When the Closing Attorney has been named as Holder in the Agreement, Buyer must deliver to Closing Attorney within two (2) business days from the Binding Agreement Date: a) the fully-signed and executed Agreement in its entirety (“Entire Contract”); and b) a copy or copies of the Escrow Agreement (F511) for the Closing Attorney to sign agreeing to become the Holder. Buyer must similarly deliver to Holder all amendments to the Entire Contract within two (2) business days of the date that the Amendment becomes binding.
3. **Closing Attorney Must Agree to Become Holder Within Three (3) Business Days of Receiving Entire Contract.** The Closing Attorney named as Holder shall not become the Holder unless within three (3) business days from the date that the Closing Attorney receives the Entire Contract, the Closing Attorney has: a) countersigned the Agreement of Closing Attorney to serve as Holder (GAR Form F511, and sometimes referred to as “Escrow Agreement”) without change or modification so except for filling in the blanks contained therein; and b) delivered the same to Buyer and Seller. When this occurs, Closing Attorney’s rights and duties as Holder and the timeframe for completing the same shall commence.
4. **Rights and Duties of Closing Attorney Acting as Holder.** Notwithstanding any provision to the contrary contained in the Agreement, Closing Attorney acting as Holder shall have all of the pre-printed rights and duties of Holder set forth in the GAR Purchase and Sale Agreement (a copy of which is incorporated herein by reference), regardless of whether such rights and duties are set forth in this Agreement. In the event of a conflict between this Agreement and the pre-printed right and duties of Holder set forth in the GAR Purchase and Sale Agreement, the latter shall control unless otherwise agreed to in writing by Buyer, Seller, and Holder. In the event the transaction does not close, Closing Attorney shall not have a right to deduct any of attorney’s costs or fees pertaining to the Closing from the earnest money or other trust funds being held by Closing Attorney, except as may be provided elsewhere herein.
5. **Earnest Money Must Be Paid to Closing Attorney Acting as Holder by Wire Transfer.** Buyer shall be responsible for paying all earnest money and other Buyer trust funds to the Closing Attorney acting as Holder by wire transfer of immediately available funds or by such other method deemed acceptable and/or required by Closing Attorney, as the case may be.
6. **Failure of Closing Attorney to Become Holder.** If the Closing Attorney named as Holder has not become Holder because the Closing Attorney rejects being the Holder or fails to timely become Holder, then: a) the Alternate Holder named below, who must be a broker in this transaction, shall automatically become the Holder instead of the Closing Attorney; b) all parties consent to the earnest money being paid or transferred to the Alternate Holder; and c) all parties shall cooperate with one another to sign any documents required to accomplish the same. The signature of the Alternate Holder to the Agreement at the time it is first signed shall be deemed consent of the Alternate Holder to serve as Holder. The Alternate Holder’s duties and the timeline for performing those duties shall commence when the Alternate Holder becomes the Holder.
7. **Alternate Holder.** The Buyer must immediately notify all parties if the Closing Attorney fails to become Holder. The Alternate Holder, who must be a broker in this transaction, shall be One of the Brokers.
In the event an Alternate Holder is not named, the Alternate Holder shall be the Buyer’s Broker.
8. **Closing Attorney Holding Earnest Money in All-Cash Transaction.** In an all-cash transaction where the Closing Attorney is representing the Buyer or Seller, the Closing Attorney can hold the earnest money (and other trust funds), but in the event of a dispute between the parties regarding the disbursement of the funds, the Closing Attorney shall not disburse the funds based upon a reasonable interpretation of the Agreement. Instead and notwithstanding any provision to the contrary contained in this agreement, in the event of a dispute regarding the earnest money in an all-cash transaction where the Closing Attorney is representing the Buyer or Seller, the only remedy available to the Closing Attorney to resolve the dispute regarding the disbursement of earnest money shall be to interplead the funds into a court of competent jurisdiction.
9. **Notices To and From Holder.** The notice procedures in the Agreement shall control with regard to all notices to and from Holder. Holder’s contact information is set forth in signature pages to this Agreement.
10. **Closing Attorney’s Contact Information.** The Closing Attorney named below shall be the Holder in this transaction.

Closing Attorney: _____
Address: _____

Phone Number: _____
Fax Number: _____
Email: _____

Buyer’s Initials: _____

Seller’s Initials: _____

AGREEMENT OF CLOSING ATTORNEY TO SERVE AS HOLDER OF EARNEST MONEY ("ESCROW AGREEMENT")



[Should only be used when F510 Closing Attorney Acting as Holder of Earnest Money Exhibit has been made part of the Purchase and Sale Agreement]

2023 Printing

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following closing attorney or law firm: _____ ("Closing Attorney") having being named as Holder in the Purchase and Sale Agreement by and between _____ ("Buyer") and _____ ("Seller") with an offer date of _____, 20____ for real property located at: _____ ("Agreement") does hereby agree to serve as Holder in such Agreement, subject to the terms herein.

1. TERMS OF CLOSING ATTORNEY ACTING AS HOLDER.

- a. This Escrow Agreement is hereby incorporated into the Agreement and together they shall bind Closing Attorney acting as Holder. The provisions in the Agreement (including the Escrow Agreement) relating directly or indirectly to earnest money and trust funds may be enforced by Holder as a third-party beneficiary to the Agreement. Holder shall have all of the pre-printed rights and duties of Holder and shall follow the procedures binding Holder set forth in the Agreement, unless other agreed to in writing by Buyer, Seller, and Holder. Closing Attorney shall have all of the preprinted rights and duties of Holder set forth in the Agreement without amendment or modification;
- b. Upon the Closing Attorney becoming Holder, the timeframe for Closing Attorney to begin to perform the duties of Holder shall not commence until Holder receives the signed and executed Agreement in its entirety ("Entire Contract"). With regards to amendments to the Entire Contract, the rights and duties of Holder under the amendment shall not commence until Holder receives the amendment.
- c. In the event the transaction does not close, Closing Attorney shall not have a right to deduct any of attorney's costs or fees pertaining to the Closing from the earnest money or other trust funds being held by Closing Attorney, except as may be provided elsewhere herein.
- d. This Escrow Agreement shall be interpreted in accordance with the laws of the State of Georgia;
- e. Time is of the essence; and
- f. This Agreement (including the Escrow Agreement) and any amendment thereto shall constitute the entire agreement of the parties relative to the Closing Attorney acting as Holder.

2. CLOSING ATTORNEY MUST AGREE TO BECOME HOLDER WITHIN THREE (3) BUSINESS DAYS. The Closing Attorney shall not become the Holder unless the Closing Attorney has within three (3) business days from the date the Closing Attorney receives the Entire Contract the Closing Attorney has: a) signed this Escrow Agreement without modification (except for filling in the blanks contained herein); and b) delivered the same to Buyer and Seller.

3. FAILURE OF CLOSING ATTORNEY TO TIMELY AGREE TO BECOME HOLDER. If the Closing Attorney named as Holder herein has not become Holder within three (3) business days from the date the Closing Attorney receives the Entire Contract in which the Closing Attorney has been appointed as the Holder, then: a) the Alternate Holder referenced in the Closing Attorney Acting as Holder of Earnest Money Exhibit (F510) shall automatically become the Holder instead of the Closing Attorney; b) all parties consent to the earnest money being paid or transferred to the Alternate Holder; and c) all parties shall cooperate with one another to sign any documents required to accomplish the same.

4. CONTACT INFORMATION

Buyer's Name: _____
Address: _____
Phone Number: _____
Fax Number: _____
Email: _____

Seller's Name: _____
Address: _____
Phone Number: _____
Fax Number: _____
Email: _____

Buyer's Name: _____
Address: _____
Phone Number: _____
Fax Number: _____
Email: _____

Seller's Name: _____
Address: _____
Phone Number: _____
Fax Number: _____
Email: _____

Buyer Licensee's Name: _____
Buyer's Broker _____
Address: _____

Phone Number: _____
Fax Number: _____
Email: _____

Seller Licensee's Name: _____
Seller's Broker _____
Address: _____

Phone Number: _____
Fax Number: _____
Email: _____

ONLY signed by closing Attorney AFTER Buyer & Seller have a Binding Contract.
Therefore this is NOT part of the contract!
Buyer & Seller sign F510 as an EXHIBIT naming the Closing Attorney to be Holder

Closing Attorney

Date

By: _____
Signature of Its Authorized Representative

Print or Type Name

Closing Attorney's Address

E-mail Address of Holder

Telephone Number of Holder

Facsimile Number of Holder

BACK-UP AGREEMENT CONTINGENCY EXHIBIT " _____ "



See NEW Form F605 "Addendum to Back-Up Agreement"

2023 Printing

This Exhibit is part of the Agreement with an Offer Date of _____ for the purchase and sale of that certain Property known as: _____, Georgia _____.

1. Buyer and Seller acknowledge that this Agreement is a "back-up" Agreement in _____ place behind the Primary Agreement with a Binding Agreement Date of _____ for the purchase and sale of the Property between Seller and Primary Buyer identified as _____ (last name of Primary Buyer or authorized signatory) represented by or working with _____ ("Primary Buyer's Broker") and that back-up Buyer has no right to purchase the Property unless the Primary Agreement and other higher priority back-up agreements, if any and which are more specifically identified on Addendum to Back-Up Contingency Exhibit (F605), attached hereto and incorporated herein, are terminated and Seller gives notice to Buyer of the same.
2. Upon the closing of the sale of the Primary Agreement or a back-up agreement in a higher position, this Agreement shall terminate, and Buyer shall be entitled to a refund of Buyer's earnest money.
3. Buyer agrees that any amendments to the Primary Agreement or a back-up agreement in higher positions shall not alter the priority of this back-up Agreement as a back-up agreement to the Primary Agreement and other back-up agreements in higher positions.
4. Buyer acknowledges that this Back-Up Agreement Contingency shall not give the Buyer a right to examine or be advised of the terms of the Primary Agreement and other back-up agreements in higher positions or any amendments thereof.
5. In the event the Primary Agreement and all other back-up agreements in higher positions are terminated, Seller shall deliver notice of the same to Buyer, this Agreement shall become primary and no longer subject to this Contingency Exhibit and Buyer and Seller shall close on this Agreement in accordance with its terms and conditions, provided, however, that: (a) notwithstanding anything to the contrary contained herein, all parties agree that the time limits (except the delivery and deposit of Earnest Money) shall commence on the date that notice of the termination of the Primary Agreement and all back-up agreements in higher positions are provided; and (b) the closing date shall be the date listed in the Agreement unless because of the change in the Binding Agreement Date any of the time periods for Buyer to conduct due diligence, or fulfill other contingencies in the Agreement extend beyond the closing date in which event the new closing date shall be seven (7) days from the last date Buyer has to fulfill Buyer's contingencies or the end of any Due Diligence Period, whichever is later.
6. If this Agreement has not become primary by _____, this Agreement shall automatically terminate. Moreover, Buyer can terminate this Agreement at any time prior to receiving the Notice from Seller that this Agreement has become primary by giving notice of the same to Seller and paying Seller a termination fee of Ten Dollars (\$10.00).

Buyer's Initials: _____

Seller's Initials: _____

ADDENDUM TO BACK-UP AGREEMENT CONTINGENCY EXHIBIT



NEW FORM in 2023

Use after Main Contract & 1 Binding Back-Up Contract

2023 Printing

This Addendum is part of the Back-Up Agreement Contingency Exhibit “____” of the Agreement with an Offer Date of _____ for the purchase and sale of that certain Property known as: _____, Georgia _____.

The following back-up agreements are in higher position than this Back-Up Agreement:

The Primary Back-Up Agreement has a Binding Agreement Date of _____ for the purchase and sale of the Property between Seller and Primary Buyer identified as _____ (last name of Primary Buyer or authorized signatory) represented by or working with _____ (“Primary Buyer’s Broker”).

The Second Back-Up Agreement has a Binding Agreement Date of _____ for the purchase and sale of the Property between Seller and Second Buyer identified as _____ (last name of Second Buyer or authorized signatory) represented by or working with _____ (“Second Buyer’s Broker”).

The Third Back-Up Agreement has a Binding Agreement Date of _____ for the purchase and sale of the Property between Seller and Third Buyer identified as _____ (last name of Third Buyer or authorized signatory) represented by or working with _____ (“Third Buyer’s Broker”).

The Fourth Back-Up Agreement has a Binding Agreement Date of _____ for the purchase and sale of the Property between Seller and Fourth Buyer identified as _____ (last name of Fourth Buyer or authorized signatory) represented by or working with _____ (“Fourth Buyer’s Broker”).

BINDING Contract & All BINDING BACK-UP Contracts ahead of THIS Binding Back-Up Contract are referenced by:

- * Binding Agreement Date
- * Buyer's Last Name
- * Buyer's Broker

Buyer's Initials: _____

Seller's Initials: _____

NOTICE TO UNILATERALLY EXTEND CLOSING DATE FOR EIGHT DAYS



2023 Printing

This notice is given this date of _____ in accordance with the provisions of that certain Agreement between _____ ("Buyer") and _____ ("Seller"), with a Binding Agreement Date of _____ for the Purchase and Sale of real property located at: _____, Georgia _____.

Buyer(s) OR Sellers(s) hereby gives notice to the other parties to the above-referenced purchase and sale Agreement that the closing date is extended for eight (8) days for the following reason(s):

A. Seller(s) cannot satisfy valid title objections; excluding: (a) liens, judgments, and deeds to secure debt that can be satisfied through the payment of money or by bonding off the same; and (b) title objections which do not prevent Seller from conveying good and marketable title to the Property.

B. 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 due to no fault of Buyer.

C. Buyer(s) has not received required estimates or disclosures, and Buyer is prohibited from closing under federal regulations. = TRID Disclosures 3 Days Prior to Closing per Federal Regulation

Dana believes Options B & C will be changed in 2023 Mid-Year Revision due to Revised 2023 "No Finance Contingency Exhibit!"

1 Signature of Party Giving Notice

Date

Print or Type Name

2 Signature of Party Giving Notice

Date

Print or Type Name

Method of Delivery:

Additional Signature Page (F267) is attached.

- In Person
- Facsimile
- Overnight Delivery Service
- Certified or Registered Mail
- E-mail

UNILATERAL NOTICE TO TERMINATE PURCHASE AND SALE AGREEMENT AND PROPOSED DISBURSEMENT OF EARNEST MONEY



2023 Printing

This notice is given this date of _____ in accordance with the provisions of that certain Agreement between _____ ("Buyer") and _____ ("Seller"), for the Purchase and Sale of real property located at: _____, Georgia _____, with a Binding Agreement Date of _____.

Unilateral Notice to Terminate

- Buyer **OR** Seller does hereby give notice to the other parties to the above-referenced purchase and sale agreement that he or she is terminating the Agreement effective immediately based upon the following:
- a. Buyer's right to terminate during the Due Diligence Period set forth in the Agreement; **No explanation required**
 - b. the failure of the following contingency to which the Agreement is subject: _____
 - c. the following default under the Agreement by Buyer Seller: _____
 - d. other lawful reason: _____

ONLY Buyer OR Seller Signature Required

1 Buyer _____	Date	OR	1 Seller _____	Date
2 Buyer _____	Date		2 Seller _____	Date

Additional Signature Page (F267) is attached. Additional Signature Page (F267) is attached.

Proposed Disbursement of Earnest Money

The party unilaterally terminating this Agreement proposes that the earnest money and any other funds currently being held by Holder (collectively "Earnest Money") be disbursed as follows:

Party's Name & Address & Amount of Earnest Money

This disbursement of Earnest Money shall only become effective upon this form being signed by and delivered to Buyer and Seller with a fully executed copy of the same then being delivered to the Buyer, Seller and Holder. Upon the happening of such event, Buyer and Seller further agree to release each other and all real estate brokerage firms, brokers and their affiliated licensees (all of whom shall be express third party beneficiaries to this Agreement) working with or representing the parties to the Agreement from any and all claims, causes of action, damages and suits arising out of or related to the Agreement. This shall not relieve any party who has defaulted under the Agreement or any brokerage engagement agreement to which they are a party from any claim, cause of action or suit for damages brought by the Broker(s) involved in the transaction. All terms referenced herein shall have the same meaning as in the Agreement.

BOTH Buyer AND Seller Signatures Requires

1 Buyer _____	Date	AND	1 Seller _____	Date
2 Buyer _____	Date		2 Seller _____	Date

Additional Signature Page (F267) is attached. Additional Signature Page (F267) is attached.

AGREEMENT TO REINSTATE CONTRACT



2023 Printing

_____ (“Buyer”) and _____ (“Seller”) entered into an Agreement for the purchase and sale of that certain real property known as _____, _____, Georgia _____ with a Binding Agreement date of _____, 20____ (“Agreement”).

WHEREAS, the above-referenced Agreement was terminated by one or both of the parties referenced above.

WHEREAS, Buyer and Seller now desire to reinstate the Agreement and have it be in full force and effect;

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller do hereby agree as follows:

1. Buyer and Seller mutually agree to reinstate the last fully, agreed upon version of the above-referenced Agreement such that it shall again be a legally enforceable contract and binding upon the parties as if it had never been terminated.
2. All of the terms, conditions and time periods set forth in the above-referenced Agreement, including the Binding Agreement Date, shall remain in full force and effect except for any changes thereto set forth below which shall control over any conflicting or inconsistent provisions set forth in the above-referenced Agreement.

Not to amend contract but perhaps change date of closing or address Earnest Money if disbursed.

Check here if any additional pages are attached and incorporated herein.

3. This Agreement to Reinstate Contract shall only be effective when it has been signed by Buyer and Seller and a fully executed copy of this Agreement to Reinstate Contract has been delivered to Buyer and Seller in accordance with the Notice section of the above-referenced Agreement.

By signing this Agreement to Reinstate Contract, Buyer and Seller acknowledge that they have each read and understood this Agreement to Reinstate Contract and agree to its terms.

1 Buyer's Signature

Print or Type Name

Date

2 Buyer's Signature

Print or Type Name

Date

Additional Signature Page (F267) is attached.

1 Seller's Signature

Print or Type Name

Date

2 Seller's Signature

Print or Type Name

Date

Additional Signature Page (F267) is attached.