

# 2023 RE Forms Contract Dissection #75557

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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 RE Forms Contract Dissection – GREC Course #75557**
  - ▶ This is a Classroom / 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.

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## 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](mailto:Dana@MaximumOneRealty.com)) 678-580-6880, the Coordinator of Real Estate Academy of America, Heidi Kelly ([CE@RealEstateAcademyofAmerica.com](mailto:CE@RealEstateAcademyofAmerica.com)) 770-919-8825 ext. 306, or the Georgia Real Estate Commission.

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## Contract Forms

- RE Forms - "Born" & copyrighted in 2012
- MAJOR Revisions August 2014 & 2015
  - Separated out Purchase & Sale & "Standard Terms"
- Minor Revisions - 2019
- Continually adding to forms library
- Copyright date on bottom says "2012" or "2014" or "2015" even in 2023
  - The GAR Forms require agents to use the current year of copyrighted forms (i.e. "2023")
- Tiny Boxes - Pay Attention & Don't miss any!
  - *"This contingency / option shall only be granted if the appropriate box related thereto is checked within the body of the Contract and is thereby selected by the parties. If this contingency is not selected, this Section (in Standard Terms) shall not be deemed a part of the Contract."*

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# Index by Category – RE4

## ► Forms at a Glance:

### AGENCY DOCUMENTS

Form Number	Form Name
RE150	Exclusive Buyer Brokerage Agreement
RE151	Exclusive Right to Sell Listing Agreement
RE152	Exclusive Right to Sell Listing Agreement Exhibit A
RE153	Exclusive Lease Procurement Listing Agreement
RE154	Lease Management Listing Agreement
RE155	Exclusive Tenant Brokerage Agreement
RE156	Broker Agreement to Pay Referral Commission
RE157	Prospect's Acknowledgment and Consent to Referral
RE158	Seller Authorization to Show Property Without Listing Acknowledgment of Customer
RE159	Non-Exclusive Tenant Brokerage Agreement
RE160	Non-Exclusive Buyer Brokerage Agreement
RE161	

### DISCLOSURE DOCUMENTS

Form Number	Form Name
RE130	Seller's Property Condition Disclosure Statement
RE131	New Construction Disclosure Statement
RE132	Multi-Family Disclosure Statement
RE133	Developed Lots Disclosure Statement
RE134	Undeveloped Land Disclosure Statement
RE135	Landlord's Disclosure Statement
RE136	Community Association Exhibit
RE140	Disclosure of Information on Lead-Based Paint
RE141	EPA's <i>Protect Your Family from Lead in Your Home</i>
RE142	EPA's <i>A Brief Guide to Mold, Moisture, and Your Home</i>
RE143	DeKalb County Plumbing Disclosure Exhibit
RE144	EPA's <i>A Citizen's Guide to Radon</i>
RE145	Home Selling- The Process
RE146	Home Buying- The Process
RE147	Renting Property- The Process
RE148	Transactions Involving Out of State Residents

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# Index by Category – RE4

### SALE DOCUMENTS

Form Number	Form Name
RE10	Special Stipulations
RE90	Letter of Intent to Purchase-Sell
RE100	Contract for Purchase and Sale of Residential Real Property
RE101	New Construction Contract
RE102	Multi-Family Contract
RE103	Developed Lots Contract
RE104	Undeveloped Land Contract
RE105	Lease for Lease/Purchase Agreement Only Exhibit
RE106	Legal Description Exhibit
RE108	New Construction Exhibit
RE109	Walk-thru/Punch List
RE110	Counteroffer
RE111	Generic Additional Page
RE112	Bill of Sale
RE240	Pet Exhibit
RE260	Notification
RE261	Amendment to Contract
RE262	Amendment During Buyers Right to Terminate Period
RE265	Notice of Acceptance

### FINANCING & CONTINGENCY DOCUMENTS

Form Number	Form Name
RE200	FHA Loan Exhibit
RE201	VA Loan Exhibit
RE202	Seller Financing Exhibit
RE203	Financing Contingency
RE204	Appraisal Contingency
RE250	Generic Contingency Exhibit
RE251	Sale or Lease Contingency Exhibit
RE252	Back-up Agreement Contingency Exhibit
RE253	Short Sale Exhibit
RE254	Seller's Right to Continue Marketing Property Exhibit

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## Index by Category – RE4

### MISCELLANEOUS DOCUMENTS

<u>Form Number</u>	<u>Form Name</u>
RE10	Special Stipulations
RE50	Confidentiality Agreement
RE51	Release of Media
RE112	Bill of Sale
RE115	Commission Acknowledgement
RE145	Home Selling- The Process
RE146	Home Buying- The Process
RE147	Renting Property- The Process
RE210	Agreement for Additional Trust Funds to be Deposited
RE211	Agreement to Transfer Trust Funds to another Party
RE212	Agreement to Disburse Trust Funds
RE215	Escrow of Funds Agreement
RE240	Pet Exhibit
RE255	Occupancy Agreement for Seller After Closing
RE256	Occupancy Agreement for Buyer Prior to Closing
RE257	Escalation Clause Exhibit
RE258	Escalation Notice
RE260	Notification
RE261	Amendment to Contract
RE262	Amendment During Buyers Right to Terminate Period
RE500	Independent Contractor Agreement

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## Index by Category – RE4

### TRUST FUND & TERMINATION DOCUMENTS

<u>Form Number</u>	<u>Form Name</u>
RE127	Lease Termination Agreement
RE210	Agreement for Additional Trust Funds to be Deposited
RE211	Agreement to Transfer Trust Funds to another Party
RE212	Agreement to Disburse Trust Funds
RE263	Notice to Withdraw or Terminate
RE264	Unilateral Notice of Withdrawal of Offer

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## Contract for the Purchase & Sale of Residential Real Property- RE-100

- ▶ CONTRACT (RE100) = Basic Terms of Transfer of Property between Buyer & Seller
  - 5 Pages
  - Including Contingencies
  - References “Standard Terms” – describes the promises, obligations & consequences
- ▶ STANDARD TERMS (RE1) = all the “legal-ese” and the promises between the parties & consequences of failure to perform
  - 9 Pages
- ▶ So TOTAL = 14 Pages

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## “Standard Terms” RE – 1

- ▶ Incorporated by Reference
- ▶ [www.REFORMSGA.com](http://www.REFORMSGA.com) = Public access
- ▶ Consideration of the Contract contained in this document
- ▶ POINT OF PRACTICE: Print & Attach to Contract as an Exhibit – Agents have access via FMLS (Remine Docs) & GAMLs (transaction desk) & Dot Loop or Wherever you access your contract forms

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# Reference to Standard Terms

## Contract for the Purchase and Sale of Residential Real Property

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

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

**THIS CONTRACT INCORPORATES BY REFERENCE THOSE CERTAIN STANDARD TERMS FOR THE PURCHASE AND SALE OF GEORGIA REAL PROPERTY PUBLISHED BY ORTHRUS REAL ESTATE ENTERPRISES, LLC AT [WWW.REFORMSGA.COM](http://WWW.REFORMSGA.COM) AND IN EFFECT AS OF THE OFFER DATE (THE "STANDARD TERMS"), WHICH STANDARD TERMS SHALL BECOME A PART HEREOF BY REFERENCE THERETO. EACH PARTY, BY AFFIXING HIS OR HER SIGNATURE HERETO, EXPRESSLY AGREES THAT HE OR SHE HAS READ THE STANDARD TERMS, AND THAT IT IS HIS OR HER INTENT THAT THE STANDARD TERMS SHALL BE INCORPORATED INTO AND ARE A PART OF THIS CONTRACT.**

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# Address AND Legal Description

## 1. PROPERTY DESCRIPTION

Seller agrees to sell, and Buyer agrees to purchase from Seller, the land, described as follows: [check all that apply]

- property address: \_\_\_\_\_;
- more particularly described on the Legal Description Exhibit attached hereto;
- identical to the legal description for the property contained in the deed recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, et seq., \_\_\_\_\_ County, Georgia records;
- Land Lot(s) \_\_\_\_\_ of the \_\_\_\_\_ District, \_\_\_\_\_ Section/GMD, Lot(s) \_\_\_\_\_, Block(s) \_\_\_\_\_, Unit(s) \_\_\_\_\_, Phase/Section(s) \_\_\_\_\_ of \_\_\_\_\_ Subdivision /Development, \_\_\_\_\_ County, Georgia according to the plat recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, et seq., \_\_\_\_\_ County, Georgia records;

together with all permits, privileges, rights, members, and appurtenances thereto and together with all improvements, fixtures, personal property, trees, timber and other crops and plants located thereon (the "Property").

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# Purchase Price

- ▶ Numbers AND Words – avoid ambiguity & typographical errors

## 2. PURCHASE PRICE

Buyer covenants that Buyer has adequate financial resources to purchase the Property. The Purchase Price shall be \_\_\_\_\_ US Dollars (US\$ \_\_\_\_\_), subject to all prorations, fees, dues, and adjustments as may be elsewhere described in this Contract.

# Earnest Money

## 3. EARNEST MONEY

A good faith deposit of \_\_\_\_\_ US Dollars (US\$ \_\_\_\_\_) (the "Earnest Money") shall be payable to \_\_\_\_\_ (the "Escrow Agent") in the form of a  check,  certified funds,  money order, or,  cash. The amount of the good faith Earnest Money deposit identified above, if any, shall be applied toward the Purchase Price at closing.

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

Buyer has remitted the Earnest Money to Escrow Agent, and Escrow Agent shall deposit same into a trust account within three (3) banking days from the date Escrow Agent receives an original or copy of the Accepted (as hereinafter defined) Contract; or

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

## Amount in numbers & words

- ▶ "Escrow Agent"
- ▶ Form of Funds & timing of close – tiny boxes
- ▶ Buyer's obligation to *Remit (= Send)* Funds – negotiated
- ▶ Escrow Agent's obligation to *Deposit* Funds – 3 Banking Days

## Earnest Money NOT Remitted by Buyer

- ▶ Either Buyer doesn't send or funds not good (i.e. "NSF" from Bank)
- ▶ Holder sends Notice
- ▶ "Seller shall have rights & remedies set out in this section." ... here is what is next in the Contract...

### 4. CLOSING

Unless amended mutually by the parties, the closing of this transaction shall take place on \_\_\_\_\_, 20\_\_\_\_, at a mutually agreed upon time (the "Closing"). Said Closing shall be at the office of \_\_\_\_\_, located at/in \_\_\_\_\_, Georgia (the "Closing Attorney"). If Closing Attorney is unavailable or unacceptable to Buyer's lender or title insurance company, then \_\_\_\_\_ shall have the right to select a different Closing Attorney. Possession of the Property shall be granted [check one]  at Closing;  \_\_\_\_\_ days after the Closing at \_\_\_\_\_ o'clock \_\_\_\_\_m.; or  \_\_\_\_\_ days before the Closing at \_\_\_\_\_ o'clock \_\_\_\_\_m. **IF POSSESSION OF THE PROPERTY IS TO BE GRANTED TO BUYER ON A DATE OTHER THAN THE DATE OF CLOSING, BUYER AND SELLER SHOULD EXECUTE AND ATTACH A SEPARATE OCCUPANCY AGREEMENT HERETO.** Buyer does hereby authorize Seller and the Brokers to communicate with Closing Attorney and any Lender with whom Buyer is working to receive from said Closing Attorney or Lender prior to Closing a copy of any settlement statement or Integrated Disclosure prepared by Lender or Closing Attorney in accordance with the provisions of the Closing.

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## Earnest Money NOT Remitted by Buyer

- ▶ So what are the Seller's rights & remedies???
- ▶ We'll find out when we go through the "Standard Terms" (RE1)

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## Closing Date & Possession

### 4. CLOSING

Unless amended mutually by the parties, the closing of this transaction shall take place on \_\_\_\_\_, 20\_\_\_\_ at a mutually agreed upon time (the "Closing"). Said Closing shall be at the office of \_\_\_\_\_ located at/in \_\_\_\_\_, Georgia (the "Closing Attorney"). If Closing Attorney is unavailable or unacceptable to Buyer's lender or title insurance company, then \_\_\_\_\_ shall have the right to select a different Closing Attorney. Possession of the Property shall be granted  [check one]  at Closing;  \_\_\_\_\_ days after the Closing at \_\_\_\_\_ o'clock \_\_\_\_\_ m.; or  \_\_\_\_\_ days before the Closing at \_\_\_\_\_ o'clock \_\_\_\_\_ m. **IF POSSESSION OF THE PROPERTY IS TO BE GRANTED TO BUYER ON A DATE OTHER THAN THE DATE OF CLOSING, BUYER AND SELLER SHOULD EXECUTE AND ATTACH A SEPARATE OCCUPANCY AGREEMENT HERETO.** Buyer does hereby authorize Seller and the Brokers to communicate with Closing Attorney and any Lender with whom Buyer is working to receive from said Closing Attorney or Lender prior to Closing a copy of any settlement statement or Integrated Disclosure prepared by Lender or Closing Attorney in anticipation of Closing.

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## Closing Date & Possession

- ▶ Requirement for a firm Closing Date
  - Must be specific & determinable
  - Cannot leave parties' interest in property open-ended
- ▶ Extension of Closing
  - Must be by Agreement on an Amendment
  - NO 8 Day Unilateral Extension Rights (as in GAR)
- ▶ Temporary Occupancy Agreements
  - RE 255 – Occupancy for Seller After Closing
    - "Usage Fee" – NOT included in GAR Exhibit
  - RE 256 – Occupancy for Buyer Prior to Closing

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# Closing Costs

## 5. CLOSING COST ALLOWANCE FOR BUYER

Seller shall contribute a maximum of [check one]  % of the purchase price, or  US\$ toward costs associated with Buyer's purchase of the Property (the Closing Cost Allowance).

# Contingencies Included in P&S

## 5. CLOSING COST ALLOWANCE FOR BUYER

Seller shall contribute a maximum of [check one]  % of the purchase price, or  US\$ toward costs associated with Buyer's purchase of the Property (the Closing Cost Allowance).

## 6. CONTINGENCIES

In consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the Seller grants to the Buyer the following contingencies, as the same are defined in the Standard Terms: [Check all that are applicable]

**6.1.  Buyer's General Right to Terminate** - This contingency shall expire at 11:59 p.m. on the day that is  days after the Acceptance Date. In consideration of Seller granting this Buyer's General Right to Terminate this Agreement, Buyer has paid Seller \$10.00 in nonrefundable option money, the receipt and sufficiency of which is hereby acknowledged.

**6.2.  Appraisal Contingency** - This contingency shall expire at 11:59 p.m. on the day that is  days after the Acceptance Date.

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

## Contingencies *Included* in P&S

- ▶ Buyer's Right to Terminate = "Due Diligence Period"
- ▶ Appraisal Contingency
- ▶ Financing Contingency (terms must be completed)
  - ▶ FHA (RE-200) & VA (RE-201) Require Additional Exhibit
- ▶ All Contingencies Subject to Expiration Date of the Contingency

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## Note About Financing & Appraisal Contingencies & Forms

- ▶ Note About Switching Between GAR & RE Forms with respect to these Contingencies (These Exhibits are *NOT to be used* if Binding on RE Forms - only if switching to a GAR form)
  - RE 204 - Appraisal Contingency Exhibit
  - RE 203 - Financing Contingency Exhibit
  - There is no USDA Exhibit

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# RE 203 - Financing Exhibit & RE 204 - Appraisal Exhibit

## Financing Contingency Exhibit (Residential)

This Exhibit is attached to and made a part of the contract for purchase and sale of real property (the "Contract") with an Offer Date of \_\_\_\_\_, 20\_\_\_\_ and relating to Property located at \_\_\_\_\_ Georgia (the "Property"), and shall control over any conflicting language in the above referenced Contract and any other Exhibits or Addenda attached thereto.

If Buyer and Seller agree to a financing contingency involving financing other than a new first mortgage from a third party institutional lender under the terms described below, such as a loan assumption, financing, an additional exhibit or special stipulation shall be attached hereto providing the financing.

This contingency shall expire at 11:59 p.m. on the day that is \_\_\_\_\_ days after the Acceptance Date. If Buyer chooses to terminate this Contract based on an inability to obtain financing as described, Buyer must give Seller written notice of termination of this Contract along with a written statement (or lenders, if applicable), indicating the reason for the lender's denial of loan approval shall be deemed waived by Buyer under the following circumstances:

1. If Buyer fails to provide proof of a lender's denial of loan approval prior to the deed recording; or
2. If the lender's denial of loan approval is based on Buyer's lack of sufficient funds to pay closing costs, a loan application that was not timely submitted, Buyer's failure to provide current property, or Buyer's conduct after the Acceptance Date but prior to the contingency.

Buyer does hereby authorize Seller and the Brokers to communicate with the Lender whom Buyer is working to determine and receive from said Lenders any or all of the information: (a) the status and timing of Buyer's loan application and any conditions; (b) the Lender's issuance of a loan commitment; (c) Buyer's financial ability to obtain any loan; (d) the reason for any denial of Buyer's loan application; and (e) a copy statement, Good Faith Estimate or Integrated Disclosure prepared by Lender or Closing Agent.

Check all of the following that are applicable:

- First Mortgage Loan Proceeds:** This Contract is contingent upon Buyer's ability to obtain a first mortgage loan to be secured by the Property, in a principal amount of [check one]  US\$ \_\_\_\_\_ or  \_\_\_\_\_ % of the purchase price, being amortized over a term of \_\_\_\_\_ years, at an interest rate per annum that is [check one]  fixed at a rate not to exceed \_\_\_\_\_ %; or  adjustable beginning at a rate not to exceed \_\_\_\_\_ % with the interest rate never to exceed \_\_\_\_\_ %, pursuant to an institutional lender's standard and customary underwriting criteria. The balance of the purchase price shall be paid by Buyer in cash, or in such other form as may be required by the Closing Attorney listed below, at time of Closing.

If Buyer chooses FHA or VA financing, a FHA or VA Exhibit shall be attached hereto. If FNMA/FHLMC, FHA, USDA, or VA underwriting guidelines mandate compliance with any underwriting criteria expressly contrary to the provisions of the Contract, those provisions shall prevail and be binding upon the parties hereto, provided, however, that if any of these guidelines result in an increase in costs or expenses to

## Appraisal Contingency Exhibit (Residential)

This Exhibit is attached to and made a part of the contract for purchase and sale of real property (the "Contract") with an Offer Date of \_\_\_\_\_, 20\_\_\_\_ and relating to Property located at \_\_\_\_\_ Georgia (the "Property"), and shall control over any conflicting language in the above referenced Contract and any other Exhibits or Addenda attached thereto.

This contingency shall expire at 11:59 p.m. on the day that is \_\_\_\_\_ days after the Acceptance Date.

Buyer's obligation to purchase the Property is contingent upon Buyer's receipt of an appraisal of the Property, performed by a licensed Georgia real estate appraiser, showing the value of the Property to be equal to or greater than the Purchase Price. If the Property does not appraise for a minimum of the Purchase Price, Buyer, at Buyer's sole discretion, shall have the right to terminate this Contract and receive a full refund of the Earnest Money by providing Seller a copy of the appraisal and written notice of Buyer's intent to terminate this Contract prior to the expiration of this contingency.

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

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

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# Financing Contingency Included in P&S

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

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

**First Mortgage Loan Proceeds:** This Contract is contingent upon Buyer's ability to obtain a third party first mortgage loan to be secured by the Property, in a principal amount of [check one]  US\$ \_\_\_\_\_ or  \_\_\_\_\_ % of the purchase price, being amortized over a term of \_\_\_\_\_ years, at an interest rate per annum that is [check one]  fixed at a rate not to exceed \_\_\_\_\_ %; or  adjustable beginning at a rate not to exceed \_\_\_\_\_ % with the interest rate never to exceed \_\_\_\_\_ %, pursuant to an institutional lender's standard and customary underwriting criteria. The balance of the purchase price shall be paid by Buyer in cash, or in such other form as may be required by the Closing Attorney listed below, at time of Closing.

**Second Mortgage Loan Proceeds:** This Contract is contingent upon Buyer's ability to obtain a third party second mortgage loan to be secured by the Property, in a principal amount of [check one]  US\$ \_\_\_\_\_ or  \_\_\_\_\_ % of the purchase price, being amortized over a term of \_\_\_\_\_ years, at an interest rate per annum that is [check one]  fixed at a rate not to exceed \_\_\_\_\_ %; or  adjustable beginning at a rate not to exceed \_\_\_\_\_ % with the interest rate never to exceed \_\_\_\_\_ %, pursuant to an institutional lender's standard and customary underwriting criteria. The balance of the purchase price shall be paid by Buyer in cash, or in such other form as may be required by the Closing Attorney listed below, at time of Closing.

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# Financing Contingency

- ▶ MUST complete terms of 1<sup>st</sup> Mortgage
- ▶ If FHA or VA Loan, MUST include FHA (RE 200) or VA Exhibit (RE 201)

FHA Loan Exhibit	VA Loan Exhibit
<p>This Exhibit is attached to and made a part of the contract for purchase and sale of real property located at _____, 20____ and relating to Property located at _____, Georgia _____ (the "Contract") and this Exhibit shall control over any conflicting language in the above referenced Contract and any other Exhibits or Addenda attached thereto.</p> <p>It is expressly agreed that notwithstanding any other provisions of this Contract, the Buyer shall complete the purchase of the Property described herein or incur any penalty for forfeiture of deposits or otherwise unless the Buyer has been given, in accordance with HUD/FHA requirements, a statement issued by the Federal Housing Commissioner, or a Direct Endorsement Lender, an appraisal value of the property of not less than US\$ _____, the agreed Price as described in this Contract. The Buyer shall have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of the "reasonable value" established by the Department of Veterans Affairs. HUD does not warrant the value of the condition of the property. The Buyer should accept that the price and condition of the property are acceptable.</p> <p><b>FHA Mortgage Insurance Premium:</b></p> <p>The Buyer will be responsible for payment of the up front portion of the FHA mortgage insurance premium which is equivalent to _____% of the loan amount, and which shall be either: [check one]</p> <p><input type="checkbox"/> added to Buyer's loan amount, thus increasing the amount the Buyer is financing, or</p> <p><input type="checkbox"/> paid in full by Buyer at the time of closing of the transaction.</p> <p>The Buyer further acknowledges that payment of the mortgage insurance premium will be made in monthly payments, which are due to be paid on a monthly basis.</p> <p><b>Seller's Obligations:</b></p> <p>1. If the FHA Commitment identifies any repairs which are required to be completed prior to closing, the Seller agrees to pay an amount not to exceed US\$ _____ for the repair of the items identified. Seller shall not be obligated to complete repairs in a good and workmanlike manner, prior to closing. Seller shall not be obligated to complete repairs costing in excess of the above referenced amount and shall have the right, at their option, to terminate this agreement if repair costs exceed the agreed upon amount, or Seller may terminate and complete repairs prior to closing as described above.</p> <p>2. At Closing, the Seller will pay any tax service fees that are required by Buyer's lender, and included in the total amount, if any has been identified, that Seller may have agreed to contribute towards Buyer's _____.</p>	<p>This Exhibit is attached to and made a part of the contract for purchase and sale of real property with an Offer Date of _____, 20____ and relating to Property located at _____, Georgia _____ and this Exhibit shall control over any conflicting language in the above referenced Contract and any other Exhibits or Addenda attached thereto.</p> <p>It is expressly agreed that, notwithstanding any other provisions of this contract, the Buyer shall not incur any penalty for forfeiture of earnest money or otherwise be obligated to complete the purchase of the Property described herein, if the contract purchase price exceeds the "reasonable value of the property" established by the Department of Veterans Affairs ("VA"). The Buyer shall, however, have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of the "reasonable value" established by the Department of Veterans Affairs.</p> <p><input type="checkbox"/> At Closing, the <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller will be responsible for full payment of the VA Funding Fee in the amount of US\$ _____ or</p> <p><input type="checkbox"/> Buyer shall be solely responsible for payment of the VA Funding Fee, which shall be added to Buyer's loan amount, thus increasing the amount the Buyer is financing, or</p> <p><input type="checkbox"/> Payment of VA Funding Fee is not required in the certificate of eligibility for this Veteran.</p> <p><b>Seller Obligations:</b></p> <p>1. If the VA Certificate of Reasonable Value identifies any repairs which are required to be completed prior to closing, the Seller agrees to pay an amount not to exceed US\$ _____ for the repair of the items indicated, and to complete said repairs in a good and workmanlike manner prior to closing. Seller shall not be obligated to complete repairs costing in excess of the above referenced amount and shall have the right, but not the obligation, to terminate this agreement if repair costs exceed the agreed upon amount, or Seller may waive their right to terminate and complete repairs prior to closing as described above.</p> <p>2. At Closing, the Seller will pay all of the costs associated with the closing of the transaction which are a condition of the closing of the VA loan but that are not permitted to be paid by Buyer under the VA guidelines. These costs are included in the total amount, if any has been identified, that Seller may have agreed to contribute towards Buyer's closing costs in the above referenced Contract.</p> <p>3. Buyer and Seller agree that the VA will require public water and/or public sewer to be connected to the property if it is a "Presentation by Dana Sparks - Real Estate Academy of America" to cover the costs of _____.</p>

# Georgia is Caveat Emptor State

## 7. INSPECTION OF PROPERTY

Buyer has the right and obligation, with reasonable notice to Seller, to inspect the property (and all improvements located thereon) for defects and other issues including, but not limited to: air conditioning, electrical, fireplace, heating, lead/lead-based paint, mold, plumbing, radon, roof, structure, wood destroying organisms, environmental hazards, or other similar issues at any time and from time to time, after the time and date of Acceptance of the Contract, through and including the Closing, from the hours of [check one]  9:00 a.m. to 7:00 p.m. or

\_\_\_\_\_ . In order to facilitate the inspection of the Property [check one]

Buyer or  Seller shall make all required utilities operational and available on the Property through and including the day of Closing. Buyer agrees to forever hold Seller and Brokers harmless from any and all claims, injuries and damages arising out of the exercise of these rights. Any part of the Property damaged or disturbed as a result of Buyer's inspection, including any testing or other evaluation, shall promptly be restored to a condition at least equal to the condition it was in prior to such inspection, testing, or evaluation.

**7.1. Duty to Consult Available Resources** – It shall be Buyer's sole duty to seek and consult any and all available resources which may provide information concerning neighborhood conditions affecting the Property and/or is of concern to Buyer.

**7.1.1. Methamphetamine Laboratory Registry** - If Buyer is interested in determining whether the Property has been used as a laboratory for methamphetamine production or dumpsite for the same, Buyer is advised to review the National Clandestine Laboratory Register (Georgia) at [www.dea.gov](http://www.dea.gov).

**7.1.2. Violent Sex Offender Registry** - If Buyer is interested in determining whether there is a registered sex offender living in and/or around the neighborhood of the Property, Buyer is advised to review the Georgia Violent Sex Offender Registry at [www.gbi.georgia.gov](http://www.gbi.georgia.gov).

- ▶ Buyer has the right AND obligation to check out "inspect" the property
- ▶ Negotiate who turns on utilities

# Brokerage

## ► Agency required to be disclosed per License Law (Unfair Trade Practices (OCGA 43-40-25b(30)))

**8. BROKERAGE**  
 By signing below, all parties represented by a Broker acknowledge that no Broker in this transaction shall owe any duty to Buyer or Seller greater than what is set forth in their brokerage engagements and the Brokerage Relationships in Real Estate Transactions Act, O.C.G.A. § 10-6A-1 et seq., and further, that they have read and acknowledged and consent to the inclusion of all additional brokerage disclosures provided in the Standard Terms.

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

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

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

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

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

**8.4.** By checking the designated agent box above, the parties acknowledge that they have consented to a designated agency and acknowledge that \_\_\_\_\_ Presentation by Dana Sparks - \_\_\_\_\_ will work exclusively with Buyer as Buyer's designated agent. \_\_\_\_\_ Real Estate Academy of America - \_\_\_\_\_ will work exclusively with the Seller as Seller's designated agent.

# Wire Fraud Disclaimer

**8.5. Wire Fraud Disclaimer** - No Broker in this transaction shall e-mail or otherwise electronically transmit wire instructions to Buyer or Seller. Any electronic transmittal of wire instructions purported to be from Broker(s) should be viewed as potential fraud and treated as such. Buyer and Seller acknowledge and agree \_\_\_\_\_

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 Form RE100, Contract for the Purchase and Sale of Residential Real Property  
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\_\_\_\_\_

that use of and/or reliance on any wire instructions by that party shall be at its own risk. Buyer and Seller further agree to release and forever hold Broker harmless from any and all liability that may occur as a result of such use and/or reliance.

## Exhibits & Special Stipulations

### 9. EXHIBITS

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

- |  |  |
|--|--|
| <input type="checkbox"/> Legal Description   | <input type="checkbox"/> FHA Exhibit                             |
| <input type="checkbox"/> Disclosure of Information on Lead-Based Paint and/or Lead Based Paint Hazards | <input type="checkbox"/> VA Exhibit                              |
| <input type="checkbox"/> Short Sale Exhibit  | <input type="checkbox"/> Lease for Lease/Purchase Agreement Only |
| <input type="checkbox"/> _____   | <input type="checkbox"/> _____                                   |
| <input type="checkbox"/> _____   | <input type="checkbox"/> _____                                   |

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

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## Exhibits & Special Stipulations

- ▶ Exhibits supersede Purchase & Sale
- ▶ Special Stipulations supersede Exhibits
  
- ▶ Therefore do NOT use an Exhibit for an issue already addressed in the contract &
- ▶ Do NOT write a Special Stipulation for an issue already addressed in the contract or in an Exhibit
- ▶ RE Forms Special Stipulations Library – RE10 (9 pages of Special Stipulations)

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## Time Limit & Binding Agreement Date

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

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

- \* Time Limit = Open for Acceptance (with no changes)
  - \* If there is a Counter Offer then those terms that were offered were NOT accepted so the Time Limit is of no consequence
  - \* If there is a Counter Offer, that may come at ANY time
  - \* Time Limit is NOT a time frame for the other party to respond
  - \* "Accepted" = Binding

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## Acceptance Date

- ▶ Critical to all time frames within contract
- ▶ "Acceptance" = "Binding" = "Meeting of the Minds"
- ▶ All parties have specific knowledge that all terms are accepted
- ▶ RE-265 Notice of Acceptance Date

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# Reference Again to “Standard Terms”

\_\_\_\_\_ By initialing here, the parties acknowledge their receipt of a printed copy of the Standard Terms. Failure to initial this section shall indicate that the parties have declined a printed copy of and hereby acknowledge the sufficiency of the online copy of the Standard Terms.

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# Signatures

<b>Buyer:</b>	<b>Seller:</b>
_____ Buyer Printed Name	_____ Seller Printed Name
_____ Buyer Printed Name	_____ Seller Printed Name
_____ Buyer Phone Number	_____ Seller Phone Number
_____ Buyer Fax Number	_____ Seller Fax Number
_____ Buyer Email Address	_____ Seller Email Address
_____ Buyer Address	_____ Seller Address
_____ Buyer City	_____ Seller City
_____ State	_____ State
_____ Zip	_____ Zip
<b>Buyer's Broker</b>	<b>Seller's Broker</b>
_____ Name of Brokerage Firm	_____ Name of Brokerage Firm
_____ Broker Code	_____ Broker Code
_____ Brokerage Phone Number	_____ Brokerage Phone Number
_____ Brokerage Fax Number	_____ Brokerage Fax Number
_____ Agent Printed Name	_____ Agent Printed Name
_____ Agent Phone Number	_____ Agent Phone Number
_____ Agent Fax Number	_____ Agent Fax Number
_____ Agent Email Address	_____ Agent Email Address
_____ Required License Number(s):	_____ Required License Number(s):
_____ Broker's License Number	_____ Agent's License Number

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## Signatures & Info for Notice

- ▶ If Agency, Broker / Affiliated Licensee Information is sufficient
- ▶ If Unrepresented party (i.e. Customer) the Brokers need legal contact information for party
  - Address OR
  - Email OR
  - Fax
- ▶ Affiliated Licensee
  - Your License Number
  - Firm License Number

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## RE1 – Standard Terms



### Standard Terms for the Purchase and Sale of Georgia Real Property

THESE STANDARD TERMS FOR CONTRACT FOR THE PURCHASE AND SALE OF RESIDENTIAL REAL PROPERTY AS PUBLISHED BY ORTHRUS REAL ESTATE ENTERPRISES, LLC ARE TO BE USED IN CONJUNCTION WITH AN EXECUTED CONTRACT FOR THE PURCHASE AND SALE OF REAL PROPERTY AS PUBLISHED BY ORTHRUS REAL ESTATE ENTERPRISES, LLC AND ARE NOT INTENDED, ABSENT AN EXECUTED CONTRACT, TO BE BINDING ON ANY PARTY UNLESS EXPRESSLY INCORPORATED THEREIN.

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## Seller to Convey Title

### 1. PROPERTY DESCRIPTION

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

- ▶ Limited Warranty Deed
- ▶ “Good & Marketable” Title

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## Earnest Money – Not Remitted or Not Honored by Bank

→ **3.3. Buyer's Failure to Remit Earnest Money** - Regardless of whether the payment was remitted prior to Acceptance or on or before an agreed upon date thereafter, if the method of presentation is not honored by the institution upon which it was drawn, Escrow Agent shall promptly notify Buyer and Seller, and the amount of the agreed upon Earnest Money deposit shall be paid by certified check or other collected funds to Escrow Agent within three (3) days of notice from Escrow Agent. If Buyer fails to do so, Seller shall have the rights and remedies set out in the Contract. Notwithstanding the above, in the event the Earnest Money is not remitted to Escrow Agent as set out in the Contract, the Earnest Money is no longer a part of the Contract and Seller may:

- 3.3.1.** Unilaterally terminate the Contract within seven (7) days of receipt of notice from Escrow Agent, thereby releasing Buyer and Seller from any further obligations or responsibilities to the other;
- 3.3.2.** If Seller holds Earnest Money, unilaterally terminate this contract within three (3) days of notice to Buyer, thereby releasing Buyer and Seller from any further obligations or responsibilities to the other; or,
- 3.3.3.** Demand full performance of all other terms and conditions of the Contract and proceed to Closing.

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## Consequences for EM Not Remitted

- ▶ Definition of “Days”
- ▶ Escrow Agent’s Obligation to Give Notice
- ▶ Buyer’s Recourse
- ▶ Seller’s Options
- ▶ Disbursement of EM held by Escrow Agent
- ▶ Note: Builder’s Construction Deposit – NOT EM (& is non-refundable)

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## Disbursement of Earnest Money

**3.4. Disbursement of Earnest Money if Held by Escrow Agent** - After receiving reasonable assurance that the bank has credited the deposit to the account where the Earnest Money is being held, the Escrow Agent may (i) disburse the Earnest Money to Buyer if contract is not accepted, unless that issue is disputed; (ii) disburse the Earnest Money for credit to Buyer at Closing; (iii) disburse the Earnest Money to Buyer at time of Closing if it is not credited towards the purchase price at Closing; (iv) disburse the Earnest Money pursuant to a separate written agreement signed by the parties, agreeing to the terms of disbursement of the Earnest Money; (v) disburse the Earnest Money upon order of a court or arbitrator which has jurisdiction over the matter; or (vi) if Escrow Agent has received notice from any party that the Contract has been terminated or Closing has failed to occur, no more than thirty (30) days after said notice has been received Escrow Agent shall notify all parties of Escrow Agent’s disbursement decision. Upon receipt of Escrow Agent’s notification of disbursement, a party shall have ten (10) days to object to the disbursement. After receipt of a party’s objection, Escrow Agent may change its decision or proceed according to Escrow Agent’s original notification, but shall, in any event, notify the parties of said final disbursement. In addition, if the disbursement of the Earnest Money is in dispute, Escrow Agent may file an action to interplead the Earnest Money to allow a court of competent jurisdiction to decide how it is to be disbursed, and Escrow Agent may disburse Earnest Money as part of the required procedures related to this filing. Additionally, Escrow Agent may deduct any attorney’s fees, court costs and other related expenses from the Earnest Money as necessary to reimburse Escrow Agent for costs related to the interpleader action, and Escrow Agent shall be entitled to recover additional costs as described above if Escrow Agent’s expenses exceed the amount of the Earnest Money. The party that the court deems to be entitled to the Earnest Money may seek to recover its attorney’s fees, court costs and the amount deducted by the Escrow Agent from the party that was not deemed to be entitled to the Earnest Money. In performing any of its duties under this Agreement, Escrow Agent shall not be liable for any loss, cost or damage which may incur as a result of serving as Escrow Agent hereunder, except for any loss, cost or damages arising out of its willful default or gross negligence. The parties agree to release Broker from liability for any costs, fees, or damages resulting from Escrow Agent’s duties described in the Contract.

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

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## Disbursement of Earnest Money

- ▶ 1. On hold with Escrow Agent but no Binding Contract
- ▶ 2. Credited to Buyer at Closing
- ▶ 3. Order of Court or Arbitrator
- ▶ 4. "10 Day Letter" if contract failed to close
  - Holder interprets contract & reason it didn't close
  - Holder sends notice of intent to disburse funds to one of the parties
  - Holder must wait 10 days for any objections
  - Holder then disburses & sends notice of disbursement
- ▶ 5. Interplead into a Court so a Judge may decide
  - Holder deducts legal fees & court costs to interplead from the Earnest Money
  
- ▶ Note: Parties may not sue Holder for decision as long as no fraud

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## Expenses to Close

### 5. EXPENSES RELATING TO CLOSING

- 5.1. Clearance of "Title Defects"** - "Title defects" are those defects required to be remedied by the title insurance company insuring title to the Lender, if any, or to the Buyer, if an owner's policy is requested by Buyer. Seller shall be responsible for the removal of any liens encumbering the title and any legal fees, recording or other costs associated with title curative work. Seller shall also bear the cost of any other document, instrument, advice, or other services rendered primarily for the benefit of the Seller, including, but not limited to: powers-of-attorney, costs associated with a mail-out or multiple counterpart closing, the preparation of corporate resolutions for Seller, or other similar expenses.
- 5.2. Prorations** - Unless prohibited by any Buyer's lender, taxes, homeowner's dues, utilities, garbage or other solid waste disposal fees, rent, and other similar costs, fees or amounts shall be prorated as of the date of Closing, unless the parties expressly agree in writing (i) that said item or items shall not be prorated or (ii) that the proration of an item or items shall be based on the date of possession (or some other date) and not the date of Closing. If the estimate upon which the prorations were based is found to be inaccurate after Closing because the actual amount of the charge exceeded or was less than the estimate, the parties agree to re-prorate, between themselves, any difference resulting from said change.
- 5.3. Buyer Expenses** - Buyer shall be responsible for payment of all other costs, fees, and expenses if not otherwise provided for in the Contract, including, but not limited to Georgia transfer tax, deed recording fees, community association fees (unless otherwise specified in a Community Association Exhibit) and title insurance.
- 5.4. Seller Closing Costs** - Seller shall bear the cost of Seller's attorney's fees and expenses, unless said attorney is also acting in the capacity of Closing Attorney representing a Lender. If Seller's attorney is acting in such a capacity, then Seller's obligation relates only to the charges and/or fees for services rendered directly to the Seller or not otherwise incurred as a result of (or as it relates to) usual and customary services provided by a Closing Attorney for a closing.

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## Seller's Contribution to Buyer's Closing Costs

→ **5.5. Closing Cost Allowance for Buyer-** The Closing Cost Allowance agreed to by Seller in the Contract, if any, shall be subject to FNMA/FHLMC, FHA, USDA, VA or other Lender's underwriting criteria as may be applicable, and may be used for any purpose whatsoever to offset closing costs incurred by Buyer, such as title insurance, costs of financing, homeowner's association dues, etc. (regardless of whether said cost is required by law, the Lender, or merely at the discretion of the Buyer) to close this transaction. In the event the Buyer's lender does not allow the Seller to contribute the full amount of the Closing Cost Allowance on the closing statement, this paragraph shall be deemed amended to reflect the actual closing cost allowance allowed by the Lender, and the Seller shall have no further obligation to Buyer therefor.

- ▶ Lender's Underwriting Criteria
- ▶ Any purpose whatsoever
- ▶ Merely at the discretion of the Buyer

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## Contract Contingencies (No Exhibits Necessary)

- ▶ Buyer's Right to Terminate = Due Diligence
- ▶ Appraisal
  - Note: Time Frame for FHA & VA is included in FHA & VA Exhibit
  - Goes Through Closing
  - Can't write Special Stipulation to Change This time frame
- ▶ Financing
  - FHA - Needs FHA Exhibit
  - VA - Needs VA Exhibit

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## Buyer's General Right to Terminate

**6.1. Buyer's General Right to Terminate** – *This contingency shall only be granted by the Seller if the appropriate box related thereto is checked within the body of the Contract and is thereby selected by the parties. If this contingency is not selected, this Section shall not be deemed a part of the Contract.* Subject to any expiration date expressed in writing in the Contract, the Buyer's General Right to Terminate is defined as Seller's grant to Buyer of the right to terminate the Contract by delivering written notice to Seller and receiving a full refund of the Earnest Money for any reason whatsoever. Buyer shall also have the right, but not the obligation, prior to the expiration of this contingency to propose to Seller an amendment to the Contract addressing any concerns Buyer has regarding the Property; provided, however, that Seller shall have no obligation to accept Buyer's proposed amendment. If Seller fails to accept Buyer's proposal to amend the Contract, if any, prior to the expiration of this contingency, Buyer shall have the option to either terminate the Contract prior to the expiration of this contingency, or accept the property "as is." If Seller does not receive timely written notice of Buyer's termination of the Contract as provided hereunder, this contingency shall be deemed waived. If Buyer does give Notice of Termination, the Earnest Money shall be refunded to Buyer, and Buyer shall promptly provide to Seller, without charge, copies of any reports, surveys, drawings, tests or other written documents obtained by Buyer with respect to the Property. In consideration of Seller granting this Buyer's General Right to Terminate this Agreement, Buyer has paid Seller \$10.00 in nonrefundable option money, the receipt and sufficiency of which is hereby acknowledged.

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## Buyer's General Right to Terminate

- ▶ Must be checked to be included
- ▶ Seller grants Buyer right to terminate & get EM refunded
- ▶ Buyer may terminate for ANY REASON WHATSOEVER – Before end of time contingency frame & with proper Notice
- ▶ Buyer may ask Seller to address concerns with property
- ▶ If Seller does not agree to address anything, Buyer either terminates or accepts property AS-IS

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## Appraisal Contingency

**6.2. Appraisal Contingency**-This contingency shall only be granted by the Seller if the appropriate box related thereto is checked within the body of the Contract and is thereby selected by the parties. If this contingency is not selected, this Section shall not be deemed a part of the Contract. Subject to any expiration date expressed in writing in the Contract, the Appraisal Contingency is defined as Seller's grant to Buyer of the conditional right to terminate the Contract if Buyer does not receive an appraisal of the Property, performed by a licensed Georgia real estate appraiser, showing the value of the Property to be equal to or greater than the Purchase Price. If the Property's appraised value is not equal to or greater than the Purchase Price, Buyer, at Buyer's sole discretion, shall have the right, prior to the expiration of this contingency, to request a reduction in the Purchase Price by providing Seller a copy of the appraisal and a written proposed amendment to the Contract reducing the Purchase Price to the appraised value of the Property. Upon delivery by Buyer of the proposed amendment to the Contract, Seller may accept or reject the amendment by delivering notice to Buyer on or before the earlier of a) time of Closing, or b) on or before 11:59 pm on the day which is 5 days after Seller's receipt of the proposed change to the Purchase Price, whichever comes first. Failure of Seller to respond whatsoever shall be deemed a rejection of the proposed amendment as of the expiration of the Seller's deadline to accept or reject. If Seller rejects the amendment, Buyer may terminate the Contract upon notice to Seller no later than 11:59 on the day which is 3 days after Seller's rejection of the amendment, and Buyer shall be entitled to receive a full refund of the Earnest Money. If Buyer does not deliver timely notice of Buyer's request to amend the Contract to reduce the Purchase Price or notice of Buyer's intent to terminate the Contract as provided hereinabove, this contingency shall be deemed waived.

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## Appraisal Contingency

- ▶ Seller gives Buyer Right to Terminate with no penalty if Appraisal is less than contract Sales Price
- ▶ Buyer or Seller has right (but not obligation) to propose an Amendment to sell property at reduced price
- ▶ If Buyer does NOT propose Amendment to Sell Property for lower price prior to end of this contingency time frame, Contingency is waived & Buyer obligated to Purchase Property DESPITE appraisal price

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## Financing Contingency

**6.3. Financing Contingency**-*This contingency shall be granted by the Seller only if the appropriate box related thereto is checked within the body of the Contract and is thereby selected by the parties. If this contingency is not selected, this Section shall not be deemed a part of the Contract.* Subject to any expiration date expressed in writing in the Contract, the Financing Contingency is defined as Seller's grant to Buyer of the right to terminate the Contract in the event the Buyer is unable to procure financing under the terms expressed in the Contract. The following conditions shall also apply:

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

→ **6.3.1.1.** If Buyer fails to provide proof of a lender's denial of loan approval prior to the deadline set forth in the Contract; or

**6.3.1.2.** If the lender's denial of loan approval is based on Buyer's lack of sufficient funds to pay for the down payment and closing costs, a loan application that was not timely submitted, Buyer's failure to sell or lease Buyer's current home, or Buyer's conduct after the Acceptance Date but prior to the expiration of this contingency.

**6.3.3.** Buyer does hereby authorize Seller and the Brokers to communicate with the Lender or Lenders with whom Buyer is working to determine and receive from said Lenders any or all of the following information: (a) the status and timing of Buyer's loan application and any conditions remaining to Lender's issuance of a loan commitment; (b) Buyer's financial ability to obtain any loan for which Buyer has applied; (c) the reason for any denial of Buyer's loan application; and (d) a copy of any settlement statement, Good Faith Estimate or Integrated Disclosure prepared by Lender or Closing Attorney in anticipation of Closing.

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## Financing Contingency

- ▶ Seller gives Buyer right to terminate contract with no penalty if Buyer cannot secure loan under terms defined in contract
- ▶ Conditions
  - Buyer must send Notice of Termination AND
  - Buyer must provide Loan Denial Letter from Lender
  - Lender's Denial of Loan can NOT be based on (i.e. Buyer will Lose Earnest Money)
    - Sufficient funds for Down Payment & Closing Costs
    - Failure to Sell or Lease Existing Property without this agreed contingency
    - Buyer's conduct after acceptance but prior to this contingency
- ▶ Underwriting Guidelines prevail

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## Suggested Special Stipulation for Down Payment Assistance Funds (DPA)

- ▶ “This Agreement is contingent upon the Buyer's approval for the receipt of down payment from \_\_\_\_\_ program within \_\_\_\_\_ days from Binding Agreement Date. Should Buyer not be approved for the DPA program within this time frame, Buyer may terminate without penalty if Buyer notifies Seller in writing and providing DPA denial letter.”

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## Financing Contingency: FHA, VA, USDA – MUST Use Exhibit

**6.3.2.** If FNMA/FHLMC, FHA, USDA, or VA underwriting guidelines mandate compliance with any underwriting criteria expressly contrary to the provisions of the Contract, those provisions shall prevail and be binding upon the parties hereto. provided, however, that if any of these guidelines result in an increase in costs or expenses to the Seller, or affect the date of closing, then Seller, at Seller's sole discretion, shall have the right to unilaterally terminate the Contract within three (3) days of Seller's receipt of notice of the applicability of such guidelines. In such event, Seller may terminate the Contract by delivering written notice of termination to Buyer, which termination shall release both Buyer and Seller from any further obligations or responsibilities to the other. If Seller does not terminate the Contract, Seller is deemed to consent to those changes that are mandated by the underwriting guidelines.

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## Loan Exhibits

- ▶ RE-200 FHA Loan
- ▶ RE-201 VA Loan
- ▶ RE-203 Financing Contingency Exhibit
  - Do NOT use when Binding on RE Forms Contract
  - ONLY for availability if co-op agent counters with a GAR Purchase & Sale & does not include a GAR Financing Exhibit
  - Remember that the Financing Contingency is INCLUDED in the RE Forms Contract but in GAR contract you would need an Exhibit

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## FHA Loan Exhibit- Appraisal Contingency

This Exhibit is attached to and made a part of the contract for purchase and sale of real property with an Offer Date of \_\_\_\_\_, 20\_\_\_\_ and relating to Property located at \_\_\_\_\_, Georgia \_\_\_\_\_ (the "Contract"), and shall control over any conflicting language in the above referenced Contract and any other Exhibits or Addenda attached thereto.

It is expressly agreed that notwithstanding any other provisions of this Contract, the Buyer shall not be obligated to complete the purchase of the Property described herein or incur any penalty by forfeiture of earnest money deposits or otherwise unless the Buyer has been given, in accordance with HUD/FHA requirements, a written statement issued by the Federal Housing Commissioner, or a Direct Endorsement Lender, setting forth the appraised value of the property of not less than US\$ \_\_\_\_\_ the agreed upon Purchase Price as described in this Contract. The 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 that the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the property. The Buyer should satisfy himself/herself that the price and condition of the property are acceptable.

- ▶ Fill in Amount in Numbers - Sale Price - Remember to counter this if Sale Price gets changed in a Counter Offer
- ▶ Buyer may terminate with No Penalty if Low Appraisal

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## FHA Loan Exhibit – MIP

### FHA Mortgage Insurance Premium:

The Buyer will be responsible for payment of the up front portion of the FHA mortgage insurance premium which is equivalent to \_\_\_\_\_% of the loan amount, and which shall be either: [check one]

- added to Buyer's loan amount, thus increasing the amount the Buyer is financing, **or**  
 paid in full by Buyer at the time of closing of the transaction.

The Buyer further acknowledges that payment of the mortgage insurance premium will be included in Buyer's mortgage payments, which are due to be paid on a monthly basis.

## FHA Loan Exhibit – Seller Costs

### Seller's Obligations:

1. If the FHA Commitment identifies any repairs which are required to be completed prior to closing, the Seller agrees to pay an amount not to exceed US\$ \_\_\_\_\_ for the repair of the items indicated, and to complete said repairs in a good and workmanlike manner, prior to closing. Seller shall not be obligated to complete repairs costing in excess of the above referenced amount and shall have the right, but not the obligation, to terminate this agreement if repair costs exceed the agreed upon amount, or Seller may waive their right to terminate and complete repairs prior to closing as described above.
2. At Closing, the Seller will pay any tax service fees that are required by Buyer's lender, and these costs are included in the total amount, if any has been identified, that Seller may have agreed to contribute towards Buyer's closing costs in the above referenced Contract.
3. Buyer and Seller agree that the FHA may require public water and/or public sewer to be connected to the property if it is available at the street, but not currently connected to the property. If the FHA requires such connection(s), the Seller agrees to pay an amount not to exceed US\$ \_\_\_\_\_ to cover the costs of connection to be made prior to closing. However, Seller shall not be obligated to complete connection costing in excess of the above referenced amount and shall have the right, but not the obligation, to terminate this agreement if connection costs exceed the agreed upon amount, or Seller may waive their right to terminate and complete connection prior to closing as described above.
4. Seller agrees to provide inspection reports or certifications to Buyer for any Lender required Septic Tank or Well System inspections at Seller's sole expense and at least ten (10) days prior to closing. In addition, Seller agrees, if required by the FHA Commitment or Direct Endorsement Lender, to provide a Home Warranty at time of closing which meets FHA requirements and which covers recent improvements to the Property.

## FHA Loan Exhibit – Seller Costs

- ▶ Repairs required by Lender – negotiated amount
  - If repair costs is more, Seller not obligated & may terminate (Buyer get EM back)
- ▶ Tax Service Fee
  - Included in Closing Costs
- ▶ Connect to Public Water & Sewer – negotiated amount
  - If connection costs are more, Seller not obligated & may terminate (Buyer get EM back)
- ▶ Septic Tank or Well Inspection
  - If required by Lender

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## FHA Loan Exhibit – Other

### Other Declarations and Disclosures:

The Buyer, also known as the Borrower, Seller and the real estate agents and brokers involved in the above referenced sales transaction hereby certify that the terms and conditions of the Contract are true to the best of their knowledge and belief, and that any other agreement entered into by any of the parties in connection with the real estate transaction is part of, or attached to, the aforementioned Contract.

Buyer and Seller warrant that:

- This Contract is an "arms length" transaction, and that the Buyer and Seller are not related to one another by blood, marriage, adoption or by any type of business enterprise, **or**
- This Contract is not an "arms length" transaction for the following reasons:

\_\_\_\_\_

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## VA Loan Exhibit – Appraisal Contingency & Funding Fee

This Exhibit is attached to and made a part of the contract for purchase and sale of real property with an Offer Date of \_\_\_\_\_, 20\_\_\_\_, and relating to Property located at \_\_\_\_\_, Georgia \_\_\_\_\_, and this Exhibit shall control over any conflicting language in the above referenced Contract and any other Exhibits or Addenda attached thereto.

It is expressly agreed that, notwithstanding any other provisions of this contract, the Buyer shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the Property described herein, if the contract purchase price exceeds the "reasonable value of the property" established by the Department of Veterans Affairs ("VA"). The Buyer shall, however, have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of the "reasonable value" established by the Department of Veteran Affairs.

- At Closing, the  Buyer or  Seller will be responsible for full payment of the VA Funding Fee in the amount of US\$ \_\_\_\_\_; or
- Buyer shall be solely responsible for payment of the VA Funding Fee, which shall be added to Buyer's loan amount; thus increasing the amount the Buyer is financing; or
- Payment of VA Funding Fee is not required in the certificate of eligibility for this Veteran.

- ▶ No Amount to fill in so must = Sale Price
- ▶ Buyer may terminate with No Penalty if Low Appraisal
- ▶ Complete Information about VA Funding Fee

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## VA Loan Exhibit – Seller Costs

### Seller Obligations:

1. If the VA Certificate of Reasonable Value identifies any repairs which are required to be completed prior to closing, the Seller agrees to pay an amount not to exceed US\$ \_\_\_\_\_ for the repair of the items indicated, and to complete said repairs in a good and workmanlike manner prior to closing. Seller shall not be obligated to complete repairs costing in excess of the above referenced amount and shall have the right, but not the obligation, to terminate this agreement if repair costs exceed the agreed upon amount, or Seller may waive their right to terminate and complete repairs prior to closing as described above.
2. At Closing, the Seller will pay all of the costs associated with the closing of the transaction which are a condition of the closing of the VA loan but that are not permitted to be paid by Buyer under the VA guidelines. These costs are included in the total amount, if any has been identified, that Seller may have agreed to contribute towards Buyer's closing costs in the above referenced Contract.
3. Buyer and Seller agree that the VA will require public water and/or public sewer to be connected to the property if it is available at the street, but not currently connected to the property. If the VA requires such connection(s), the Seller agrees to pay an amount not to exceed US\$ \_\_\_\_\_ to cover the costs of connection to be made prior to closing. However, Seller shall not be obligated to complete connection costing in excess of the above referenced amount and shall have the right, but not the obligation, to terminate this agreement if connection costs exceed the agreed upon amount, or Seller may waive their right to terminate and complete connection prior to closing as described above.
4. Seller agrees to provide inspection reports or certifications to Buyer for any Lender required Septic Tank or Well System inspections at Seller's sole expense and at least ten (10) days prior to closing. In addition, Seller agrees, if required by the VA, to provide a Home Warranty at time of closing which meets VA requirements and which covers recent improvements on the Property.

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## VA Loan Exhibit – Seller Costs

- ▶ Repairs required by Lender – negotiated amount
  - If repair costs is more, Seller not obligated & may terminate (Buyer get EM back)
- ▶ Costs Associated with Closing a VA Loan that Buyer may Not Pay
  - Included in Closing Costs
- ▶ Connect to Public Water & Sewer – negotiated amount
  - If connection costs are more, Seller not obligated & may terminate (Buyer get EM back)
- ▶ Septic Tank or Well Inspection
  - If required by Lender

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## Condition of Property

### 7. CONDITION OF PROPERTY

7.1. **Duty to Inspect** - Seller and Buyer have been advised and expressly acknowledge their obligation to conduct a thorough investigation, or to obtain independent professional advice, with respect to any concerns they may have regarding the Contract or the condition of the Property and the surrounding neighborhood, including, but not limited to, any structural, safety, title, environmental, financial, tax, legal or health concerns, location of military installation(s) and high noise or air installation compatible use zones or other operations, or issues regarding the surrounding community, future or current real estate development, or municipal services offered to local residents. Information relating to high noise and compatible use zones for a certain military installation is available in the most recent Air Installation Compatible Use Zone Study or Joint Land Use Study prepared for such military installation and may be accessed on the website of the military installation and the county or municipality where the military installation is located.

- ▶ Georgia is a Caveat Emptor State
- ▶ Buyer & Seller have OBLIGATION to get independent advice regarding their concerns with respect to this contract
  - i.e. inspection, survey, zoning, roof, termiate, foundation, future development, etc.

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## Repairs

**7.3. For Resales of Homes, Lots and Raw Land:** If Property is not under construction as of the date of the Acceptance Date, and Seller has not agreed to construct a home on the Property prior to Closing, and if the Seller has agreed in writing, by Contract amendment, exhibit or otherwise, to perform any repairs to the Property, any repairs performed by Seller shall be done in a "good and workmanlike" manner and shall be completed no later than three (3) days prior to Closing. Unless otherwise stipulated in the Contract, Seller warrants and represents that, at Closing, Property shall be in the same condition on date of Closing as it is on date of Acceptance, normal wear and tear excepted and "broom clean," with all garbage, debris and personal property and belongings of Seller removed from the Property.

- ▶ Buyer & Seller may negotiate Repairs on "Amendment During Buyer' Right to Terminate Period" – RE 262
- ▶ "Good & Workmanlike Manner
- ▶ Completed 3 Days Prior to Closing
- ▶ Same Condition at Closing as on Acceptance Date – "Normal Wear & Tear"
- ▶ Broom Clean
- ▶ All garbage, debris & personal property removed

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## Damage Prior to Closing

**7.4. Damage to Property Before Closing -** Seller shall keep in force sufficient hazard insurance on the property to protect all interests until this sale is closed and the deed delivered. If the Property is destroyed or materially damaged between the date hereof and the Closing and Seller is unable or unwilling to restore it to its previous condition prior to closing, Buyer shall have the option of canceling the Contract and receiving back the Earnest Money (or) accepting the Property in its damaged condition, any insurance proceeds otherwise payable to Seller by reason of such damage shall be applied to the balance of the purchase price or otherwise be payable to Buyer. Buyer shall indemnify, hold harmless and defend Seller from and against any and all claims, demands, causes of action, liabilities, losses, costs, damages and expenses (including reasonable attorneys' fees and expenses and court costs incurred in defending any such claim or in enforcing this indemnity) that may be incurred by Seller arising out of or in connection with the acts or omissions of Buyer and its agents, representatives, contractors and consultants, or any of them (the "Claims"). The Claims shall include, but not be limited to, claims arising out of or in connection with personal injury or death of persons, loss, destruction or damage to property, or liens or claims of lien filed against the Property, excluding, however, any claims to the extent such claims arise out of the discovery of, or the non-negligent, accidental or inadvertent actual or threatened release or movement of, any Hazardous Materials resulting from Buyer's inspections and other activities (unless the Hazardous Materials are brought onto the Property by Buyer or Buyer's authorized agents, employees, consultants or contractors).

- ▶ Seller to restore to condition prior to closing
- ▶ Buyer may terminate
- ▶ Buyer may close & accept all Insurance Proceeds

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# Brokerage

## 8. BROKERAGE

All parties represented by a Broker acknowledge that no Broker in this transaction shall owe any duty to Buyer or Seller greater than what is set forth in their brokerage engagements and the Brokerage Relationships in Real Estate Transactions Act, O.C.G.A. § 10-6A-1 et. seq and further:

8.1. Seller and Buyer each hereby represents and warrants to the other that he/she/they have not dealt with any real estate Broker, agent or salesperson (other than Seller's Broker or Buyer's Broker, as defined in the Contract) so as to create any legal right or claim in any such Broker, agent or salesperson for a commission

- ▶ Broker only owes duty per Listing/Buyer Brokerage Agreement
- ▶ Buyer & Seller affirm they are not a current party to another Brokerage Agreement

agreement with said Broker. If any party hereto is not represented by a Broker, that party acknowledges full responsibility for protecting his/her/their own interests. = Customer

- ▶ Buyer or Seller who have NOT signed an Agreement = Customer
- ▶ Must protect their own interests

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# Brokerage

- ▶ Client Relationships with Buyer & Seller
  - RE-151 Exclusive Right to Sell Listing Agreement
  - RE-150 Exclusive Buyer Brokerage Agreement
    - BRETTA (O.C.G.A. §10-6A-1) requires Buyer Brokerage signed for Client relationship with Buyer
- ▶ Customer Relationships with Buyer & Seller
  - RE-158 Seller Authorization to Show Property Without a Listing
  - RE-159 Acknowledgment of Customer
- ▶ These Documents Describe Compensation

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## Brokerage Disclaimer & Liability

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

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

- ▶ Parties have not relied on any advice or representations
- ▶ Broker has no liability for “perceived” advice
- ▶ If there is liability, amount is limited to commission

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## Dual & Designated Agency

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

**8.5. Designated Agent** - "Designated agent" means one or more licensees affiliated with a Broker who are assigned by the Broker to represent solely one client to the exclusion of all other clients in the same transaction and to the exclusion of all other licensees affiliated with the Broker. O.C.G.A. §10-6A-3(9). By checking the designated agent box in the contract, the parties acknowledge that they have consented to a designated agency.

- ▶ **Dual Agency**
    - Buyer & Seller MUST consent
    - 1 Broker
    - 1 Agent with Client Relationship with Buyer & Seller
  - ▶ **Designated Agency**
    - 1 Broker
    - 2 Agents each with a Client relationship with Buyer & Seller
  - ▶ **Not the same as having “both sides”**
    - 1 Broker
    - 1 Agent with one client and one customer
- Check with Broker

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## Default – Changed in 2019

### 10. DEFAULT

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

**10.1. Buyer's Default** - If Buyer defaults under any of the terms of the Contract, then Seller may terminate the Contract, in which event the Earnest Money shall be paid to and retained by Seller as liquidated damages and as Seller's sole and exclusive remedy hereunder. The parties acknowledge the actual damages are impossible to calculate, and the Earnest Money is a reasonable estimate of Seller's damages resulting from Buyer's default. Buyer's forfeiture of the Earnest Money is intended not as a penalty, but as full liquidated damages pursuant to O.C.G.A. §13-6-7.

- ▶ Buyer's Default
  - Seller get Earnest Money
  - Sole & Exclusive Remedy
  - NO grounds to sue for damages

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## Default – Changed in 2019

**10.2. Seller's Default** - If this transaction shall not be closed because of default of Seller, the Earnest Money shall, at Buyer's election, be refunded to Buyer, and, after repayment of the Earnest Money to Buyer, the Contract shall be null and void and neither Seller nor Buyer shall have any further rights or obligations hereunder; or Buyer shall have the right to sue for specific performance of the Contract, provided that such specific performance remedy shall be available to Buyer only upon Buyer's full satisfaction of each of Buyer's

obligations under the Contract, including without limitation Buyer's obligation to deliver the Earnest Money and delivering sufficient proof to the Closing Attorney and Seller that Buyer is ready, willing and able to close this transaction. The option selected by Buyer shall be Buyer's sole and exclusive remedy, and in no event shall Buyer be entitled to damages.

- ▶ Seller's Default
  - Earnest Money
  - OR Sue for "Specific Performance"
    - **"Specific performance"** is an equitable remedy in the law of **contract**, whereby a court issues an order requiring a party to perform a **specific act**, such as to complete **performance of the contract**
  - NO grounds to sue for damages

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## Default cont'd

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

- ▶ **Broker's Remedy for Default on Contract**
  - What commission would have been
- ▶ **Default on Brokerage Agreement**
  - Look at terms of signed Brokerage Agreement

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## Notice

### 11. NOTICES

Any notice, request or other communication required or permitted to be given hereunder shall be in writing and shall be delivered by hand or overnight courier (such as United Parcel Service or Federal Express), sent by facsimile, sent by electronic mail ("email") or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party at its address as set forth in the Contract. Any such notice shall be considered given on the date of such hand or courier delivery, confirmed facsimile transmission, deposit with such overnight courier for next business day delivery, or deposit in the United States mail, but the time period (if any is provided in the Contract) in which to respond to such notice shall commence on the date of hand or overnight courier delivery or on the date received following deposit in the United States mail as provided

- ▶ **Must be in Writing**
- ▶ **Text is NOT a legally recognized form of written communication**
- ▶ **By hand, courier, fax, email, registered or certified mail**

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## Notice by Email

above. Notice sent by email shall be deemed received on the date and time the email is sent. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of a notice. By giving at least five (5) banking days' prior written notice thereof, any party may from time to time and at any time change its mailing address hereunder. Any notice of any party may be given by or to such party's counsel or Broker as long as it is signed by the appropriate party. The parties' respective mailing and email addresses for notice purposes are indicated after the parties' signatures in the Contract. Telephone numbers are given for convenience of reference only. Notice by telephone shall not be effective.

- ▶ Email
  - Deemed RECEIVED when Sender can prove Sent
- ▶ To address on Signature Page
  - Physical address
  - Email
  - Fax
  - May change with 5 banking days notice
- ▶ If Agency, Broker may accept Notice for Client
- ▶ “Notice by telephone shall not be effective”

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## Survival of Contract

### 12. MISCELLANEOUS

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

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

- ▶ “Survival” = party’s obligations per contract continue AFTER closing if not completed prior to closing

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# Definitions

## 12.9. Definitions:

Any capitalized or defined term, if not otherwise defined in these Standard Terms, shall have the meaning ascribed to it elsewhere in the Contract.

**12.9.1. Acceptance (Accepted):** "Acceptance" or "Accepted" shall mean the acceptance of the Contract pursuant to a right to do so provided in the Contract. Acceptance shall occur only prior to an Offer being withdrawn, revoked or terminated, in writing and in accordance with any provision of the

Contract, if the receiver of an Offer accepts it exactly as presented, without modification, provided Acceptance is communicated, in writing, to the party making the Offer;

**12.9.2. Acceptance Date:** The date upon which Acceptance of the Contract occurs;

**12.9.3. Banking Days:** Monday through Friday, excluding federal holidays;

**12.9.4. Broker:** Any individual or entity issued a broker's real estate license by the Georgia Real Estate Commission pursuant to O.C.G.A. § 43-40. The term "Broker" includes the Broker's affiliated licensees except where the context would otherwise indicate;

- ▶ "Acceptance" = "Binding"
  - In writing
  - NO changes to offer (or counter offer)
  - Notice of acceptance sent back to party who made last offer or counter offer

**Broker = Qualifying Broker & Affiliated Licensees**

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# Defintions Cont'd

**12.9.5. Buyer:** The term "Buyer" used in the Contract shall refer collectively to all persons named in the Contract and signing the Contract as Buyer, and the liability of each such person shall be joint and several. Notice given by Seller to any person named as Buyer, or by any such person to Seller, shall bind all persons signing the Contract as Buyer;

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

**12.9.7. Contract:** An executed purchase and sale agreement between a Buyer and Seller for the purchase of real property, which agreement shall include and incorporate by reference these Standard Terms for Contract for the Purchase and Sale of Residential Real Property.

**12.9.8. Inspection:** Includes any and all inspections regardless of whether by the Buyer individually or by a licensed (where required by law) or other third party inspector selected by Buyer; it includes all types of land surveys relating to real property; and, it includes any and all other types of borings, examinations, samplings, testings, and other reviews;

**12.9.9. Offer:** A proposal to purchase or sell the Property which, upon Acceptance, will result in a binding contract. An Offer includes any counteroffer made in result of an Offer. Any counteroffer automatically terminates the Offer being countered;

**12.9.10. Party:** Each person named in the Contract as Buyer or Seller and shall not include any Broker or other third party named in the Contract.

**12.9.11. Seller:** The term "Seller" used in the Contract shall refer collectively to all persons named in the Contract and signing the Contract as Seller, and their successors and/or assigns. Notice given by Buyer to any person named as Seller, or by any such person to Buyer, shall bind all persons signing the Contract as Seller;

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

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

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## Frequently-Used Disclosures

- ▶ RE-140 Disclosure of Information on Lead Based Paint – REQUIRED by EPA for houses built prior to 1978 or if anything IN house existed prior to 1978
- ▶ RE141 – EPA’s Protect Your Family from Lead in Your Home – REQUIRED by EPA – house built or anything in house prior to 1978
- ▶ RE-130 Seller’s Property Condition Disclosure
- ▶ RE-122 Bill of Sale
- ▶ RE-136 Community Association Exhibit

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## Lead-Based Paint Disclosures

- ▶ RE140 & RE141
- ▶ Required if home built prior to 1978
- ▶ Per EPA... MUST get to Buyer prior to a Binding Contract
- ▶ Must get EPA Pamphlet AND Seller’s Disclosures

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## Seller's Disclosure Form- RE 130

**Purpose of Statement and Disclaimer:**

This is a statement by the Seller pertaining to certain conditions and information concerning the Property known to the Seller. Unless otherwise indicated, the Seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements on the Property or the land. Also, unless otherwise indicated, the Seller has not conducted any inspection of generally inaccessible areas such as underneath floor or wall coverings, under the foundation or on the roof. This Seller's Property Condition Disclosure Statement is not a warranty of any kind by the Seller, or by any agent representing the Seller. It is not a substitute for any inspections or tests to be conducted by the Buyer, and it is the Buyer's responsibility to obtain independent professional inspections, surveys, environmental tests, public records and any other information available pertaining to the Property. In no event shall the parties hold the Seller's Broker liable for any representations not directly made by the Broker or Broker's Agent.

- ▶ Not a substitute for Buyer Inspections

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## Personal Property Items / Fixtures - Seller's Disclosure

Have there been or are there any known material defects in any of the following?

54. Security Alarm system	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
55. Carbon monoxide detector?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
56. Smoke detector?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
57. Fire sprinkler system?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
58. Foundation/slab?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
59. Interior walls/ceilings?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
60. Exterior walls or siding?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
61. Floors?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
62. Chimney/fireplace or stove?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
63. Patio/deck?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
64. Gas Grill?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
65. Lawn Sprinkling System?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
66. Oven/Range?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
67. Refrigerator?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
68. Dishwasher?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
69. Microwave Oven?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
70. Garbage Disposal?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A

Nothing about  
Seller removing  
these items.

- ▶ Need Special Stipulation if Seller is removing an item (i.e. refrigerator) - See "Seller to Remove Fixtures Prior to Closing"
- ▶ It is understood and agreed that, no later than \_\_\_\_ days prior to Closing, Seller shall remove the following fixtures from the Property and repair any and all damage resulting from the removal of such. Items to be removed by Seller are: \_\_\_\_\_ Should Seller damage and not repair the Property during the removal of said items, Buyer shall have the right to either (i) terminate this Contract by delivering notice to the Seller no later than midnight, \_\_\_\_\_ days prior to Closing, in which case the Earnest Money shall be refunded to Buyer, or (ii) waive the right to object to the damage, in which case this Contract shall remain in full force and effect.

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## Community Association Exhibit – RE136

### Community Association Exhibit

This Exhibit is attached to and made a part of the contract for purchase and sale of real property (the "Contract") with an Offer Date of \_\_\_\_\_, 20\_\_\_\_ and relating to Property located at \_\_\_\_\_, Georgia \_\_\_\_\_ (the "Property"), and shall control over any conflicting language in the above referenced Contract and any other Exhibits or Addenda attached thereto.

- ▶ Exhibit Shall Control
- ▶ Bottom Line: Seller must disclose accurate fees or Seller must pay difference at closing BUT Buyer is responsible for checking out the HOA & Covenants & Restrictions & Rental Rights

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## Buyer Responsibilities

### 4. BUYER'S RESPONSIBILITIES

Buyer acknowledges that Buyer has the responsibility to obtain and review all applicable declarations of covenants and restrictions, declarations of condominium, bylaws, articles of incorporation, rules and regulations which create the Property Association and/or Master Association, govern its members and burden the Property (collectively, the "Association Documents"). Buyer acknowledges that, even if the community in which the Property is located is a gated community, this does not mean that the Property is a secure community, or that the Association guarantees the Buyer's safety, and Buyer shall be responsible for taking reasonable steps to provide for the safety of Buyer's person and property. In the event a master policy of insurance is provided by either Association, Buyer shall be responsible for verifying the adequacy of coverage and insuring Buyer's belongings. Buyer further acknowledges that neither Seller nor Broker makes any representations or warranties as to any Association rules or covenants regarding Buyer's ability to lease the Property. Seller does not warrant the accuracy of the information contained in this Exhibit, other than the amount of any fees described herein as of the date hereof, and Buyer should contact the Property Association directly for any questions regarding the Property Association or Property Association amenities and services.

- ▶ Obtain & Review CCR's
- ▶ Insurance Coverage
- ▶ Rental Restrictions
- ▶ Etc.

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## Seller Responsibilities

### 5. SELLER'S RESPONSIBILITIES

Seller agrees to fill out this Exhibit accurately and completely to the best of Seller's knowledge. If Seller learns of new information which materially changes the answers provided herein, Seller shall no later than three (3) days after Seller learns of the new information update this Exhibit accordingly and provide Buyer a revised copy of the same. In the event there is an increase to the Initial Fees hereinafter disclosed, Seller shall provide notice of said increase to Buyer within three (3) days of Seller learning or receiving news of the same. Any Initial Fees not disclosed and all subsequent changes to the Initial Fees not properly and timely disclosed as provided herein shall be paid by Seller.

- ▶ Disclose Fees
- ▶ Disclose changes in fees within 3 days
- ▶ At closing must PAY any fees not accurately disclosed or updated

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## Fees

- ▶ Property Association Dues
- ▶ Initiation Fees
- ▶ Master Association Fees
- ▶ Special Assessments
- ▶ Voluntary Association Fees
- ▶ Recurring Dues
- ▶ Admin Fees
- ▶ Other Fees

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## Frequently-Used Contingencies

- ▶ RE-252 Back-Up Agreement Contingency
- ▶ RE-251 Sale or Lease Contingency Exhibit
- ▶ RE-250 Generic Contingency Exhibit

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## Back-Up Contingency – RE252

It is understood and agreed by the parties that the Contract shall be in a secondary, "back-up" position to a previously negotiated agreement (the "Prior Agreement") between the Seller and \_\_\_\_\_ (the "Prior Agreement Buyer"). Seller's obligation to sell and Buyer's obligation to buy the Property is contingent upon the termination before closing of the Prior Agreement. Seller warrants that Seller is not a party to any other contract for the sale of the Property, other than the Prior Agreement.

It is understood and agreed that for purposes of calculating any timeframes tied to or based on the Acceptance or Binding Agreement Date described in the Contract, such as contingency periods or the closing date, the Acceptance or Binding Agreement Date shall be deemed to be the date on which Seller gives, and Buyer and/or Buyer's Agent has received, notification that the Prior Agreement has been terminated and is no longer in effect.

Notwithstanding the above paragraph, any Earnest Money described in the Contract shall be immediately delivered and deposited in accordance with the terms of the Contract.

Buyer acknowledges and agrees that the Seller may elect to alter the terms of the Prior Agreement at any time, and Buyer does not have the right to review, approve or disapprove said changes in terms.

Prior to receiving notice from Seller that the Prior Agreement has terminated, Buyer may unilaterally terminate this Contract at any time and receive a refund of the Earnest Money. In that event Buyer and Seller will execute an "Agreement to Disburse Trust Funds" as soon as is reasonably practical.

Should the Prior Agreement close and the Property be conveyed to the Prior Agreement Buyer, this Contract shall be deemed terminated, and any Earnest Money shall be returned to Buyer in accordance with the terms of the Contract.

This contingency shall be deemed automatically satisfied and terminated on the date on which Seller gives, and Buyer and/or Buyer's Agent has received, notification that the Prior Agreement has been terminated and is no longer in effect.

- ▶ Only ONE Back-Up – must reference specific Primary contract
- ▶ EM Due immediately
- ▶ All Contingency Time Frames begin when Seller gives Notice that this Buyer is now Primary
- ▶ Buyer may terminate at any time & get return of EM

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## Slae or Lease Contingency – RE 251

### CONTINGENCY

Buyer's obligation to purchase the Property is contingent upon the [check one or both]  sale or  lease of Buyer's current property located at Address of Current Property

This contingency shall expire at 11:59 p.m. on the day that is      days after the Contract acceptance date. The time period beginning on the acceptance date and ending with the expiration of this contingency shall be known as the "Contingency Period."

- ▶ Reference Buyer's Current Home
- ▶ Give a Time Frame in which to sell that home = Contingency Period

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## "Kickout" Clause

### DEMAND TO REMOVE CONTINGENCIES = "Kickout"

Seller [check one]  SHALL or  SHALL NOT have the right to demand removal of contingencies during the Contingency Period.

If Seller does have the right to demand removal of contingencies during the contingency period as selected above, it is understood and agreed that Seller shall continue to market the Property for sale during the Contingency Period, and should Seller receive an offer from another purchaser prior to Closing (the "Secondary Contract"), and said Secondary Contract is contingent on the termination of this Contract, Seller shall notify Buyer that Buyer has      hours after receiving notice from Seller of Seller's receipt of the Secondary Contract (the "Response Period") to remove all contingencies negotiated in favor of Buyer, including, but not limited to, contingencies for inspections, appraisals, financing, etc.

Should Buyer, prior to the expiration of the Response Period, fail to deliver to Seller an amendment to this Contract removing all contingencies negotiated in favor of Buyer, this Contract shall be deemed terminated and any Earnest Money shall be returned to Buyer.

- ▶ Seller may market to another Buyer
- ▶ Send Notice to THIS Buyer to "kickout"
- ▶ Buyer has \_\_\_ hours to send notice to move forward to Terminate
- ▶ If Buyer STAYS in contract:
  - ALL Buyer Contingencies are Removed

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## How to Remove JUST Sale or Lease Contingency

### **VOLUNTARY REMOVAL OF CONTINGENCY PRIOR TO SELLER DEMAND FOR REMOVAL**

At any time prior to Seller demand for the removal of this contingency, should Buyer deliver an amendment to Seller which removes this Sale or Lease Contingency, Seller shall execute and return to Buyer said amendment, and all remaining terms and conditions of the Contract, including, but not limited to other contingencies contained therein, shall remain in full force and effect.

- ▶ Buyer may JUST remove Sale or Lease Contingency & Keep all others in tact

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## Procedural Forms

- ▶ RE-110 Counteroffer
- ▶ RE-265 Notice of Acceptance Date
- ▶ RE-115 Commission Acknowledgement
- ▶ RE-264 Unilateral Notice to Withdraw Offer  
OR RE-263 Notice to Withdraw or Terminate
- ▶ RE-260 Notification

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## Amendments

- ▶ RE-262 Amendment During Buyer's Right to Terminate
- ▶ RE-261 Amendment - Multi-Purpose

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## Amendment During Buyer's Right to Terminate Period - RE262

This amendment [check one]  SHALL or  SHALL NOT act as a unilateral notice of termination of the above referenced Contract if it is not accepted by the Seller and delivered back to Buyer prior to the end of the Buyer's right to terminate period or due diligence period, as defined in the Contract.

- ▶ Must be agreed to by Buyer & Seller to be binding upon parties
- ▶ If it is a "make-it or Break-It" repair then Buyer may want to mark option to terminate contract if Seller doesn't agree or else Buyer is buying AS-IS

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## Note About Repairs

- ▶ Must address consequences to Seller's lack of performance on this Amendment
- ▶ If Seller doesn't do Repairs, Buyer may not necessarily terminate & get Earnest Money Back
- ▶ See Various Special Stipulations Regarding Repairs
  - RE Special Stipulations
  - Handout – see [www.eAGENTweb.com](http://www.eAGENTweb.com) – click “Training Videos” – find this class & download Handouts

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## Terminating a Contract – TWO Forms Required (Terminate & Release EM)

- ▶ RE-263 Notice to Withdraw or Terminate
- ▶ This is the form to use to TERMINATE a Binding Contract
  - You need another form to release the Earnest Money – RE 212
- ▶ This is also the form to use to WITHDRAW an offer or Counteroffer before you have a Binding Contract
- ▶ Terminating / Withdrawing is Unilateral & requires only 1 Party's signature

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## Terminating a Contract cont'd

- ▶ Any party may terminate BUT is it by Contingency or Default?
- ▶ If BOTH parties don't agree on Disbursement, the "Earnest Money is in dispute"
- ▶ Escrow Agent must follow contractual procedures
- ▶ Even if a party terminated by contingency but other party won't sign release, then "Earnest Money in dispute"
- ▶ Earnest Money addressed in the creation of a contract, earnest money must be addressed in the termination of a contract

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## Notice to Terminate -RE 263

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

The undersigned hereby gives the following Notice:

That certain **unaccepted** offer/counteroffer with an offer date of \_\_\_\_\_, 20\_\_\_\_ relating to property known as \_\_\_\_\_ is hereby **withdrawn**.

That certain **accepted** contract with an acceptance date of \_\_\_\_\_, 20\_\_\_\_ relating to property known as \_\_\_\_\_ is hereby **terminated**.

Reason for Termination:

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## Agreement to Release Earnest Money

- ▶ RE-212 Agreement to Disburse Trust Funds
- ▶ This is the form to use to address the Earnest Money when a contract is terminated
- ▶ The parties must first Terminate the Contract using RE- 263
- ▶ This form is Bilateral “Agreement” – Need BOTH parties’ signatures

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## Agreement to Release EM – RE 212

The trust funds being held by Name of Holder as Escrow Agent, shall be disbursed as follows:

US\$ \_\_\_\_\_ payable to: \_\_\_\_\_ at the following address: \_\_\_\_\_

US\$ \_\_\_\_\_ payable to: \_\_\_\_\_ at the following address: \_\_\_\_\_

Other Disbursement Instructions:

|

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## Disbursement of Earnest Money – Standard Terms Paragraph 3.4

- ▶ Funds cleared the Bank
- ▶ EM back to Buyer if no Accepted Contract (unless issue is disputed)
- ▶ EM as credit to Buyer at Closing
- ▶ EM back to Buyer at or after closing if EM not credited to Buyer at closing
- ▶ Pursuant to a separate written agreement signed by the parties agreeing to the terms of the disbursement (RE –212)

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## Disbursement of Earnest Money Cont'd

- ▶ Court order of court or arbitrator with jurisdiction
- ▶ Escrow Agent's decision of disbursement
  - "10 Day Letter"
  - Upon notice that contract has terminated or failed to close, EM disbursed no more than 30 days
  - Holder may interplead funds into court (& take out legal fees)
- ▶ "Hold Harmless" clause for Holder
- ▶ Note: Nonrefundable Builder's Deposit is NOT EM

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## “10 Day Letter”

- ▶ If Buyer & Seller DON'T Agree in Writing to Disbursement of Earnest Money on RE 212
- ▶ Holder interprets contract as to why it failed to close
  - By Default
  - By Unexpired Contingency
- ▶ Sends Notice of intent to disburse EM
- ▶ Party NOT getting EM has 10 days to disagree in writing
- ▶ If no contractual change, then Holder disburses on Day 11 & sends Notice of Disbursement

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## Consumer Brochures – Give Appropriate Brochures to Your Clients / Customers

- ▶ RE-140 Disclosure of Information on Lead-Based Paint
- ▶ RE-141 EPA Protect Your Family from Lead-Based Paint
- ▶ RE-142 EPA Guide to Mold & Moisture
- ▶ RE-144 Citizen's Guide to Radon
- ▶ RE-145 Home Selling – The Process
- ▶ RE-146 Home Buying – The Process

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## Thank you!

- ▶ Remember to Confirm all Contract Questions with your Broker!
- ▶ Please attend Additional Courses:  
[www.registerforREclasses.com](http://www.registerforREclasses.com) – select a geographic area – Note that “Marietta” is MASTER Calendar of all courses including all Virtual Courses
- ▶ 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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