



# Special Stipulations to Consider

## Contents: Special Stipulations to Consider

**Due Diligence - When You Need Seller to Do Something to Prevent Buyer From Spending Money Unnecessarily But Still Give Buyer Termination Rights & Protect Their Earnest Money:** (Authored by Dana Sparks, Qualifying Broker, Maximum One Greater Atlanta, REALTORS®)..... 3

FOR EXAMPLE: Let’s say the utilities aren’t on in the property & Buyer needs Seller to turn them on for Inspection & Appraisal. How do you not run out of the Due Diligence Period because utilities aren’t on & not yet have Buyer pay for inspection? Another situation would be if the Buyer is waiting on the Seller to return the completed Community Association Disclosure or Seller’s Property Disclosure.” ..... 3

**“Appraisal Gap” Buyer to Bring Cash for Difference Between Low Appraisal & Contract Price:** (Authored by Ameer Davis of Davis & Associates)..... 3

**Seller Consideration for Buyer Appraisal Gap – Proof of Funds**..... 4

**“Appraisal Gap” Buyer to Bring Cash for Difference Between Low Appraisal & Contract Price:** (Authored by Seth Weissman of Weissman Law)..... 4

**Appraisal Gap Stipulation with Obligation for Seller to Agree to Lower Sale Price:** ..... 4

**Buyer Brokerage Commission – GAR 2022**..... 5

**Additional Option Money for DD with Seller Termination Rights:**..... 5

**Discrete Parcels Sold as an Assemblage: authored by Ameer Davis of Davis & Associates** ..... 5

**Buyer Terminates Prior to End of Due Diligence & Prior to Sending Earnest Money to the Holder**..... 6

**GAR SPECIAL STIPULATIONS - 2022** ..... 6

    SS 220 BUYER WARRANTS THAT USE OF LAND WILL QUALIFY FOR PREFERENTIAL TAX TREATMENT .... 6

    SS 317 REPAIRS MADE BY SELLER DURING THE TRANSACTION..... 6

    SS 611 SELLER CONSENTS TO ASSIGNMENT OF PURCHASE AND SALE AGREEMENT ..... 6

**NEW GAR Special Stipulations as of May 1, 2022** ..... 7

    SS110 – No Commission Owed by Buyer ..... 7

    SS 528 CONTINGENCY FOR RECEIVING CONDOMINIUM QUESTIONNAIRE..... 7

**GAR SITUATIONS & SPECIAL STIPULATIONS – November 2021** ..... 7

**Seller to Transfer Security Deposit and Prorate Rent as of day of closing:** authored by Ameer Davis of Davis & Associates ..... 9

**Seller to provide Buyer a copy of Tenant’s lease agreement(s):** authored by Ameer Davis of Davis & Associates..... 10

**Seller desires to remove Buyer’s right to access through closing:** authored by Ameer Davis of Davis & Associates..... 10

**To Survive Closing** ..... 10

**To Accept a Contract AFTER the Time Limit:** - authored by Shawn Horan of Horan Law Group, PC..... 11

**Seller Warrants Seller Disclosure Form** – authored by Ameer Davis of Davis & Associates ..... 11

**How to Complete a T&R When Earnest Money has Not Yet Been Remitted:** ..... 11



# Special Stipulations to Consider

**Escalation Clause:** ..... 11  
 I would also suggest you add to Escalation Clause: ..... 11  
**Escalation Clause Version 2**..... 11  
**Seller Strategies if Buyer wants to Extend Closing**..... 12  
**Multiple Email Addresses – One on Contract & Another Used in Practice – Formerly GAR SS 263:** ..... 12  
**Contractual Time Frames in Short Sale or When Making Due Diligence Contingent Upon a Certain Situation** (i.e. Utilities Being Turned On or Seller’s Completion of Community Association Exhibit) ..... 13  
**Repair Issues:** - authored by Ameer Davis of Davis & Associates ..... 13  
**Repair Issues – Alternative:** (from the RE Forms Special Stipulations)..... 13  
**GAR SS 302 AMENDMENT TO ADDRESS CONCERNS AS NOTICE TO TERMINATE** ..... 13  
**Protect Your Selling-Side Commission on New Construction**..... 14  
**Down Payment Assistance Funds:** ..... 14  
**Amendment to Address Concerns as Notice to Terminate** (GAR SS302) : ..... 14  
**Agent Acting as Principal:** (from the RE Forms Special Stipulations)..... 14  
**Updates to HOA Letters:** - authored by Ameer Davis of Davis & Associates ..... 14  
**Notification to “Bad” Fax /Email:** (from the RE Forms Special Stipulations)..... 14  
**Additional Stip for Seller Occupancy After Closing** ..... 15  
 Variation:..... 15  
**Listing Special Stipulations**..... 15  
**Conformed Copy = “Clean Copy” – GAR SS622**..... 15  
**Contractual Time Frames in Short Sale** ..... 16  
**Common Issues to Consider:** (See GAR Special Stipulations) ..... 16  
**Buying a Property with a Tenant in Place Who is Supposed to Vacate** ..... 16  
**Special Stipulation: Agent Contribution towards Repairs if Seller is Netting \$0.00** - Compliments of Ameer Davis, Attorney at Law 770.426.5440..... 17  
 Special Stipulation:..... 17  
 Scenario: ..... 17  
**Buyer Wants to Buy a Condo & There is Current & Ongoing Litigation Involving the Association** (i.e. on-going litigation between the Association and the Insurance Co in connection with the roof replacement. As per one of the board members, they are almost at a resolution but I need a special stip to cover my client.) – authored by Ameer Davis of Davis & Associates..... 17

**Check with your Broker prior to using any of these Special Stipulations in your contracts.**



## Special Stipulations to Consider

---

### **Due Diligence - When You Need Seller to Do Something to Prevent Buyer From Spending Money Unnecessarily But Still Give Buyer Termination Rights & Protect Their Earnest Money: (Authored by Dana Sparks, Qualifying Broker, Maximum One Greater Atlanta, REALTORS®)**

FOR EXAMPLE: Let's say the utilities aren't on in the property & Buyer needs Seller to turn them on for Inspection & Appraisal. How do you not run out of the Due Diligence Period because utilities aren't on & not yet have Buyer pay for inspection? Another situation would be if the Buyer is waiting on the Seller to return the completed Community Association Disclosure or Seller's Property Disclosure."

"Due Diligence to begin upon Binding Agreement Date & extend for \_\_\_\_\_ days after Buyer's receipt of written notification that all utilities are on and operational."

This way, if Seller never performs (i.e. turns on utilities) then Buyer will never have to pay for an inspection AND Buyer may terminate based on DD. IF you write "DD to begin when Buyer does XYZ..." then if Seller never does XYZ, Buyer may never terminate because DD has not yet BEGUN!

### **"Appraisal Gap" Buyer to Bring Cash for Difference Between Low Appraisal & Contract Price: (Authored by Ameer Davis of Davis & Associates)**

"All parties hereby acknowledge that any Appraisal Contingency is hereby amended to reflect the following terms: If any appraisal is for less than the purchase price, Buyer shall be responsible to deliver any additional funds needed for closing to satisfy the difference between the lower appraised value and the agreed upon purchase price of the Property up to an amount not to exceed \$\_\_\_\_\_ ("The Variance"). Any difference in appraised value and the purchase price that is equal to or lesser than the Variance will not be grounds to terminate this Agreement. However, if the difference in appraised value and the purchase price is greater than the Variance, Buyer is subject to the terms outlined in the Appraisal Contingency Clause of this Agreement and has the right, but not the obligation, to terminate this Agreement without penalty. Buyer will have 3 days from receipt of notice of appraised value, resulting in the Variance being greater than the variance agreed upon herein, to terminate. If buyer does not terminate within 3 days, buyer shall be deemed to waive the right to terminate and will bring additional funds above original variance value to close. This stipulation, if conflicting with any exhibit, addendum, or preceding paragraph, shall control."



## Special Stipulations to Consider

---

### **Seller Consideration for Buyer Appraisal Gap – Proof of Funds**

Listing Agents, remember that if a Buyer agrees to bring cash for the difference between a Low Appraisal & the contract Sale Price, that Buyer's cash outlay is ON TOP of the cash they already have to bring for their down payment for the portion the Lender will lend AND any pre-pays & escrows! So, don't waste time by simply accepting a contract with an appraisal gap stipulation, consider asking for Proof of Funds to COVER this Gap on top of cash already allocated / required for home purchase!

For verbiage, check out paragraph 2 on GAR Cash Exhibit – F401 or check with a closing attorney.

### **“Appraisal Gap” Buyer to Bring Cash for Difference Between Low Appraisal & Contract Price: (Authored by Seth Weissman of Weissman Law)**

“In the event the property does not appraise for at least the purchase price, Buyer agrees to pay Seller at closing the difference between the sales price and the appraised value in cash and not use the failure of the Property to appraise for the purchase price as a basis to either terminate this Agreement or ask for a reduction in the sales price. Notwithstanding the above, if the difference between the sales price and the appraised value of the property is more than \$\_\_\_\_\_, Buyer shall have the right but not the obligation to terminate this Agreement provided that the Buyer gives Notice to the Seller within \_\_\_\_\_ days of receiving the appraisal of the property in which case Buyer shall be entitled to the return of the Buyer's earnest money. If Buyer does not terminate the Agreement within the time frame, Buyer's right to terminate on this basis shall be waived and Buyer shall pay cash to Seller at the closing for the entire difference between the appraised value and the sales price of the property.”

### **Appraisal Gap Stipulation with Obligation for Seller to Agree to Lower Sale Price:**

"Should the property appraise for less than the contract sales price, at closing, Buyer agrees to pay \$\_\_\_\_\_ cash above the appraised value "variance" up to the contract sales price. Should this difference "variance" still fall below the contract sales price, Seller agrees to sell at the new price including this \$\_\_\_\_\_ cash overage. Buyer shall have 3 days from receipt of notice of appraised value resulting in an appraised value more than the Variance (i.e. there is still a gap between the contract Sale Price and appraised value plus Buyer's cash overage) to deliver copy of Appraisal to Seller along with an Amendment to Sale Price reflecting this new contract sale price (appraisal value plus cash amount Buyer agrees to pay at closing.) Should Seller not agree in writing (by signing the Amendment to Sale Price and delivering signed Amendment to Buyer) to this new Sale Price within 3 days after receipt of copy of Appraisal and Amendment, Buyer



## Special Stipulations to Consider

---

reserves the right to terminate this contract in writing with Notice sent to Seller through Closing Date of contract with no penalty and full refund of earnest money. Should Buyer not send copy of Appraisal plus Amendment to Sale Price to Seller at least 7 days prior to Closing Date, Buyer agrees to pay contract sale price with no changes despite the appraised value of the property."

### Buyer Brokerage Commission – GAR 2022

- ▶ Do not leave this blank nor put in \$0.
- ▶ Consider entering a % of Sale Price or \$\_\_\_\_\_ and then on a transaction by transaction basis, amend the Buyer Brokerage Agreement if they wish – AFTER the Buyer is under contract & specifically identifying a property & commission to be received from Seller side
- ▶ i.e. *“At the closing of 123 Lucky Street, Buyer to pay Maximum One Realty Greater Atlanta \$0.00 as the Brokerage will accept commission of \_\_\_\_\_% of Sale Price solely from Listing Broker.”*

### Additional Option Money for DD with Seller Termination Rights:

All parties acknowledge and agree that upon acceptance of the contract, Buyer shall pay a nonrefundable option payment for seller to take property off market for a period equivalent to the due diligence period herein. The option fee shall be \$\_\_\_\_\_ payable to seller(s). Said option money shall be separate and apart from the Earnest money stated herein. Should buyer fail to pay said money within 2 days of binding agreement date, seller shall have 5 days in which to terminate the contract or seller shall have waived the right to the option money.

### Discrete Parcels Sold as an Assemblage: authored by Anee Davis of Davis & Associates – MUST Spell Out the Legal Descriptions

In Contract Under “Legal Description” type “See Stips” then add the following as a Special Stipulation:



## Special Stipulations to Consider

---

The conveyance of property herein includes multiple tracts of land being purchased as an assemblage. Said tracts are described as follows: (1) that tract being fully described in Deed Book \_\_, Page \_\_, \_\_ county real property records. Said parcel being \_\_ acres and being tax parcel identification number \_\_ according to the \_\_ county tax commissioner's office; (2) that tract being fully described in Deed Book \_\_, Page \_\_, \_\_ county real property records. Said parcel being \_\_ acres and being tax parcel identification number \_\_ according to the \_\_ county tax commissioner's office; and (3) that tract being fully described in Deed Book \_\_, Page \_\_, \_\_ county real property records. Said parcel being \_\_ acres and being tax parcel identification number \_\_ according to the \_\_ county tax commissioner's office. Each parcel set out is also being more clearly described in those deeds attached hereto as Exhibits “ \_\_, \_\_ and \_\_ ”

**Note:** In the alternative, you can also insert each of the legal descriptions instead of the deed books and pages.

### Buyer Terminates Prior to End of Due Diligence & Prior to Sending Earnest Money to the Holder

- ▶ If Earnest Money is addressed in the creation of a contract, it must addressed in the Termination of a contract EVEN if EM not yet sent
- ▶ “Earnest Money not yet remitted per contract to be retained by Buyer.”

## GAR SPECIAL STIPULATIONS - 2022

**SS 220 BUYER WARRANTS THAT USE OF LAND WILL QUALIFY FOR PREFERENTIAL TAX TREATMENT** Buyer warrants that Buyer's use or ownership of the Property will qualify for continuation of the preferential tax treatment of the Property as agricultural property. If Buyer is found to no longer qualify for the same, Buyer shall indemnify and hold Seller harmless from and against all liability for rollback taxes. This warranty shall survive Closing.

**SS 317 REPAIRS MADE BY SELLER DURING THE TRANSACTION** Seller will obtain any required permits and/or certificates for the completion of the repairs/construction as is made part of this Agreement and provide Buyer with applicable documentation.

**SS 611 SELLER CONSENTS TO ASSIGNMENT OF PURCHASE AND SALE AGREEMENT** Seller consents to Buyer assigning this Agreement to another buyer (“Assignee”) and having Assignee become the buyer thereunder.



## Special Stipulations to Consider

### NEW GAR Special Stipulations as of May 1, 2022

**SS110 – No Commission Owed by Buyer** - Notwithstanding any provision to the contrary contained in this Agreement, Broker shall not look for Buyer to pay any portion of Broker’s Commission pursuant to this Exclusive Buyer Brokerage Engagement Agreement.

#### SS 528 CONTINGENCY FOR RECEIVING CONDOMINIUM QUESTIONNAIRE

If the Property is a condominium unit, and if the Buyer is obtaining a loan to purchase the Property, this Agreement shall be contingent upon the condominium in which the unit is located being eligible for financing and approved by Buyer’s lender. If Buyer obtains written notice from Buyer’s lender indicating that (1) it is declining Buyer’s loan application because the condominium in which the unit is located is ineligible for financing or (2) Buyer’s lender is unable to determine whether the condominium in which the unit is located is eligible for financing because the HOA or management company for the condominium has not provided sufficient information for the lender to make such a determination, then Buyer may terminate this Agreement by providing written notice to Seller, along with the notice from Buyer’s lender, within \_\_\_\_ days from the Binding Agreement Date. If Buyer timely provides such notice, then Buyer shall be entitled to the return of their earnest money. If Buyer does not timely provide such notice, then the contingency contained in this paragraph shall be waived and of no further force or effect. This contingency is applicable irrespective of whether there is any loan, financing, or all cash, contingency exhibit attached hereto and shall survive the expiration, wavier, or satisfaction of the same.

### GAR SITUATIONS & SPECIAL STIPULATIONS – November 2021

Below are special stipulations for a variety of situations that can occur during the home sale process. Cut and paste the special stipulations below to modify the Purchase & Sale Agreement to fit your client’s situation. For a full explanation of these stipulations, read Seth Weissman’s article “*Special Stipulations for All Occasions*,” in the [Winter 2021 issue of Georgia REALTOR® magazine \(p. 12\)](#).

**SITUATION:** **Changing the time deadline** for obligations to be performed from midnight to 9:00 P.M.

**STIPULATION:** “All time deadlines set forth herein shall expire at \_\_\_\_\_  a.m. OR  p.m. on the day of the deadline.”

**SITUATION:** **Allowing notices to be sent via text**

**STIPULATION:** “Notwithstanding any provision to the contrary contained herein, notices by text shall expressly be permitted in this Agreement provided that the party receiving the text has provided a cell phone number below, all





## Special Stipulations to Consider

---

*other terms of the notice provision are met, and the sender saves a copy of the text. The text shall be deemed signed by the party sending the text if the sender types their name at the end of the text or the notice is attached to the text and that notice is signed. The notice shall be deemed delivered when it is received on the receiving device of the party to whom it was sent, and not when it is opened. The name of the party who is consenting to receiving notices by text and their phone number is set forth below.”*

---

---

### **SITUATION:** Cleanliness of house at closing

**STIPULATION:** *“Seller agrees that not more than three days prior to the Closing, all carpeted areas in the house shall be steam cleaned by a professional carpet cleaning company, all non-carpeted areas shall be swept clean and mopped (with areas with hardwood floors being damp mopped), all toilets, sinks, kitchen and sink counters, bathtubs, showers, ovens and stovetops shall be cleaned such that dirt and stains, to the extent reasonably possible, are removed and all dirt and hand marks around door handles on doors and on door frames shall be cleaned. Seller agrees to have removed all personal property from the Property at least four (4) hours prior to Closing to make it easier for Buyer to do a final walk-through of the Property.”*

### **SITUATION:** Buyer warrants that buyer doesn't have other nearby property under contract.

**STIPULATION:** *“Buyer warrants that Buyer is not currently a party to any other purchase and sale contract to buy real property within \_\_\_\_\_ miles of the Property and will not contract to purchase any other property within \_\_\_\_\_ miles from this Property during the pendency of this Agreement. If Buyer breaches this warranty, Seller may terminate this Agreement due to Buyer's breach upon notice to Buyer. Buyer acknowledges that Seller will be significantly damaged as a result of such breach and Buyer and Seller agree that Seller shall be entitled to keep Buyer's earnest money as liquidated damages (even if not all of the conditions or contingencies in the Agreement have been fulfilled), or if the Due Diligence Period has not yet expired, it being agreed that the amount is a reasonable pre-estimate of Seller's actual damages and is not a penalty.”*

### **SITUATION:** Getting a copy of the covenants and determining whether the property is subject to easements and covenants.

**STIPULATION:**

<b>Option</b>	<b>1</b>
<i>“Seller agrees to provide Buyer within _____ days from the Binding Agreement Date with a complete and current set of all covenants, Declarations of Covenants, Conditions, Restrictions and Easements, Declarations of Condominium and other similar documents binding the Property.”</i>	
<b>Option</b>	<b>2</b>
<i>“Seller shall within three days of the Binding Agreement Date provide Buyer with</i>	





## Special Stipulations to Consider

---

*a copy of the Owner's Title Policy or Lender's Title Policy Seller, if any, received when Seller closed on the purchase of the Property."*

**SITUATION:** Paying cash for the difference between the appraised price and the sales price.

**STIPULATION:** *"In the event the Property does not appraise for at least the purchase price, Buyer agrees to pay Seller at closing the difference between the sales price and the appraised value in cash and not use the failure of the Property to appraise for the purchase price as a basis to either terminate this Agreement or ask for a reduction in the sales price. Notwithstanding the above, if the difference between the sales price and the appraised value of the Property is more than \$\_\_\_\_\_, Buyer shall have the right, but not the obligation, to terminate this Agreement provided that Buyer gives notice to Seller within \_\_\_\_ days of receiving the appraisal of the Property, in which case Buyer shall be entitled to the return of Buyer's earnest money. If Buyer does not terminate the Agreement within this time frame, Buyer's right to terminate on this basis shall be waived and Buyer shall pay cash to Seller at the closing for the entire difference between the appraised value and the sales price of the Property."*

**SITUATION:** Right of buyer to terminate agreement if amendment to address concerns is not agreed upon.

**STIPULATION:** *"In the event Buyer and Seller have not agreed in writing to an Amendment to Address Concerns with Property where a fully-signed copy of the same is delivered to Buyer and Seller by 11:59 p.m. on the last day of the Due Diligence Period, this special stipulation shall serve as notice from Buyer to Seller of Buyer's decision to terminate this Agreement immediately thereafter and prior to the end of the Due Diligence Period."*

**SITUATION:** Condition of systems and appliances.

**STIPULATION:** *"Seller agrees that as of the date of Closing, all systems in the Property, including, but not limited to, the HVAC, electrical, plumbing, roofing, sewer and structural and all fixtures and appliances remaining in the Property shall be in good working order and repair."*

**Seller to Transfer Security Deposit and Prorate Rent as of day of closing:** authored by Ameer Davis of Davis & Associates

Seller agrees to credit to buyer at closing all security deposits paid as part of the lease agreement and to prorate the monthly rent through the date of closing.



## Special Stipulations to Consider

---

### **Seller to provide Buyer a copy of Tenant's lease agreement(s):** authored by Amee Davis of Davis & Associates

All parties acknowledge and agree that the sale of this property is contemplated upon the current Tenant's remaining the property after the date of closing. Sellers will provide Buyer a full copy of all lease agreements, extensions and/or modifications to lease within 3 days of binding agreement date. Should seller not provide a copy of lease as required herein, buyer may terminate the contract. Buyer will have 3 days from receipt of lease documents to review. Should Buyer, for any reason, desire to terminate this agreement due to any unacceptable terms in lease to Buyer, Buyer will receive full refund of earnest money. Buyer may terminate within 6 days after receipt of Lease Agreement or Buyer waives the right to terminate the agreement due to unacceptable lease terms.

### **Seller desires to remove Buyer's right to access through closing:** authored by Amee Davis of Davis & Associates

All parties acknowledge and agree that Buyer shall have access to property as defined in Paragraph B (8)(a) Inspection and Due Diligence, through the expiration of the Due Diligence period as agreed upon herein. However, upon the expiration of the Due Diligence period, Buyer shall have the right to request access to the property with 48 hour advance written request to seller. Seller shall have the sole right to allow or deny access to the property during this time. However, this in no way shall prohibit the buyer from access to the property within 2 days of the closing date (or any extension thereof) to enter the property for a walk through prior to the closing of the transaction.

### **To Survive Closing**

"This provision shall survive closing" in GAR Contract in order for these issues to survive closing (For items such as repairs, Purchase of Home Warranty, etc.)



## Special Stipulations to Consider

---

### To Accept a Contract AFTER the Time Limit: - authored by Shawn Horan of Horan Law Group, PC

"This counter offer is being executed by all parties to evidence their intent to be bound by the terms contained in the purchase and sale agreement dated \_\_\_\_\_, and agreed to by all parties on \_\_\_\_\_. All parties agree that the binding agreement date and time for this purchase and sale agreement is \_\_\_\_\_."

### Seller Warrants Seller Disclosure Form – authored by Ameer Davis of Davis & Associates

Seller's Disclosure Form attached herein states \_\_\_\_\_ (i.e. property is on sewer & not septic)\_\_\_\_\_ and Seller warrants this information. This disclosure and Seller warranty of this information shall survive closing.

### How to Complete a T&R When Earnest Money has Not Yet Been Remitted:

If Earnest Money is addressed in the creation of a contract, it must always be addressed in the termination of a contract EVEN IF the Buyer has not yet remitted the funds. Regardless of where the funds are regarding remittance or deposit, Earnest Money is still a part of the contract. So, if you write a Termination & Release prior to the Buyer's obligation to remit the funds, you would simply state,

- **GAR Contract:** "Buyer to retain Earnest Money not yet remitted per paragraph A7b
- **RE Forms Contract:** "Buyer to retain Earnest Money not yet remitted per paragraph 3.1."

### Escalation Clause:

Buyer to pay \$\_\_\_\_\_ (\$500 or \$1,000 or whatever amount) above highest received verifiable offer not to exceed a total sale price of \$\_\_\_\_\_ (top sale price Buyer is willing to pay or is qualified to pay for the house) with contractual proof of next highest offer.

### I would also suggest you add to Escalation Clause:

All parties agree to execute a conformed copy of the Binding Agreement reflecting the final contractual price and terms.

### Escalation Clause Version 2

\*\* In the event that the seller receives one or more additional bona fide offers to purchase the property with terms acceptable to the Seller, but which result in net proceeds of sale payable to the Seller equal to or greater than the net proceeds of sale payable to seller under this offer, then the sales price stated in this Offer shall automatically increase to an amount which generates net proceeds of sale to Seller equal to **\$0.00** in excess of the highest net proceeds of sale generated in such Other Offers.



## Special Stipulations to Consider

---

\*\*The sales price under this offer shall in no event exceed a cap of **\$00,000**.

\*\*In the event that Other Offers cause the escalation of the Sales Price of the Offer, the Seller will provide the buyer with a copy of sufficient documentation to justify the Sales Price increase and the buyer acknowledges that the Escalating Factor of this Offer and the Escalating Factors of Other Offers may result in multiple escalations and, in some cases, escalation to the Cap.

\*\*The terms contained herein are for the use and purpose of obtaining a mutually agreeable Sales Price and shall be deemed satisfied and will terminate upon ratification of a Contract for the above referenced property.

\*\*Buyer acknowledges and affirms that this Offer and Escalation Clause has been made of his own volition and at his own discretion and both Buyer and Seller agree to hold agents and their Brokers harmless with regard to negotiation of the Sales Price. In the event Other Offers are presented on this Property, Buyer acknowledges that a copy of the documents constituting the Offer may be provided to the parties making such Other Offers.

\*\*In the event the Seller agrees to accept a Sales Price within the terms of this Offer and pursuant to the Escalation clause, the Seller will submit to the Buyer a copy of this Offer with the Sales price adjusted according to the escalation provisions contained herein, having been fully executed by the Seller ("Counteroffer"). Acceptance of the counteroffer will occur upon counter signature and initial of the modified terms of this Offer, by the Buyer, and delivery to the Seller of the fully ratified Contract.

### Seller Strategies if Buyer wants to Extend Closing

- Decrease Seller's contribution to Buyer's Closing Costs
- Transfer Earnest Money to MX1 if it is held by another Broker or Closing Attorney
- Add kick out provision – so that Seller may solicit back-up contract (& change to CK in MLS)
- Can't ask for additional "non-refundable EM" – "EM" is not non-refundable... instead
  - "Buyer shall deposit \$\_\_\_\_\_ with Maximum One Realty Greater Atlanta (or Maximum One Greater Atlanta, REALTORS.) If Buyer fails to close for any reason, Seller may retain all Earnest Money & additional deposits as liquidated damages and such shall not be considered, deemed or implied as a penalty."

### Multiple Email Addresses – One on Contract & Another Used in Practice – Formerly GAR SS 263:

All parties agree that all e-mail notices sent to \_\_\_\_\_ shall be sent to both of the following e-mail addresses \_\_\_\_\_ and \_\_\_\_\_. Provided that notice is sent to both email addresses, notice shall be deemed given when it is first received at either of the above email addresses.



## Special Stipulations to Consider

---

### **Contractual Time Frames in Short Sale or When Making Due Diligence Contingent Upon a Certain Situation (i.e. Utilities Being Turned On or Seller's Completion of Community Association Exhibit)**

All time frames in contract & and Exhibits begin upon Binding Agreement Date and extend to specified number of days per provision after Buyer's receipt of written approval of terms of short sale from Seller lien holder(s.)

### **Repair Issues: - authored by Ameer Davis of Davis & Associates**

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

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

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

### **GAR SS 302 AMENDMENT TO ADDRESS CONCERNS AS NOTICE TO TERMINATE**

In the event this Amendment to Address Concerns with Property is not accepted by Seller and delivered back to Buyer prior to the end of the Buyer's Right to Terminate as set forth in the Due Diligence provision of the Agreement, this Amendment to Address Concerns with Property shall serve as notice of termination of this Agreement upon expiration of the Right to Terminate period as set forth herein



## Special Stipulations to Consider

---

### Protect Your Selling-Side Commission on New Construction

If you buy a house being constructed ("New Construction") you agree that the Selling Broker commission shall be a part of the original offer prior to signing that offer. If the transaction turns in to a Lease, you agree to pay Maximum One Realty Greater Atlanta (or Maximum One Greater Atlanta Realtors) a commission of \$ \_\_\_\_\_ for valuable services rendered within 2 Banking days of signing lease.

### Down Payment Assistance Funds:

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.

### Amendment to Address Concerns as Notice to Terminate (GAR SS302) :

In the event this Amendment to Address Concerns with Property is not accepted by Seller and delivered back to Buyer prior to the end of the Buyer's Right to Terminate as set forth in the Due Diligence provision of the Agreement, this Amendment to Address Concerns with Property shall serve as notice of termination of this Agreement upon expiration of the Right to Terminate period as set forth herein

### Agent Acting as Principal: (from the RE Forms Special Stipulations)

It is understood and agreed that \_\_\_\_\_ is a licensed real estate agent (or Broker) in the state of Georgia, whose license is held by \_\_\_\_\_, and is acting as a principal in this transaction.

### Updates to HOA Letters: - authored by Ameer Davis of Davis & Associates

If transaction does not close by originally scheduled closing date due to no fault of the Seller, Buyer to pay for any required updates to the HOA Letter.

### Notification to "Bad" Fax /Email: (from the RE Forms Special Stipulations)

Should Broker(s) identify an email address or fax number in this Contract that is different from the email address of fax number identified as the correct fax number by the MLS of which Broker(s) is a member, it is hereby agreed that should the email address or fax number identified in this Contract fail to deliver a document/notice pertaining to this Contract, then successful delivery of the documents/notices to the email address or fax number identified in the MLS shall be deemed sufficient notice, provided that the





## Special Stipulations to Consider

---

sending entity produces a written confirmation showing the correct time and date of the transmission and the email address or fax number referenced herein.

### Additional Stip for Seller Occupancy After Closing

All Parties Agree that "YOUR BROKER" shall hold \$\_\_\_\_\_ from seller proceeds in Brokers Trust Account. If Seller vacates property in clean, damage-free condition and free of all trash, personal property and debris, Broker shall release funds to Seller within 10 days of written notice from Buyer to Broker that Property is acceptable. If property is not left in condition acceptable to Buyer, Broker shall disburse said funds to Buyer.

#### Variation:

"...Broker shall deduct cost of cleaning, repairing and including but not limited to hauling away trash or debris from the amount Broker is holding and disburse remainder to Seller

### Listing Special Stipulations

1. If Seller cancels or withdraws the listing prior to expiration of Listing Agreement for any reason, Seller shall pay \$50 to \_\_\_\_\_(Brokerage)\_\_\_\_\_ an early termination fee & to remove listing from MLS Services.
2. If the property is place Under Contract with a Lease Purchase, Seller shall pay to \_\_\_\_ (Brokerage)\_\_\_\_\_ 1% of Sale Price as Commission for valuable services rendered. This fee shall be paid in certified funds at time of contract acceptance and the remainder of the total commission owed to the Broker shall be paid at the Closing of the transaction. All parties acknowledge that the 1% commission paid at time of Binding Agreement shall be considered earned when contract is Binding and shall be considered payment for contract services rendered as well as procurement of sale and shall not be refundable.
3. If Listing Broker procures a tenant for the property under a lease, Seller shall pay in certified funds the equivalent of one month's rent to \_\_\_\_ (Brokerage)\_\_\_\_\_ at time of Binding Lease. All parties acknowledge that the fee shall be considered earned at the time of contract for procuring Tenant and shall not be refundable. Seller shall have no monthly obligation to Broker and Broker shall not be considered Property Manager; Broker's sole role is to place Landlord and Tenant together
4. At Closing, Seller shall pay to \_\_\_\_\_(Brokerage)\_\_\_\_\_ \$\_\_\_\_\_ Administration fee.

### Conformed Copy = "Clean Copy" – GAR SS622

Buyer and Seller acknowledge that the above Agreement is a conformed copy of an Agreement between the parties dated \_\_\_\_\_. In the event of any conflict between this conformed Agreement and the original thereof, all parties agree that the original Agreement shall control.



## Special Stipulations to Consider

---

### Contractual Time Frames in Short Sale

All time frames in contract & Exhibits begin upon Binding Agreement Date and extend to specified number of days per provision after Buyer's receipt of written approval of terms of short sale from Seller lien holder(s.)

### Common Issues to Consider: (See GAR Special Stipulations)

- Repairs by Seller After Loan Approval – SS314
- Home Warranty – SS712
- Termite Letter / Bond – SS326 & 328 & 330
- Septic / Well Inspections or Repairs – SS318 & 742
- Seasonal Items that Cannot be Inspected – SS310
- Rising Interest Rates – especially helpful in New Construction or perhaps Short Sale – SS510
- Agent Acting as Principal – SS102
- Multiple Offers – SS632 (for use in counter offers)
- Amendment to Address Concerns as Notice to Terminate – SS302
- Conformed Copy of Agreement – SS622
- Due Diligence begins when Utilities Turned On – SS331

### Buying a Property with a Tenant in Place Who is Supposed to Vacate

How about putting a realistic closing date but add a special stipulation:

"All parties agree that closing date shall be on or before 10 days after Seller provides legal proof that tenant has been successfully evicted and removed from the property. Furthermore, it is agreed that Due Diligence period and financing contingency periods shall expire \_\_\_\_\_ and \_\_\_\_\_ respectively from the date of written notice of the same:..

The latter part gives you the right to back out ANY TIME from binding until 10 days after you receive written notice. That way you don't have to waste any inspection money or appraisal money. Additionally check with lender to see if 10 days will be enough to do title search and appraisal. You may need to change the 10 to something else.



## Special Stipulations to Consider

---

### **Special Stipulation: Agent Contribution towards Repairs if Seller is Netting \$0.00 - Compliments of Ameer Davis, Attorney at Law 770.426.5440**

#### Special Stipulation:

“Listing Agent (or selling agent) herein has agreed to contribute \$xxx.xx to be used towards \_\_\_\_\_ (i.e. repairs, home warranty, etc). All parties herein acknowledge that listing agent agreed to pay said amount as seller has disclosed that seller will net \$0.00 (zero) dollars or will have to bring funds to closing for the herein reference closing transaction. In the event seller receives any funds from said transaction, the money to be contributed by listing agent will be reduced by the amount of net proceeds to be disbursed to seller. If seller's proceeds are greater than the amount herein agreed to, listing agent will not contribute any funds.”

#### Scenario:

For example, Selling Agent agrees to pay \$500.00 towards required repairs as Listing Agent has disclosed that seller has to bring funds to the closing table to finalize the closing. Upon arrival at closing, selling agent discovers that seller is actually walking away from the closing transaction with \$35,000.00. By using the above stipulation, selling agent would not then be required to pay for repairs or reduce commissions because seller would have the proceeds to pay for the repairs. If the seller's proceeds at closing were only \$250.00 then the seller would pay \$250.00 and the selling agent would pay \$250.00.

### **Buyer Wants to Buy a Condo & There is Current & Ongoing Litigation Involving the Association (i.e. on-going litigation between the Association and the Insurance Co in connection with the roof replacement. As per one of the board members, they are almost at a resolution but I need a special stip to cover my client.) – authored by Ameer Davis of Davis & Associates**

All parties acknowledge and agree that the homeowner's/condo association (“association”) for the property being sold and referenced herein, is in an active pending lawsuit with the insurance company which provided coverage for any roof damage. Said lawsuit having been filed in the \_\_\_\_\_ court of \_\_\_\_\_ county, Georgia. As a condition precedent to the buyer purchasing said property, Seller agrees that should the lawsuit be ruled not in favor of the Association, and such ruling results in the homeowners having to pay to replace the roofs or result in a special assessment to replace funds for roof payment, Seller shall pay said amounts as required by the Association. Said cost not to Seller not to



## Special Stipulations to Consider

---

exceed \$\_\_\_\_\_. Seller to pay sums within \_\_\_\_\_ days of notice from Buyer to Seller of costs assessed by Association. This matter shall specifically survive closing.

**Check with your Broker prior to using any of these  
Special Stipulations in your contracts.**