

# PURCHASE AND SALE AGREEMENT

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

2010 Printing

1. **Purchase and Sale.** The undersigned buyer ("Buyer") agrees to buy and the undersigned seller ("Seller") agrees to sell the Property with the following address: \_\_\_\_\_  
City \_\_\_\_\_, County \_\_\_\_\_, Georgia, Zip Code \_\_\_\_\_  
TAXID/PIN # \_\_\_\_\_ together with all fixtures, landscaping, improvements, and appurtenances (except those identified in any Seller's Property Disclosure Statement attached hereto as not remaining with the Property) and as more particularly described in the Legal Description Paragraph below (all of which is hereinafter collectively referred to as "Property").
2. **Legal Description.** The full legal description of the Property is:  
*[Select A, B or C below. The sections not marked shall not be a part of this Agreement]*
- A. attached as an exhibit hereto;
- B. identical to the legal description for the property contained in the deed recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, et. seq., \_\_\_\_\_ County, Georgia records;
- C. described below:  
Land Lot(s) \_\_\_\_\_ of the \_\_\_\_\_ District, \_\_\_\_\_ Section/  
GMD, Lot \_\_\_\_\_, Block \_\_\_\_\_, Unit \_\_\_\_\_, Phase/Section \_\_\_\_\_  
of \_\_\_\_\_ Subdivision/Development,  
\_\_\_\_\_ County, Georgia according to the plat recorded in  
Plat Book \_\_\_\_\_, Page \_\_\_\_\_, et. seq., \_\_\_\_\_ County, Georgia records.
3. **Purchase Price and Method of Payment.** At closing, Buyer agrees to pay Seller the purchase price of the Property of \$ \_\_\_\_\_ U.S. Dollars: cash, wire transfer of immediately available funds, or a cashier's check issued for the closing by a federally insured bank, savings bank, savings and loan association or credit union where the funds are immediately available. The above forms of payment shall be deemed to be the equivalent of Buyer paying all cash at closing which shall be the method of payment.
4. **Amount and Deposit of Earnest Money.** Buyer has paid to **Northgate Realty Brokers, LLC** ("Holder") earnest money of \$ \_\_\_\_\_ check, **OR** \$ \_\_\_\_\_ cash, which has been received by Holder. The earnest money shall be deposited in Holder's escrow/trust account (with Holder retaining the interest if the account is interest bearing) within five (5) banking days from the Binding Agreement Date. If Buyer writes a check for earnest money and the same is deposited into Holder's escrow/trust account, Holder shall not be required to return the earnest money until the check has cleared the account on which the check was written. In the event any earnest money check is dishonored by the bank upon which it is drawn, Holder shall promptly give notice of the same to Buyer and Seller. Buyer shall have three (3) banking days after receiving such notice to deliver good funds to Holder. In the event Buyer does not timely deliver good funds, Seller shall have the right to terminate this Agreement upon notice to Buyer.
5. **Closing Costs and Other Settlement Expenses.**
- A. Items Paid By Buyer at Closing.** At closing, Buyer shall pay the following:
1. Georgia property transfer tax;
  2. All costs, fees and charges to have the closing attorney search title and prepare: (a) the warranty deed; (b) owner's affidavit; (c) Buyer's powers of attorney; and (d) all promissory notes, deeds to secure debt and other loan documents required by any lender providing financing in the transaction;
  3. All closing costs, tax service charges, recording costs, courier fees, overnight delivery fees, document preparation fees, underwriting fees, delivery, copying and handling charges, and all other costs, fees, charges and amounts to close this transaction otherwise, except as they relate to the clearance of title encumbrances and/or defects necessary for Seller to be able to convey good and marketable title to the Property.
- B. Items Paid By Seller at Closing.** At closing, Seller shall pay the following:
1. The sum of \$ \_\_\_\_\_ to be used by Buyer as a contribution for the items in the paragraph above. In addition, Buyer may use the Seller's contribution to pay for, including but not limited to, survey costs, appraisals, insurance (including flood insurance, if applicable), inspections, termite treatment and/or repair guarantee and, if Buyer is obtaining mortgage financing, escrow establishment charges, loan discount points, costs to buy down a loan, and other similar costs (unless any of the same are prohibited by Buyer's mortgage lender). Unspent sums, if any, shall remain with the Seller.
  2. Except as provided above, all sums, costs, charges and fees necessary to clear title encumbrances and/or defects to allow Seller to be able to convey good and marketable title to the Property.
  3. Any extra costs, fees and charges resulting from Seller not being able to attend the closing in person.
- C. Prorated Amounts:** Seller and Buyer agree to prorate the following: (1) real estate taxes and community association assessments, if any, for the calendar year in which the sale is closed, as of the date of closing; and (2) all utility bills solid waste and other fees as of the date of closing (or the day of possession of Property by Buyer, whichever is later) that are issued after closing and include service for any period of time Property was owned/occupied by Seller or Seller's invitees. In the event real estate taxes are paid at closing based upon an estimated tax bill or tax bill under appeal, Buyer and Seller upon the issuance of the actual tax bill or the appeal being resolved shall promptly make any financial adjustments between themselves as are necessary to prorate the tax bill correctly. This subparagraph shall survive the closing.

**6. Closing and Transfer of Possession.**

- A. Closing:** This transaction shall be closed on 20 or on such other date as may be agreed to in writing by the parties. No later than at the conclusion of the closing, Seller shall provide the Buyer with all keys in Seller's possession or under Seller's control, to all locks that shall remain with the Property.
- B. Right to Extend Unilaterally the Closing Date:** Buyer or Seller may unilaterally extend the closing date for seven (7) days upon notice to the other party given prior to or on the date of closing if: (1) Seller cannot satisfy valid title objections (except for liens, judgments, and deeds to secure debt that can be satisfied through the payment of money or by bonding off the same); or (2) Buyer's mortgage lender, if any, (including in "all cash" transactions) or the closing attorney cannot fulfill their respective obligations by the date of closing due to no fault of Buyer. In such event, Buyer and Seller consent to the closing attorney and/or any such mortgage lender disclosing to the parties and their Brokers the basis for the delay. The exercise of the right to extend unilaterally the closing date by either party shall cause the right to extend unilaterally the closing date to terminate and no longer be a part of this Agreement.
- C. Possession:** Buyer agrees to allow Seller to retain possession of Property until and through:  
[Select one. The sections not marked shall not be a part of this Agreement.]  
 1. the closing; **OR**  2. \_\_\_\_\_ hours after the closing; **OR**  3. \_\_\_\_\_ days after the closing at \_\_\_\_\_ o'clock \_\_\_\_\_ m.

- 7. Closing Attorney.** This transaction shall be closed by the law firm of Seller to Select.  
If Buyer is given the right to select a law firm from a mortgage lender's approved list of closing attorneys, Buyer agrees to select said law firm. If the law firm named above is not on the mortgage lender's approved list, and cannot be added in time to close this transaction, Buyer may select another law firm from lender's approved list to close this transaction. The closing attorney shall represent the mortgage lender in any transaction in which the Buyer obtains mortgage financing (including transactions where the method of payment referenced herein is "all cash"). In transactions where the Buyer does not obtain mortgage financing, the closing attorney shall represent the:  
 Buyer **OR**  Seller. If the closing attorney declines to represent the party selected, the party may select a different closing attorney.

**8. Title.**

- A. Warranty:** Seller warrants that at the closing Seller will convey good and marketable title to said Property by general warranty deed subject only to: (1) zoning; (2) general utility, sewer, and drainage easements of record as of the Binding Agreement Date and upon which the improvements do not encroach; (3) declarations of condominium and declarations of covenants, conditions and restrictions of record on the Binding Agreement Date; and (4) leases and other encumbrances specified in this Agreement. Buyer agrees to assume Seller's responsibilities in any leases specified in this Agreement.
- B. Examination:** Buyer may examine title and furnish Seller with a written statement of title objections at or prior to the closing. If Seller fails or is unable to satisfy valid title objections at or prior to the closing or any unilateral extension thereof, which would prevent the Seller from conveying good and marketable title to the Property, then Buyer, among its other remedies, may terminate the Agreement upon written notice to Seller. Good and marketable title as used herein shall mean title which a title insurance company licensed to do business in Georgia will insure at its regular rates, subject only to standard exceptions.
- C. Survey:** A survey of Property is  **OR** is not  attached to this Agreement as an exhibit. Notwithstanding any other provision to the contrary contained herein, Buyer shall have the right to terminate this Agreement upon notice to Seller if a new survey performed by a surveyor licensed in Georgia is obtained which is materially different from any survey attached hereto as an exhibit with respect to Property. The term "materially different" shall not apply to any improvements constructed by Seller in their agreed-upon locations subsequent to Binding Date Agreement. Matters revealed in said survey shall not relieve the warranty of title obligations of Seller referenced above.

- 9. Risk of Damage to Property.** Seller warrants that at the time of closing or upon the granting of possession, if at a time other than at closing, Property will be in substantially the same condition (including conditions disclosed in the Seller's Property Disclosure Statement) as on the Binding Agreement Date, except for normal wear and tear, and changes made to the condition of Property pursuant to the written agreement of Buyer and Seller. Seller shall deliver Property clean and free of trash and debris at time of possession. Notwithstanding the above, if the Property is destroyed or substantially damaged prior to closing, Seller shall promptly give notice to Buyer of the same and provide Buyer with whatever information Seller has regarding the availability of insurance and the disposition of any insurance claim. Buyer or Seller may terminate this Agreement not later than fourteen (14) days from receipt of the above notice, except that any party who causes the Property to be destroyed or substantially damaged as the result of that party's criminal conduct shall forfeit the right to terminate this Agreement and shall be in default hereunder. If Buyer or Seller does not terminate this Agreement, Seller shall cause Property to be restored to substantially the same condition as on the Binding Agreement Date. The date of closing shall be extended until the earlier of one year from the original date of closing, or seven (7) days from the date that Property has been restored to substantially the same condition as on the Binding Agreement Date and a new certificate of occupancy (if required) is issued.

**10. Inspection.**

- A. Right of Buyer to Inspect Property:** Buyer and/or Buyer's representatives shall have the right to enter Property at Buyer's expense and at reasonable times (including immediately prior to closing) to inspect, examine, test and survey Property. Seller shall cause all utility services and any pool, hot tub and similar items to be operational so that Buyer may complete all inspections under this Agreement. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries, and damages arising out of or related to the exercise of these rights.
- B. Duty of Buyer to Inspect Neighborhood:** Buyer acknowledges that: (1) in every neighborhood there are conditions which different buyers may find objectionable and (2) Buyer has had the full opportunity to become acquainted with all existing neighborhood conditions (and proposed changes thereto) which could affect the Property including without limitation land-fills, quarries, high-voltage power lines, cemeteries, airports, prisons, stadiums, odor and/or noise producing land uses, crime, schools serving the Property, political jurisdictional maps and land use and transportation maps and plans. It shall be Buyer's sole duty to become familiar with neighborhood conditions of concern to Buyer. **If Buyer is concerned about the possibility of a registered sex offender residing in a neighborhood in which Buyer is interested, Buyer should review the Georgia Violent Sex Offender Registry available on the Georgia Bureau of Investigation Website at [www.gbi.georgia.gov](http://www.gbi.georgia.gov).**

**11. Property Sold Subject to Due Diligence Period or “As-Is.”**

*[Select Section A. or B. below. The section not marked shall not be a part of this Agreement.]*

**A. Property Sold Subject to Due Diligence Period.**

1. **Contract Is Option Contract.** For and in consideration of the additional payment of Ten Dollars (\$10) by the Buyer to the Seller, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby grant Buyer the option of terminating this Agreement, for any reason, for a 7 Seven day period from the Binding Agreement Date (“Due Diligence Period”). This Agreement shall be an option contract until the Due Diligence Period has ended without Buyer terminating the same.
2. **Purpose of Due Diligence Period.** During the Due Diligence Period, Buyer may, but shall not be required to: (a) arrange any loans Buyer needs to complete the purchase of the Property; and (b) conduct at Buyer’s sole expense whatever evaluations, inspections, appraisals, examinations, surveys, and testing, if any, Buyer deems appropriate to determine whether Buyer’s option to terminate this Agreement should be exercised. This shall include but not be limited to testing for lead-based paint and/or lead-based paint hazards, inspecting for active infestation of and/or damage from termites and other wood destroying organisms and determining if the Property or the improvements thereon are in a flood plain. During the Due Diligence Period, Buyer may also propose an amendment(s) to this Agreement to address any concerns of Buyer with the Property.
3. **Right to Terminate.** If Buyer decides to exercise Buyer’s option to terminate this Agreement, Buyer must give notice of the same to Seller prior to the end of the Due Diligence Period. If Buyer fails to give such notice in a timely manner, the Due Diligence Period shall terminate and Buyer shall be deemed to have accepted the Property “as-is.” The expiration of the Due Diligence Period shall not terminate any other contingencies to which this Agreement may be subject.
4. **Warranties of Buyer.** Buyer warrants that Buyer is  **OR** is not  currently under contract (including option contracts) to purchase other real property. Buyer warrants that during the Due Diligence Period Buyer shall  have the right to enter into other such contracts **OR**  not enter into any other such contracts. Buyer shall be in default of the Agreement if Buyer breaches Buyer’s warranties in this subparagraph.

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

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

- A. Return of Earnest Money to Buyer:** Subject to the Disbursement of Earnest Money paragraph below, Buyer shall be entitled to the earnest money upon the: (1) failure of the parties to enter into a binding agreement; (2) failure of any contingency or condition to which this Agreement is subject; (3) termination of this Agreement due to the default of Seller; or (4) termination of this Agreement in accordance with a specific right to terminate set forth in the Agreement. Otherwise, the earnest money shall be applied towards the purchase price of the Property at closing or if other funds are used to pay the purchase price then the earnest money shall be returned to Buyer.
- B. Disbursement of Earnest Money:** Holder shall disburse the earnest money upon: (1) the closing of Property; (2) a subsequent written agreement of Buyer and Seller; (3) an order of a court or arbitrator having jurisdiction over any dispute involving the earnest money; or (4) the failure of the parties to enter into a binding agreement (where there is no dispute over the formation or enforceability of the Agreement). In addition, Holder may disburse the earnest money upon a reasonable interpretation of the Agreement, provided that Holder first gives all parties fifteen (15) days notice stating to whom and why the disbursement will be made. Any party may object to the proposed disbursement by giving written notice of the same to Holder within the fifteen (15) day notice period. Objections not timely made in writing shall be deemed waived. If Holder receives an objection and, after considering it, decides to disburse the earnest money as originally proposed, Holder may do so and send notice to the parties of Holder’s action. If Holder decides to modify its proposed disbursement, Holder shall first send a new fifteen (15) day notice to the parties stating the rationale for the modification and to whom the disbursement will now be made.
- C. Interpleader:** If there is a dispute over the earnest money which the parties cannot resolve after a reasonable period of time, and where Holder has a bona fide question as to who is entitled to the earnest money, Broker may interplead the earnest money into a court of competent jurisdiction. Holder shall be reimbursed for and may deduct from any funds interpleaded, its costs and expenses, including reasonable attorney’s fees actually incurred. The prevailing defendant in the interpleader lawsuit shall be entitled to collect its attorney’s fees and court costs and the amount deducted by Holder from the non-prevailing defendant.
- D. Hold Harmless:** All parties hereby agree to indemnify and hold Holder harmless from and against all claims, causes of action, suits and damages arising out of or related to the performance by Holder of its duties hereunder. All parties further covenant and agree not to sue Holder for damages relating to any decision of Holder to disburse earnest money made in accordance with the requirements of this Agreement.

**13. Agency and Brokerage.**

- A. Agency Disclosure:** In this Agreement, the term “Broker” shall mean a licensed Georgia real estate broker or brokerage firm and, where the context would indicate, the broker’s affiliated licensees. No Broker in this transaction shall owe any duty to Buyer or Seller greater than what is set forth in their brokerage engagements and the Brokerage Relationships in Real Estate Transactions Act, O.C.G.A. § 10-6A-1 et. seq.;
  1. **No Agency Relationship.** Buyer and Seller acknowledge that, if they are not represented by a Broker, they are each solely responsible for protecting their own interests, and that Broker’s role is limited to performing ministerial acts for that party.
  2. **Listing Broker.** Broker working with the Seller is identified on the signature page as the “Listing Broker”; and said Broker is  **OR** is not  representing Seller;
  3. **Selling Broker.** Broker working with Buyer (including in transactions where Broker is representing Seller) is identified on the signature page as “Selling Broker;” and said Broker is  **OR** is not  representing Buyer; and
  4. **Dual Agency or Designated Agency.** If Buyer and Seller are both being represented by the same Broker, a relationship of either designated agency  **OR** dual agency  shall exist.

**a. Dual Agency Disclosure.** *[Applicable only if dual agency has been selected above.]*

Buyer and Seller are aware that Broker is acting as a dual agent in this transaction and consent to the same. Buyer and Seller have been advised that:

- (1) In serving as a dual agent, Broker is representing two clients whose interests are or at times could be different or even adverse;
- (2) Broker will disclose all adverse, material facts relevant to the transaction and actually known to the dual agent to all parties in the transaction except for information made confidential by request or instructions from each client which is not otherwise required to be disclosed by law;
- (3) Buyer and Seller do not have to consent to dual agency and, the consent of Buyer and Seller to dual agency has been given voluntarily and the parties have read and understand their brokerage engagement agreements.
- (4) Notwithstanding any provision to the contrary contained herein, Buyer and Seller each hereby direct Broker, while acting as a dual agent, to keep confidential and not reveal to the other party any information which could materially and adversely affect their negotiating position.

**b. Designated Agency Assignment.** *[Applicable only if the designated agency has been selected above.]*

Broker has assigned \_\_\_\_\_ to work exclusively with Buyer as Buyer's designated agent and \_\_\_\_\_ to work exclusively with Seller as Seller's designated agent. Each designated agent shall exclusively represent the party to whom each has been assigned as a client and shall not represent in this transaction the client assigned to the other designated agent.

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

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

**C. Material Relationship Disclosure:** Brokers and/or their affiliated licensees have the following material relationship(s) with either Buyer and/or Seller as follows: \_\_\_\_\_

**14. Disclaimer.** Buyer and Seller acknowledge that they have not relied upon any advice, representations or statements of Brokers other than what is expressly included in this Agreement and waive and shall not assert any claims against Brokers involving the same. Buyer and Seller agree that Brokers shall not be responsible to advise Buyer and Seller on any matter including but not limited to the following: any matter which could have been revealed through a survey, title search or inspection of Property; the condition of Property, any portion thereof, or any item therein; building products and construction techniques; the necessity or cost of any repairs to Property; mold; hazardous or toxic materials or substances; termites and other wood destroying organisms; the tax or legal consequences of this Agreement and transaction; the availability and cost of utilities or community amenities; the appraised or future value of Property; any condition(s) existing off Property which may affect Property; the terms, conditions and availability of financing; and the uses and zoning of Property whether permitted or proposed. Buyer and Seller acknowledge that Brokers are not experts with respect to the above matters and that, if any of these matters or any other matters are of concern to them, they should seek independent expert advice relative thereto. Buyer and Seller acknowledge that Brokers shall not be responsible to monitor or supervise any portion of any construction or repairs to Property and that such tasks clearly fall outside the scope of real estate brokerage services.

**15. Lead-Based Paint.** A portion of any residential dwelling on the Property was  OR was not  built prior to 1978. If any portion of a residential dwelling was built prior to 1978, the Lead-Based Paint Exhibit must be and is hereby attached as an exhibit to this Agreement by Seller. For the purposes of this paragraph, the term "residential dwelling" shall include any painted fixture, component or material used therein that was built or manufactured prior to 1978.

**16. Notices.**

**A. All Notices Must Be In Writing.** All notices, including but not limited to offers, counteroffers, acceptances, amendments, demands, notices of termination and other notices, required or permitted hereunder shall be in writing, signed by the party giving the notice. It is the intent of the parties that the requirements of this Notice paragraph shall apply even prior to this Agreement becoming binding.

**B. Method of Delivery of Notice.** Subject to limitations and conditions set forth herein, notices may only be delivered: (1) in person; (2) by an overnight delivery service, prepaid; (3) by facsimile transmission (FAX); (4) by registered or certified U. S. mail, prepaid, return receipt requested; or (5) by e-mail.

**C. When Notice Is Deemed Received.** Except as may be provided herein, a notice shall not be deemed to be given, delivered or received until it is actually received by the party to whom the notice was intended or that person's authorized agent. Notwithstanding the above, a notice sent by FAX shall be deemed to be received by the party to whom it was sent as of the date and time it is transmitted to either the party or the party's authorized agent provided that the sending FAX produces a written confirmation showing the correct date and the time of the transmission and the telephone number referenced herein to which the notice should have been sent.

**D. When Notice to Broker Is Notice to Broker's Client.** Except in transactions where the Broker is practicing designated agency, notice to the Broker or the affiliated licensee of Broker representing a party in the transaction shall for all purposes herein be deemed to be notice to that party. Said Broker and affiliated licensee shall be authorized agents of the party for the purpose of receiving notice. In any transaction where the Broker is practicing designated agency, only notice to the affiliated licensee designated by Broker to represent the party in the transaction shall be notice to that party. Personal delivery of notice may only be delivered to the party intended to receive the same or that party's authorized agent.

**E. Notice by Fax or E-Mail to a Broker or Affiliated Licensee of a Broker.** Notices by fax or e-mail to a Broker or the affiliated licensee of a Broker may only be sent to the e-mail address or fax number, if any, of the Broker or the affiliated licensee of the Broker set forth in the Broker/Licensee Contact Information section of the signature page of this Agreement or subsequently provided by the Broker or the affiliated licensee of Broker following the notice procedures set forth herein. If no fax number or e-mail address is included in the Broker/Licensee Contact Information section of the signature page of this Agreement (or is subsequently provided by the Broker or the affiliated licensee of Broker following the notice procedures) then notice by the means of communication not provided shall not be valid for any purpose herein. Notice to a Broker or the affiliated licensee of Broker who is working with, but not representing a party, shall not be deemed to be notice to that party. Any party sending notice by FAX or email shall send an original copy of the notice if so requested by the other party. A faxed or emailed signature of a party shall constitute an original signature binding upon that party.

**F. Notice to Unrepresented Party.** A party who is not represented by a Broker in the transaction may receive notices by Fax or e-mail at the e-mail address or fax number, if any, of the party set forth below or at such other fax number or e-mail address as the party may provide following the notice procedures set forth herein. If no e-mail address or fax number is provided for below, or is subsequently provided by the party following the notice procedures set forth herein, then notice through the means of communication not provided shall not be valid for any purpose herein.

Unrepresented Buyer:

Fax No. \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Unrepresented Seller:

Fax No. \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

#### **17. Default.**

In the event of a default of this Agreement by Buyer or Seller, the non-defaulting party may pursue any and all remedies available at law or in equity relative to the default. In the event this Agreement is terminated by Seller due to the default of Buyer, Holder shall offer the earnest money to Seller, by check, which if accepted and deposited by Seller, shall constitute liquidated damages in full settlement of all claims of Seller against Buyer. The parties agree that such liquidated damages shall not be a penalty but are instead a reasonable pre-estimate of Seller's actual damages, which damages are difficult to ascertain. Nothing herein shall prevent the Seller from declining any tender of the earnest money by the Holder. In such event, Holder may disburse the earnest money to Buyer upon a reasonable interpretation of the Agreement as set forth elsewhere herein.

Notwithstanding any other provision to the contrary contained in either this Agreement or in any brokerage engagement agreement entered into by Buyer or Seller with any real estate broker, in the event the sale is not closed because of the failure or refusal of Buyer or Seller to perform any of their respective obligations, the defaulting party shall pay the Broker(s) the full commission the Broker(s) would have been entitled to under the Listing Agreement (incorporated herein by reference) had the transaction closed. The Selling Broker and Listing Broker may jointly or independently pursue the defaulting party for their respective portions of the commission. If the defaulting party has not entered into a brokerage engagement agreement with either the Listing Broker or Selling Broker herein or such agreement is no longer in full force and effect as of the Binding Agreement Date, this Agreement shall create a separate cause of action on the part of the Brokers herein against the defaulting party. In the event the defaulting party has entered into a brokerage engagement agreement with either the Listing Broker or Selling Broker that is in full force and effect as of the Binding Agreement Date, this section of the Agreement shall serve to amend such brokerage engagement agreement and shall control over and supersede any conflicting or inconsistent provisions contained therein. The consideration for the rights granted herein to Broker(s) shall be the mutual promises set forth in this Agreement and other good and valuable consideration the receipt and sufficiency of which is acknowledged by Buyer and Seller. The rights granted herein to Broker(s) shall survive the termination of this Agreement. Notwithstanding the above, the payment to the Broker(s) by the defaulting party of the full commission(s) referenced above shall relieve the defaulting party of any other commission obligation owed to the Broker(s).

#### **18. Other Provisions.**

**A. Warranties Transfer:** Seller agrees to transfer to Buyer, at closing, subject to Buyer's acceptance thereof (and at Buyer's expense, if there is any cost associated with said transfer), Seller's interest in any existing manufacturer's warranties, service contracts, termite treatment and/or repair guarantee and/or other similar warranties which, by their terms, may be transferable to Buyer.

**B. Repairs:** All agreed upon repairs and replacements shall be performed in a good and workmanlike manner prior to closing.

**C. Binding Effect, Entire Agreement, Modification, Assignment:** This Agreement constitutes the sole and entire agreement between all of the parties, supersedes all of their prior written and verbal agreements and shall be binding upon the parties and their successors, heirs and permitted assigns. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto. This Agreement may not be amended, modified or waived except upon the written agreement of Buyer and Seller. This Agreement may not be assigned by Buyer except with the written agreement of Seller. Any assignee shall fulfill all the terms and conditions of this Agreement.

**D. Survival of Agreement:** The following shall survive the closing of this Agreement: (1) the obligation of a party to pay a real estate commission; (2) any warranty of title; and (3) any obligations which the parties herein agree shall survive the closing or may be performed or fulfilled after the closing.

**E. Governing Law and Interpretation:** This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original and shall be interpreted in accordance with the laws of the State of Georgia. No provision herein, by virtue of the party who drafted it, shall be interpreted less favorably against one party than another. All references to time shall mean the time in Georgia.

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

**G. Terminology:** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa; and (2) all pronouns shall mean and include the person, entity, firm, or corporation to which they relate.

**H. Binding Agreement Date:** The Binding Agreement Date in this Agreement shall be the date when the party making the last offer, or the Broker (except in a designated agency transaction) or affiliated licensee of Broker representing that party as a client, receives notice that the offer has been accepted. This party (or the Broker or affiliated licensee representing this party as a client) shall fill in the Binding Agreement Date below and promptly give notice of this date to the other party. Filling in the Binding Agreement Date shall not be deemed to be a counteroffer.

- I. **Responsibility to Cooperate:** All parties agree to take all actions and do all things reasonably necessary to fulfill the terms and conditions of this Agreement in good faith and in a timely manner. Buyer and Seller shall execute and deliver such certifications, affidavits, and statements as are required at closing to meet the requirements of any lender(s) and of federal and state law.
- J. **GAR Forms:** The Georgia Association of REALTORS®, Inc. ("GAR") makes certain standard real estate forms available to its members. These GAR forms are frequently provided to the parties in real estate transactions by the REALTORS® with whom they are working. No party is required to use any GAR form. Since these forms are generic and written with the interests of multiple parties in mind, they may need to be modified to meet the specific needs of the parties using them. If any party has any questions about his or her rights and obligations under any GAR form he or she should consult an attorney. The parties hereto agree that the GAR forms may only be used in accordance with the licensing agreement of GAR. While GAR forms may be modified by the parties, no GAR form may be reproduced with sections removed, altered or modified unless the changes are visible on the form itself or in a stipulation, addendum, exhibit or amendment thereto.

19. **Exhibits and Addenda.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement. If any such exhibit or addendum conflicts with any preceding paragraph (including any changes thereto made by the parties), said exhibit or addendum shall control:

- Legal Description of the Property as Exhibit " \_\_\_\_\_ "
- Financing Contingency as Exhibit " \_\_\_\_\_ "
- The  FHA Loan Exhibit **OR**  VA Loan Exhibit as Exhibit " \_\_\_\_\_ "
- A Survey of Property as Exhibit " \_\_\_\_\_ "
- Appraisal Contingency as Exhibit " \_\_\_\_\_ "
- Seller's Property Disclosure Statement as Exhibit " \_\_\_\_\_ "
- Lead-Based Paint Exhibit as Exhibit " \_\_\_\_\_ "
- Source of Buyer's Funds as Exhibit " \_\_\_\_\_ "
- Sale or Lease of Buyer's Property Contingency as Exhibit " \_\_\_\_\_ "
- Back-up Agreement Contingency as Exhibit " \_\_\_\_\_ "
- Community Association Disclosure as Exhibit " \_\_\_\_\_ "
- Other \_\_\_\_\_
- Other \_\_\_\_\_
- Other \_\_\_\_\_
- Other \_\_\_\_\_
- Other \_\_\_\_\_

**SPECIAL STIPULATIONS:** The following Special Stipulations, if conflicting with any exhibit, addendum, or preceding paragraph (including any changes thereto made by the parties), shall control:

- 1) Seller will grant buyer a 7 day due diligence and a 10 day finance contingency. Earnest money will not be refundable for any reason after the expiration of these periods.
- 2) Purchaser agrees to provide Listing Broker with earnest money within 48 hours of contract acceptance. Only Certified funds or money order will be accepted.
- 3) The sale of this property is strictly AS/IS. Seller provides no warranties, gives no concessions and make no repairs to the property. The Listing Broker may unknowingly list and the Selling Broker may unknowingly show properties that contain mold. It is the buyers sole responsibility to retain appropriate professionals to determine the presence of any potential environmental hazards.
- 4) Seller reserves the right to select closing attorney.
- 5) This property is a foreclosure. Seller will not provide property disclosure, survey, or any warranty. Seller will convey title by Limited Warranty Deed.
- 6) Buyer acknowledges and agrees that buyer and or buyers contractors will not be granted access to the property prior to closing for any repairs or alterations to the property.
- 7) This purchase agreement is subject to all terms and conditions set forth in the Sellers real estate addendum.
- 8) Buyer is purchasing property in it Existing condition without representation or warranties of any kind of nature. Buyer is responsible for obtaining any inspections, verify HOA information, covenants, planning authority or governmental authority for condition and or suitable use of property.
- 9) Section 6B (Right to Extend Unilaterally the Closing Date) is stricken.
- 10) Section 10A (Right of Buyer to inspect Property) Seller will connect the Electrical system only. All other utilities, appliances, pools or hot tubs will be the buyers responsibility to connect or inspect. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries, and damages arising out of or related to the exercise of these rights.

Additional Special Stipulations are  or are  not attached.

**Time Limit of the Offer:** The terms of this Agreement shall constitute an offer ("Offer") which shall expire at \_\_\_\_\_ o'clock  
a .m. on the date of \_\_\_\_\_ unless prior to that time it is accepted in writing by the party to  
whom the offer was made and notice of the acceptance is delivered back to the party making the offer.

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

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

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

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

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

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

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

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

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

**NORTHGATE REALTY BROKERS LLC**  
\_\_\_\_\_  
Listing Broker

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

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

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

**Joe Porter**  
\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
MLS Office Code

\_\_\_\_\_  
Brokerage Firm License Number

**NGRB01**  
\_\_\_\_\_  
MLS Office Code

**H-61900**  
\_\_\_\_\_  
Brokerage Firm License Number

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

Selling Broker/Licensee Contact Information:

Phone# \_\_\_\_\_

Phone# **770-560-9049**

Fax# \_\_\_\_\_

Fax# **770-928-4860**

E-Mail \_\_\_\_\_

E-Mail **northgaterealty@att.net**

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

**274970**  
\_\_\_\_\_  
Listing Agent's Georgia Real Estate License Number

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

# COMMISSION CONFIRMATION AGREEMENT/ INSTRUCTIONS TO CLOSING ATTORNEY

2010 Printing

This Commission Confirmation Agreement ("Agreement") is entered into this date of \_\_\_\_\_ and relates to that Purchase and Sale Agreement and/or an offer to purchase property dated \_\_\_\_\_ by and between \_\_\_\_\_ ("Seller") and \_\_\_\_\_ ("Buyer") for property located at \_\_\_\_\_ ("Property").

1. The undersigned Listing Broker is to be paid a real estate commission by the Seller upon the closing of the above referenced Agreement.
2. Listing Broker agrees to share its commission with the undersigned Selling Broker as set forth below:  
Selling Broker shall receive a commission of \_\_\_\_\_ percent (%) of the purchase price of Property or \$ \_\_\_\_\_.  
Listing Broker shall receive a commission of \_\_\_\_\_ percent (%) of the purchase price of Property or \$ \_\_\_\_\_.
3. Listing Broker and Selling Broker hereby direct the closing attorney to include on the settlement statement the amounts listed below that are being paid or received by listing Broker or Selling Broker in this transaction for the following services:

<b>A.</b>	<b><u>Service</u></b>	<b><u>Amount Received or to be Received by Listing Broker</u></b>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

<b>B.</b>	<b><u>Service</u></b>	<b><u>Amount Paid or to be Paid by Listing Broker</u></b>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

<b>C.</b>	<b><u>Service</u></b>	<b><u>Amount Received or to be Received by Selling Broker</u></b>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

<b>D.</b>	<b><u>Service</u></b>	<b><u>Amount Paid or to be Paid by Selling Broker</u></b>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. This Agreement is subject to the following terms and conditions:
- A. This Agreement shall control over and supersede any previous agreements entered into by the parties.
  - B. Listing Broker shall have no obligation to the Selling Broker for a commission if the Purchase and Sale Agreement referenced above does not close.
  - C. Neither broker shall have the authority to reduce, change or modify the commission to be paid to other broker as set forth above without the written consent of the other broker. If either broker, subsequent to entering into this Agreement, unilaterally agrees to a reduction in the commission to be paid by Seller without the consent of the other broker, the amount of the reduction shall be deducted solely from the commission amount to be paid to the broker agreeing to the reduction.
  - D. If the Seller pays less than the full commission owed, absent the agreement of either or both of the brokers, each broker shall be paid their pro rata share of the commission actually paid based on the percentages set forth in paragraph 2 above.
5. Listing Broker and/or Selling Broker shall provide the closing attorney with a copy of this Agreement prior to closing.
6. The Listing Broker and Selling Broker do hereby direct the closing attorney to disburse to the Listing Broker and the Selling Broker at closing their respective shares of the commission in accordance with the terms and conditions of this Agreement and any written amendments thereto.
7. Notwithstanding the above, signing this Agreement shall not, unless otherwise specifically provided for herein, waive or limit the right of the Selling Broker or Listing Broker to challenge, after the closing, either the entitlement to, or the amount of any commission paid hereunder, or to assert any claim or seek arbitration regarding the same.

**SPECIAL STIPULATIONS:** The following Special Stipulations, if conflicting with any exhibit, addendum, or preceding paragraph, shall control:

**Broker commission is calculated on net sales price. (Sale price minus any seller concessions.)**

Additional Special Stipulations are  or are  not attached.

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

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

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

**NORTHGATE REALTY BROKERS LLC**  
\_\_\_\_\_  
Listing Broker

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

Broker's Phone: **770-560-9049** & FAX# **770-928-4860**

# LEAD-BASED PAINT EXHIBIT " \_\_\_\_\_ "

2010 Printing

This Exhibit is part of the Agreement with an Offer Date of \_\_\_\_\_ 20 \_\_\_\_\_ for the purchase and sale of that certain Property known as: \_\_\_\_\_, \_\_\_\_\_, Georgia \_\_\_\_\_.

## 1. Purchase and Sale or Lease Transaction Lead Warning Statement.

Every purchaser of any interest in residential property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The Seller of any interest in residential real property is required to provide the Buyer with any information on lead-based paint hazards from risk assessments or inspections in the Seller's possession and notify the Buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

## 2. Seller's/Lessor's Disclosure. [Seller/Lessor to initial section A. and B. below]

A. Presence of lead-based paint and/or lead paint hazard [check one below]:

Known lead-based paint and/or lead-based paint hazards are present in the housing (explain below):

Seller/Lessor  
Initials

Seller/Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

B. Records and Reports available to the Seller/Lessor [check one below]:

Seller/Lessor has provided the Buyer/Lessee with all the available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list document below):

Seller/Lessor  
Initials

Seller/Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

## Buyer's/Lessee's Acknowledgment. [Buyer/Lessee to initial sections below]

C. Buyer/Lessee has received copies of all information listed above.

Buyer/Lessee  
Initials

D. Buyer/Lessee has read and understands the above lead warning statement and has received the pamphlet "Protect Your Family From Lead in Your Home".

Buyer/Lessee  
Initials

E. Buyer/Lessee has [check one below]:

Received a ten (10) day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

Buyer/Lessee  
Initials

Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

## Broker's Acknowledgment. [Broker to initial below]

F. Broker has informed the Seller/Lessor of the Seller's/Lessor's obligations under 42 U.S.C. § 4852(d) and is aware of his/her responsibility to ensure compliance.

Broker's Initials

## 3. Certification of Accuracy.

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

\_\_\_\_\_  
Seller/Lessor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Buyer/Lessee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Seller/Lessor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Buyer/Lessee

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Selling/Leasing Broker

\_\_\_\_\_  
Date

**NOTE: It is the intent of this Exhibit that it be applicable to both the sale and leasing of Property. The use of terms like "Buyer/Lessee" shall mean either a Buyer or a Lessee or both as the context may indicate.**

# FINANCING CONTINGENCY EXHIBIT " \_\_\_\_\_ "

2010 Printing

This Exhibit is part of the Agreement with an Offer Date of \_\_\_\_\_ **20** \_\_\_\_\_ for the purchase and sale of that certain Property known as: \_\_\_\_\_, \_\_\_\_\_, Georgia \_\_\_\_\_.

**Purchase Subject to Limited Financing Contingency:**

Buyer shall have **10 Ten** days from the Binding Agreement Date ("Financing Contingency Period") to determine if Buyer has the ability to obtain the Loan(s) described below: *[Select 1. or 1. and 2. below. Any box not checked shall not be a part of this Agreement.]*

**1. First Mortgage (promissory note secured by first priority security deed)**

- a. Loan Amount: \_\_\_\_\_ percent (%) of the purchase price of Property
- b. Term: \_\_\_\_\_ years
- c. Interest rate at par of \_\_\_\_\_ percent (%) per annum (or initial interest rate if interest rate adjusts)
- d. Loan Type:  Conventional  FHA (see exhibit)  VA (see exhibit)  Other (see exhibit)
- e. Rate Type:  Fixed Rate Mortgage  Adjustable Rate Mortgage  Interest Only Mortgage
- f. Source of Loan:  Institutional Lender  Seller (see Exhibit \_\_\_\_\_)  Other \_\_\_\_\_

**2. Second Mortgage (promissory note secured by second priority security deed)**

- a. Loan Amount: \_\_\_\_\_ percent (%) of the purchase price of Property
- b. Term: \_\_\_\_\_ years
- c. Interest rate at par of \_\_\_\_\_ percent (%) per annum (or initial interest rate if interest rate adjusts)
- d. Rate Type:  Fixed Rate Mortgage  Adjustable Rate Mortgage  Interest Only Mortgage  Equity Line
- e. Source of Loan:  Institutional Lender  Seller (see Exhibit \_\_\_\_\_)  Other \_\_\_\_\_

The term "ability to obtain" as used herein shall mean that Buyer, as of the end of the Financing Contingency Period, is qualified to obtain the Loan(s) described above based upon the lender's customary and standard underwriting criteria. If Buyer does not have the ability to obtain either or both of the Loan(s) described above, Buyer shall cause a letter from the lender denying either of the Loan(s) to be delivered to Seller prior to the end of the Financing Contingency Period setting forth the Loan(s) described above for which Buyer applied and all of the reasons why Buyer does not have the ability to obtain said Loan(s). Except as may be provided below, this Agreement shall terminate without penalty to Buyer if the above-described letter is delivered to Seller in a timely manner.

Buyer shall be deemed to have the ability to obtain the Loan(s), this Agreement shall thereafter no longer be subject to any financing contingency and the method of payment shall thereafter be deemed to be "all cash" if either: (a) Buyer does not deliver the above-referenced letter to Seller within the time frame set forth above, or (b) Buyer delivers the above-referenced letter but the basis upon which Buyer does not have the ability to obtain the Loan(s) is that Buyer: (1) lacks sufficient funds to close; (2) is required to lease or sell other real property as a condition of obtaining the Loan(s); or (3) did not timely provide the lender(s) with needed information to evaluate whether Buyer had the ability to obtain the Loan(s). Buyer shall not intentionally make any material changes in Buyer's financial condition which would adversely affect Buyer's ability to obtain the Loan(s) during Financing Contingency Period. Buyer shall be responsible for obtaining and providing to the lender(s) all loan documentation, Official Georgia Wood Infestation Report, structural letter, well tests, septic system certifications, flood plain certifications and any other similar information required by lender.

Buyer's Initials: \_\_\_\_\_ / \_\_\_\_\_

Seller's Initials: \_\_\_\_\_ / \_\_\_\_\_

**FHA LOAN  
EXHIBIT “ \_\_\_\_\_ ”**

**2010 Printing**

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

1. It is expressly agreed that, notwithstanding any other provisions of this Agreement, Buyer shall not be obligated to complete the purchase of Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless Buyer has been given in accordance with HUD/FHA requirements a written statement by the Federal Housing Commissioner or a Direct Endorsement lender setting forth the appraised value of Property of not less than \$\_\_\_\_\_. Buyer shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure.
2. The FHA up-front \_\_\_\_\_ percent (%) mortgage insurance premium shall be paid by Buyer as follows: *[select one]*  
 **A.** in full at closing,  

**OR**

 **B.** added to the loan amount and financed. (If this box is checked, then the term “loan amount” as used herein shall mean the amount set forth in the Purchase and Sale Agreement plus the FHA mortgage insurance premium so financed; the monthly payments will increase accordingly.)
3. Buyer is aware that a monthly mortgage insurance premium shall be included in the regular monthly mortgage payments.
4. **Seller shall pay the following lender fees: Tax Service Fees.**  
(These costs  are **OR**  are not included in any closing costs that Seller may have agreed to pay in accordance with the Seller's Contributions at Closing paragraph.)
5. Any repairs required in the FHA Commitment shall be completed and paid for by \_\_\_\_\_ prior to closing provided such repairs do not exceed \$\_\_\_\_\_ in total costs.
6. Seller shall pay the cost of any lender-imposed inspections of the septic tank and/or well systems.
7. If the improvements on Property are less than one year old at the time of closing, Seller shall, if required by FHA, provide a home warranty certificate acceptable to FHA.
8. As required by FHA, both Buyer and Seller agree that if public water or a public sewer system is available at the street, Property must be connected, and that *[select one]*:  \_\_\_\_\_ agrees to pay the cost of said connection not to exceed \$\_\_\_\_\_  
**OR**  Buyer to pay \$\_\_\_\_\_ and Seller to pay \$\_\_\_\_\_ for the cost of connection. At the time of closing, Seller shall provide certification from the proper authority that Property is connected to and serviced by the public system.
9. Seller, Buyer, and Broker (and its Affiliated Licensees) certify that the above referenced Purchase and Sale Agreement is true and complete to the best of our knowledge and fully represents the transaction between them. No agreements exist outside this Purchase and Sale Agreement, and any agreements made from this date until closing, shall be revealed to lender.
10. Buyer and Seller certify that *[select one]*:  This is an arms length transaction as there is no relationship between the Buyer and Seller  
**OR**  this is not an arms length transaction because \_\_\_\_\_.
11. This exhibit shall control over a conflicting or inconsistent provision set forth in any other Exhibit to this Agreement.

Buyer's Initials: \_\_\_\_\_ / \_\_\_\_\_

Seller's Initials: \_\_\_\_\_ / \_\_\_\_\_

Broker's Initials: \_\_\_\_\_ / \_\_\_\_\_  
(or Broker's Affiliated Licensee)

Broker's Initials: \_\_\_\_\_ / \_\_\_\_\_  
(or Broker's Affiliated Licensee)