

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

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

## **1. PROPERTY DESCRIPTION**

Seller shall convey to Buyer good and marketable title to the Property by limited warranty deed, free and clear of all mortgages and liens, except the Property shall be subject to the taxes not yet due and payable and all other encumbrances, zoning ordinances, easements and restrictions of record as of the Acceptance date of the Contract. Good and marketable title as used in the Contract shall mean title which a title insurance company licensed to do business in Georgia will insure at its regular rates, subject only to standard exceptions.

## **2. PURCHASE PRICE**

Buyer covenants that Buyer has adequate financial resources to purchase the Property. The Purchase Price, as adjusted by the prorations and adjustments provided in the Contract, shall be payable in full at Closing in cash by wire transfer of immediately available United States currency to a bank account designated by Closing Attorney (as defined in the Contract).

## **3. EARNEST MONEY/NONREFUNDABLE BUILDER DEPOSIT**

**3.1. Escrow Agent's Trust Account** . If the Earnest Money funds shall be held by Escrow Agent, and not Seller, the Earnest Money funds shall be deposited into Escrow Agent's trust account as set out in the Contract. If the trust account is an interest bearing account, Escrow Agent shall be entitled to the interest.

**3.2. Seller's Account**- If Earnest Money and/or Nonrefundable Builder Deposit are to be held by Seller, said funds may be deposited into Seller's general operating account, not segregated or set apart in any manner, and Seller shall have the right to use the Earnest Money for whatever purpose Seller deems appropriate, unless Seller is otherwise required under Georgia law to deposit funds into Seller's trust account. If Seller's General Operating Account is an interest bearing account, the interest earned thereon shall be retained by Seller. Buyer and Seller acknowledge and agree that: Broker has no responsibility for, or control over any funds deposited with Seller. Buyer has not relied upon the advice or recommendation of Broker as to the financial condition or stability of Seller. The parties agree to release Broker from liability for any costs, fees, or damages resulting from Seller's handling of any funds described herein.

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

**3.3.1.** Unilaterally terminate the Contract within seven (7) days of receipt of notice from Escrow Agent, thereby releasing Buyer and Seller from any further obligations or responsibilities to the other;

**3.3.2.** If Seller holds Earnest Money, unilaterally terminate this contract within three (3) days of notice to Buyer, thereby releasing Buyer and Seller from any further obligations or responsibilities to the other; or,

**3.3.3.** Demand full performance of all other terms and conditions of the Contract and proceed to Closing.

**3.4. Disbursement of Earnest Money if Held by Escrow Agent** - After receiving reasonable assurance that the bank has credited the deposit to the account where the Earnest Money is being held, the Escrow Agent may (i) disburse the Earnest Money to Buyer if contract is not accepted, unless that issue is disputed; (ii) disburse the Earnest Money for credit to Buyer at Closing; (iii) disburse the Earnest Money to Buyer at time of Closing if it is not credited towards the purchase price at Closing; (iv) disburse the Earnest Money pursuant to a separate written agreement signed by the parties, agreeing to the terms of disbursement of the

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Earnest Money; (v) disburse the Earnest Money upon order of a court or arbitrator which has jurisdiction over the matter; or (vi) if Escrow Agent has received notice from any party that the Contract has been terminated or Closing has failed to occur, no more than thirty (30) days after said notice has been received Escrow Agent shall notify all parties of Escrow Agent's disbursement decision. Upon receipt of Escrow Agent's notification of disbursement, a party shall have ten (10) days to object to the disbursement. After receipt of a party's objection, Escrow Agent may change its decision or proceed according to Escrow Agent's original notification, but shall, in any event, notify the parties of said final disbursement.

In addition, if the disbursement of the Earnest Money is in dispute, Escrow Agent may file an action to interplead the Earnest Money to allow a court of competent jurisdiction to decide how it is to be disbursed, and Escrow Agent may disburse Earnest Money as part of the required procedures related to this filing. Additionally, Escrow Agent may deduct any attorney's fees, court costs and other related expenses from the Earnest Money as necessary to reimburse Escrow Agent for costs related to the interpleader action, and Escrow Agent shall be entitled to recover additional costs as described above if Escrow Agent's expenses exceed the amount of the Earnest Money. The party that the court deems to be entitled to the Earnest Money may seek to recover its attorney's fees, court costs and the amount deducted by the Escrow Agent from the party that was not deemed to be entitled to the Earnest Money. In performing any of its duties under this Agreement, Escrow Agent shall not be liable for any loss, cost or damage which may incur as a result of serving as Escrow Agent hereunder, except for any loss, cost or damages arising out of its willful default or gross negligence. The parties agree to release Broker from liability for any costs, fees, or damages resulting from Escrow Agent's duties described in the Contract.

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

**3.2. Non-Refundable Builder Deposit (may be applicable when Property is New Construction)-** The purpose of the Non-Refundable Builder Deposit is not to secure Buyer's performance under the Contract, but to cover the estimated cost of any upgrades, selections or options selected by Buyer and agreed to by Seller.

#### **4. CLOSING**

**4.1. Closing Documents-** At Closing each party shall execute and deliver such deeds, certifications, affidavits, and statements as are required to fulfill the terms of the Contract, comply with federal and state law, and meet the requirements of any title insurance company or lender involved in this transaction. These documents shall include, but not be limited to, those necessary to effectuate a party's IRS §1031 exchange, if applicable, consent to which is hereby given by each party to the other.

**4.2. Obligation to Complete and ILSA Compliance -** If Property is under construction as of the date of the Acceptance Date, or if Seller has agreed to construct a home on the Property prior to Closing, and in order to ensure compliance with the Interstate Land Sales Full Disclosure Act ("ILSA"), Seller covenants that, in all events, the Seller will complete the Home within two (2) years from the date of Buyer's execution of this Contract; provided that, the date for completion may also be extended beyond two years in the event of delays incurred by circumstances beyond Seller's control that are recognized under Georgia contract law as impossibility or frustration of performance. The Home shall be deemed substantially complete upon the issuance of a certificate of occupancy by the applicable local building jurisdiction or when the space can be used for its intended purpose (Substantial Completion), and a certificate of occupancy from the local building jurisdiction shall satisfy the Seller's obligation to complete hereunder. This paragraph is intended to require the unconditional completion of the Home pursuant to ILSA, and shall not waive Buyer's right to enforce the Closing date stated in the Contract. Notwithstanding any limitation on remedies set forth elsewhere in the Contract, this obligation to complete is unconditional and may not be abridged and in the event Seller breaches its covenant to complete as set forth in this paragraph, Buyer may exercise all remedies available to it under the Contract at law or in equity.

#### **5. EXPENSES RELATING TO CLOSING**

**5.1. Clearance of "Title Defects" -** "Title defects" are those defects required to be remedied by the title insurance company insuring title to the Lender, if any, or to the Buyer, if an owner's policy is requested by Buyer. Seller shall be responsible for the removal of any liens encumbering the title and any legal fees, recording or other costs associated with title curative work. Seller shall also bear the cost of any other document, instrument, advice, or other services rendered primarily for the benefit of the Seller, including, but

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not limited to: powers-of-attorney, costs associated with a mail-out or multiple counterpart closing, the preparation of corporate resolutions for Seller, or other similar expenses.

**5.2. Prorations** - Unless prohibited by any Buyer's lender, taxes, homeowner's dues, utilities, garbage or other solid waste disposal fees, rent, and other similar costs, fees or amounts shall be prorated as of the date of closing, unless the parties expressly agree in writing (i) that said item or items shall not be prorated or (ii) that the proration of an item or items shall be based on the date of possession (or some other date) and not the date of closing. If the estimate upon which the prorations were based is found to be inaccurate after closing because the actual amount of the charge exceeded or was less than the estimate, the parties agree to re-prorate, between themselves, any difference resulting from said change.

**5.3. Buyer Expenses** - Buyer shall be responsible for payment of all other costs, fees, and expenses if not otherwise provided for in the Contract, including, but not limited to Georgia transfer tax, deed recording fees and title insurance.

**5.4. Seller Closing Costs** - Seller shall bear the cost of Seller's attorney's fees and expenses, unless said attorney is also acting in the capacity of Closing Attorney representing a Lender. If Seller's attorney is acting in such a capacity, then Seller's obligation relates only to the charges and/or fees for services rendered directly to the Seller or not otherwise incurred as a result of (or as it relates to) usual and customary services provided by a Closing Attorney for a closing.

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

## 6. DEFINED CONTINGENCIES

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

**6.2. Appraisal Contingency**-*This contingency shall only be granted by the Seller if the appropriate box related thereto is checked within the body of the Contract and is thereby selected by the parties. If this contingency is not selected, this Section shall not be deemed a part of the Contract.* Subject to any expiration date expressed in writing in the Contract, the Appraisal Contingency is defined as Seller's grant to Buyer of the right to terminate the Contract if Buyer does not receive an appraisal of the Property, performed by a licensed Georgia real estate appraiser, showing the value of the Property to be equal to or greater than the Purchase Price. If the Property does not appraise for a minimum of the Purchase Price, Buyer, at Buyer's sole discretion, shall have the right to terminate the Contract and receive a full refund of the Earnest Money by providing Seller a copy of the appraisal and written notice of Buyer's intent to terminate the Contract prior to the expiration of this contingency. If the Property fails to appraise for a minimum of the Purchase Price, either party shall also have the right, but not the obligation, prior to the expiration of this contingency to propose to the other an amendment to the Contract reducing the Purchase Price; provided, however, that neither party shall have the obligation to accept said proposed amendment. If Seller does not receive notice of Buyer's termination of the Contract as provided hereunder, this contingency shall be deemed waived.

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

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

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

**6.3.1.2.** If the lender's denial of loan approval is based on Buyer's lack of sufficient funds to pay for the down payment and closing costs, lack of timely loan application, Buyer's failure to sell or lease Buyer's current home, or Buyer's conduct after the Acceptance Date but prior to the expiration of this contingency.

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

## 7. CONDITION OF PROPERTY

**7.1. Duty to Inspect** - Seller and Buyer have been advised and expressly acknowledge their obligation to conduct a thorough investigation, or to obtain independent professional advice, with respect to any concerns they may have regarding the Contract or the condition of the Property and the surrounding neighborhood, including, but not limited to, any structural, safety, title, environmental, financial, tax, legal or health concerns, or issues regarding the surrounding community, future or current real estate development, or municipal services offered to local residents.

**7.2. For New Construction Only-** If Property is under construction as of the date of the Acceptance Date, or if Seller has agreed to construct a home on the Property prior to Closing, then, except for changes and improvements made to the condition of Property pursuant to the Contract, Seller warrants and represents that, at Closing, Property shall be in the same condition on date of Closing as it is on date of Acceptance, normal wear and tear excepted and %~~room~~ clean.+

**7.2.1. Punchlist:** Whether or not Buyer has inspected the Property during construction, Buyer and Seller's representative(s) shall inspect the Property prior to Closing and after construction of Property is substantially complete. If applicable, Buyer and Seller shall prepare and sign an amendment to the Contract (the %~~Punchlist~~+) specifying all items, including any noted in previous inspections that fail to comply with the Plans and Specifications (as defined in the Contract). Buyer acknowledges that Seller will make its best efforts to address all of the items specified in the Punchlist on a timely basis as soon as reasonably possible before Closing. However, the fact that any such items remain to be addressed as of the Closing shall not constitute a valid reason for Buyer's failure or refusal to close, as long as a certificate of occupancy has been issued, and none of the proceeds due to Seller at Closing shall be withheld from Seller or placed in escrow. In lieu of repairing any item specified on the Punchlist, Seller shall have the option of replacing such item or paying a reasonable sum to Buyer for the cost of the repair

**7.2.2. Insulation:** Notwithstanding the thickness and R-values stated in the Contract, insulation may be of a lesser thickness and R-value in certain limited areas where the design of the home does not permit greater thickness, such as in locations where studs are placed in walls, at corners and at windows. The R-values and thickness stated are based on representations of the manufacturers and/or the installer of the insulation and Seller does not warrant or represent that these R-values or thickness are correct.

Seller has the right to make substitutions as to the type, thickness and R-value of the insulation installed in the home without obtaining the consent of the Buyer as long as there are no substantial changes in the R-values of the insulation installed in a substantial portion of the home.



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**7.2.3. Warranty:** Buyer agrees to accept any builder's warranty described in the Contract (the "Warranty") as the sole warranty being given by the Seller to the Buyer. Seller disclaims any and all implied warranties of merchantability and fitness or habitability as to the Property and in the place of such warranties, whether arising from implication, custom, usage, course of trade, statutory or case law, or otherwise, is the Warranty described in the Contract as the sole warranty being given by Seller to Buyer. Buyer agrees that Seller shall not be liable for any defects not specifically provided for in the Warranty. The provisions of this paragraph shall survive the Closing and delivery of the deed to the Buyer, and without further documentation, all warranties which by their terms are transferable shall be deemed transferred to Buyer.

**7.2.4. Selection Period:** If the Contract provides for a selection period during which Buyer and Seller may finalize selections for options and/or upgrades to the Property, Seller has the right to approve or disapprove Buyer's selection of upgrades and options. Buyer understands and agrees materials used for all upgrades and options may vary somewhat from any samples provided and actual as-built conditions may also vary. Such variations are inherent in manufacturing and shall not be grounds for any refusal by Buyer to accept the home. If all option selections are not completed by Buyer within the specified timeframe indicated in the Contract, Seller shall have the right to make such selections on behalf of Buyer, which selections shall be deemed accepted and agreeable to Buyer.

**7.2.5. Change Orders:** Should Buyer request a change to the Plans and Specifications (as defined in the Contract) of the improvements on the Property (a "Change Order") after the initial selection period, if any, the request must be made to Seller in writing. Seller shall not be obligated to grant Buyer's Change Order request. At Seller's sole and absolute discretion, Seller may amend the Change Order request by providing the Buyer in writing with the additional cost for the change and any necessary extensions of the Closing date caused thereby. Buyer must approve and accept the cost for any additional options and/or changes by signing and returning the amended Change Order form to Seller within 48 hours of receipt, or the Change Order request shall be deemed denied and not a part of this Contract. Payment for the additional monies required for the change must accompany the fully executed final Change Order. The total amount of any monies actually paid for the Change Order shall be added to the original Non-Refundable Builder Deposit amount, if any.

**7.3. For Resales of Homes, Lots and Raw Land:** If Property is not under construction as of the date of the Acceptance Date, and Seller has not agreed to construct a home on the Property prior to Closing, and if the Seller has agreed in writing, by Contract amendment, exhibit or otherwise, to perform any repairs to the Property, any repairs performed by Seller shall be done in a good and workmanlike manner and shall be completed no later than three (3) days prior to Closing.

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

**7.5. Eminent Domain-** If, after the Acceptance Date of the Contract and prior to Closing, Seller receives notice of the commencement or threatened commencement of eminent domain or other like proceedings against the Property or any portion thereof, Seller shall immediately give Notice thereof to Buyer. Within thirty (30) days of Seller's notification to Buyer, Buyer shall elect by Notice to Seller either (i) to Terminate the Contract, in which event the Earnest Money shall be refunded to Buyer, or (ii) to close the transaction in accordance with the terms of the Contract but subject to such proceedings, in which event the Purchase Price

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shall not be reduced but Seller shall assign to Buyer Seller's rights in any condemnation award or proceeds. If Buyer does not give Notice timely, Buyer shall be deemed to have elected to close the transaction in accordance with this paragraph.

**7.6. Plans and Specifications** – Buyer hereby acknowledges and agrees that any floor plans, renderings, drawings, and the like, furnished by Seller to Buyer and which purport to depict the home, or any portion thereof, or the building containing the same, are merely approximations, and do not necessarily reflect the actual as-built conditions of the same. Illustrations in sales brochures and other marketing materials are artists' representations and are not actual construction plans or exact depictions of the Home. The Buyer further acknowledges and agrees that the decorations, furniture, furnishings, wallpaper, appliances and fixtures contained in any model home are for demonstrative purposes only and are not included in the sale of the Property. Buyer acknowledges that during the course of construction certain changes, substitutions of materials, deviations or omissions may be required by governmental authorities having jurisdiction over the Property, design changes, or availability of labor or materials. All such changes, deviations and omissions are hereby authorized by Buyer. Certain items and improvements to the Home such as paint color, tile cabinets, and appliances furnished by Seller may be subject to design change by the manufacturer or subject to shading in color or graduation and may vary from any samples that any have been shown to Buyer by Seller.

## 8. BROKERAGE

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

**8.1.** Seller and Buyer each hereby represents and warrants to the other that he/she/they have not dealt with any real estate Broker, agent or salesperson (other than Seller's Broker or Buyer's Broker, as defined in the Contract) so as to create any legal right or claim in any such Broker, agent or salesperson for a commission or similar fee or compensation with respect to the negotiation and/or consummation of the Contract. Buyer and Seller acknowledge that they are not represented by a Broker unless they have signed a brokerage agreement with said Broker. If any party hereto is not represented by a Broker, that party acknowledges full responsibility for protecting his/ her/their own interests.

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

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

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

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

## 9. DEFAULT

A party shall be in default if he or she breaches any term of the Contract. Except in the event of a party's failure to close or as otherwise stated in the Contract, neither Seller nor Buyer shall be deemed to be in default hereunder,

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however, until and unless such party has been given written notice of its failure to comply with the terms of the Contract and thereafter does not cure such failure within three (3) banking days after receipt of such notice.

**9.1. Buyer's Default** - Buyer's default under any of the terms of the Contract may result in Seller's termination of the Contract, together with Seller's exercise of all rights and remedies available under the law, including, but not limited to, Buyer's forfeiture of earnest money deposits and law suits for damages. Seller may either accept the Earnest Money as full liquidated damages or bring legal action for actual damages, it being agreed by the parties that the actual damages are impossible to calculate. Seller's right to retain the Earnest Money is intended not as penalty, but as full liquidated damages pursuant to Official Code of Georgia Annotated, §13-6-7.

**9.2. Seller's Default** - If this transaction shall not be closed because of default of Seller, the Earnest Money shall, at Buyer's election, be refunded to Buyer, and, after repayment of the Earnest Money to Buyer, the Contract shall be null and void and neither Seller nor Buyer shall have any further rights or obligations hereunder; or Buyer shall have the right to sue for specific performance of the Contract, provided that such specific performance remedy shall be available to Buyer only upon Buyer's full satisfaction of each of Buyer's obligations under the Contract, including without limitation Buyer's obligation to deliver the Earnest Money and delivering sufficient proof to the Closing Attorney and Seller that Buyer is ready, willing and able to close this transaction. The option selected by Buyer shall be Buyer's sole and exclusive remedy, and in no event shall Buyer be entitled to damages.

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

## 10. NOTICES

Any notice, request or other communication required or permitted to be given hereunder shall be in writing and shall be delivered by hand or overnight courier (such as United Parcel Service or Federal Express), sent by facsimile, sent by electronic mail (email) or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party at its address as set forth in the Contract. Any such notice shall be considered given on the date of such hand or courier delivery, confirmed facsimile transmission, deposit with such overnight courier for next business day delivery, or deposit in the United States mail, but the time period (if any is provided in the Contract) in which to respond to such notice shall commence on the date of hand or overnight courier delivery or on the date received following deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice. By giving at least five (5) banking days prior written notice thereof, any party may from time to time and at any time change its mailing address hereunder. Any notice of any party may be given by or to such party's counsel or Broker as long as it is signed by the appropriate party. The parties' respective mailing and email addresses for notice purposes are indicated after the parties' signatures in the Contract. Telephone numbers are given for convenience of reference only. Notice by telephone shall not be effective.

## 11. MISCELLANEOUS

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

**11.1.** The provisions of the Contract shall extend to and be binding on the respective heirs, executors, administrators and successors of each party hereto;

**11.2.** If any provision of the Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall nonetheless remain in full force and effect;

**11.3.** The section headings appearing in the Contract are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof;

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**11.4.** The Contract, including any Exhibits attached hereto, contain the entire agreement between the parties pertaining to the subject matter hereof and fully supersede all prior written or oral agreements and understandings between the parties pertaining to such subject matter;

**11.5.** The Contract shall be governed by and interpreted under the laws of the State of Georgia;

**11.6.** Time is of the essence of the Contract.

**11.7.** Unless expressly agreed otherwise in the Contract or unless provided otherwise in any other document executed by Seller and Buyer at or prior to closing, the provisions of the Contract shall survive closing.

**11.8.** The form of the Contract is provided as a convenience. All parties to the Contract have the obligation to seek independent legal advice as to whether this form protects their rights and fulfills their expectations.

**11.9. Definitions:**

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

**11.9.1. Acceptance (Accepted):** "Acceptance" or "Accepted" shall mean the acceptance of the Contract pursuant to a right to do so provided in the Contract. Acceptance shall occur only prior to an Offer being withdrawn, revoked or terminated, in writing and in accordance with any provision of the Contract, if the receiver of an Offer accepts it exactly as presented, without modification, provided Acceptance is communicated, in writing, to the party making the Offer;

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

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

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

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

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

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

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

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

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

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

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