

**TOWN OF TALLULAH FALLS  
STATE OF GEORGIA  
SPECIAL CALLED COUNCIL MEETING  
TOWN HALL, 255 MAIN STREET, TALLULAH FALLS, GA  
DECEMBER 17, 2020, 3:00 PM**

**Agenda**

- I. CALL TO ORDER
- II. ADOPTION OF THE AGENDA
- III. NEW BUSINESS
  - Approval of purchase and sale agreement related to sale of surplus property located at 11785 Hwy 441 in Tallulah Falls pursuant to Sealed Bid Awarded 12-10-2020
- IV. ADJOURNMENT



- B. Protected Period:** If Owner during the Protected Period, as that term is hereinafter defined, sells or contracts to sell, exchange or leases Property (pursuant to an authorization above) to any buyer or tenant who made an offer on, was introduced to, visited, received information on, inquired about, or otherwise learned of the Property during the term of this Agreement, as a result of the efforts of the Broker, then Owner shall pay the commission referenced above to Broker at the closing of the sale, exchange, lease of Property to said buyer or tenant. The term "Protected Period" shall refer to the 90 day period following the earlier of either: (a) the expiration of this Agreement; or (b) the date that the Agreement is terminated upon the mutual, written consent of the Broker and Owner. If this Agreement is terminated by Owner without the express, written consent of Broker, the Protected Period shall be the time period referenced above plus the number of days that remained on the term of this Agreement at the time it was terminated early without the express, written consent of Broker. In such event, the Protected Period shall commence on the date this Agreement was terminated early without the express written consent of Broker. For the purposes of this Agreement, the terms "buyer" and "tenant" shall include, respectively, buyer, tenant, all members of the buyer's and tenant's immediate family, any legal entity in which buyer, tenant or any member of buyer's or tenant's immediate family owns or controls, directly or indirectly, more than ten percent (10%) of the shares or interests therein, and any third party who is acting under the direction or control of any of the above parties. Notwithstanding the above, no listing commission shall be paid to Broker if this Agreement has either expired or been terminated upon the mutual, written consent of Broker and Owner and the Property is sold or contracted to be sold to a prospective buyer or tenant by or through another licensed broker with whom Owner has signed an exclusive right to sell listing agreement. The commission rights and obligations set forth herein shall survive the termination or expiration of this Agreement.
- 7. Independent Contractor Relationship.** This Agreement shall create an independent contractor relationship between Broker and Owner. Broker shall at no time be considered an employee of Owner. If there is an affiliated licensee of Broker directly assisting Broker in marketing and selling the Property, said licensee shall be an:  
*[Select all which apply. Any section not selected shall not be a part of this Agreement.]*
- Independent contractor of Broker  
 Employee of Broker
- 8. Arbitration.** All claims arising out of or relating to this Agreement and the alleged acts or omissions of any or all the parties hereunder shall be resolved by arbitration in accordance with the Federal Arbitration Act 9 U.S.C. § 1 et. seq. and the rules and procedures of the arbitration company selected to administer the arbitration. Upon making or receiving a demand for arbitration, the parties shall work together in good faith to select a mutually acceptable arbitration company with offices in Georgia to administer and conduct the arbitration. If the parties cannot mutually agree on an arbitration company, the company shall be selected as follows. Each party shall simultaneously exchange with the other party a list of three arbitration companies with offices in Georgia acceptable to that party to administer and conduct the arbitration. If there is only one (1) arbitration company that is common to both lists, that company shall administer and conduct the arbitration. If there is more than one arbitration company that is common to both lists, the parties shall either mutually agree on which arbitration company shall be selected or flip a coin to select the arbitration company. If there is not initially a common arbitration company on the lists, the parties shall repeat the process by expanding their lists by two each time until there is a common name on the lists selected by the parties. The decision of the arbitrator shall be final and the arbitrator shall have authority to award attorneys' fees and allocate the costs of arbitration as part of any final award. All claims shall be brought by a party in his or her individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. The arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. Notwithstanding anything to the contrary contained herein, this agreement to arbitrate shall not apply to: (1) any claim regarding the handling and disbursement of earnest money; and (2) any claim of Broker regarding the entitlement to or the non-payment of a real estate commission hereunder.
- 9. LIMIT ON BROKER'S LIABILITY. OWNER ACKNOWLEDGES THAT BROKER:**
- A. SHALL, UNDER NO CIRCUMSTANCES, HAVE ANY LIABILITY GREATER THAN THE AMOUNT OF THE REAL ESTATE COMMISSION PAID HEREUNDER TO BROKER (EXCLUDING ANY COMMISSION AMOUNT PAID TO A COOPERATING REAL ESTATE BROKER, IF ANY) OR, IF NO REAL ESTATE COMMISSION IS PAID TO BROKER, THAN A SUM NOT TO EXCEED \$100; AND**
- B. NOTWITHSTANDING THE ABOVE, SHALL HAVE NO LIABILITY IN EXCESS OF \$100 FOR ANY LOSS OF FUNDS AS THE RESULT OF WIRE OR CYBER FRAUD.**
- 10. Statute of Limitations.** All claims of any nature whatsoever against the Broker(s) and/or their affiliated licensees, whether asserted in litigation or arbitration and sounding in breach of contract and/or tort, must be brought within two (2) years from the date any claim or cause of action arises. Such actions shall thereafter be time-barred.
- 11. Referrals.** Owner hereby authorizes Broker to refer Owner to another real estate licensee or broker for brokerage or relocation services not related to the sale of the Property. Owner acknowledges and agrees that Broker may receive a valuable consideration for the referral.
- 12. Hazardous Conditions on Property.** Seller acknowledges that Seller owes a duty of reasonable care to keep the Property safe for prospective buyers, tenants and their agents who to view and inspect the Property. Among other things, this includes a duty to warn such invitees of dangerous conditions that would not be obvious to an invitee. Sellers are encouraged to inspect the Property for hazardous conditions and correct and eliminate all such conditions. Seller agrees to indemnify and hold Broker harmless from and against any and all claims, causes of action, suits, and damages arising out of or relating to a person or persons being injured or harmed while on the Property.

13. **No Brokerage Relationship Between Seller and Broker.** This Agreement shall not be construed to create a brokerage engagement between Owner and Broker, but is, rather, limited to Owner's permission given to Broker to show the above Property to prospective buyer(s) and/or tenants, pursuant to the above authorization, in exchange for compensation to Broker as set forth above. The parties understand and agree that Owner is Broker's customer, and that, as such, Broker may perform ministerial acts for Owner. It is understood that this Agreement in no way prohibits Owner from selling or leasing Property directly to a buyer or tenant other than prospective buyer(s) and tenant(s) listed above or subsequently provided by Broker to Owner. Owner shall retain the right to enter into a listing agreement concerning Property with any other real estate broker.
14. **Owner Representations.** Owner represents that Owner:
- A. presently has title to Property or has full authority to enter into this Agreement; and
  - B. will cooperate with Broker to show and sell Property to prospective buyer(s).
15. **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.
16. **Time of Essence.** Time is of the essence of this Agreement.
17. **WARNING TO BUYERS AND SELLERS: BEWARE OF CYBER-FRAUD.** Fraudulent e-mails attempting to get the buyer and/or seller to wire money to criminal computer hackers are increasingly common in real estate transactions. Specifically, criminals are impersonating the online identity of the actual mortgage lender, closing attorney, real estate broker or other person or companies involved in the real estate transaction. In that role, the criminals send fake wiring instructions attempting to trick buyers and/or sellers into wiring them money related to the real estate transaction, including, for example, the buyer's earnest money, the cash needed for the buyer to close, and/or the seller's proceeds from the closing. These instructions, if followed, will result in the money being wired to the criminals. In many cases, the fraudulent email is believable because it is sent from what appears to be the email address/domain of the legitimate company or person responsible for sending the buyer or seller wiring instructions. The buyer and/or seller should verify wiring instructions sent by email by independently looking up and calling the telephone number of the company or person purporting to have sent them. Buyers and sellers should never call the telephone number provided with wiring instructions sent by email since they may end up receiving a fake verification from the criminals. Buyer and sellers should be on special alert for: 1) emails directing the buyer and/or seller to wire money to a bank or bank account in a state other than Georgia; and 2) emails from a person or company involved in the real estate transaction that are slightly different (often by one letter, number, or character) from the actual email address of the person or company.
18. **Receipt by Owner of Consumer Protection Brochures.** Brochures referenced herein are prepared courtesy of the Georgia Association of REALTORS®. The recommendations are general in nature and are not intended to be exhaustive. Some of the recommendations may not apply to specific properties. Owners are encouraged to consult with experts and professionals of their own choosing to ensure that they are protected.

**The following Brochures and/or Exhibits have been received by the Owner(s):** (Check all that apply. Any box not checked means the Owner(s) has not received that brochure or other consumer information)

- GAR CB10 – Protect Yourself When Selling a House
- GAR CB28 – What Buyers and Sellers Should Know About Short Sales and Distressed Properties
- GAR F316 – Lead-Based Paint Exhibit

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

**Additional Special Stipulations are attached.**

BY SIGNING THIS AGREEMENT, OWNER ACKNOWLEDGES THAT: (1) OWNER HAS READ ALL PROVISIONS AND DISCLOSURES MADE HEREIN; (2) OWNER UNDERSTANDS ALL SUCH PROVISIONS AND DISCLOSURES AND HAS ENTERED INTO THIS AGREEMENT VOLUNTARILY; AND (3) OWNER IS NOT SUBJECT TO A CURRENT EXCLUSIVE LISTING AGREEMENT WITH ANY OTHER BROKER.

### OWNER'S ACCEPTANCE AND CONTACT INFORMATION

[Signature Line]

1 Owner's Signature

CITY OF TALLULAH FALLS  
Print or Type Name \_\_\_\_\_ Date \_\_\_\_\_

Owner's Address for Receiving Notice \_\_\_\_\_

Owner's Phone Number:  Cell  Home  Work

Owner's E-mail Address \_\_\_\_\_

Additional Signature Page (F146) is attached.

[Signature Line]

2 Owner's Signature

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

Owner's Address for Receiving Notice \_\_\_\_\_

Owner's Phone Number:  Cell  Home  Work

Owner's E-mail Address \_\_\_\_\_

### BROKER / BROKER'S AFFILIATED LICENSEE CONTACT INFORMATION

BHGRE METROBROKERS  
Broker

*Gerald Silvious* dotloop verified  
12/16/20 11:51 AM EST  
L6JW-DXGV-MXCY-Y0VF  
Broker/Affiliated Licensee Signature \_\_\_\_\_ Date \_\_\_\_\_

Gerald Silvious \_\_\_\_\_ 339122 \_\_\_\_\_  
Print or Type Name \_\_\_\_\_ GA Real Estate License # \_\_\_\_\_

706.982.0096 \_\_\_\_\_ 706.212.9969 \_\_\_\_\_  
Licensee's Phone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

gerald.silvious@metrobrokers.com  
Licensee's E-mail Address \_\_\_\_\_

GMLRA  
REALTOR® Membership \_\_\_\_\_

MBTR31 \_\_\_\_\_ H6179 \_\_\_\_\_  
MLS Office Code \_\_\_\_\_ Brokerage Firm License Number \_\_\_\_\_

706.212.9960 \_\_\_\_\_ 706.212.9969 \_\_\_\_\_  
Broker's Phone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

534 HWY 441  
Broker's Address \_\_\_\_\_

CLAYTON, GA 30525 \_\_\_\_\_

RECEIPT OF A COPY OF THIS AGREEMENT IS HEREBY ACKNOWLEDGED BY OWNER. The above Agreement is hereby accepted, \_\_\_\_\_ o'clock \_\_\_\_\_ .m., on the date of \_\_\_\_\_.



# PURCHASE AND SALE AGREEMENT

Offer Date: 12/01/2020



2020 Printing

## A. KEY TERMS AND CONDITIONS

1. **Purchase and Sale.** The undersigned buyer(s) ("Buyer") agree to buy and the undersigned seller(s) ("Seller") agree to sell the real property described below including all fixtures, improvements and landscaping therein ("Property") on the terms and conditions set forth in this Agreement.

a. **Property Identification:** Address: 11785 HWY 441

City TALLULAH FALLS, County RABUN, Georgia, Zip Code 30573

MLS Number: \_\_\_\_\_ Tax Parcel I.D. Number: 101B 068

b. **Legal Description:** The legal description of the Property is [select one of the following below]:

(1) attached as an exhibit hereto;

(2) Condominium (attach F204 Condominium Resale Purchase and Sale Exhibit)

(3) the same as described in Deed Book S41, Page 101-106, et. seq., of the land records of the above county; **OR**

(4) Land Lot(s) \_\_\_\_\_ of the \_\_\_\_\_ District, \_\_\_\_\_ Section/GMD, Lot \_\_\_\_\_, Block \_\_\_\_\_, Unit \_\_\_\_\_, Phase/Section \_\_\_\_\_ of \_\_\_\_\_ Subdivision/Development, according to the plat recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, et. seq., of the land records of the above county.

2. **Purchase Price of Property to be Paid by Buyer.**  
\$ 300,000

3. **Closing Costs.**  
Seller's Contribution at Closing: \$ 0

4. **Closing Date and Possession.**

Closing Date shall be **ON OR BEFORE** 01-31-2021 with possession of the Property transferred to Buyer

at Closing **OR**  \_\_\_\_\_ days after Closing at \_\_\_\_\_ o'clock  AM  PM (attach F219 Temporary Occupancy Agreement).

5. **Holder of Earnest Money ("Holder").** (If Holder is Closing Attorney, F510 must be attached as an exhibit hereto, and F511 must be signed by Closing Attorney.)  
BHGRE METRO BROKERS

6. **Closing Attorney/Law Firm.**  
RUSSELL AND RUSSELL

7. **Earnest Money.** Earnest Money shall be paid by  check  cash or  wire transfer of immediately available funds as follows:

a. \$ \_\_\_\_\_ as of the Offer Date.

b. \$5000.00 within 5 days from the Binding Agreement Date.

c. \_\_\_\_\_

8. **Inspection and Due Diligence.**

a. **Due Diligence Period:** Property is being sold subject to a Due Diligence Period of 30 days from the Binding Agreement Date.

b. **Option Payment for Due Diligence Period:** In consideration of Seller granting Buyer the option to terminate this Agreement, Buyer:

(1) has paid Seller \$10.00 in nonrefundable option money, the receipt and sufficiency of which is hereby acknowledged; plus

(2) shall pay Seller additional option money of \$ \_\_\_\_\_ by  check or  wire transfer of immediately available funds either  as of the Offer Date; **OR**  within \_\_\_\_\_ days from the Binding Agreement Date. Any additional option money paid by Buyer to Seller  shall (subject to lender approval) or  shall not be applied toward the purchase price at closing and shall not be refundable to Buyer unless the closing fails to occur due to the default of the Seller.

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

10. **Brokerage Relationships in this Transaction.**

a. **Selling Broker is** BHGRE METRO BROKERS **and is:**

- (1)  representing Buyer as a client.
- (2)  working with Buyer as a customer.
- (3)  acting as a dual agent representing Buyer and Seller.
- (4)  acting as a designated agent where:

\_\_\_\_\_ has been assigned to exclusively represent Buyer.

b. **Listing Broker is** BHGRE METROBROKERS **and is:**

- (1)  representing Seller as a client.
- (2)  working with Seller as a customer.
- (3)  acting as a dual agent representing Buyer and Seller.
- (4)  acting as a designated agent where:

\_\_\_\_\_ has been assigned to exclusively represent Seller.

c. **Material Relationship Disclosure:** The material relationships required to be disclosed by either Broker are as follows:

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

Buyer(s) Initials \_\_\_\_\_ Seller(s) Initials \_\_\_\_\_

THIS FORM IS COPYRIGHTED AND MAY ONLY BE USED IN REAL ESTATE TRANSACTIONS IN WHICH Gerald Silvius IS INVOLVED AS A REAL ESTATE LICENSEE. UNAUTHORIZED USE OF THE FORM MAY RESULT IN LEGAL SANCTIONS BEING BROUGHT AGAINST THE USER AND SHOULD BE REPORTED TO THE GEORGIA ASSOCIATION OF REALTORS® AT (770) 451-1831.

## B. CORRESPONDING PARAGRAPHS FOR SECTION A

### 1. Purchase and Sale.

- a. **Warranty:** Seller warrants that at the time of closing Seller will convey good and marketable title to said Property by limited warranty deed subject only to: (1) zoning; (2) general utility, sewer, and drainage easements of record as of the Binding Agreement Date and upon which the improvements (other than any driveway or walkway) do not encroach; (3) declarations of condominium and declarations of covenants, conditions and restrictions of record on the Binding Agreement Date; and (4) leases and other encumbrances specified in this Agreement. Buyer agrees to assume Seller's responsibilities in any leases specified in this Agreement.
- b. **Examination:** Buyer may examine title and obtain a survey of the Property and furnish Seller with a written statement of title objections at or prior to the closing. If Seller fails or is unable to satisfy valid title objections at or prior to the closing or any unilateral extension thereof, which would prevent the Seller from conveying good and marketable title to the Property, then Buyer, among its other remedies, may terminate the Agreement without penalty upon written notice to Seller. Good and marketable title as used herein shall mean title which a title insurance company licensed to do business in Georgia will insure at its regular rates, subject only to standard exceptions.
- c. **Title Insurance:** Buyer hereby directs any mortgage lender involved in this transaction to quote the cost of title insurance based upon the presumption that Buyer will be obtaining an enhanced title insurance policy since such a policy affords Buyer greater coverage.

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

### 3. Closing Costs.

- a. **Seller's Contribution at Closing:** At closing, Seller shall make the referenced Seller's Monetary Contribution which Buyer may use to pay any cost or expense of Buyer related to this transaction. Buyer acknowledges that Buyer's mortgage lender(s) may not allow the Seller's Monetary Contribution, or the full amount thereof, to be used for some costs or expenses. In such event, any unused portion of the Seller's Monetary Contribution shall remain the property of the Seller. The Seller shall pay the fees and costs of the closing attorney: (1) to prepare and record title curative documents and (2) for Seller not attending the closing in person.
- b. **Items Paid by Buyer:** At closing, Buyer shall pay: (1) Georgia property transfer tax; (2) the cost to search title and tax records and prepare the limited warranty deed; and (3) all other costs, fees and charges to close this transaction, except as otherwise provided herein.
- c. **Prorations:** Ad valorem property taxes, community association fees, solid waste and governmental fees and utility bills for which service cannot be terminated as of the date of closing shall be prorated as of the date of closing. In the event ad valorem property taxes are based upon an estimated tax bill or tax bill under appeal, Buyer and Seller shall, upon the issuance of the actual tax bill or the appeal being resolved, promptly make such financial adjustments between themselves as are necessary to correctly prorate the tax bill. In the event there are tax savings resulting from a tax appeal, third party professional costs to handle the appeal may be deducted from the savings for that tax year before re-prorating. Any pending tax appeal for the year in which the Property is sold shall be deemed assigned to Buyer at closing.

### 4. Closing Date and Possession.

- a. **Right to Extend the Closing Date:** Buyer or Seller may unilaterally extend the closing date for eight (8) days upon notice to the other party given prior to or on the date of closing if: (1) Seller cannot satisfy valid title objections (excluding title objections that: (a) can be satisfied through the payment of money or by bonding off the same; and (b) do not prevent Seller from conveying good and marketable title, as that term is defined herein, to the Property); (2) Buyer's mortgage lender (even in "all cash" transactions where Buyer is obtaining a mortgage loan) or the closing attorney is delayed and cannot fulfill their respective obligations by the date of closing, provided that the delay is not caused by Buyer; or (3) Buyer has not received required estimates or disclosures and Buyer is prohibited from closing under federal regulations. The party unilaterally extending the closing date shall state the basis for the delay in the notice of extension. If the right to unilaterally extend the closing date is exercised once by either the Buyer or Seller, the right shall thereafter terminate.
- b. **Keys and Openers:** At Closing, Seller shall provide Buyer with all keys, door openers, codes and other similar equipment pertaining to the Property.

5. **Holder of Earnest Money.** The earnest money shall be deposited into Holder's escrow/trust account (with Holder being permitted to retain the interest if the account is interest bearing) not later than: (a) five (5) banking days after the Binding Agreement Date hereunder or (b) five (5) banking days after the date it is actually received if it is received after the Binding Agreement Date. If Buyer writes a check for earnest money and the same is deposited into Holder's escrow/trust account, Holder shall not 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, or earnest money is not timely paid, Holder shall promptly give notice of the same to Buyer and Seller. Buyer shall have three (3) banking days from the date of receiving the notice to cure the default and if Buyer does not do so, Seller may within seven (7) days thereafter terminate this Agreement upon notice to Buyer. If Seller fails to terminate the Agreement timely, Seller's right to terminate based on the default shall be waived.

6. **Closing Attorney/Law Firm.** Buyer shall have the right to select the closing attorney to close this transaction, and hereby selects the closing attorney referenced herein. In all cases where an individual closing attorney is named in this Agreement but the closing attorney is employed by or an owner, shareholder, or member in a law firm, the law firm shall be deemed to be the closing attorney. If Buyer's mortgage lender refuses to allow that closing attorney to close this transaction, Buyer shall select a different closing attorney acceptable to the mortgage lender. The closing attorney shall represent the mortgage lender in any transaction in which the Buyer obtains mortgage financing (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.

## 7. **Earnest Money.**

- a. **Entitlement to Earnest Money:** Subject to the paragraph below, Buyer shall be entitled to the earnest money upon the: (1) failure of the parties to enter into a binding agreement; (2) failure of any unexpired contingency or condition to which this Agreement is subject; (3) termination of this Agreement due to the default of Seller; or (4) termination of this Agreement in accordance with a specific right to terminate set forth in the Agreement. Otherwise, the earnest money shall be applied towards the purchase price of the Property at closing or if other funds are used to pay the purchase price then the earnest money shall be returned to Buyer.
- b. **Disbursement of Earnest Money:** Holder shall disburse the earnest money upon: (1) the closing of Property; (2) a subsequent written agreement of Buyer and Seller; (3) an order of a court or arbitrator having jurisdiction over any dispute involving the earnest money; or (4) the failure of the parties to enter into a binding agreement (where there is no dispute over the formation or enforceability of the Agreement). In addition, Holder may disburse the earnest money upon a reasonable interpretation of the Agreement, provided that Holder first gives all parties at least ten (10) days notice stating to whom and why the disbursement will be made. Any party may object to the proposed disbursement by giving written notice of the same to Holder within the ten (10) day notice period. Objections not timely made in writing shall be deemed waived. If Holder receives an objection and, after considering it, decides to disburse the earnest money as originally proposed, Holder may do so and send notice to the parties of Holder's action. If Holder decides to modify its proposed disbursement, Holder shall first send a new ten (10) day notice to the parties stating the rationale for the modification and to whom the disbursement will now be made. Holder shall disburse the earnest money to Seller by check in the event Holder: (1) makes a reasonable interpretation of the Agreement that the Agreement has been terminated due to Buyer's default; and (2) sends the required ten (10) day notice of the proposed disbursement to Buyer and Seller. The above-referenced check shall constitute liquidated damages in full settlement of all claims of Seller against Buyer and the Brokers in this transaction. Holder may require Seller to sign a W-9 before issuing a check to Seller for liquidated damages of \$600 or more. Such liquidated damages are a reasonable pre-estimate of Seller's actual damages, which damages the parties agree are difficult to ascertain and are not a penalty.
- c. **Interpleader:** If an earnest money dispute cannot be resolved after a reasonable time, Holder may interplead the earnest money into a court of competent jurisdiction if Holder is unsure who is entitled to the earnest money. Holder shall be reimbursed for and may deduct its costs, expenses and reasonable attorney's fees from any funds interpleaded. The prevailing defendant in the interpleader lawsuit shall be entitled to collect its attorney's fees, court costs and the amount deducted by Holder to cover Holder's costs and expenses from the non-prevailing defendant.
- d. **Hold Harmless:** All parties hereby covenant and agree to: (1) indemnify and hold Holder harmless from and against all claims, injuries, suits and damages arising out of the performance by Holder of its duties; (2) not to sue Holder for any decision of Holder to disburse earnest money in accordance with this Agreement.

## 8. **Inspection and Due Diligence.**

- a. **Right to Inspect Property:** Upon prior notice to Seller, Buyer and/or Buyer's representatives shall have the right to enter the Property at Buyer's expense and at reasonable times (including immediately prior to closing) to inspect, examine, test, appraise and survey Property. Seller shall cause all utilities, systems and equipment to be on so that Buyer may complete all inspections. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages relating to the exercise of these rights and shall promptly restore any portion of the Property damaged or disturbed from testing or other evaluations to a condition equal to or better than the condition it was in prior to such testing or evaluation. If Buyer is concerned that the Property may have been used as a laboratory for the production of methamphetamine, or as a dumpsite for the same, Buyer should review the National Clandestine Laboratory Register – Georgia at [www.dea.gov](http://www.dea.gov).
  - b. **Duty to Inspect Neighborhood:** In every neighborhood there are conditions which different buyers may find objectionable. Buyer shall have the sole duty to become familiar with neighborhood conditions that could affect the Property such as landfills, quarries, power lines, airports, cemeteries, prisons, stadiums, odor and noise producing activities, crime and school, land use, government and transportation maps and plans. 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).**
  - c. **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.
  - d. **Property Sold "As-Is" Unless this Agreement is Subject to Due Diligence Period:**
    - (1) **General:** Unless the Property is being sold subject to a Due Diligence Period referenced herein, the Property shall be sold "as-is" with all faults. Even if the Property is sold "as-is" Seller is required under Georgia law to disclose to the Buyer latent or hidden defects in the Property which Seller is aware and which could not have been discovered by the Buyer upon a reasonable inspection of the property. The inclusion of a Due Diligence Period herein shall: (a) during its term make this Agreement an option contract in which Buyer may decide to proceed or not proceed with the purchase of the Property for any or no reason; and (b) be an acknowledgement by Seller that Buyer has paid separate valuable consideration of \$10 for the granting of the option.
    - (2) **Purpose of Due Diligence Period:** During the Due Diligence Period, Buyer shall determine whether or not to exercise Buyer's option to proceed or not proceed with the purchase of the Property. If Buyer has concerns with the Property, Buyer may during the Due Diligence Period seek to negotiate an amendment to this Agreement to address such concerns.
    - (3) **Notice of Decision Not To Proceed:** Buyer shall have elected to exercise Buyer's option to purchase the Property unless prior to the end of any Due Diligence Period, Buyer notifies Seller of Buyer's decision not to proceed by delivering to Seller a notice of termination of this Agreement. In the event Buyer does not terminate this Agreement prior to the end of the Due Diligence Period, then: (a) Buyer shall have accepted the Property "as-is" subject to the terms of this Agreement; and (b) Buyer shall no longer have any right to terminate this Agreement based upon the Due Diligence Period.
  - e. **Repairs:** All agreed upon repairs and replacements shall be performed in a good and workmanlike manner prior to closing.
9. **Lead-Based Paint.** If any portion of a residential dwelling on the Property was built prior to 1978, the Lead-Based Paint Exhibit (F316) is hereby attached as an exhibit to this Agreement. The term "residential dwelling" includes any painted fixture or material used therein that was built or manufactured prior to 1978.



**10. Brokerage Relationships in this Transaction.**

- a. Agency Disclosure:** No Broker in this transaction shall owe any duty to Buyer or Seller greater than what is set forth in their brokerage engagements and the Brokerage Relationships in Real Estate Transactions Act, O.C.G.A. § 10-6A-1 et. seq.;
- (1) No Agency Relationship:** Buyer and Seller acknowledge that, if they are not represented by Brokers in a client relationship, they are each solely responsible for protecting their own interests, and that Broker's role is limited to performing ministerial acts for that party.
- (2) Consent to Dual Agency:** If Broker is acting as dual agent in this transaction, Buyer and Seller consent to the same and acknowledge having been advised of the following:
- i. Dual Agency Disclosure:** *[Applicable only if Broker is acting as a dual agent in this transaction.]*
- (a) As a dual agent, Broker is representing two clients whose interests are or at times could be different or even adverse;
  - (b) Broker will disclose all adverse material facts relevant to the transaction and actually known to the dual agent to all parties in the transaction except for information made confidential by request or instructions from each client which is not otherwise required to be disclosed by law;
  - (c) Buyer and Seller do not have to consent to dual agency and the consent of Buyer and Seller to dual agency has been given voluntarily and the parties have read and understand their brokerage engagement agreements.
  - (d) Notwithstanding any provision to the contrary contained herein Buyer and Seller each hereby direct Broker while acting as a dual agent to keep confidential and not reveal to the other party any information which could materially and adversely affect their negotiating position.
- ii. Designated Agency Disclosure:** If Broker in this transaction is acting as a designated agent, Buyer and Seller consent to the same and acknowledge that each designated agent shall exclusively represent the party to whom each has been assigned as a client and shall not represent in this transaction the client assigned to the other designated agent.
- b. Brokerage:** Seller has agreed to pay Listing Broker(s) a commission pursuant to a separate brokerage engagement agreement entered into between the parties and incorporated herein by reference ("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 portions of the 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. The acceptance by the Broker(s) of a partial real estate commission at the closing shall not relieve the party owing the same from paying the remainder after the closing (unless the Broker(s) have expressly agreed in writing to accept the amount paid in full satisfaction of the Broker(s) claim to a commission). The Brokers herein are signing this Agreement to reflect their role in this transaction and consent to act as Holder if either of them is named as such. This Agreement and any amendment thereto shall be enforceable even without the signature of any Broker referenced herein.
- c. Disclaimer:** Buyer and Seller have not relied upon any advice or representations of Brokers other than what is included in this Agreement. Brokers shall have no duty to inspect the Property or to advise Buyer or Seller on any matter relating to the Property which could have been revealed through a survey, appraisal, title search, Official Georgia Wood Infestation Report, utility bill review, septic system inspection, well water test, tests for radon, asbestos, mold, methamphetamine, and lead-based paint; moisture test of stucco or synthetic stucco, inspection of the Property by a professional, construction expert, structural engineer or environmental engineer; review of this Agreement and transaction by an attorney, financial planner, mortgage consultant or tax consultant; and consulting appropriate governmental officials to determine, among other things and without limitation, the zoning of Property, whether any condemnation action is pending or has been filed or other nearby governmental improvements are planned. Buyer and Seller acknowledge that Broker does not perform or have expertise in any of the above tests, inspections, and reviews or in any of the matters handled by the professionals referenced above. Buyer and Seller should seek independent expert advice regarding any matter of concern to them relative to the Property and this Agreement. Buyer and Seller acknowledge that Broker shall not be responsible to monitor, supervise, or inspect any construction or repairs to Property and such tasks clearly fall outside the scope of real estate brokerage services. If Broker has written any special stipulations herein, the party for whom such special stipulations were written: a) confirms that each such stipulation reflects the party's complete understanding as to the substance and form of the special stipulations; b) hereby adopts each special stipulation as the original work of the party; and c) hereby agrees to indemnify and hold Broker who prepared the stipulation harmless from any and all claims, causes of action, suits, and damages arising out of or relating to such special stipulation. Buyer acknowledges that when and if Broker answers a question of Buyer or otherwise describes some aspect of the Property or the transaction, Broker is doing so based upon information provided by Seller rather than the independent knowledge of Broker (unless Broker makes an independent written disclosure to the contrary).

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

**C. OTHER TERMS AND CONDITIONS****1. Notices.**

- a. Generally:** All notices given hereunder shall be in writing, legible and signed by the party giving the notice. In the event of a dispute regarding notice, the burden shall be on the party giving notice to prove delivery. The requirements of this notice paragraph shall apply even prior to this Agreement becoming binding. Notices shall only be delivered: (1) in person; (2) by courier, overnight delivery service or by certified or registered U.S. mail (hereinafter collectively "Delivery Service"); or (3) by e-mail or facsimile. The person delivering or sending the written notice signed by a party may be someone other than that party.
- b. Delivery of Notice:** A notice to a party shall be deemed to have been delivered and received upon the earliest of the following to occur: (1) the actual receipt of the written notice by a party; (2) in the case of delivery by a Delivery Service, when the written notice is delivered to an address of a party set forth herein (or subsequently provided by the party following the notice provisions herein), provided that a record of the delivery is created; (3) in the case of delivery electronically, on the date and time the written notice is electronically sent to an e-mail address or facsimile number of a party herein (or subsequently provided by the party following the notice provisions herein). Notice to a party shall not be effective unless the written notice is sent to an address, facsimile number or e-mail address of the party set forth herein (or subsequently provided by the party following the notice provisions herein).



- g. GAR Forms:** The Georgia Association of REALTORS®, Inc. ("GAR") issues certain standard real estate forms. These GAR forms are frequently provided to the parties in real estate transactions. No party is required to use any GAR form. Since these forms are generic and written with the interests of multiple parties in mind, they may need to be modified to meet the specific needs of the parties using them. If any party has any questions about his or her rights and obligations under any GAR form, he or she should consult an attorney. 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.
- h. Governing Law and Interpretation:** This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original and shall be interpreted in accordance with the laws of Georgia. No provision herein, by virtue of the party who drafted it, shall be interpreted less favorably against one party than another. All references to time shall mean the time in Georgia. If any provision herein is to be unenforceable, it shall be severed from this Agreement while the remainder of the Agreement shall, to the fullest extent permitted by law, continue to have full force and effect as a binding contract.
- i. No Authority to Bind:** No Broker or affiliated licensee of Broker, by virtue of this status, shall have any authority to bind any party hereto to any contract, provisions herein, amendments hereto, or termination hereof. However, if authorized in this Agreement, Broker shall have the right to accept notice on behalf of a party. Additionally, any Broker or real estate licensee involved in this transaction may perform the ministerial act of filling in the Binding Agreement Date. In the event of a dispute over the Binding Agreement Date, it may only be resolved by the written agreement of the Buyer and Seller.
- j. Notice of Binding Agreement Date:** The Binding Agreement Date shall be the date when a party to this transaction who has accepted an offer or counteroffer to buy or sell real property delivers notice of that acceptance to the party who made the offer or counteroffer in accordance with the Notices section of the Agreement. Notice of the Binding Agreement Date may be delivered by either party (or the Broker working with or representing such party) to the other party. If notice of accurate Binding Agreement Date is delivered, the party receiving notice shall sign the same and immediately return it to the other party.
- k. Statute of Limitations:** All claims of any nature whatsoever against Broker(s) and/or their affiliated licensees, whether asserted in litigation or arbitration, must be brought within two (2) years from the date any claim or cause of action arises. Such actions shall thereafter be time-barred.
- l. Survival of Agreement:** The following shall survive the closing of this Agreement: (1) the obligation of a party to pay a real estate commission; (2) any warranty of title; (3) all representations of Seller regarding the Property; (4) the section on condemnation; and (5) any obligations which the parties herein agree shall survive the closing or may be performed or fulfilled after the closing.
- m. 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. The letters "N.A." or "N/A", if used in this Agreement, shall mean "Not Applicable", except where the context would indicate otherwise.
- n. Time of Essence:** Time is of the essence of this Agreement.

**5. Definitions.**

- a. Banking Day:** A "Banking Day" shall mean a day on which a bank is open to the public for carrying out substantially all of its banking functions. For purposes herein, a "Banking Day" shall mean Monday through Friday excluding federal holidays.
- b. Binding Agreement Date:** The "Binding Agreement Date" shall be the date when a party to this transaction who has accepted an offer or counteroffer to buy or sell real property delivers notice of that acceptance to the party who made the offer or counteroffer in accordance with the Notices section of the Agreement. Once that occurs, this Agreement shall be deemed a Binding Agreement.
- c. Broker:** In this Agreement, the term "Broker" shall mean a licensed Georgia real estate broker or brokerage firm and its affiliated licensees unless the context would indicate otherwise.
- d. Business Day:** A "Business Day" shall mean a day on which substantially all businesses are open for business. For all purposes herein, a "Business Day" shall mean Monday through Friday excluding federal holidays.
- e. Material Relationship:** A material relationship shall mean any actually known personal, familial, social, or business relationship between the broker or the broker's affiliated licensees and any other party to this transaction which could impair the ability of the broker or affiliated licensees to exercise fair and independent judgment relative to their client.

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

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

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

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

- All Cash Sale Exhibit (F401) "A \_\_\_\_\_"
- Back-up Agreement Contingency Exhibit (F604) "\_\_\_\_\_"
- Closing Attorney Acting as Holder of Earnest Money Exhibit (F510) "\_\_\_\_\_"
- Community Association Disclosure Exhibit (F322) "\_\_\_\_\_"
- Condominium Resale Purchase and Sale Exhibit (F204) "\_\_\_\_\_"
- Conventional Loan Contingency Exhibit (F404) "\_\_\_\_\_"
- FHA Loan Contingency Exhibit (F407) "\_\_\_\_\_"
- Lead-Based Paint Exhibit (F316) "\_\_\_\_\_"
- Lease Purchase and Sale Exhibit (F207) (to be used with F916) "\_\_\_\_\_"
- Lease for Lease/Purchase Agreement (F916) (to be used with F207) "\_\_\_\_\_"
- Legal Description Exhibit (F807 or other) "\_\_\_\_\_"
- Loan Assumption Exhibit (F416) "\_\_\_\_\_"
- Sale or Lease of Buyer's Property Contingency Exhibit (F601) "\_\_\_\_\_"
- Seller's Property Disclosure Statement Exhibit (F301, F304, F307 or F310) "\_\_\_\_\_"
- Survey of Property as Exhibit "B \_\_\_\_\_"
- Temporary Occupancy Agreement for Seller after Closing Exhibit (F219) "\_\_\_\_\_"
- USDA-RD Loan Contingency Exhibit (F413) "\_\_\_\_\_"
- VA Loan Contingency Exhibit (F410) "\_\_\_\_\_"
- 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) Broker acknowledges that it may not sell or show property to another prospective purchase other than Paul Burns, who is listed herein, on account of this transaction being between or involving a local government and is made pursuant to O.C.G.A. § 36-37-6."
- 2) Buyer will give to the Seller at no cost copies of all due diligence reports or materials upon Seller's request, and that this provision survives termination of the contract.

Additional Special Stipulations are attached.

**Buyer Acceptance and Contact Information**

*Paul Burns*

dotloop verified  
12/16/20 11:59 AM EST  
VNZN-SSX1-WICR-TRE2

**1 Buyer's Signature**

Paul Burns  
Print or Type Name \_\_\_\_\_ Date \_\_\_\_\_

Buyer's Address for Receiving Notice  
FL

Buyer's Phone Number:  Cell  Home  Work

PAULDUKERBURNZ@GMAIL.COM  
Buyer's E-mail Address

**2 Buyer's Signature**

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

Buyer's Address for Receiving Notice

Buyer's Phone Number:  Cell  Home  Work

Buyer's E-mail Address

Additional Signature Page (F267) is attached.

**Selling Broker/Affiliated Licensee Contact Information**

BHGRE METRO BROKERS  
Selling Brokerage Firm

*Gerald Silvios*

dotloop verified  
12/16/20 11:40 AM EST  
CIAT-HMBP-24KL-2Y3A

**Broker/Affiliated Licensee Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

GERALD SILVIOUS 339122  
Print or Type Name \_\_\_\_\_ GA Real Estate License # \_\_\_\_\_

706.982.0096 706.212.9969  
Licensee's Phone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

gerald.silvios@metrobrokers.com  
Licensee's E-mail Address

GMLRTA  
REALTOR® Membership

534 A HWY 441  
Broker's Address

CLAYTON, GA. 30525

706.212.9960 706.212.9969  
Broker's Phone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

MBTR31 H6179  
MLS Office Code \_\_\_\_\_ Brokerage Firm License Number \_\_\_\_\_

**Seller Acceptance and Contact Information**

**1 Seller's Signature**

CITY OF TALLULAH FALLS  
Print or Type Name \_\_\_\_\_ Date \_\_\_\_\_

Seller's Address for Receiving Notice

Seller's Phone Number:  Cell  Home  Work

Seller's E-mail Address

**2 Seller's Signature**

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

Seller's Address for Receiving Notice

Seller's Phone Number:  Cell  Home  Work

Seller's E-mail Address

Additional Signature Page (F267) is attached.

**Listing Broker/Affiliated Licensee Contact Information**

BHGRE METROBROKERS  
Listing Broker Firm

*Gerald Silvios*

dotloop verified  
12/16/20 11:49 AM EST  
DAM9-GAKJ-LQJ-SUQD

**Broker/Affiliated Licensee Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

Gerald Silvios 339122  
Print or Type Name \_\_\_\_\_ GA Real Estate License # \_\_\_\_\_

706.982.0096 706.212.9969  
Licensee's Phone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

gerald.silvios@metrobrokers.com  
Licensee's Email Address

GMLRA  
REALTOR® Membership

534 HWY 441  
Broker's Address

CLAYTON, GA 30525

706.212.9960 706.212.9969  
Broker's Phone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

MBTR31 H6179  
MLS Office Code \_\_\_\_\_ Brokerage Firm License Number \_\_\_\_\_

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