

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.,

Defendants.

CASE NO.: 8:09-cv-0087-T-26TBM

SCOOP REAL ESTATE, L.P.,
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.,
VICTORY IRA FUND, LTD,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT, LLC.

Relief Defendants.

**RECEIVER'S UNOPPOSED VERIFIED MOTION FOR APPROVAL OF SALE OF
UNDEVELOPED LAND LOCATED IN GRADY COUNTY, GEORGIA**

Pursuant to 28 U.S.C. § 754, Fed. R. Civ. P. 66, and Rule 3.01 of the Local Rules of the Middle District of Florida, Burton W. Wiand, as Receiver (the "Receiver"), respectfully moves the Court for entry of an order in substantially the form attached as

Exhibit 1, approving the sale of Receivership undeveloped land located Grady County, Georgia.

BACKGROUND

On January 21, 2009, the Securities and Exchange Commission (“Commission”) initiated this action to prevent the defendants from further defrauding investors of hedge funds operated by them. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants Scoop Capital, LLC (“Scoop Capital”) and Scoop Management, Inc. (“Scoop Management”) and Relief Defendants Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Valhalla Management, Inc.; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; Viking Fund, LLC; and Viking Management, LLC (the “Order Appointing Receiver”). (*See generally* Order Appointing Receiver (Doc. 8).)

The Court subsequently granted several motions to expand the scope of the Receivership to include other entities owned or controlled by Arthur Nadel (“Nadel”). (*See generally* Docs. 17, 44, 68, 81, 153, 172, 454.) All of the entities and the trust in receivership are hereinafter collectively referred to as the “Receivership Entities.”

Pursuant to the Order Appointing Receiver, the Receiver has the duty and authority to: “administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors.” (Order Appointing Receiver at 1-2.) In particular, the Receiver was directed to:

[t]ake immediate possession of all property, assets and estates of every kind of the [Receivership Entities], whatsoever and wheresoever located belonging to

or in the possession of the [Receivership Entities], including but not limited to all offices maintained by the [Receivership Entities], rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the [Receivership Entities] wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court

(*Id.* at 2.) In accordance with that Order, the Receiver took possession of undeveloped land located in Grady County, Georgia (the “Property”).

THE PROPERTY

The Property was purchased by Receivership Entity Scoop Capital on or about June 2, 2006, for \$223,406.98 with proceeds from Nadel’s Ponzi scheme. The Property consists of approximately 33.296 acres of undeveloped land located near the town of Beachton, approximately ten miles south of Thomasville, Georgia. The Property is not subject to any liens or encumbrances.

The Grady County Georgia Tax Commissioner assessed the fair market value of the Property at \$151,125.00 in 2009 and 2010. The Receiver also obtained a land appraisal in June 2009 which estimated the market value of the Property to be \$153,000.00.

RECEIVER’S MARKETING EFFORTS

The Receiver initially marketed the Property to potential purchasers through his website, www.nadelreceivership.com, in a specific “Assets for Sale” section, but there was little interest in the Property. In September 2009, the Receiver engaged the services of Tallahassee Land Company, Inc. and the property was listed for \$200,000.00. Tallahassee Land Company, Inc.’s listing agreement expired in March 2010 and was not renewed.

Between January 2009 and March 2010, the Receiver was presented with several offers to purchase the property but those offers were declined as he did not believe that they fairly represented the fair market value of the Property.

Then, in February 2011, the Receiver was presented with an offer from Timothy B. Collins and Donna M. Collins (collectively, "Purchasers") for \$135,000.00. On March 22, 2011, the Receiver and the Purchasers entered into a Purchase and Sale Agreement (the "Agreement") for the purchase price of \$135,000.00, contingent on this Court's approval. *See* Exhibit 2. The Receiver believes that the offer by Purchasers fairly represents the current value of the Property. Furthermore, Purchasers are in position to complete the sale and purchase of the Property contingent upon this Court's approval. As part of the Agreement, Purchasers have deposited \$1,000.00 of earnest money into an escrow account, which amount is to be credited towards the purchase price at closing should the Court approve the sale. Purchasers have agreed to pay the balance of the purchase price in full at closing, which is scheduled to take place on or before April 30, 2011, contingent upon this Court's approval.

The Receivership Estate will net approximately \$124,200.00 in connection with the sale of the Property, after the payment of commissions and other expenses associated with the sale of the Property. The Receiver believes that the Agreement with Purchasers is in the best interests of the Receivership, and accordingly, the Receiver respectfully requests that this Court enter an order in substantially the form attached as Exhibit 1, approving the sale of the Property.

MEMORANDUM OF LAW

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). The relief sought by the Receiver falls squarely within those powers. Furthermore, the relief sought is in furtherance of the duties and authorities bestowed upon the Receiver by the Order Appointing Receiver.

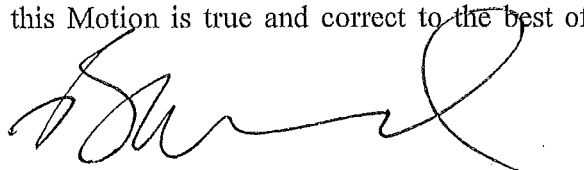
WHEREFORE, the Receiver moves the Court for entry of an order in substantially the form of the proposed Order attached as Exhibit 1 approving the sale of the Property to Purchasers in accordance with the terms set forth in the Agreement attached hereto as Exhibit 2 and authorizing the Receiver to transfer title to the Property to the Purchasers via Receiver's Deed free and clear of all liens and encumbrances.

CERTIFICATE UNDER LOCAL RULE 3.01(g)

Undersigned counsel has conferred with counsel for the SEC and is authorized to represent to the Court that this motion is unopposed.

VERIFICATION OF RECEIVER

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter hereby certify that the information contained in this Motion is true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read 'B. Wiand', is written over a horizontal line.

Burton W. Wiand, Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 25, 2011, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I FURTHER CERTIFY that on April 25, 2011, I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants.

Arthur Nadel
Register No. 50690-018
FCI BUTNER LOW
Federal Correctional Institution
P.O. Box 999
Butner, NC 27509

s/Gianluca Morello

Gianluca Morello, FBN 034997

gmorello@wiandlaw.com

WIAND GUERRA KING P.L

3000 Bayport Drive

Suite 600

Tampa, FL 33607

Tel: 813-347-5100

Fax: 813-347-5199

*Attorney for the Receiver, Burton W. Wiand
W. Wiand*

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VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT, LLC.

Relief Defendants. /

ORDER

Before the Court is the Receiver's Unopposed Verified Motion for Approval of Sale of Undeveloped Land Located in Grady County, Georgia (the "Motion") (Dkt. ____). Upon due consideration of the Receiver's powers as set forth in the Order Appointing Receiver (Dkt. 8), the Orders Reappointing Receiver (Dkts. 140, 316 and 493), and applicable law, it is **ORDERED AND ADJUDGED** that the Receiver's Unopposed Verified Motion for

EXHIBIT 1

Approval of Sale of Undeveloped Land Located in Grady County, Georgia (Dkt. ____) is
GRANTED.

The Receiver is hereby authorized to transfer to Timothy B. Collins and Donna M. Collins by way of Receiver's Deed free and clear of all claims, liens, and encumbrances, pursuant to the Purchase and Sale Agreement title to real property located in Grady County, Georgia, which bears the following legal description:

All that tract or parcel of land situate, lying and being in Land Lot 11 of the 23rd Land District of Grady County, Georgia, containing 33.296 acres and more particularly shown on a plat of survey prepared for Melissa Robinson by Ernest C. Johns, Jr., Georgia Registered Surveyor No. 2774, dated August 16, 2004, and more particularly described as follows:

Commence at a concrete monument located at the land lot corner common to Land Lots 11, 10, 30 and 31 in the 23rd Land District and run thence north 00 degrees 47 minutes 55 seconds west a distance of 487.10 feet to a half inch iron pin and the POINT OF BEGINNING. From said point of beginning run thence south 89 degrees 15 minutes 00 seconds west a distance of 3169.45 feet to a one and a quarter inch pipe located on the eastern margin of the right-of-way of Holton Lane; run thence north 02 degrees 11 minutes 43 seconds west along the eastern margin of the right-of-way of Holton Lane a distance of 486.34 feet to a concrete marker; run thence south 89 degrees 46 minutes 20 seconds east a distance of 3149.19 feet to a half inch iron pin; run thence south 05 degrees 06 minutes 49 seconds east a distance of 433.69 feet to a half inch iron pin and the point of beginning.

DONE and ORDERED in chambers in Tampa, Florida this ____ day of April, 2011.

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record



COUNTEROFFER # 3



2011 Printing

1:45 o'clock p m. on the date of February 25, 2011

This is a Counteroffer from: [Select A or B below. The one not selected is not a part of this Agreement.]

☒ A. Seller to Buyer OR ☐ B. Buyer to Seller

The following is a counteroffer ("Counteroffer") to that certain offer to purchase or sell real property set forth in the Purchase and Sale Agreement dated February 15, 2011 ("Offer") located at: 33,296 acres MOL, Holton Lane, Calro, Georgia 39828.

The provisions set forth in this Counteroffer shall control over any conflicting or inconsistent provisions set forth in the Offer and shall supersede all previous counteroffers. By signing below, all parties acknowledge and agree that the Offer: (1) is incorporated herein by reference; (2) is accepted subject to the terms and conditions of this Counteroffer; and (3) as modified by this Counteroffer, is the entire agreement of the parties. No prior representation, inducement or agreement of the parties that is not contained in the Offer, as modified by this Counteroffer, shall be binding upon the parties. The Binding Agreement Date shall be the date when the party who made this Counteroffer receives notice that it has been accepted. At any time between the Binding Agreement Date and the closing, either party if so requested by the other party, shall sign a conformed copy of the Agreement incorporating therein the terms and conditions of the Offer as modified by this Counteroffer. All terms and conditions of the Offer are agreed to and accepted by the undersigned with the express exceptions of the following:

1. Purchase Price shall be \$135,000.
2. Closing shall take place on or before April 30, 2011.
3. All other conditions of original Purchase & Sale Agreement shall remain the same.
4. All parties acknowledge Exhibit "B" is hereby attached and made a part of this agreement. DC/TC 3-2-11

Additional Special Stipulations are ☐ or are not ☒ attached.

COUNTEROFFER # 3 (CONTINUED)

Time Limit of the Offer: The terms of this Agreement shall constitute an offer ("Offer") which shall expire at 5:00 o'clock p.m. on the date of 5/3 ~~5/27/2011~~ 2011 unless prior to that time the Offer is accepted in writing and notice of the acceptance is delivered to the party who made the Offer.

Donna M. Collins
Buyer's Signature

Donna M. Collins
Print or Type Name

Timothy B. Collins
Buyer's Signature

Timothy B. Collins
Print or Type Name

Selling Broker

By: Kay W. Davis
Broker or Broker's Affiliated Licensee

Rose City Realty, Inc.
Print or Type Name

ROSEC H-30906
MLS Office Code Brokerage Firm License Number

Multiple Listing Number _____

Selling Broker/Licensee Contact Information:

Phone# 229-225-9225

Fax# 229-225-9991

E-Mail kaydavis@rose.net

173188

Selling Agent's Georgia Real Estate License Number

Member of: tab of REALTORS®

Benjamin W. Bennett
Seller's Signature

Benjamin W. Bennett
Print or Type Name

Seller's Signature

Print or Type Name

Listing Broker

By: _____
Broker or Broker's Affiliated Licensee

Rose City Realty, Inc.
Print or Type Name

ROSEC H-30906
MLS Office Code Brokerage Firm License Number

Listing Broker/Licensee Contact Information:

Phone# 229-225-9991

Fax# 229-225-9991

E-Mail bennematt@rose.net

Listing Agent's Georgia Real Estate License Number

Member of: tab of REALTORS®

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

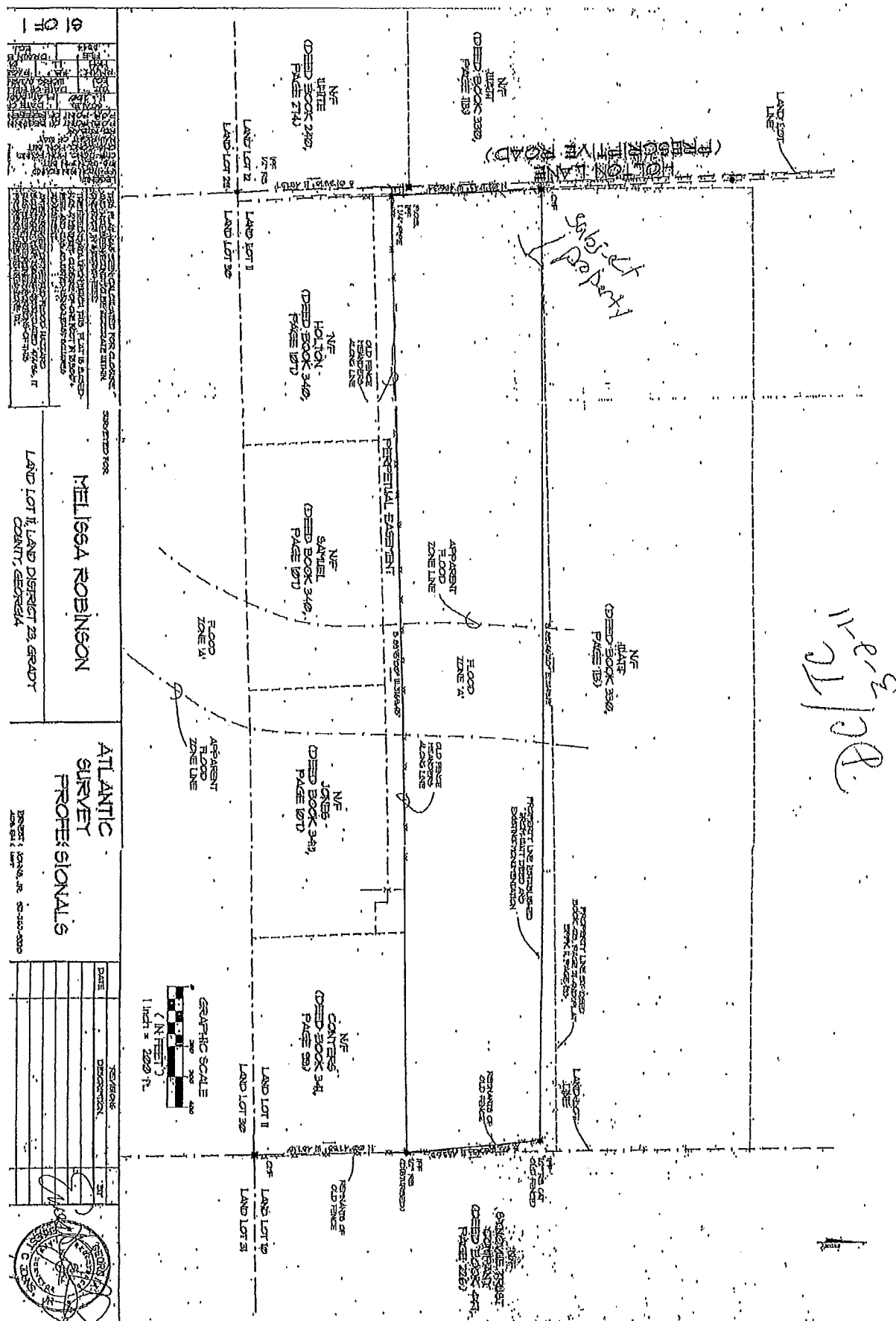


EXHIBIT "B"

Purchase Price: \$135,000.00

Earnest Money: Paid by Buyer to Rose City Realty within 24 hours of binding agreement in the amount of \$1,000.00 and held pursuant to the terms of the Offer;

Inspection: Property to be sold "As Is"; Buyer has the right to inspect. Inspection period shall last 30 days. All costs associated with inspection shall be the responsibility of the Buyer. If Buyer decides not to go forward at the end of the inspection period for whatever reason earnest money will be refunded. After the 30th day the earnest money is non-refundable.

Court Approval/Closing: Sale is subject to approval by the United States District Court, Middle District of Florida. Closing on or before April 30, 2011; Seller will transfer title to the property free and clear of all liens and encumbrances via Receiver's Deed. All costs associated with the purchase (recording costs, docs stamps, title insurance, environmental, survey, attorneys fees, etc.) shall be the responsibility of the Buyer. Seller to net \$124,200.00 at closing.

Special Stipulations: Brokers split an 8% commission on total sales price. If no closing takes place, no commission is due.

Financing Contingency: Buyer shall have 30 days from the date of agreement to obtain financing. Should Buyer be unable to obtain financing, the earnest deposit will be refunded.



PURCHASE AND SALE AGREEMENT

Offer Date: February 15, 2011



2010 Printing

1. **Purchase and Sale.** The undersigned buyer ("Buyer") agrees to buy and the undersigned seller ("Seller") agrees to sell the Property with the following address: 33.296 acres MOL, Holton Lane
 City Calro, County Grady, Georgia, Zip Code 39828
 TAXID/PIN # _____ together with all fixtures, landscaping, improvements, and appurtenances (except those identified in any Seller's Property Disclosure Statement attached hereto as not remaining with the Property) and as more particularly described in the Legal Description Paragraph below (all of which is hereinafter collectively referred to as "Property").
2. **Legal Description.** The full legal description of the Property is:
[Select A, B, or C below. The sections not marked shall not be a part of this Agreement].
☐ A. attached as an exhibit hereto;
☒ B. identical to the legal description for the property contained in the deed recorded in Deed Book 634, Page 399, et. seq., Grady County, Georgia records;
☐ C. described below:
 Land Lot(s) 11 of the 23rd District, _____ Section/ GMD,
 Lot _____, Block _____, Unit _____, Phase/Section _____ of
 _____ Subdivision/Development,
 _____ County, Georgia according to the plat recorded in
 Plat Book _____, Page _____, et. seq.; _____ County, Georgia records.
3. **Purchase Price and Method of Payment.** At closing, Buyer agrees to pay Seller the purchase price of the Property of \$ 120,000.00, One Hundred Twenty Thousand and no/100 U.S. Dollars: cash, wire transfer of immediately available funds, or a cashier's check issued for the closing by a federally insured bank, savings bank, savings and loan association or credit union where the funds are immediately available. The above forms of payment shall be deemed to be the equivalent of Buyer paying all cash at closing which shall be the method of payment.
4. **Amount and Deposit of Earnest Money.** Buyer has paid to Rose City Realty, Inc. (See Spec. Stips.) ("Holder") earnest money of \$ _____ check, OR \$ _____ cash, which has been received by Holder. The earnest money shall be deposited in Holder's escrow/trust account (with Holder retaining the interest if the account is interest bearing) within five (5) banking days from the Binding Agreement Date. If Buyer writes a check for earnest money and the same is deposited into Holder's escrow/trust account, Holder shall not be required to return the earnest money until the check has cleared the account on which the check was written. In the event any earnest money check is dishonored by the bank upon which it is drawn, Holder shall promptly give notice of the same to Buyer and Seller. Buyer shall have three (3) banking days after receiving such notice to deliver good funds to Holder. In the event Buyer does not timely deliver good funds, Seller shall have the right to terminate this Agreement upon notice to Buyer.
5. **Closing Costs and Other Settlement Expenses.**
 - A. **Items Paid By Buyer at Closing.** At closing, Buyer shall pay the following:
 1. Georgia property transfer tax;
 2. All costs, fees and charges to have the closing attorney search title and prepare: (a) the warranty deed; (b) owner's affidavit; (c) Buyer's powers of attorney; and (d) all promissory notes, deeds to secure debt and other loan documents required by any lender providing financing in the transaction;
 3. All closing costs, tax service charges, recording costs, courier fees, overnight delivery fees, document preparation fees, underwriting fees, delivery, copying and handling charges, and all other costs, fees, charges and amounts to close this transaction otherwise, except as they relate to the clearance of title encumbrances and/or defects necessary for Seller to be able to convey good and marketable title to the Property.
 - B. **Items Paid By Seller at Closing.** At closing, Seller shall pay the following:
 1. The sum of \$ -0- to be used by Buyer as a contribution for the items in the paragraph above. In addition, Buyer may use the Seller's contribution to pay for, including but not limited to, survey costs, appraisals, insurance (including flood insurance, if applicable), inspections, termite treatment and/or repair guarantee and, if Buyer is obtaining mortgage financing, escrow establishment charges, loan discount points, costs to buy down a loan, and other similar costs (unless any of the same are prohibited by Buyer's mortgage lender). Unspent sums, if any, shall remain with the Seller.
 2. Except as provided above, all sums, costs, charges and fees necessary to clear title encumbrances and/or defects to allow Seller to be able to convey good and marketable title to the Property.
 3. Any extra costs, fees and charges resulting from Seller not being able to attend the closing in person.
 - C. **Prorated Amounts:** Seller and Buyer agree to prorate the following: (1) real estate taxes and community association assessments, if any, for the calendar year in which the sale is closed, as of the date of closing; and (2) all utility bills, solid waste and other fees, as of the date of closing (or the day of possession of Property by Buyer, whichever is later) that are issued after closing and include service for any period of time Property was owned/occupied by Seller or Seller's invitees. In the event real estate taxes are paid at closing based upon an estimated tax bill or tax bill under appeal, Buyer and Seller upon the issuance of the actual tax bill or the appeal being resolved shall promptly make any financial adjustments between themselves as are necessary to prorate the tax bill correctly. This subparagraph shall survive the closing.

6. Closing and Transfer of Possession.

- A. **Closing:** This transaction shall be closed on March 30, 2011 or on such other date as may be agreed to in writing by the parties. No later than at the conclusion of the closing, Seller shall provide the Buyer with all keys in Seller's possession or under Seller's control, to all locks that shall remain with the Property.
- B. **Right to Extend Unilaterally the Closing Date:** Buyer or Seller may unilaterally extend the closing date for seven (7) days upon notice to the other party given prior to or on the date of closing if: (1) Seller cannot satisfy valid title objections (except for liens, judgments, and deeds to secure debt that can be satisfied through the payment of money or by bonding off the same); or (2) Buyer's mortgage lender, if any, (including in "all cash" transactions) or the closing attorney cannot fulfill their respective obligations by the date of closing due to no fault of Buyer. In such event, Buyer and Seller consent to the closing attorney and/or any such mortgage lender disclosing to the parties and their Brokers the basis for the delay. The exercise of the right to extend unilaterally the closing date by either party shall cause the right to extend unilaterally the closing date to terminate and no longer be a part of this Agreement.

- C. **Possession:** Buyer agrees to allow Seller to retain possession of Property until and through: *[Select one. The sections not marked shall not be a part of this Agreement.]*

☒ 1. the closing; OR ☐ 2. ____ hours after the closing; OR ☐ 3. ____ days after the closing at ____ o'clock ____ m.

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

8. Title.

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

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

10. Inspection.

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

11. Property Sold Subject to Due Diligence Period or "As-Is".*[Select Section A. or B. below. The sections not marked shall not be a part of this Agreement.]*☒ **A. Property Sold Subject to Due Diligence Period.**

1. **Contract Is Option Contract.** For and in consideration of the additional payment of Ten Dollars (\$10) by the Buyer to the Seller, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby grant Buyer the option of terminating this Agreement, for any reason, for a 30 day period from the Binding Agreement Date ("Due Diligence Period"). This Agreement shall be an option contract until the Due Diligence Period has ended without Buyer terminating the same.
2. **Purpose of Due Diligence Period.** During the Due Diligence Period, Buyer may, but shall not be required to: (a) arrange any loans Buyer needs to complete the purchase of the Property; and (b) conduct at Buyer's sole expense whatever evaluations, inspections, appraisals, examinations, surveys, and testing, if any, Buyer deems appropriate to determine whether Buyer's option to terminate this Agreement should be exercised. This shall include but not be limited to testing for lead-based paint and/or lead-based paint hazards, inspecting for active infestation of and/or damage from termites and other wood destroying organisms and determining if the Property or the improvements thereon are in a flood plain. During the Due Diligence Period, Buyer may also propose an amendment(s) to this Agreement to address any concerns of Buyer with the Property.
3. **Right to Terminate.** If Buyer decides to exercise Buyer's option to terminate this Agreement, Buyer must give notice of the same to Seller prior to the end of the Due Diligence Period. If Buyer fails to give such notice in a timely manner, the Due Diligence Period shall terminate and Buyer shall be deemed to have accepted the Property "as-is." The expiration of the Due Diligence Period shall not terminate any other contingencies to which this Agreement may be subject.
4. **Warranties of Buyer.** Buyer warrants that Buyer is ☐ OR is not ☐ currently under contract (including option contracts) to purchase other real property. Buyer warrants that during the Due Diligence Period Buyer shall ☐ have the right to enter into other such contracts OR ☐ not enter into any other such contracts. Buyer shall be in default of the Agreement if Buyer breaches Buyer's warranties in this subparagraph.

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

12. Return and Disbursement of Earnest Money.

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

13. Agency and Brokerage.

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

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

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

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

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

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

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

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

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

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

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

16. Notices.

- A. All Notices Must Be In Writing.** All notices, including but not limited to offers, counteroffers, acceptances, amendments, demands, notices of termination and other notices, required or permitted hereunder shall be in writing, signed by the party giving the notice. It is the intent of the parties that the requirements of this Notice paragraph shall apply even prior to this Agreement becoming binding.
- B. Method of Delivery of Notice.** Subject to limitations and conditions set forth herein, notices may only be delivered: (1) in person; (2) by an overnight delivery service, prepaid; (3) by facsimile transmission (FAX); (4) by registered or certified U. S. mail, prepaid, return receipt requested; or (5) by e-mail.
- C. When Notice Is Deemed Received.** Except as may be provided herein, a notice shall not be deemed to be given, delivered or received until it is actually received by the party to whom the notice was intended or that person's authorized agent. Notwithstanding the above, a notice sent by FAX shall be deemed to be received by the party to whom it was sent as of the date and time it is transmitted to either the party or the party's authorized agent provided that the sending FAX produces a written confirmation showing the correct date and the time of the transmission and the telephone number referenced herein to which the notice should have been sent.
- D. When Notice to Broker Is Notice to Broker's Client.** Except in transactions where the Broker is practicing designated agency, notice to the Broker or the affiliated licensee of Broker representing a party in the transaction shall for all purposes herein be deemed to be notice to that party. Said Broker and affiliated licensee shall be authorized agents of the party for the purpose of receiving notice. In any transaction where the Broker is practicing designated agency, only notice to the affiliated licensee designated by Broker to represent the party in the transaction shall be notice to that party. Personal delivery of notice may only be delivered to the party intended to receive the same or that party's authorized agent.

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

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

Unrepresented Buyer:

Fax No. _____

E-Mail Address: _____

Unrepresented Seller:

Fax No. _____

E-Mail Address: _____

17. Default.

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

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

18. Other Provisions.

- A. Warranties Transfer:** Seller agrees to transfer to Buyer, at closing, subject to Buyer's acceptance thereof (and at Buyer's expense, if there is any cost associated with said transfer), Seller's interest in any existing manufacturer's warranties, service contracts, termite treatment and/or repair guarantee and/or other similar warranties which, by their terms, may be transferable to Buyer.
- B. Repairs:** All agreed upon repairs and replacements shall be performed in a good and workmanlike manner prior to closing.
- C. Binding Effect, Entire Agreement, Modification, Assignment:** This Agreement constitutes the sole and entire agreement between all of the parties, supersedes all of their prior written and verbal agreements and shall be binding upon the parties and their successors, heirs and permitted assigns. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto. This Agreement may not be amended, modified or waived except upon the written agreement of Buyer and Seller. This Agreement may not be assigned by Buyer except with the written agreement of Seller. Any assignee shall fulfill all the terms and conditions of this Agreement.
- D. Survival of Agreement:** The following shall survive the closing of this Agreement: (1) the obligation of a party to pay a real estate commission; (2) any warranty of title; and (3) any obligations which the parties herein agree shall survive the closing or may be performed or fulfilled after the closing.
- E. Governing Law and Interpretation:** This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original and shall be interpreted in accordance with the laws of the State of Georgia. No provision herein, by virtue of the party who drafted it, shall be interpreted less favorably against one party than another. All references to time shall mean the time in Georgia.
- F. Time of Essence:** Time is of the essence of this Agreement.
- G. Terminology:** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa; and (2) all pronouns shall mean and include the person, entity, firm, or corporation to which they relate.
- H. Binding Agreement Date:** The Binding Agreement Date in this Agreement shall be the date when the party making the last offer, or the Broker (except in a designated agency transaction) or affiliated licensee of Broker representing that party as a client, receives notice that the offer has been accepted. This party (or the Broker or affiliated licensee representing this party as a client) shall fill in the Binding Agreement Date below and promptly give notice of this date to the other party. Filling in the Binding Agreement Date shall not be deemed to be a counteroffer.

- I. **Responsibility to Cooperate:** All parties agree to take all actions and do all things reasonably necessary to fulfill the terms and conditions of this Agreement in good faith and in a timely manner. Buyer and Seller shall execute and deliver such certifications, affidavits, and statements as are required at closing to meet the requirements of any lender(s) and of federal and state law.
- J. **GAR Forms:** The Georgia Association of REALTORS®, Inc. ("GAR") makes certain standard real estate forms available to its members. These GAR forms are frequently provided to the parties in real estate transactions by the REALTORS® with whom they are working. No party is required to use any GAR form. Since these forms are generic and written with the interests of multiple parties in mind, they may need to be modified to meet the specific needs of the parties using them. If any party has any questions about his or her rights and obligations under any GAR form he or she should consult an attorney. The parties hereto agree that the GAR forms may only be used in accordance with the licensing agreement of GAR. While GAR forms may be modified by the parties, no GAR form may be reproduced with sections removed, altered or modified unless the changes are visible on the form itself or in a stipulation, addendum, exhibit or amendment thereto.
19. **Exhibits and Addenda.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement. If any such exhibit or addendum conflicts with any preceding paragraph (including any changes thereto made by the parties), said exhibit or addendum shall control:
- ☐ Legal Description of the Property as Exhibit "_____"
 - ☒ Financing Contingency as Exhibit "A"
 - ☐ The ☐ FHA Loan Exhibit OR ☐ VA Loan Exhibit as Exhibit "_____"
 - ☐ A Survey of Property as Exhibit "_____"
 - ☐ Appraisal Contingency as Exhibit "_____"
 - ☐ Seller's Property Disclosure Statement as Exhibit "_____"
 - ☐ Lead-Based Paint Exhibit as Exhibit "_____"
 - ☐ Source of Buyer's Funds as Exhibit "_____"
 - ☐ Sale or Lease of Buyer's Property Contingency as Exhibit "_____"
 - ☐ Back-up Agreement Contingency as Exhibit "_____"
 - ☐ Community Association Disclosure as Exhibit "_____"
 - ☐ Other _____
 - ☐ Other _____
 - ☐ Other _____
 - ☐ Other _____
 - ☐ Other _____

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

1. *Earnest money shall be increased to \$1,000 within 24 hours of binding agreement.*

Additional Special Stipulations are ☐ or are not ☒ attached.

Time Limit of the Offer: The terms of this Agreement shall constitute an offer ("Offer") which shall expire at 5:00 o'clock p.m. on the date of February 17, 2011 unless prior to that time it is accepted in writing by the party to whom the offer was made and notice of the acceptance is delivered back to the party making the offer.

Timothy B. Collins
Buyer's Signature

Timothy B. Collins
Print or Type Name

Donna M. Collins
Buyer's Signature

Donna M. Collins
Print or Type Name

ROSE CITY REALTY, INC.
Selling Broker

By: Kay W. Davis
Broker or Broker's Affiliated Licensee

KAY W. DAVIS
Print or Type Name

ROSEC H-30906
MLS Office Code Brokerage Firm License Number

Multiple Listing Number _____

Selling Broker/Licensee Contact Information:

Phone# 229-225-9225

Fax# 229-225-9991

E-Mail KAYDAVIS@ROSE.NET

173188
Selling Agent's Georgia Real Estate License Number

Seller's Signature

Print or Type Name

Seller's Signature

Print or Type Name

ROSE CITY REALTY, INC.
Listing Broker

By: _____
Broker or Broker's Affiliated Licensee

Matt Bennett
Print or Type Name

ROSEC H-30906
MLS Office Code Brokerage Firm License Number

Listing Broker/Licensee Contact Information:

Phone# 229-225-9225

Fax# 229-225-9991

E-Mail benniematt@rose.net

Listing Agent's Georgia Real Estate License Number

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



FINANCING CONTINGENCY EXHIBIT " A "



2011 Printing

This Exhibit is part of the Agreement with an Offer Date of February 15, 2011 for the purchase and sale of that certain Property known as: 33.296 acres MOL, Holton Lane, Calro, Georgia 39828.

Purchase Subject to Limited Financing Contingency:

Buyer shall have 30 days from the Binding Agreement Date ("Financing Contingency Period") to determine if Buyer has the ability to obtain the Loan(s) described below: [Select 1 or 1 and 2 below. Any box not checked shall not be a part of this Agreement.]

- ☒ 1. First Mortgage (promissory note secured by first priority security deed)
- a. Loan Amount: 95 percent (%) of the purchase price of Property
 - b. Term: 30 years
 - c. Interest rate at par of 6 percent (%) per annum (or initial interest rate if interest rate adjusts)
 - d. Loan Type: ☒ Conventional ☐ FHA (see exhibit) ☐ VA (see exhibit) ☐ Other (see exhibit)
 - e. Rate Type: ☒ Fixed Rate Mortgage ☐ Adjustable Rate Mortgage ☐ Interest Only Mortgage
 - f. Source of Loan: ☒ Institutional Lender ☐ Seller (see Exhibit) ☐ Other
- ☐ 2. Second Mortgage (promissory note secured by second priority security deed)
- a. Loan Amount: percent (%) of the purchase price of Property
 - b. Term: years
 - c. Interest rate at par of percent (%) per annum (or initial interest rate if interest rate adjusts)
 - d. Rate Type: ☐ Fixed Rate Mortgage ☐ Adjustable Rate Mortgage ☐ Interest Only Mortgage ☐ Equity Line
 - e. Source of Loan: ☐ Institutional Lender ☐ Seller (see Exhibit) ☐ Other

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

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

Buyer's Initials: J.C. I.D.C. Seller's Initials:

