



# New Home Purchase and Sale Agreement



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THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of this \_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_\_ between METROPOLITAN HOMES, INC. ("Seller") and \_\_\_\_\_ ("Buyer");

1. PROPERTY. Buyer agrees to buy and Seller agrees to sell the following land together with all improvements, fixtures and landscaping on such land and all appurtenances relating to such land (collectively, "the Property"):

Street Address: \_\_\_\_\_,  
City: \_\_\_\_\_, County: \_\_\_\_\_, Zip Code: \_\_\_\_\_,  
Multiple Listing #: \_\_\_\_\_, and being more particularly described as Lot: \_\_\_\_\_,  
Block: \_\_\_\_\_, Unit: \_\_\_\_\_, Phase/Section: \_\_\_\_\_,  
of \_\_\_\_\_ Subdivision, as recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_ of such county's records. The full legal description of the Property is as recorded with the Clerk of the Superior Court in such county and is incorporated by reference.

2. PURCHASE PRICE. The purchase price of the Property shall be: \$\_\_\_\_\_ Dollars, (U.S.) to be paid as set forth in paragraph 4.A or 4.B. Buyer warrants that at closing, it will have sufficient cash together with any loan described herein to complete the purchase.

Buyer (Buyer Initials) \_\_\_\_\_  does or  does not have real property to sell, lease or close on in order to complete the purchase. If Buyer checks Buyer further agrees that the failure to sell, lease or close on such property will not be grounds for refund of earnest money in the event of loan denial.

3. CLOSING DATE. This transaction shall be closed on or before \_\_\_\_\_, 20\_\_\_\_, provided however, that in the event any loan described in paragraph 4 hereinafter cannot be closed by that date or Seller fails to satisfy valid title objections, either Buyer or Seller may, by written notice to the other party, extend the closing date seven (7) calendar days from the designated closing date.

4. METHOD OF PAYMENT. (Select A or B below; the other is not part of this Agreement.)

A.  All Cash At Closing: At closing, Buyer shall pay purchase price to Seller in cash or its equivalent. Buyer's obligation to close shall not be contingent upon Buyer's ability to obtain financing. Buyer shall pay all usual and customary closing costs.

B.  Where New Loan Is To Be Obtained:

(1) Loan Terms/Financing Contingency: This Agreement is conditioned upon Buyer's ability to obtain (as hereinafter defined) a loan with the principal amount being \_\_\_\_\_ % of the purchase price (reduced to the next lowest hundred dollars), providing for payments in consecutive monthly installments of principal and interest over a term of not less than \_\_\_\_\_ years and secured by a first-priority deed to secure debt on the Property. Initial monthly payments of principal and interest shall not be more than \$\_\_\_\_\_. "Ability to obtain" as used herein means that Buyer is qualified to receive the loan described herein

based upon lender's customary and standard underwriting criteria. The loan shall be a (Select (a), (b), (c) or (d) below; the others are not part of this Agreement):

- (a)  Fixed Rate Mortgage Loan, with an interest rate of not more than \_\_\_\_\_% per annum on the unpaid principal balance.
  - (b)  Adjustable Rate Mortgage ("ARM") Loan, with an initial interest rate of not more than \_\_\_\_\_% per annum on the unpaid principal balance. The interest rate payable to lender by Buyer may increase or decrease according to the terms of the loan, and as a result, the monthly installments of principal and interest may increase or decrease.
  - (c)  FHA or VA Loan sees EXHIBIT "\_\_\_\_\_", attached and incorporated by reference.
  - (d)  Other Loan, see EXHIBIT "\_\_\_\_\_", attached and incorporated by reference.
- (2) Closing Costs: Buyer shall pay all usual and customary closing costs for any loan, including the Georgia intangible tax, any usual and customary incidental costs, and the cost of any survey required by lender.
- (3) Loan Application: within \_\_\_\_\_ days from the date this Agreement becomes binding, Buyer agrees to both apply for the loan and to notify the Seller or Listing Broker of the identity of any lender to which application has been made. Buyer further agrees to pursue any such application diligently and in good faith, to execute all papers, to provide all documents, to perform all other actions necessary to obtain the loan and to accept such loan if approved by a lender. Should Buyer not apply for the loan and not provide notice to the Seller or Listing Broker as required above in the time specified above, Seller may void this Agreement upon written notification to Buyer.
- (4) Financing Contingency Waiver: If Seller has not received written notice from Buyer within \_\_\_\_\_ days from the date the Agreement becomes binding that Buyer is unable to qualify for the loan, the financing contingency shall be deemed waived by Buyer.
- (5) Loan Options:
- (a) Buyer acknowledges the possibility that many different loan programs, available from many different lenders, may fit the description of the loan set forth herein. No attempt has been made to precisely describe all terms and conditions of the loan. The economics of this transaction, as bargained for by the parties, are such that Buyer agrees that a loan with terms consistent with those described herein shall be acceptable to Buyer and shall satisfy this loan contingency.
  - (b) Buyer, at its option and without voiding this Agreement, may also apply for a loan with different terms and conditions and close the transaction provided:
    - I. all other terms and conditions of this Agreement are fulfilled; and
    - II. the new loan does not increase the costs charged to Seller.  
Notwithstanding the foregoing option, Buyer shall be obligated to close this transaction if Buyer has the ability to obtain a loan with terms as described herein.
- (6) Loan Responsibility: Buyer acknowledges and represents that it has not relied upon the advice or representations of Seller or Brokers regarding the type of loan or the terms of any loan to be obtained by Buyer. Buyer agrees to hold Seller and Brokers harmless from any

claim or loss arising out of Buyer's application and commitment for any loan or the terms of the instruments evidencing or securing the loan.

- (7) Loan Discount: Buyer shall pay any loan discount payable in connection with the loan.
- (8) Loan Proceeds: Proceeds of the loan, together with any balance of the purchase price, shall be paid in cash or certified funds by Buyer to Seller at closing.
- (9) Interest Rate Fluctuation: Buyer and Seller acknowledge and agree that interest rates on mortgage
  - (a) loans may fluctuate between the date the Agreement becomes binding and closing. Accordingly, Buyer
  - (b) agrees that, notwithstanding anything contained in paragraph 4.B.1, a loan with an interest rate no
  - (c) more than two percent (2%) higher than the interest rate set forth in paragraph 4.B.1 and a monthly
  - (d) payment not greater than that resulting from such two percent (2%) increase in interest rate, shall be acceptable to Buyer and the financing contingency shall be subject to such adjusted rate.
- (10) Private Mortgage Insurance Premium: Any private mortgage insurance premium for the loan shall be paid by Buyer.
- (11) Escrow Deposits: In addition to the payment of principal and interest upon the loan, Buyer shall pay at closing the amount necessary to establish an escrow account as required by lender and shall also pay, along with each monthly payment of principal and interest, amounts required by lender for escrows, including but not limited to annual ad valorem taxes and hazard insurance premiums for the Property.

5. EARNEST MONEY AND NON-REFUNDABLE CONSTRUCTION DEPOSIT. (Select A and/or B below; if not selected, the subparagraph is not part of this Agreement.)

- A.  Non-Refundable Construction Deposit (see attached Exhibit).
- B.  Earnest Money.

- (1) Buyer has paid \$\_\_\_\_\_ as earnest money to  Seller,  Listing Broker or  Selling Broker in the form of  cash or  check.
- (2) Within five (5) banking days, the earnest money shall be deposited in  an escrow/trust account or in  a general account and, in the case of an escrow/trust account, shall thereafter be held in such account. The earnest money may be deposited in an interest bearing account and the interest earned thereon shall be retained by the holder of those funds.
- (3) If any check given as earnest money is not honored, Seller may terminate this Agreement by notice to Buyer and Brokers.
- (4) If the earnest money is to be deposited in Seller's general account, such funds shall not be segregated and Seller may use such funds for whatever purpose Seller deems fit. Seller and Buyer agree that Brokers have no responsibility for earnest money deposited with Seller.

- (5) The earnest money shall be applied to the purchase price at closing.
- (6) If the sale is not closed because of Seller's inability, failure or refusal to perform the Agreement or because Buyer never had an unconditional obligation to close because of a contingency in the Agreement, the earnest money shall be refunded to Buyer.
- (7) If Buyer fails or refuses to close for any reason other than provided in paragraph 5.B.6, Seller shall be entitled to the earnest money as liquidated damages for damages other than those damages covered by any Non-Refundable Construction Deposit, if any such deposit. The parties agree that it would be extremely difficult to ascertain such actual damages to Seller in such event, that the earnest money is a reasonable estimate of such actual damages to Seller and that the retention of the earnest money by Seller under such circumstances is not intended as a penalty but rather as full liquidated damages to Seller other than for damages covered by any Non-Refundable Construction Deposit, if any such deposit. As an alternative to retaining the earnest money as damages, Seller may seek specific performance of the Agreement. If specific performance is granted, the earnest money shall be applied to the purchase price at closing.
- (8) If the earnest money is held by one of the Brokers, then it will only be disbursed as follows:
  - (a) upon the failure of the parties to enter into a binding agreement;
  - (b) at closing;
  - (c) upon written agreement of all parties;
  - (d) upon an award of an arbitrator (if the parties have agreed to binding arbitration) or order of court;
  - (e) as set forth in paragraph 14.M;
  - (f) under the circumstances described in subsection 5.B.6.; or
  - (g) in accordance with the notice provision set forth in paragraph 5.B.9. below.
- (9) If the earnest money is being held by one of the Brokers, that Broker is also authorized to disburse the earnest money upon reasonable interpretation of the Agreement by Broker. Before Broker disburses on this basis, it shall give written notice to all parties of its intent to disburse the earnest money in the manner as specified in the notice. Within 15 days from the date such notice is given, any party may give notice to that Broker of its objection to such disbursement. If objection is made, that Broker shall interplead the funds into court or, if the parties have agreed to arbitrate, in the Agreement or otherwise, shall hold them pending conclusion of the arbitration. If no objection is made, any objections to disbursement as noticed by Broker shall be waived. If an inter-pleader is filed by Broker, it shall be entitled to an award against the earnest money for its reasonable expenses, including attorneys fees, incurred in that proceeding. The party prevailing in that proceeding shall be entitled to recover any such Broker expenses and fees from the other party. Notices provided for by this subparagraph shall be governed by paragraph 14.Q. No party shall be entitled to recover damages relating to earnest money against Broker holding the earnest money as long as Broker complies with its duties under this paragraph.

6. TITLE EXAMINATION. Buyer shall have a reasonable time after the Agreement becomes binding to examine title to the Property and to furnish Seller with a written statement of objections affecting the marketability of the title. Seller shall have a reasonable time after receipt of such objections to satisfy valid objections. If Seller fails to satisfy such valid objections within a reasonable time, then, at the option

of Buyer, evidenced by written notice to Seller, the Agreement shall be null and void and the earnest money shall be returned to Buyer.

7. HOME WARRANTY DISCLOSURE. (Initial one of the following; the others are not part of this Agreement.)

\_\_\_\_\_ BUILDER LIMITED WARRANTY WITH HOMEOWNER HANDBOOK is offered with the Property. Seller agrees to deliver to Buyer at closing or with this Agreement a limited warranty, which is not insured by a third party authorized to insure warranties under a state or federal insurance or risk retention act or statute, together with the current version of the Homeowner Handbook published by the Greater Atlanta Home Builders Association, Inc. The Homeowner Handbook is not a warranty by the Greater Atlanta Home Builders Association, Inc. Buyer acknowledges that a copy of the limited warranty and Homeowner Handbook has been provided to Buyer or is available upon request from Seller.

\_\_\_\_\_ AN INSURED LIMITED WARRANTY is offered with the Property. Seller agrees to deliver to Buyer at closing or with this Agreement a \_\_\_\_\_ limited warranty, which is insured by a third party authorized to insure warranties under a state or federal insurance or risk retention act. Buyer acknowledges that a copy of the limited warranty has been provided to Buyer or is available upon request from Seller.

\_\_\_\_\_ BUILDER LIMITED WARRANTY (without Homeowner Handbook) is offered with the Property. Seller agrees to deliver to Buyer at closing or with this Agreement a limited warranty, which is not insured by a third party authorized to insure warranties under a state or federal insurance or risk retention act or statute. Buyer acknowledges that a copy of the limited warranty has been provided to Buyer or is available upon request from Seller.

\_\_\_\_\_ NO WARRANTY is offered with the Property.

Unless otherwise provided in any warranty selected above, the effective date of the warranty shall be the date of closing. Any limited warranty is in addition to any rights that the Buyer may have under state, federal and local laws, including but not limited to rights under applicable governmental codes, regulations or ordinances.

8. INSPECTIONS.

A. Standards. The only criteria and standards that will be used in connection with inspections permitted by this Agreement and in compiling the New Home Orientation Walk Through List are those set forth in writing in:

- (1) applicable governmental codes, regulations or ordinances;
- (2) enforceable public or private restrictions or covenants or subdivision or homeowners' association rules or regulations;
- (3) any warranty provided for in paragraph 7 of this Agreement,
- (4) Exhibit "A", if that exhibit is part of this Agreement, and
- (5) requirements included in special stipulations or attached or expressly incorporated plans, specifications or similar documents. If no warranty is provided for in paragraph 7, then instead of standards established by such warranty, generally accepted building industry standards shall be used. If the warranty provided in paragraph 7 does not address a particular item of construction, generally accepted building industry standards shall be used for such item. The criteria and standards provided for by this subparagraph shall be referred to as the "Construction Standards." Buyer acknowledges that Seller is not required to perform work that exceeds the Construction Standards. Seller is also not

responsible for addressing or correcting conditions located outside the Property even if they affect the Property.

- B. **Buyer Inspection.** Buyer, at Buyer's expense, at reasonable times during normal business hours, and without interfering with any work on the Property, shall have the right and responsibility to enter upon the Property for the purpose of inspecting, examining, testing and surveying the Property and any other condition or circumstance on or in the vicinity of the Property that might affect the Property. Buyer agrees to assume all responsibility for its own acts and those of its representative(s) in exercising its rights under paragraph 8 and agrees to indemnify and hold Seller and Brokers harmless as to any damages or injuries (including reasonable attorney's fees and litigation and arbitration costs and fees) resulting therefrom to the fullest extent permitted by Georgia law. Seller may be present during any inspection. If Buyer becomes aware of a problem or defect during any such inspection, Buyer shall promptly provide written notification to Seller of such problem or defect.
- C. **Buyer Inspection Waiver.** Buyer acknowledges that it has read subparagraph 8.B. By initialing below, Buyer waives the inspections described in that subparagraph. Buyer agrees that in waiving its right to inspect, Buyer:
- (1) accepts the Property, **As Is**, despite any provision in this Agreement to the contrary, except as provided in paragraphs 8.D. or 11 or in any express warranty provided by Seller to Buyer as provided in paragraph 7; and,
  - (2) waives and releases Seller, its agents, employees and subcontractors and Brokers from any claim, right of action, suit or arbitration seeking rescission of this Agreement., damages or other relief based upon or relating to any condition or circumstance existing on or in the vicinity of the Property, except as may be covered by paragraphs 8.D. or 11 or, the express warranty provided for in paragraph 7. Buyer should not select this paragraph without consultation with counsel. \_\_\_\_\_ (Buyers Initials)
- D. **New Home Orientation Walk Through Inspection.** Whether or not Buyer has earlier inspected the Property, prior to closing, Buyer and Seller's representative shall inspect the Property and prepare and sign a New Home Orientation Walk Through List specifying all items, including any noted in previous inspections, that fail to comply with the Construction Standards. The inclusion of an item on the executed New Home Orientation Walk Through List that does not fail to meet the Construction Standards shall not obligate Seller to address that item. Buyer acknowledges that Seller will make its best efforts to address all of the items specified in the New Home Orientation Walk Through List that fail to comply with the Construction Standards on a timely basis as soon as reasonably possible after closing. However, the fact that any such items remain to be addressed as of closing shall not constitute a valid reason for Buyer's failure or refusal to close, as long as a certificate of occupancy or final inspection certificate has been issued, and none of the proceeds due to Seller at closing shall be withheld from Seller or placed in escrow without the Seller's written consent because such items have not been addressed prior to closing. In lieu of repairing any item specified on the New Home Orientation Walk Through List, or in previous written notification, Seller shall have the option of replacing such item or paying reasonable sums to Buyer with which to have such repair or replacement made by Buyer or a third party.
- E. **Private Inspectors.** If Buyer chooses to use a private home inspector in connection with any of the inspections permitted herein, that inspector must at the time of the inspection:
- (1) maintain all business and other licenses required by law;
  - (2) be a full-time professional inspector or registered professional engineer;
  - (3) if not a professional engineer, be a member of either the America Society of Home Inspectors, Inc. or the Georgia Association of Home Inspectors, Inc.;

- (4) have general liability insurance in an amount of a least \$500,000;
- (5) Have workers compensation coverage, if required by laws; and
- (6) be a certified CABO One and Two Family Dwelling inspector (or its equivalent) under the state adopted one and two family dwelling building code.

At the time of the inspection, Buyer shall provide to seller proof that the inspector meets all these requirements. Buyer shall make arrangements with Seller, at least one week in advance, for the home inspector to conduct any such inspection. If the home inspector concludes that there are any violations of applicable codes in effect as of the date of the issuance of the building permit, then for each alleged violation, Buyer is required to have the inspector specify in written form the applicable code and sections and subsections of the code that the inspector contends have been violated. In conducting any inspection permitted by the Agreement, the private inspector shall evaluate the Property solely in accordance with the Construction Standards and not in accordance with other standards. It shall be the sole responsibility of the buyer to pay for such inspections.

9. **MANDATORY BINDING ARBITRATION.** Seller and Buyer will cooperate with one another in avoiding and informally resolving disputes between them. They acknowledge the availability of mediation as a method of assisting in the resolution of disputes. Seller and Buyer further acknowledge that in the event of disputes which are not informally resolved, resolution of those disputes will best be achieved through arbitration rather than civil litigation because of the substantial savings of time and expense for all parties and because of the privacy and flexibility associated with arbitration procedures. If Seller provides a warranty to Buyer, then the terms and procedures of that warranty shall first apply to any claim or dispute, which is within the coverage of that warranty, involving Seller, Buyer or the insurer, if any, of the warranty. Any unresolved claim or dispute between Seller and Buyer arising out of or relating to such warranty, if any, and any other claim or dispute of any kind or nature between Seller and Buyer arising out of or relating in any manner to this Agreement or this transaction shall be decided by binding arbitration in accordance with the Federal Arbitration Act and with the rules and procedures of the arbitrator and such decision shall be final. If Seller and Buyer do not voluntarily agree on another arbitrator, **Construction Arbitration Associates** shall be the arbitrator. The provisions of this paragraph shall survive closing and delivery of the warranty deed to Buyer and shall apply to any claim for rescission of the Agreement. Any questions regarding the interpretation of this arbitration provision or about the arbitrability of a dispute under this provision shall be decided by the arbitrator, unless specifically required by law to be decided by a court, and shall be binding on the parties. The parties' agreement to the provisions of this paragraph is evidenced by their initials:

**Seller Initials** \_\_\_\_\_ **Buyer Initials** \_\_\_\_\_

In order for this paragraph to be deemed a part of this Agreement, it must be initialed by both Seller and all Buyers. In the event this Agreement is executed by Seller and Buyer, but one or the other does not initial this paragraph, then either party shall have two days from its receipt of the original or a copy of such executed Agreement in which to void this Agreement by written notice to the other party. **Neither party is required to agree to arbitration as provided for in this paragraph. Both parties should be aware that arbitration can involve the payment of substantial fees by each party for the services of the arbitrator. Before agreeing to arbitrate, each party should consider consulting legal counsel about arbitration, its costs, alternatives to arbitration, the arbitrator and other potential arbitrators.**

10. **DISPOSAL SYSTEMS AND WATER SOURCE.** Seller warrants that the main dwelling on the Property is served by: (Seller and Buyer must initial on the same applicable line in A and B below.)

	(Seller Initials)	(Buyer Initials)
A. Disposal System		
<input type="checkbox"/> Public Sewer	_____ /	_____
<input type="checkbox"/> Septic Tank	_____ /	_____
<input type="checkbox"/> Other Disposal System	_____ /	_____

B. Water Source

- Public Water  
 Well

\_\_\_\_\_/\_\_\_\_\_  
\_\_\_\_\_/\_\_\_\_\_

C. Any lender-imposed inspection(s) of the disposal system or water source shall be obtained and paid for by Buyer.

11. WARRANTY OF TITLE.

A. Seller warrants that it presently has title to the Property. At closing, Seller agrees to convey good and marketable title to the Property by general warranty deed subject only to:

- (1) zoning ordinances affecting the Property;
- (2) general utility, sewer and drainage easements of record upon which buildings do not encroach;
- (3) subdivision covenants, easements and restrictions of record; and
- (4) leases and other easements, restrictions and encumbrances specified in this Agreement. Marketable title as used herein shall be determined in accordance with Georgia law as supplemented by the Title Standards of the State Bar of Georgia and shall be insurable at regular rates, subject only to standard exceptions unless otherwise specified herein by a title insurance company licensed to do business in the State of Georgia. It is agreed that any defect in the title which comes within the scope of any of such Title Standards shall not constitute a valid objection on the part of Buyer provided Seller furnishes the affidavits or other title papers, if any, required in such standard to cure such defect.

B. Seller shall provide Buyer with an affidavit at closing stating that all bills for labor and materials have been paid in full or will be paid from the closing proceeds.

12. DISCLAIMER AND DISCLOSURE.

A. Seller and Buyer acknowledge that they have not relied upon the advice or representations, if any, of Brokers relative to: the legal and tax consequences of this Agreement; the terms and conditions of financing; the purchase and ownership of the Property; the structural condition of the improvements on the Property; the operating condition of the electrical, heating, air conditioning, plumbing, water heating systems, pool, spa and appliances in the Property; the availability of utilities to the Property; the investment potential or resale value of the Property; the availability and ownership of any amenity package; or, restrictive covenants and architectural controls. Seller and Buyer acknowledge that if such matters have been of concern to them, they have sought and obtained independent advice relative to such matters. Buyer acknowledges that closing shall constitute acceptance of the Property.

B. All parties to this Agreement acknowledge that various substances used in the construction of the improvements on the Property or otherwise located on the Property may now or in the future be determined to be toxic or hazardous and may need to be specially treated, handled and/or removed from the Property. Persons who have an interest in the Property may be required by law to undertake the cleanup of such substances. Buyer acknowledges:

- (1) that Seller and Brokers have no expertise with respect to toxic wastes or hazardous substances;
- (2) that such substances can be extremely costly to correct and remove;

- (3) that Seller and Brokers have made no investigations or representations with respect to such substances;
- (4) that Seller and Brokers shall have no liability to Buyer regarding the presence of such substances on the Property; and
- (5) Buyer releases Seller and Brokers from any claim, rights of action or suits relating to the presence of such substances on the Property to the fullest extent permitted by law.

### 13. AGENCY AND BROKERAGE.

#### A. Agency:

- (1) 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 owes any duty to Buyer or Seller greater than set forth in the brokerage engagement or the Brokerage Relationships in Real Estate Transaction Act, O.C.G.A. §10-6A-1 et seq.
- (2) If either Seller or Buyer is unrepresented by a Broker, such party acknowledges that it is solely responsible for protecting its interests and that Broker's role is limited to performing ministerial acts for it.
- (3) Any Broker working with Seller is identified on the signature page as the "Listing Broker." That Broker is  or  is not representing Seller.
- (4) Any Broker working with Buyer is identified on the signature page as the "Selling Broker." That Broker is  or  is not representing Buyer.
- (5) If Seller and Buyer are both represented by the same Broker, a relationship of either dual agency  or  designated agency shall exist.

#### B. Dual Agency Disclosure. (*applicable only if dual agency has been selected above.*) Seller and Buyer consent to Broker acting as a dual agent in this transaction.

- (1) Seller and Buyer have been advised by Broker that:
  - (a) in serving 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 except for information made confidential by request or instructions from another client which is not otherwise required by law to be disclosed;
  - (c) Neither Buyer nor Seller has to consent to dual agency; and
  - (d) The consent of Buyer and Seller to dual agency has been given voluntarily and each has read and understands its brokerage engagement agreement
- (2) Material Relationship Disclosure. Broker and/or affiliated licensees have no material relationship with either client except as follows: \_\_\_\_\_  
\_\_\_\_\_  
(A material relationship means one actually known of a personal, familial or business nature between Broker and/or affiliated licensees and a client which would impair either's ability to exercise fair and independent judgment relative to another client.)

- (3) Notwithstanding any provision to the contrary contained herein, Seller and Buyer each direct Broker, while acting as a dual agent, to keep confidential and not reveal to the other party any information which could adversely affect its negotiating position.
- (4) Designated Agency Assignment. *(Applicable only if the designated agency has been selected above.)* Broker has assigned \_\_\_\_\_ to work exclusively with Seller as Seller's designated agent and \_\_\_\_\_ to work exclusively with Buyer as Buyer's designated agent. Each designated agent shall represent exclusively the party to whom it has been assigned as a client and shall not represent in this transaction the client assigned to the other designated agent.

C. Brokerage:

- (1) Broker(s) have performed valuable brokerage services and are to be paid a commission pursuant to separate agreement(s).
- (2) \_\_\_\_\_ agrees to pay a total commission at closing of \$\_\_\_\_\_ or \_\_\_\_\_% of the purchase price.
- (3) The commission paid at closing or under this paragraph shall be split as follows: \_\_\_\_% to Listing Broker and \_\_\_\_\_% to Selling Broker.
- (4) If the sale is not closed because of Seller's inability, failure or refusal to perform this Agreement, Seller shall pay a commission equal to the lesser of one-half of the amount of the earnest money or the full commission. If the sales is not closed because of Buyer's failure or refusal to perform this Agreement, Buyer shall pay the full commission. The amounts to be paid under this subparagraph represent the full liquidated damages to which Broker(s) shall be entitled under such circumstances and all parties agree that such amounts are reasonable estimates of the actual damages to be suffered by Broker(s) and that such amounts are not penalties. The commission provided for by this subparagraph shall not be satisfied out of the earnest money or Non-Refundable Construction Deposit.

14. OTHER PROVISIONS.

- A. Utility Services. \_\_\_\_\_ shall cause all utility services to be operational. Buyer shall pay all costs and deposits required by utility service companies to have services turned on in Buyer's name.
- B. Property Condition. The Property shall be in broom-clean condition as of closing.
- C. Possession. Possession should be provided to Buyer at time of closing. Buyer shall not move persons or items into the Property prior to closing.
- D. Real Estate Taxes. Real estate taxes on the Property for the calendar year in which the sale is closed shall be prorated between the parties as of the date of closing.
- E. Prorations. Seller and Buyer agree to prorate between themselves as of the date of closing any association fees and all utility bills rendered subsequent to closing which include service for any period of time the Property was owned/occupied by Seller and any other items customarily prorated in connection with the purchase and sale of property similar to the Property.
- F. IRS Compliance. Buyer and Seller agree to comply with and to execute and deliver such certifications, affidavits and statements as are required at the closing in order to meet the requirements of the Internal Revenue Code.
- G. Transfer Tax. Seller shall pay State of Georgia property transfer tax.

- H. Wood Infestation Report and Soil Treatment Certification. At closing, Seller shall provide Buyer a current soil treatment certification/bond, if required by Buyer's lender. If any additional inspections or reports are requested by Buyer or such lender, any costs for any inspections or reports shall be paid by Buyer.
- I. Insulation. Insulation has been installed (or will be installed prior to closing) in accordance with the terms of this paragraph.
- (1) Exterior walls are insulated with \_\_\_\_\_insulation to a thickness of \_\_\_\_\_inches which will, according to the manufacturer, yield an R-value of \_\_\_\_\_ ;
  - (2) Ceilings below attic areas are insulated with \_\_\_\_\_insulation to a thickness of \_\_\_\_\_inches which will, according to the manufacturer, yield an R-value of \_\_\_\_\_ ;
  - (3) Vaulted ceilings are insulated with \_\_\_\_\_insulation to a thickness of \_\_\_\_\_inches which will, according to the manufacturer, yield an R-value of \_\_\_\_\_ ;
  - (4) Floor overhangs are insulated with \_\_\_\_\_insulation to a thickness of \_\_\_\_\_inches which will, according to the manufacturer, yield an R-value of \_\_\_\_\_
- J. Survival of Agreement. Except as otherwise specified in this Agreement, any condition or stipulation not fulfilled at time of closing shall survive the closing, execution and delivery of the warranty deed until such time as such condition or stipulation is fulfilled.
- K. Severability. Each provision of the Agreement is severable from every other provision of the Agreement. If any provision is determined to be unenforceable, the rest of the Agreement shall remain valid and enforceable. If any provision of the Agreement is determined unenforceable in a particular context or as to a particular right, the Agreement shall remain enforceable in all other contexts and as to all other rights.
- L. Instructions to Closing Attorney. Closing Attorney is instructed to:
- (1) transfer Survival of Agreement subparagraph to the closing statement (although a failure to do so shall not prevent the survival of such subparagraph);
  - (2) obtain and distribute to and from the appropriate parties such certifications, affidavits and statements required in order to meet the requirements of Internal Revenue Code Section 1445 (Foreign/Non-Foreign Sellers) or in the alternative to disburse and hold the sales proceeds in such a manner as may be required to comply with Internal Revenue Code Section 1445;
  - (3) file with the Internal Revenue Service the IRS Form 1099B documenting this transaction and comply with any other reporting requirements related thereto; and
  - (4) comply with any other federal or state withholding requirements.
- M. Destruction of the Property. Should the Property be destroyed or substantially damaged before closing, Seller is to immediately notify Buyer. In the event Seller does not elect, within ten (10) days after receipt of notification of the amount of insurance proceeds, to repair such damage,

Buyer may elect, within ten (10) days after notification by Seller of Seller's intent not to repair the damage to:

- (1) cancel the Agreement and have the earnest money returned to Buyer; or
- (2) consummate the Agreement and receive, at closing, such insurance as is paid on the claim of loss. Notwithstanding the foregoing, Buyer's election to cancel this Agreement must be made no later than sixty (60) days after the Property is destroyed or substantially damaged.

N. Flood Insurance. If flood insurance is desired by Buyer, or required by Buyer's lender, Buyer shall pay for such insurance.

O. Covenants, Easements and Restrictions. If the Property is subject to association, neighborhood or subdivision covenants, restrictions and easements, Buyer acknowledges that it has had an opportunity to review the documents creating same before executing this Agreement and that it is bound by the provisions of such documents, including but not limited to any that set forth design or construction criteria or create or allow for the creation of committees or organizations to establish such criteria.

P. Association Fees. (Select 1, 2 or 3 below; the others are not part of this Agreement.)

- (1)  Buyer acknowledges that there is a mandatory association fee in the approximate amount of \$\_\_\_\_\_per year.
- (2)  Buyer acknowledges that there is not a required association fee.
- (3)  Buyer acknowledges that there is no association.

Q. Notices. Except as otherwise provided for in this Agreement, all notices or demands required or permitted hereunder shall be in writing to the address herein provided and delivered either:

- (1) in person;
- (2) by overnight delivery service prepaid;
- (3) by facsimile (Fax) transmission; or
- (4) by the United States Postal Service, postage prepaid, registered or certified, return receipt requested. Such notices shall be deemed to have been given as of the date and time the same are actually received by the party to whom the notice was directed. Prior to closing, Buyer's address for purposes of this sub-paragraph shall be as indicated on the signature page. After closing, it shall be the Property address. Refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed receipt of such notice. Any party, by written notice to the others in the manner herein provided, may designate an address different from that stated below.

R. Modifications. This Agreement may not be modified, altered or amended except by written instrument executed by the parties hereto.

S. Transfer or Assignment. This Agreement shall not be transferred or assigned without the written consent of all parties. Any assignee shall fulfill all the terms and conditions of this Agreement.

T. Governing Law. This Agreement and all of its provisions, exhibits and attachments shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Georgia.

- U. Terminology and Captions. All pronouns, singular or plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. Wherever the context may require, the singular shall mean and include the plural and the plural shall mean and include the singular.
- V. Time is of the Essence. Time is of the essence of this Agreement.
- W. Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their heirs, successors, administrators, executors and assigns.
- X. Responsibility to Cooperate. All parties agree that such documentation, as is reasonably necessary to carry out the obligations of this Agreement, shall be produced, executed and/or delivered by such parties at the time required to fulfill the terms and conditions of this Agreement. This responsibility shall not include execution by Seller of documents, which impose additional obligations on the Seller.
- Y. Seller shall transfer to Buyer, at closing, Seller's interest in all manufacturer's warranties and service contracts which by their terms are transferable to Buyer.
- Z. Entire Agreement. This Agreement constitutes the sole and entire agreement between the parties. No representation, promise or inducement not included in this Agreement is relied upon or shall be binding upon any party. The term "Agreement" as used herein, as well as the terms "herein", "hereof", "hereunder", and the like mean this Agreement in its entirety. All exhibits, amendments and addenda attached hereto are part of this Agreement.

15. SPECIAL STIPULATIONS. The following stipulations, if conflicting with any preceding paragraph, shall control and are made apart hereof:

16. EXHIBITS AND ADDENDA. The following Exhibits and/or Addenda are attached hereto and by reference made a part hereof:

- New Construction, Exhibit "A"
- Association/Assessment Fee, Exhibit "\_\_\_"
- FHA or VA Loan, Exhibit "\_\_\_"
- Non-Refundable Construction Deposit, Exhibit "\_\_\_"
- Other, \_\_\_\_\_ Exhibit "\_\_\_"
- Other, \_\_\_\_\_ Exhibit "\_\_\_"
- Other, \_\_\_\_\_ Exhibit "\_\_\_"

17. TIME LIMIT OF OFFER. This instrument shall be regarded as an offer by Buyer or Seller, whoever first signs, to the other and is open for acceptance by the other until \_\_\_\_\_ o'clock \_\_\_\_M, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

18. ACCEPTANCE. The offer is hereby accepted, at \_\_\_\_\_ o'clock \_\_\_\_\_ M, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_. This instrument shall become a binding Agreement when written acceptance or a facsimile (FAX) transmission of acceptance is

actually received by offeror or Broker for offeror, if any. Upon receipt of acceptance, the other party and Brokers shall be notified immediately.



# New Home Purchase and Sale Agreement

## SIGNATURE PAGE

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

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

Social Security No: \_\_\_\_\_

Home Phone: \_\_\_\_\_

Business Phone: \_\_\_\_\_

FAX: \_\_\_\_\_

Address: \_\_\_\_\_

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

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

Social Security No: \_\_\_\_\_

Home Phone: \_\_\_\_\_

Business Phone: \_\_\_\_\_

FAX: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
**MARINA Y. SHLOMOV**  
**FOR METROPOLITAN HOMES, INC.**

Print or Type Name: **METROPOLITAN HOMES, INC.**

By: **MARINA SHLOMOV**

Title: **VP**

Business Phone: **770-255-3600**

FAX: **770-234-5401**

Address: **1084 MEADOW CLUB CT., STE. B2**  
**SUWANEE, GA 30024**

\_\_\_\_\_  
Listing Broker MLS (\_\_\_\_\_) Office Code

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

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

Business Phone: \_\_\_\_\_

FAX: \_\_\_\_\_

\_\_\_\_\_  
Selling Broker MLS (\_\_\_\_\_) Office Code

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

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

Business Phone: \_\_\_\_\_

FAX: \_\_\_\_\_



The Stamp Of A Professional

## The Housing Institute, Inc. New Home Purchase and Sale Agreement Addendum

This addendum is part of the New Home Purchase and Sale Agreement ("Agreement") between the undersigned Seller and the undersigned Buyer(s) dated \_\_\_\_\_, relating to real property located at \_\_\_\_\_.

The purpose of this addendum is to clarify the relationship between the Seller, who is a Certified Professional Home Builder, the Buyer(s) and The Housing Institute, Inc. ("Institute.") The Institute uses its best efforts to determine a builder's qualifications for certification as a Professional Home Builder. The Buyer(s) acknowledges, however, that the Institute, its affiliated organizations, and the officers, directors, employees and agents of those organizations: (1) are not parties to the Agreement; (2) shall have no liability to the Buyer(s) or Seller relating to the real property or home; and (3) have not made any warranty or representation, express or implied, to the Buyer(s) or Seller.

The Certified Professional Home Builder program is administered by the Institute and was established to recognize professionalism in the home building industry. The term "Professional" is used to describe the manner in which the Seller conducts business and the process the Seller follows in delivering your new home. While the program recognized the professionalism of the Seller, the Institute has not inspected the real property identified above and it does not and cannot evaluate the specific construction quality of the new home.

To be a Certified Professional Home Builder, the Seller agrees to meet certain criteria regarding experience, education, references, insurance, building performance standards, warranties, building volume and ethics. These criteria are detailed within the Policy and Procedures for the program, which the Buyer(s) is encouraged to review. Certified Professional Home Builders are recertified each year.

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

\_\_\_\_\_  
*Date*

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

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Seller's Signature*  
*(Use full legal name)*

\_\_\_\_\_  
*Date*

*Print or Type Name:* \_\_\_\_\_

*By:* \_\_\_\_\_

*Title:* \_\_\_\_\_