

USDA-RD LOAN CONTINGENCY EXHIBIT “ _____ ”



2018 Printing

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

1. **Application.** Buyer shall promptly apply for and in good faith seek to obtain the United States Department of Agriculture (USDA) Rural Development (RD) loan or loans described below (“Loan(s)”) such that Buyer can fulfill Buyer’s obligations hereunder prior to the expiration of this USDA-RD Loan Contingency.
[Select below. All Loan terms must be filled in].

<input type="checkbox"/> A.	FIRST MORTGAGE LOAN	Loan Amount	Term	Interest Rate (at par)	Rate Type	Source Of Loans Term
		_____ % of purchase price	_____ years	_____ % per annum (or initial rate on adjustable loan)	<input type="checkbox"/> Fixed <input type="checkbox"/> Adjustable	<input type="checkbox"/> Institutional

2. **Use of Particular Mortgage Lender.** Unless an Approved Mortgage Lender is identified below, Buyer may apply for approval of the Loan(s) with any institutional mortgage lender licensed to do business in Georgia. If an Approved Mortgage Lender(s) is identified below, Buyer shall apply for approval of the Loan(s) with at least one such Approved Mortgage Lender. Nothing herein shall require Buyer to obtain mortgage financing from an Approved Mortgage Lender.

Approved Mortgage Lender(s)

(hereinafter singularly “Approved Mortgage Lender” and collectively “Approved Mortgage Lender(s)”)

3. **Buyer May Apply for Different Loan(s).** Buyer may also apply for different loans than the Loan(s) described above. However, the denial of such other loans shall not be a basis for Buyer to terminate this Agreement.
4. **Buyer to Notify Seller of Intent to Proceed.** When it is known, Buyer shall promptly notify seller of any mortgage lender to whom Buyer has sent a notice of intent to proceed with loan application and the name and contact information for the loan originator.
5. **Financing Contingency.** Buyer shall have _____ days from the Binding Agreement Date (“Financing Contingency Period”) to determine if Buyer has the ability to obtain the Loan(s) described above (“Financing Contingency”). Buyer shall be deemed to have the ability to obtain the Loan(s) unless prior to the end of the Financing Contingency Period, Buyer: a) notifies Seller that Buyer is terminating the Agreement because Buyer has been turned down for the Loan(s) and b) provides Seller within seven (7) days from the date of such notice a letter of loan denial from a mortgage lender based upon the mortgage lender’s customary and standard underwriting criteria (“Loan Denial Letter”). The Loan Denial Letter and mortgage lender issuing the Loan Denial Letter must meet all of the requirements set forth elsewhere in this Exhibit. Notwithstanding any provision to the contrary contained herein, the Loan Denial Letter may be provided to Seller after the Financing Contingency Period has ended if the above-referenced seven (7) day period to provide the Loan Denial Letter falls outside of the Financing Contingency Period.
6. **Use of Approved Mortgage Lender and Loan Denial Letter.** If Buyer has agreed to apply for the Loan(s) with an Approved Mortgage Lender, the Loan Denial Letter must be from an Approved Mortgage Lender. If Buyer is not required to apply for the Loan(s) with an Approved Mortgage Lender, the Loan Denial Letter may be from any institutional mortgage lender licensed to do business in Georgia. A Loan Denial Letter from a non-institutional mortgage lender shall not be the basis for Buyer to terminate this Agreement.

Notwithstanding any provision to the contrary contained herein, the Loan Denial Letter may not be based upon any of the following: (a) Buyer lacking sufficient funds other than the amount of the Loan(s) to close; (b) Buyer not having leased or sold other real property (unless such a contingency is expressly provided for in this Agreement); or (c) Buyer not having provided the lender(s) in a timely fashion with all information required by lender, including but not limited to, loan documentation, Official Wood Infestation Reports, structural letters, well tests, septic system certifications, flood plain certifications and any other similar information required by lender (hereinafter collectively “Required Information”).

Buyer may terminate this Agreement without penalty based upon an inability to obtain the Loan(s) only if Buyer fulfills all of the applicable requirements set forth in this Exhibit.

7. Right of Seller to Request Evidence of Buyer's Ability to Close. If the Financing Contingency ends without Buyer terminating this Agreement, Seller shall have the right, but not the obligation, to request that Buyer provide Seller with written evidence of Buyer's financial ability to purchase the Property ("Evidence"). A copy of a loan commitment from each institutional mortgage lender from whom Buyer is seeking mortgage financing to purchase the Property stating the type, amount and terms of the loan(s) and the conditions for funding the loan(s), shall be deemed sufficient Evidence. The provision of such Evidence is not a guarantee that the mortgage loan(s) will be funded or that Buyer will close on the purchase of the Property. Buyer shall have seven (7) days from the date Seller delivers notice to Buyer requesting such Evidence to produce the same. No request for such Evidence shall be made by Seller less than seven (7) days from the date of Closing.

8. Seller's Right to Terminate. In the event Buyer fails to provide Seller with the Evidence of Buyer's Ability to Close within the timeframe set forth above, Seller shall notify Buyer of the default and give Buyer three (3) days from the date of the delivery of the notice to cure the same. If Buyer does not timely cure the default, Seller may terminate this Agreement within seven (7) days thereafter due to Buyer's default upon notice to Buyer. In the event Seller does not terminate this Agreement within that timeframe, the right to terminate on this basis shall be waived.

9. Authorization of Buyer to Release Information to Seller and Brokers. Buyer does hereby authorize Seller and the Brokers identified herein to communicate with the lenders with whom Buyer is working to determine and receive from said lenders any or all of the following information: (a) the status of the loan application; (b) Buyer's financial ability to obtain the Loan(s) or other loans for which Buyer has applied; (c) whether and when Buyer provided the lenders with Required Information; (d) whether and what conditions may remain to complete the loan application process and issue of a loan commitment; and (e) the basis for any Loan Denial Letter.

10. Miscellaneous. For the purposes of this Exhibit, the term "mortgage loan" shall refer to a secured lending transaction where the loan or promissory note is secured by a deed to secure debt on the Property. Whether such mortgage loan is a first or second mortgage loan is a reference to the legal priorities of the deeds to secure debt relative to each other and other liens and encumbrances.

11. Appraisal Contingency. In addition to the other rights of Buyer set forth herein, this Agreement shall also be subject to the Property appraising for at least the purchase price. Buyer shall cause the lender to: (a) procure the appraiser to perform the certain appraisal(s) and (b) provide Buyer with a copy of any such appraisal that is for less than the purchase price of the Property.

If any appraisal performed pursuant to and in accordance with this exhibit is for less than the purchase price of the Property, the Buyer shall have the right to request within _____ days of the Binding Agreement Date that Seller reduce the sales price of the Property to a price not less than the appraisal price by submitting an Amendment to Sales Price to Seller along with a complete copy of the appraisal which is for less than the purchase price. In the event that Buyer does not submit an Amendment to Sales Price within the time frame referenced above, Buyer shall be deemed to have waived Buyer's right to request a reduction in the sales price and this Agreement shall no longer be subject to an appraisal contingency. The time limit of the offer for the Seller to accept or reject the Amendment to Sales Price shall run through the earlier of:

- (a) _____ days from the date that the Amendment to Sales Price is delivered to Seller; or
- (b) the time of closing (excluding any extensions of the closing resulting from the unilateral extension of the closing date).

If Seller timely accepts the Amendment to Sales Price, Buyer shall be obligated to purchase the Property in accordance with this Agreement as amended. If Seller does not accept the Amendment to Sales Price, Buyer may terminate this Agreement without penalty upon notice to Seller. Nothing herein shall require Buyer to seek any reduction in the sales price of the Property. If Buyer does not seek a reduction in the sales price, Buyer shall be obligated to purchase the Property for the price agreed to by the parties in the Agreement.

12. Right to Terminate if Government Funding Allotment is Used. The USDA Rural Development single family housing loan program is allotted funds to make certain single family loans. When the allotment is used in its entirety the USDA cannot make any further loans until additional funds are allotted to the program. If Buyer is not otherwise in default under this Agreement, but cannot close on the purchase of the Property solely because the funding allotment has been used, Buyer or Seller may, upon notice to the other party, terminate this Agreement without penalty.

13. Loan Guarantee Fee. The USDA-RD loan guarantee fee of _____% shall be paid as follows: *[select one]*

- A. In full at closing by Buyer or Seller; **OR**
- B. Added to the loan amount and financed (If this box is checked, then the term "loan amount" as used herein shall mean the amount set forth in the Purchase and Sale Agreement plus the USDA-RD loan guarantee fee so financed; the monthly payments will increase accordingly.)

14. Home Warranty. If the improvements on the property are less than one year old at the time of closing, Seller shall, if required by USDA-RD provide a home warranty certificate acceptable to USDA-RD.

1 Buyer's Signature

Print or Type Name

2 Buyer's Signature

Print or Type Name

Additional Signature Page (F149) is is not attached.

Selling Brokerage Firm

Broker/Affiliated Licensee Signature

Print or Type Name

REALTOR® Membership

1 Seller's Signature

Print or Type Name

2 Seller's Signature

Print or Type Name

Additional Signature Page (F149) is is not attached.

Listing Brokerage Firm

Broker/Affiliated Licensee Signature

Print or Type Name

REALTOR® Membership