

Fax

To: Micheal Lennon
Fax Number: 770 487 3676
From: Brian Hendricks
Date & Time: 6/12/2002 12:22 PM
Pages: 1 of 6
Re: Purchase and sale agreement (Calvin McCully)

Mr. Lennon I was instructed by Calvin McCully to fax the contract to you. If you have any questions please feel free to contact me at 770 845 2693

PURCHASE AND SALE AGREEMENT

Date: June 7, 2002

1. **Purchase and Sale.** The undersigned buyer ("Buyer") agrees to buy and the undersigned seller ("Seller") agrees to sell all that tract or parcel of land, with such improvements as are located thereon, described as follows: All that tract of land lying and being in Land Lot 139 of the 13th District, Section of Clayton County, Georgia, and being known as Address 325/327 Riverbrook Trail, City Riverdale, Georgia Zip Code 30274, according to the present system of numbering in and around this area, being more particularly described as Lot 1, Block _____, Unit _____, Phase/Section _____ of Oakridge Subdivision, as recorded in Plat Book _____, Page _____, Clayton County, Georgia records together with all fixtures, landscaping, improvements, and appurtenances, all being hereinafter collectively referred to as the "Property." The full legal description of the Property is the same as is recorded with the Clerk of the Superior Court of the county in which the Property is located and is made a part of this Agreement by reference.

2. **Purchase Price and Method of Payment.** Buyer warrants that Buyer will have sufficient cash at closing, which when combined with the loan(s), if any, referenced herein, will allow Buyer to complete the purchase of the Property. Buyer does not need to sell or lease other real property in order to complete the purchase of the Property. The purchase price of the Property to be paid by Buyer at closing is: One Hundred Thirty Thousand U.S. Dollars, \$ 130,000.00 subject to the following: [Select sections A, B, C, and/or D below. The sections not marked are not a part of this Agreement.]

A. **All Cash At Closing:** Buyer shall pay the purchase price to Seller in cash, or its equivalent. Buyer's obligation to close shall not be subject to any financial contingency. Buyer shall pay all closing costs.

B. **Loan To Be Assumed:** See Exhibit "N/A".

C. **New Loan To Be Obtained:** This Agreement is made conditioned upon Buyer's ability to obtain a loan (except if the loan is denied because Buyer lacks sufficient cash to close excluding the amount of the loan and/or because Buyer has not sold or leased other real property) in the principal amount of 95 % of the purchase price listed above, with an interest rate at par of not more than 7 % per annum on the unpaid balance, to be secured by a first lien security deed on the Property; the loan to be paid in consecutive monthly installments of principal and interest over a term of not less than 30 years. "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 of the type selected below. [The sections not marked are not a part of this Agreement.]

(1) **Loan Type:** Conventional; FHA (see attached exhibit); VA (see attached exhibit); Other (see attached exhibit)

(2) **Rate Type:** Fixed Rate Mortgage Loan; Adjustable Rate Mortgage ("ARM") Loan;

(3) **Closing Costs and Discount Points:** Seller shall, at the time of closing, contribute a sum not to exceed \$ 4000.00 to be used by Buyer to pay for: (a) preparation of the warranty deed and owner's affidavit by the closing attorney; (b) at Buyer's discretion, closing costs, loan discount points, survey costs, and insurance premiums (including flood insurance, if applicable) relating to the Property and/or loan; and (c) at Buyer's discretion, other costs to close including escrow establishment charges and prepaid items, if allowed by lender. Buyer shall pay all other costs, fees, and amounts for the above referenced items and to fulfill lender requirements to otherwise close this transaction.

(4) **Closing Attorney:** This transaction shall be closed by the law firm of to be determined

(5) **Loan Obligations:** Buyer agrees to: (a) make application for the loan within Seven (7) days from the Binding Agreement Date; (b) immediately notify Seller of having applied for the loan and the name of the lender; and (c) pursue qualification for and approval of the loan diligently and in good faith. Should Buyer not timely apply for the loan, Seller may terminate the Agreement if Buyer does not, within five days after receiving written notice thereof, cure the default by providing Seller with written evidence of loan application. Buyer agrees that a loan with terms consistent with those described herein shall satisfy this loan contingency. Buyer may also apply for a loan with different terms and conditions and close the transaction provided all other terms and conditions of this Agreement are fulfilled, and the new loan does not increase the costs charged to the Seller. Buyer shall be obligated to close this transaction if Buyer has the ability to obtain a loan with terms as described herein and/or any other loan for which Buyer has applied and been approved. From the Binding Agreement Date until closing, Buyer shall not intentionally make any material changes in Buyer's financial condition which would adversely affect Buyer's ability to obtain a loan. In the event any application of Buyer for a loan is denied, Buyer shall promptly provide Seller with a letter from the lender denying the loan stating the basis for the loan denial.

D. **Second Loan to be Obtained,** see Exhibit "N/A".

3. **Earnest Money.** Buyer has paid to See special stipulation #1 ("Holder") earnest money of \$ N/A check, OR \$ N/A 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 banking days from the

Binding Agreement Date and shall be applied toward the purchase price of the Property at the time of closing. In the event any earnest money check is not honored, for any reason, by the bank upon which it is drawn, Holder shall promptly notify Buyer and Seller. Buyer shall have three banking days after notice to deliver good funds to Holder. In the event Buyer does not timely deliver good funds, the Seller shall have the right to terminate this Agreement upon written notice to the Buyer. Holder shall disburse earnest money only as follows: (a) upon the failure of the parties to enter into a binding agreement; (b) at closing; (c) upon a subsequent written agreement signed by all parties having an interest in the funds; (d) upon order of a court or arbitrator having jurisdiction over any dispute involving the earnest money; or (e) upon a reasonable interpretation of this Agreement by Holder. Prior to disbursing earnest money pursuant to a reasonable interpretation of this Agreement, Holder shall give all parties fifteen days notice, stating to whom the disbursement will be made. Any party may object in writing to the disbursement, provided the objection is received by Holder prior to the end of the fifteen-day notice period. All objections not raised in a timely manner shall be waived. In the event a timely objection is made, Holder shall consider the objection and shall do one or more of the following: (a) hold the earnest money for a reasonable period of time to give the parties an opportunity to resolve the dispute; (b) disburse the earnest money and so notify all parties; and/or (c) 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 attorneys' fees. The prevailing party in the interpleader action shall be entitled to collect from the other party the costs and expenses reimbursed to Holder. No party shall seek damages from Holder (nor shall Holder be liable for the same) for any matter arising out of or related to the performance of Holder's duties under this earnest money paragraph. If Buyer breaches Buyer's obligations or warranties herein, holder may pay 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. It is agreed to by the parties that such liquidated damages are not a penalty and are a good faith estimate of Seller's actual damages, which damages are difficult to ascertain.

4. Closing and Possession.

- A. **Property Condition:** Seller warrants that at the time of closing or upon the granting of possession if at a time other than at closing, the Property will be in substantially the same condition as it was on Binding Agreement Date, except for normal wear and tear, and changes made to the condition of the Property pursuant to the written agreement of Buyer and Seller. Seller shall deliver Property clean and free of debris at time of possession. If the Property is destroyed or substantially damaged prior to closing, Seller shall promptly notify Buyer of the amount of insurance proceeds available to repair the damage and whether Seller will complete repairs prior to closing. Buyer may terminate this Agreement not later than five days after receiving such notice by giving written notice to Seller. If Buyer does not terminate this Agreement, Buyer shall receive at closing such insurance proceeds as are paid on the claim which are not spent to repair the damage.
- B. **Taxes:** Real estate taxes on said Property for the calendar year in which the sale is closed shall be prorated as of the date of closing. Seller shall pay State of Georgia property transfer tax.
- C. **Timing of Closing and Possession:** This transaction shall be closed on July 29th, 2002 or on such other date as may be agreed to by the parties in writing, provided, however, that: (1) in the event the loan described herein is unable to be closed on or before said date; or (2) Seller fails to satisfy valid title objections, Buyer or Seller may, by notice to the other party (which notice must be received on or before the closing date), extend this Agreement's closing date and the date for surrender of occupancy if later than the closing date, up to seven days from the above-stated closing date. Buyer agrees to allow Seller to retain possession of the Property through: [Select sections A, B, or C below. The sections not marked are not a part of this Agreement.]
 A. the closing; or B. _____ hours after the closing; or C. _____ days after the closing at _____ m. o'clock
- D. **Warranties Transfer:** Seller agrees to transfer to Buyer, at closing, subject to Buyer's acceptance thereof, Seller's interest in any manufacturer's warranties, service contracts, termite bond or treatment guarantee and/or other similar warranties which, by their terms, may be transferable to Buyer.
- E. **Prorations:** Seller and Buyer agree to prorate all utility bills between themselves, as of the date of closing (or the day of possession of the Property by the Buyer, whichever is the later) which are issued after closing and include service for any period of time the Property was owned/occupied by Seller or any other person prior to Buyer.
- F. **Closing Certifications:** Buyer and Seller shall execute and deliver such certifications, affidavits, and statements as are required at closing to meet the requirements of the lender and of federal and state law.

5. Title.

- A. **Warranty:** Seller warrants that, at the time of 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 on the Acceptance Date upon which the improvements do not encroach; (3) subdivision and/or condominium declarations, covenants, restrictions, and easements of record on the Acceptance 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, prior to closing, examine title and furnish Seller with a written statement of objections affecting the marketability of said title. If Seller fails to satisfy valid title objections prior to closing or any extension thereof, then Buyer may terminate the Agreement upon written notice to Seller, in which case Buyer's earnest money shall be returned. 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:** Any survey of the Property attached hereto by agreement of the parties prior to the Binding Agreement Date shall be a part of this Agreement. Buyer shall have the right to terminate this Agreement upon written notice to Seller if a new survey performed by a surveyor licensed in Georgia is obtained which is materially different from any attached survey with respect to the Property, in which case Buyer's earnest money shall be returned. 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.

6. Seller's Property Disclosure.

Seller's Property Disclosure Statement is attached hereto and incorporated herein. Seller warrants that to the best of Seller's knowledge and belief, the information contained therein is accurate and complete as of the Binding Agreement Date.

7. Termite Letter. An official Georgia Wood Infestation Report ("Report") prepared by a licensed pest control operator, covering each dwelling and garage on the Property and dated within one hundred eighty days of the acceptance date is OR, is not attached to this Agreement as an exhibit. If the Report is not attached, Seller shall provide such a Report to Buyer within seven days from the Binding Agreement Date. Buyer shall have the right to terminate this Agreement within ten days from the Binding Agreement Date if either of the following events occur: (a) the Report is not timely provided to Buyer, or (b) the Report provided after the Binding Agreement Date indicates present infestation of, or damage to, the Property from termites or other wood destroying organisms. If Buyer does not timely give Seller notice of Buyer's decision to terminate this Agreement, Buyer's right to terminate the Agreement pursuant to this paragraph shall be waived. Notwithstanding the above, Buyer shall continue to have whatever other rights to terminate this Agreement, if any, that exist elsewhere in this Agreement. Unless otherwise noted on the Seller's Property Disclosure Statement, to the best of Seller's knowledge, the information contained in any attached or later provided Report is accurate and complete, and no other termite inspections have been performed or reports issued, the findings of which are inconsistent with the Report attached hereto. Prior to closing, Seller shall treat active infestation of termites and other wood destroying organisms, if any. At closing, Seller shall provide Buyer with a Report prepared by a licensed pest control operator dated within thirty days of the closing, stating that each dwelling and garage has been found to be free from active infestation of termites and other wood destroying organisms. This paragraph shall not limit Buyer's right to request that Seller repair and/or replace defects resulting from termites and other wood destroying organisms if the Property is sold with the right to request repairs in accordance with the Inspection Paragraph herein.

8. Inspection. Buyer and/or Buyer's representatives shall have the right to enter the Property at Buyer's expense and at reasonable times (including immediately prior to closing) to thoroughly inspect, examine, test and survey the Property. This shall include the right to inspect and test for lead-based paint and lead-based paint hazards for not less than ten days from the Binding Agreement Date. Seller shall cause all utility services and any pool, spa, and similar items to be operational so that Buyer may complete all inspections under this Agreement. The Buyer agrees to hold the Seller and all Brokers harmless from all claims, injuries, and damages arising out of or related to the exercise of these rights.

[Select section A or B below. The section not marked shall not be part of this Agreement.]

Buyer(s)

Initials



A. Property Sold With Right to Request Repairs.

- (1) Buyer shall have the right to request that Seller repair and/or replace only defects in the Property identified by Buyer's representative(s) by providing Seller, within 15 days from Binding Agreement Date, with a copy of inspection report(s) and a signed written amendment to this Agreement setting forth the defects noted in the report which Buyer requests be repaired and/or replaced. The term "defects" shall mean any portion of or item in the Property which: (a) is not in good working order and repair (normal wear and tear excepted); (b) constitutes a violation of applicable laws, governmental codes or regulations and is not otherwise grandfathered; or (c) is in a condition which represents a significant health risk or an unreasonable risk of injury or damage to persons or property. If Buyer does not timely present the written amendment and inspection report, Buyer shall be deemed to have accepted the Property "as is" in accordance with paragraph B below.
- (2) If Buyer timely submits the inspection report and the written amendment, Buyer and Seller shall have 20 days (hereinafter "Defect Resolution Period") from the Binding Agreement Date to negotiate through written offers and counteroffers the defects to be repaired and/or replaced by Seller.
- (3) Neither party may terminate this Agreement prior to the end of the Defect Resolution Period due to the failure to agree on the repair and/or replacement of defects without the written consent of the other party.
- (4) If Seller at any time during the Defect Resolution Period notifies Buyer that Seller will repair and/or replace all of the defects listed in the initial amendment submitted by Buyer, an agreement on the repair and/or replacement of defects shall be deemed to have been reached and all parties shall execute an amendment to that effect.
- (5) If Buyer and Seller have not within the Defect Resolution Period agreed on the defects to be repaired and/or replaced by signing a written amendment to this Agreement, Buyer may either accept the last unexpired counteroffer of Seller or accept the Property "as is" in accordance with paragraph B below, by giving notice to Seller within three days after the end of the Defect Resolution Period. If Buyer fails to timely give this notice, this Agreement shall terminate immediately, and Buyer's earnest money shall be returned in accordance with the Earnest Money paragraph above. All agreed-upon repairs and replacements shall be completed in a good and workmanlike manner prior to closing.

Buyer(s)

Initials

OR

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

9. Other Provisions.

- A. Binding Effect, Entire Agreement, Modification, Assignment:** This Agreement shall be for the benefit of, and be binding upon, Buyer and Seller, their heirs, successors, legal representatives and permitted assigns. This Agreement constitutes the sole and entire agreement between the parties hereto and no modification or assignment of this Agreement shall be binding unless signed by all parties to this Agreement. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto. Any assignee shall fulfill all the terms and conditions of this Agreement.
- B. Survival of Agreement:** All conditions or stipulations not fulfilled at time of closing shall survive the closing until such time as the conditions or stipulations are fulfilled.
- C. Governing Law:** This Agreement may be signed in multiple counterparts, is intended as a contract for the purchase and sale of real property and shall be interpreted in accordance with the laws of the State of Georgia.

- D. **Time of Essence:** Time is of the essence of this Agreement.
- E. **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.
- F. **Responsibility to Cooperate:** All parties agree to timely take such actions and produce, execute, and/or deliver such information and documentation as is reasonably necessary to carry out the responsibilities and obligations of this Agreement.
- G. **Notices.** Except as otherwise provided herein, all notices, including offers, counteroffers, acceptances, amendments and demands, required or permitted hereunder shall be in writing, signed by the party giving the notice and delivered either: (1) in person, (2) by an overnight delivery service, prepaid, (3) by facsimile transmission (FAX) (provided that an original of the notice shall be promptly sent thereafter if so requested by the party receiving the same) or (4) by the United States Postal Service, postage prepaid, registered or certified return receipt requested. The parties agree that a faxed signature of a party constitutes an original signature binding upon that party. Notice shall be deemed to have been given as of the date and time it is actually received. Notwithstanding the above, notice by FAX shall be deemed to have been given as of the date and time it is transmitted if the sending FAX produces a written confirmation with the date, time and telephone number to which the notice was sent. Receipt of notice by the Broker representing a party as a client shall be deemed to be notice to that party for all purposes herein, except in transactions where the Broker is practicing designated agency, in which case, receipt of notice by the designated agent representing a party as a client shall be required to constitute notice. All notice requirements referenced herein shall be strictly construed.

10. **Disclaimer.** Buyer and Seller acknowledge that they have not relied upon any advice, representations or statements of Brokers 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 the Property; the condition of the Property, any portion thereof, or any item therein; building products and construction techniques; the necessity or cost of any repairs to the Property; hazardous or toxic materials or substances; termites and other wood destroying organisms; the tax or legal consequences of this transaction; the availability and cost of utilities or community amenities; the appraised or future value of the Property; any condition(s) existing off the Property which may affect the Property; the terms, conditions and availability of financing; and the uses and zoning of the 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 further acknowledges that in every neighborhood there are conditions which different buyers may find objectionable. Buyer shall therefore be responsible to become fully acquainted with neighborhood and other off site conditions which could affect the Property.

11. **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 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.;
- (2) Seller and Buyer 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.
- (3) The Broker, if any, working with the Seller is identified on the signature page as the "Listing Broker"; and said Broker is OR, is NOT representing the Seller,
- (4) The Broker, if any, working with the Buyer is identified on the signature page as the "Selling Broker", and said Broker is OR, is NOT representing the Buyer; and
- (5) 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] Seller and Buyer are aware that Broker is acting as a dual agent in this transaction and consent to the same. Seller and Buyer have been advised that:
 - 1 - in serving as a dual agent the Broker is representing two clients whose interests are or at times could be different or even adverse;
 - 2 - The 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 another client which is not otherwise required to be disclosed by law;
 - 3 - The Buyer and Seller do not have to consent to dual agency; and
 - 4 - The consent of the Buyer and Seller to dual agency has been given voluntarily and the parties have read and understood their brokerage engagement agreements.
 - 5 - Notwithstanding any provision to the contrary contained herein, Seller and Buyer 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] The Broker has assigned N/A to work exclusively with Buyer as Buyer's designated agent and N/A 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.

(c) **Material Relationship Disclosure.** The Broker and/or affiliated licensees have no material relationship with either client except as follows: N/A
 (A material relationship means one actually known of a personal, familial or business nature between the Broker and affiliated licensees and a client which would impair their ability to exercise fair judgment relative to another client.)

B. **Brokerage.** The Broker(s) identified herein have performed valuable brokerage services and are to be paid a commission pursuant to a separate agreement or agreements. Unless otherwise provided for herein, the Listing Broker will be paid a commission by the Seller, and the Selling Broker will receive a portion of the Listing Broker's commission pursuant to a cooperative brokerage agreement. The closing attorney is directed to pay the commission of the Broker(s) at closing out of the proceeds of the sale. If the sale proceeds are insufficient to pay the full commission, the party owing the commission will pay any shortfall at closing. If more than one Broker is involved in the transaction, the closing attorney is directed to pay each Broker their respective portion of said commission. In the event the sale is not closed because of Buyer's and/or Seller's failure or refusal to perform any of their obligations herein, the non-performing party shall immediately pay the Broker(s) the full commission the Broker(s) would have received had the sale closed, and the Selling Broker and Listing Broker may jointly or independently pursue the non-performing party for their portion of the commission.

12. **Time Limit of Offer.** This instrument shall be open for acceptance until 6:00 o'clock P. M. on the 14th day of June, 2002.

13. **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, said exhibit or addendum shall control.

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

- 1) Earnest Money in the amount of \$1,000.00 shall be paid to seller within 2 day of binding Agreement date.
- 2) offer is contingent upon home inspection satisfactory to buyer(s)
- 3) offer is contingent upon final approval by buyer(s) financial advisor

(Mark box if additional pages are attached.)

Selling Broker _____ ()
MLS Office Code

By: _____
Broker or Broker's Affiliated Licensee

Print or Type Name: _____

Bus. Phone: _____ FAX # _____

Multiple Listing #: _____

Listing Broker _____ ()
MLS Office Code

By: _____
Broker or Broker's Affiliated Licensee

Print or Type Name: _____

Bus. Phone: _____ FAX# _____

B.L.
Buyer's Signature: _____ SS/FEI#

Print or Type Name: Brian Hendricks

James W. Holloway
Buyer's Signature: _____ SS/FEI#

Print or Type Name: James Holloway

Seller's Signature: _____ SS/FEI#

Print or Type Name: Calvin R McCully

Seller's Signature: _____ SS/FEI#

Print or Type Name: Janice J McCully

Acceptance Date

The above proposition is hereby accepted, _____ o'clock _____ m. on the _____ day of _____, 20____.

Binding Agreement Date

This instrument shall become a binding agreement on the date ("Binding Agreement Date") when notice of the acceptance of this Agreement has been received by offeror. The offeror shall promptly notify offeree when acceptance has been received.