

GADSDEN MLS PURCHASE/SALE AGREEMENT

REAL ESTATE CONSUMER'S AGENCY AND DISCLOSURE ACT (RECAD)/ AGENCY DISCLOSURE

The listing company is: Realty Plus

- (Two boxes may be checked)
- An agent of the seller
 An agent of the buyer
 An agent for both the seller and buyer and is acting as a limited consensual dual agent
 Assisting the buyer seller as a transaction broker.

The selling company is: REALTY PLUS, INC.

- (Two boxes may be checked)
- An agent of the seller
 An agent of the buyer
 An agent for both the seller and buyer and is acting as a limited consensual dual agent
 Assisting the buyer seller as a transaction broker.

_____|_____
 Buyer (s) Initials | Seller(s) Initials

The undersigned BUYER(S) _____ hereby agree to purchase and the undersigned SELLER(S) _____ hereby agree to sell the following described real estate situated in Etowah County, Alabama, together with all improvements, shrubbery, plantings, fixtures & appurtenances on the terms stated below:

1. PROPERTY: Address: [] City: [] State [] Zip []
 LEGAL: Lot [] Block: [] Subdivision: [] Addition: [], Plat Bk: [], Pg: []
 METES & BOUNDS: (attached []).

2. PRICE: The Contract Purchase/Sales Price to be.....\$ []
 amount is EXACT when sale is cash and new financing or APPROXIMATE if assuming Seller(s) existing mortgage.

3. FINANCING: (Check X subparagraph A, B, or C)

- A: (CASH SALE)** This contract is not subject to Buyer(s) obtaining any financing.
- B: (FINANCED SALE)** This contract is subject to Buyer(s) obtaining a: CONVENTIONAL [], FHA [], VA [], new loan from the lender of his choice for the approximate amount of [] Buyer(s) agree in good faith to exert all reasonable effort and diligence to obtain such loan and to make application within [] days of ratification of this Contract or Seller(s) have the option to terminate this contract.
- C: (EQUITY SALE)** This contract subject to Buyer(s) being able to assume: CONVENTIONAL [], FHA [], VA [], existing loan with an APPROXIMATE REMAINING BALANCE OF.....\$ []
 with an APPROXIMATE MONTHLY PAYMENTS OF.....\$ []
 and with the EXACT EQUITY BEING:\$ []
- Buyer(s) agree to exert all reasonable efforts and diligence to assume such loan and make application for same within [] days of ratification of this contract and to be "Pre-approved" for credit worthiness by lender in writing within [] days of application, or Seller(s) have option to terminate this contract. Notwithstanding paragraph 14 of this agreement (Proration), all taxes, insurance, rents, interest, and maintenance fees (if any) shall [], shall not [], be prorated to closing date. If not prorated, Seller(s) escrow/reserve account shall be "made current" and transferred to Buyer(s) at no cost and Seller(s) hazard insurance policy shall be transferred/assumed by Buyer(s), but, if hazard insurance policy is non-transferable, Buyer(s) agree to obtain a new policy.

4. EARNEST MONEY: \$ [] Receipt of which is hereby acknowledged by CHECK [], CASH []. Seller(s) hereby authorize the earnest money (which is to be applied at closing) to be deposited into the Listing Brokers trust account as soon as practical following the final written acceptance of this contract by the last party and being deposited at no interest to Buyer(s) pending the fulfillment of this SALES CONTRACT with the understanding that: (A) In the event this sale fails to close through no fault of Buyer(s), all earnest money shall be deemed as due to be refunded to Buyer(s), however, the Listing Company, as is mandated by Alabama Law, must require from all signatories a written termination of liability which authorizes the release of the earnest money. (B) In the event a release is not signed by all signatories or a dispute between the parties to this agreement as to which shall be entitled to the said earnest money, the Listing Company shall be authorized to interplea such earnest money into the proper court, and in so doing, the Listing Company shall be entitled to deduct a reasonable attorney's fee from the sums so interplead. (D) The Listing Company is not liable for interest or other charges on the funds held. (D) The Listing and Selling company(s) are not a party to this SALES CONTRACT, nor do they assume any liability for performance or non-performance of any signatory.

5. SETTLEMENT CHARGES:

- A. Loan Discount POINTS:** If necessary to obtain the required loan, not to exceed [] % of the amount of the approved loan, shall be paid by the SELLER(S) [], BUYER(S) [], any excess discount points paid by
- B. Closing Costs:** Seller(s) agree to pay real estate brokerage fee as is prescribed in his Listing Contract, deed preparation fee, proration of property taxes, reinspection fee (if applicable), and cost of wood infestation report as is herein described under Paragraph 10-A-3. Buyer(s) desire An Owner Title Insurance Policy: Yes [], No [],
 SELLER(S) agree to pay costs BUYER(S) are not allowed to pay and BUYER(S) agree to pay costs SELLER(S) are not allowed to pay under applicable FHA/VA requirements. Negotiable Loan Closing Costs are to be paid as follows:
 BUYER(S): .
 SELLER(S): not to exceed \$ []
- C. Prepaid Items:** are to be..... paid by Buyer
- D. MIP/PMI/VA Funding fee:** To be financed: YES [], or NO [], but..... paid by Buyer

Page #1 of _____ Pages

Buyer(s) Initials: _____ / _____

Seller(s) Initials: _____ / _____

6. CLOSING & POSSESSION: The sale shall be closed and the deed delivered on [] SELLER(S) shall have a reasonable length of time within which to perfect title or cure defects in the title to said property. Possession to be granted on or before 12 a.m. [] days following closing date. After the passing of title but prior to giving possession, Seller(s) shall pay Buyer(s) [] per day rent for the first [] days and [] per day thereafter until which time possession granted.

7. CONTINGENCY: This Sale IS [], IS NOT [], contingent upon the sale/closing of the Buyer's present home located at [] which IS [], IS NOT [], presently under contract to be closed []. Seller(s) SHALL [], SHALL NOT [], have the right to continue to market the property to seek another qualified Buyer(s) and in the event another acceptable offer is received, Seller(s) agent shall notify the undersigned Buyer(s) agent who is then to notify the said undersigned Buyer(s) and the undersigned Buyer(s) shall then have [] hours after such notification to either remove this contingency from the contract or to release Seller(s) from this contract thereby deeming it VOID. Should for any reason this contingency not be removed prior to [] days following the final written acceptance of aforementioned contract by the last party, then this contract shall expire after 11:59 p.m. on that said day and the earnest money due to be refunded to the undersigned Buyer(s) under the terms as herein stated in Paragraph 4.

8. FIXTURES AND APPURTENANCES: All heating and cooling equipment, hot water heaters, door bells, mantels, and light fixtures, ceiling fans, garage door openers (with remotes), range, oven, dishwasher, mailbox and shrubbery now on the premises shall remain and form a part of this sale. In addition, the following non-realty items which are now on the premises are to remain at no additional cost to Buyer(s): (Check box if applicable)

- | | | |
|---|---|--|
| <input type="checkbox"/> Refrigerator | <input type="checkbox"/> Hot tub/Swim Pool Equip., Covers, etc. | <input type="checkbox"/> Utility/Out Building(s) |
| <input type="checkbox"/> Microwave Oven | <input type="checkbox"/> TV Antenna/Satellite Dish & Controls | <input type="checkbox"/> PlayHouse |
| <input type="checkbox"/> Trash Compactor | <input type="checkbox"/> Gas Logs | <input type="checkbox"/> BasketBall Goal &Post |
| <input type="checkbox"/> Gas Grill (attached) | <input type="checkbox"/> Window A/C Unit(s) _____ | <input type="checkbox"/> Porch/YardSwing |
| <input type="checkbox"/> Bathroom Mirrors | <input type="checkbox"/> Window Dressings, Blinds, Shutters, Curtains, (& hardware) | |
| <input type="checkbox"/> Other: _____ | | |

9. LEAD PAINT DISCLOSURE OF INFORMATION & ACKNOWLEDGMENT: YES [], NO [], subject residence was constructed prior to 1978. If yes, SELLER(S) and BUYER(S) hereby acknowledge that they have read and understand the information contained in the attached Exhibit "A", "DISCLOSURES OF INFORMATION & ACKNOWLEDGMENT LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS", and agree that said disclosure and acknowledgment form is incorporated herein and forms a part of this Purchase/Sales Contract:

10. CONDITION OF THE PROPERTY:

A. SELLER(S) RESPONSIBILITY :

- (1) PRIOR TO CLOSING:** SELLER(S) agree to deliver the heating, cooling, plumbing and electrical systems and any built in appliances in normal operating condition at the time of closing, however Seller(s) responsibility CEASES AT CLOSING UNLESS OTHERWISE HEREIN STATED. Seller(s) make no representations or warranties, either written or verbal, regarding the condition of the property except to the extent expressly and specifically set forth herein. Said HOME is YES [], NO [], less than one (1) year old, In which case if "yes", by Alabama Law, the builder must warrant the new home at least full 12 months following the closing to the original Buyer(s).
- (2) REPAIRS:** If not a "NEW HOME", total seller(s) required repairs are NOT TO EXCEED \$ [] (Should total repairs be in excess of the herein specified limit, at the option of both Buyer(s) and Seller(s), in which case neither elect to make the additional expenditures, this contract shall be deemed VOID.)
- (3) TERMITE INSPECTIONS:** Seller(s) to furnish a favorable wood infestation report from a licensed exterminating company certifying the property free of termites and other wood destroying agents in accordance with VA/FHA regulations, or as required by mortgage lender.

B. BUYER(S) RESPONSIBILITY:

- (1) BEFORE MAKING OFFER:** Prior to the writing of this offer to purchase, the Buyer(s) acknowledge that they either have inspected, have had inspected, said property or have had the opportunity to do so and have chosen not to. Buyer(s) request Seller(s) make those lending institution required repairs along with the following repairs [Subject to Paragraph 10-A-(2)] []
- (2) PRIOR TO CLOSING:** It shall be the responsibility of Buyer(s) to have the utilities turned on if they are off and inspect the systems/equipment prior to closing by a walk-through inspection(s) personally and/or elect to YES [], NO [], have a qualified professional, of Buyer(s) own choice, sole cost and expense, prepare an inspection report on the property. Buyer(s) then are to notify SELLER(S) within [] days following the final acceptance of this contract (but prior to closing), of any systems/equipment that are found not to be in normal operating condition. Failure of BUYER(S) to provide such notification prior to said limitation period shall conclusively establish that SELLER(S) have satisfied this covenant and accept the property in its present "AS IS, WHERE IS" condition, including ordinary wear and tear to closing date, subject only to the warranties set forth herein and in Paragraph 13.

C. REALTOR(S) RESPONSIBILITY: The Agent(s) do not warrant or guarantee the condition of this property.

11. REALTOR DISCLAIMER: SELLER(S) and BUYER(S) acknowledge that they have not relied upon any advice or representations either written or oral, of any Agent involved in this sale relative to the: (A) Legal or tax consequences of this SALES CONTRACT and the sale, purchase, or ownership, of the property; (B) Structural condition of the property including the condition of the roof and the basement; (C) Construction materials; (D) Nature and operating condition of the electrical, heating, air conditioning, plumbing, and water heating systems, and appliances. (E) Age and square footage of the improvements, and the size or area of the property; (F) Availability of utilities and sewer service or septic tank service or condition; (G) Existence or non-existence of termites, fungus and other wood destroying organisms, lead base paint, radon, asbestos, PCB transformers or other toxic, hazardous or contaminated substances or gases in, on or about the property; (H) Compliance of the property with all applicable federal, state, and local statutes, ordinances and regulations concerning fire/smoke detectors; (I) Or any determination of the location of the property in relation to a flood plain; (J) Character of the neighborhood; (K) Investment or resale value of the property; (L) Or any other matter affecting their willingness to sell or purchase the property on the terms and price herein set forth. Agent(s) are not skilled, unless otherwise herein stated, in any field except real estate marketing and purchasing. The only information Agent(s) convey is that which has been reported to them from another source which is deemed as knowledgeable and reliable. SELLER(S) and (BUYER(S) acknowledge that if such matters herein stated in this paragraph are of concern to them in the decision to sell or purchase the property, they have sought and obtained independent professional advice relative thereto or have had the opportunity to have done so and have waived their rights.

Page #2 of	Pages
Buyer(s) Initials:	/
Seller(s) Initials:	/

12. APPRAISALS:

- A. **CONVENTIONAL LOAN:** If Conventional financing is used Buyer(s) acknowledge that any appraisal required by the lender is used by the lender to determine the maximum mortgage amount and does not warrant the value or condition of the property. Further, it is expressly agreed that notwithstanding any other provisions of this contract Buyer(s) shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the property described herein if the contract purchase price exceeds the appraised value. Buyer(s) shall, however, have the privilege and option of proceeding with the consummation of the contract without regard to the appraised value.
- B. **FHA LOAN:** If FHA Financing is used, it is expressly agreed that, notwithstanding any other provisions of this contract, Buyer(s) shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless Mortgagee has delivered to Buyer(s) a written statement issued by the Federal Housing Commissioner or a Direct Endorsement Lender setting forth the appraised value of the property (excluding closing costs) of not less than the sales/purchase price amount in Paragraph 2 which statement Mortgagee hereby agrees to deliver to Buyer(s) promptly after such appraised value statement is made available to the Mortgagee. Buyer(s) shall, however, have the privilege and option of proceeding with the consummation of the contract without regard to the amount of the appraised valuation made by the Federal Housing Commissioner. The appraised valuation is arrive at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the property Buyer(s) should satisfy themselves that the price and condition of the property are acceptable.
- C. **VA LOAN:** If VA financing is used it is expressly agreed that notwithstanding any other provisions of this contract, Buyer(s) shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the property described herein if the contract purchase price exceeds the reasonable value of the property established by the Veterans Administration. Buyer(s) shall, however, have the privilege and option of proceeding with the consummation of the contract without regard to the amount of the reasonable value established by the Veterans Administration.
- D. **FAILURE OF PROPERTY TO APPRAISE:** Should the said property not appraise for the herein Contract Sales Price thereby causing this sale to not close, then the property appraisal and credit report fees are not refundable.

13. CONVEYANCE: Seller(s) will furnish Buyer(s) a good and merchantable title and General Warranty Deed insuring that the property is free from any and all encumbrances, except current ad valorem taxes, existing restrictions, right of ways, easements, applicable zoning ordinances, provided that none of the foregoing materially impair use of the property for residential purposes, and any liens or encumbrances assumed or incurred or permitted in this Sales Contract. Seller(s) warrant to have not received notifications regarding any pending lawsuits involving said property, assessments, pending public improvements, repairs, replacement, or alterations unsatisfactorily made. Seller(s) and Buyer(s) agree that any encumbrances not herein excepted or assumed may be cleared at the time of closing from sales proceeds. The property is sold and is to be conveyed subject to any mineral and mining rights not owned by Seller(s). REALTOR® recommends buyer(s) obtain a title examination at time of closing, and both lenders (if applicable) and owner's title insurance policies, the cost of which are to be borne as is herein described under Paragraph 5-B.

14. PRORATION: All property taxes shall be prorated as of the date of closing. Taxes are paid in the arrears with the tax year beginning each October 1. The tax proration is based upon the County Tax Assessor's office information.

15. RISK OF LOSS: Seller(s) agree(s) to keep in force sufficient hazard insurance on the property to protect all interest until this sale is closed and the deed delivered. If the property is destroyed or materially damaged between the date thereof and the closing and Seller(s) is unable or unwilling to restore it to its previous condition prior to closing, Buyer(s) shall have the option to cancel the Sales Contract and receive back the earnest money (as herein stated per Paragraph 4), or accept the property in its then condition. If Buyer(s) elect(s) to accept the damaged condition, any insurance proceeds otherwise payable to Seller(s) by reason of such damage shall be applied to the balance of the purchase price or otherwise be payable to Buyer(s).

16. SURVEY: REALTOR® recommends that Buyer(s) obtain a current survey by a registered Alabama Land Surveyor, if not required by the lender. (The survey is deemed as a portion of the normal negotiable closing costs as herein referred to under Paragraph 4-B.)

17. FLOOD PLAIN : SELLER(S) states, to the best of his knowledge, that said property IS , IS NOT , UNKNOWN located in a flood plain. The flood plain is established by FEMA (the Federal Emergency Management Agency) and it's relationship to this subject property is determined a certification by a registered Surveyor.

18. PERK TEST: If this is vacant property and the buyers wish build on it, the following shall apply: The percolation rate of a piece of property is measured by an independent engineer and based upon those results the engineer determines its suitability for a septic system. If the test results meet current guidelines, the engineer designs an appropriate proposed system. The engineer's report and system proposal are then submitted to the County Environmental Health Officer for approval of a septic system installation permit. A residence can not be built on any property unless the person who intends to build or is that person's builder, has this permit! Having a satisfactory perk test does not guarantee the issuance of this permit. If the perk test is not recent or should the County Environmental Health Officer have other concerns he may require further testing before issuing (or denying) a permit. Buyer(s), if they so desire, have the right to order their own perk test from an engineer of their choosing, as is herein related to in Paragraph 10-B-2. If this is vacant property, Buyer(s) agree to, prior to closing and with the closing subject to them being able to do so, obtain a septic permit from the County Environmental Health Officer. Failure of BUYER(S) to try to acquire the septic permit shall conclusively establish that SELLER(S) have satisfied this covenant, thereby accepting the property in its present "AS IS, WHERE IS" condition.

19. ATTORNEY REPRESENTATION: Seller(s) and Buyer(s) acknowledge and agree that the loan closing attorney represents the mortgage lender regardless of who pays the attorney's fee and or closing costs. Each party further acknowledges the right to be represented at all times in connection with the Sales Contract and the closing, by an attorney of his own choosing, at his own expense.

20. BINDING EFFECT: All rights, privileges, obligations and duties hereby granted or assumed shall inure to the benefit of and shall be binding upon successors, assigns, heirs, personal representatives of the parties hereto.

21. ENTIRE AGREEMENT: This SALES CONTRACT states the entire agreement between the parties and merges in this agreement all statements, representations and covenants heretofore made, and any other agreements not incorporated herein are void and of no force and effect. This SALES CONTRACT may not be modified or amended unless such amendment is set forth in writing and is signed by all Seller(s) and Buyer(s).

22. SURVIVAL OF CLOSING: All of the statements, representations and warranties set forth in this agreement shall survive the closing and the delivery of the deed and the other closing instruments and documents and shall not be merged thereby.

23. SERVABILITY OF TERMS: If any provision of this agreement is deemed to be unlawful or is rendered inoperative by operation of law, then such provision shall be severed and the remaining provisions shall be enforced unless such severance shall render the agreement meaningless or shall work a manifest injustice on either party.

Page #3 of	Pages
Buyer(s) Initials:	/
Seller(s) Initials:	/

24. ARBITRATION CLAUSE: Buyer(s) and Seller(s) expressly Do , Do Not , agree that all claims, both tort and contract, relating to the subject of this Sales Contract shall be settled by arbitration under the rules of the American Arbitration Association, including specifically, but not exclusively, any disputes relating to the scope of this arbitration clause. By agreeing to this arbitration the parties then waive their rights to bring suite in a court of law.

25. DEFAULT

- A. **BY BUYER(S):** Should Buyer(s) fail to carry out the terms of this Sales Contract in accordance with all its provisions, Seller(s) shall have the option to do one of the following: (A) Seller(s) may proceed against Buyer(s) for the recovery of all damages incurred by Seller(s) as a result of Buyer(s) breach of the Sales Contract, in which event the Agent shall be entitled to their commission. The earnest money herein shall be applied to legally ascertainable damages. (B) Seller(s) may reaffirm the Sales CONTRACT, and proceed for specific performance, in which event the Agent(s) shall be entitled to their commission. (C) Seller(s) may accept the earnest money herein as liquidated damages and the earnest money so forfeited shall be equally divided between Seller(s) and the Agent(s).
- B. **BY SELLER(S):** Should Seller(s) fail to carry out the terms of this SALES CONTRACT in accordance with all its provisions, Buyer(s) shall have the option to do one of the following: (A) Buyer(s) shall be entitled to a refund of the earnest money plus reimbursement from Seller(s) together with any sums expended by him or on his behalf in conjunction with this transaction, including but not specifically, for title examination, appraisal, credit reports. Upon payment by Seller(s) of such sums, this SALES CONTRACT shall be void. (B) Buyer(s) may proceed for specific performance.
- C. **Litigation:** Each party hereto agrees to pay the costs and expenses of the prevailing party that may arise, from enforcing this Sales Contract, or resulting from the closing of this sale, including a reasonable attorney's fee.

26. DISCLOSURE: Once this sale has closed, the purchase price and terms of this sale may be disclosed to the members and affiliate members of the Gadsden Area Board of Realtors® for use in the conduct of their business. THE COMMISSION PAYABLE TO THE LISTING OR SELLING BROKER IN THIS TRANSACTION, AS PER PRIOR WRITTEN AGREEMENT, IS NOT SET BY THE GADSDEN AREA ASSOCIATION OF REALTORS®.

27. ADDITIONAL STIPULATIONS:

(FURTHER ADDITIONAL STIPULATIONS ATTACHED)

28. TIME IS OF ESSENCE: Time is of essence in all states relative to this sales contract . As either being in the state of an "OFFER", or "COUNTER-OFFER", the offeree(s) have hours after notification, to communicate their answer, after which time the "OFFER"/COUNTER-OFFER" shall be, at the option of the Offeror(s) "VOID". All counter-offers shall be attached hereto, signed and dated in the form of an addendum to and become a part of this contract.

I/WE HAVE READ AND UNDERSTAND THIS SALES CONTRACT ALONG WITH THE ATTACHED ADDENDUM'S (IF APPLICABLE, AND AGREE THAT THE SAME ARE INCORPORATED HEREIN AND FORM A PART OF THIS SALES CONTRACT). ADDITIONALLY I/WE DO HEREBY ACKNOWLEDGE THE RECEIPT OF A COPY OF THESE PAPERS WHICH TOGETHER FORM THIS CONTRACT AND HAVE ALSO BEEN GIVEN A COPY OF AN ESTIMATED CLOSING COSTS STATEMENT SPECIFYING THE APPROXIMATE COSTS WHICH I/WE WILL INCUR UNDER THE TERMS OF THIS AGREEMENT AND IT'S ADDENDUMS.

WITNESS OUR HAND AND) SEAL this the ____ day of ____, 20 ____ hereby agree to buy the above described property according to the aforementioned stated terms and conditions.

WITNESS _____ BUYER _____

BUYER _____

WITNESS OUR HAND AND) SEAL this the ____ day of ____, 20 ____ hereby agree to sell the above described property according to the aforementioned stated terms and conditions.

WITNESS _____ SELLER _____

SELLER _____

This form has been provided by the Gadsden Area Association of REALTORS® to its members for their use only. The Gadsden Area Association of REALTORS® makes no warranty of the legal effectiveness or validity of this form and disclaims any liability for damages resulting from its use. By use of this form the parties agree to the limitations set forth in this paragraph. The Parties hereby release the Gadsden Area Association of REALTORS®, the real estate brokers, their agents and employees from any liability arising out of the use of this form. You should consult your attorney with regards to the effectiveness, validity, or any consequences of the use of this form.

Thank You!

Page #4 of	Pages
Buyer(s) Initials:	/
Seller(s) Initials:	/