

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

DAVID G. BERNY and  
VELENA B. BERNY,

Plaintiffs,

v.

KEVIN EZELL, LYNETTE EZELL,  
MICHAEL STEVENS, ANSLEY ATLANTA  
REAL ESTATE, LLC, MELINDA  
MCCONNELL, and COLDWELL BANKER  
RESIDENTIAL REAL ESTATE, LLC,

Defendants.

CIVIL ACTION FILE  
NO. 2023CV385913

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiffs David G. Berny (“Mr. Berny”) and Velen B. Berny (“Ms. Berny”) (collectively, “Plaintiffs”) hereby file the following Complaint against Defendants Kevin Ezell (“Mr. Ezell”), Lynette Ezell (“Ms. Ezell”; together with Mr. Ezell, “the Ezells”), Michael Stevens (“Stevens”), Ansley Atlanta Real Estate, LLC (“Ansley”), Melinda McConnell (“McConnell”), and Coldwell Banker Residential Real Estate, LLC (“Coldwell Banker”) (collectively, “Defendants”), and show the Court as follows:

**JURISDICTION AND VENUE**

1.

Plaintiffs are individuals and residents of Fulton County, Georgia.

2.

Mr. Ezell is an individual and resident of the State of Georgia, residing at 4345 Murray Park Drive, Cumming, Georgia 30040 and may be served with process in accordance with law at said address, or wherever he may be located. Mr. Ezell is subject to the jurisdiction and venue of this Court.

3.

**Ms. Ezell** is an individual and resident of the State of Georgia, residing at 4345 Murray Park Drive, Cumming, Georgia 30040 and may be served with process in accordance with law at said address, or wherever she may be located. Ms. Ezell is subject to the jurisdiction and venue of this Court.

4.

Stevens is an individual and resident of the State of Georgia, residing at 910 York Cove, Alpharetta, Georgia 30004 and may be served with process in accordance with law at said address, or wherever he may be located. Stevens is subject to the jurisdiction and venue of this Court.

5.

Ansley is a domestic limited liability company with its principal place of business located at 3035 Peachtree Road, N.E., Suite 202, Atlanta, Georgia 30305, which is located in Fulton County. Ansley may be served through its registered agent, Bill Brunstad, at 2981 North Fulton Drive NE, Atlanta, Fulton County, Georgia 30305.

6.

McConnell is an individual and resident of the State of Georgia, residing at 440 Wigton Drive, Alpharetta, Georgia 30004 and may be served with process in accordance with law at said address, or wherever she may be located. McConnell is subject to the jurisdiction and venue of this Court.

7.

Coldwell Banker is a foreign limited liability company with its principal place of business located at 175 Park Avenue, Madison, New Jersey 07940. Coldwell Banker

may be served through its registered agent, Corporate Creations Network, Inc. at 2985 Gordy Parkway, 1st Floor, Marietta, Georgia 30066.

8.

Jurisdiction and venue are proper in this Court.

**FACTUAL BACKGROUND**

9.

In June 2019, Plaintiffs hired McConnell to act as their real estate agent and broker in their search to purchase a residential property.

10.

Plaintiffs and McConnell executed an Exclusive Buyer Brokerage Agreement (the “Brokerage Agreement”) on June 5, 2019. A true and correct copy of the Brokerage Agreement is attached hereto as Exhibit A and incorporated herein by reference.

11.

Pursuant to ¶ 4(c) of the Brokerage Agreement, McConnell agreed to comply with the Real Estate Transactions Act, O.C.G.A. § 10-6A-1, *et. seq.*

12.

At that time, and continuing to the date of filing, McConnell has worked as an agent for Coldwell Banker.

13.

On the week of June 17, 2019, McConnell showed Plaintiffs a home at 16590 Quayside Drive, Milton, Georgia 30004 (the “Property”).

14.

The Ezells, the then owners of the Property, had purchased the Property as new construction in June 2012.

15.

After viewing the Property, Mr. Berny asked McConnell two questions: (1) what was the original purchase price of the Property; and (2) was the finished basement included in the original purchase price, or did the Ezells subsequently finish the basement at their own cost?

16.

At all times while attempting to locate a property to purchase, including viewing approximately 30-35 houses listed for sale, Mr. Berny made clear to McConnell that the original purchase price for any property was important to Mr. Berny's considerations.

17.

In fact, Plaintiffs had only made one purchase offer prior to making an offer on the Property, and, in making that offer, Mr. Berny made clear to McConnell that Plaintiffs' best and final offer was 5% above the original purchase price.

18.

McConnell originally stated that the Ezells paid their builder to finish the basement at their own cost *after* purchasing the Property.

19.

Accordingly, based on McConnell's representations, Plaintiffs believed the Ezells paid an initial purchase price of \$737,000 for the Property and an additional approximately \$100,000 to finish the basement, totaling \$837,000.

20.

On June 23, 2019, Plaintiffs went under contract to buy the Property from the Ezells for \$880,000, which amount represented approximately a 5% increase over the \$837,000 that McConnell had led Plaintiffs to believe was the Ezells' purchase price.

21.

Later that day on June 23, 2019, McConnell's associate confirmed that the builder finished the basement after the sale and that McConnell would re-verify the same.

22.

McConnell then provided several different new explanations for when the Ezells finished the basement.

23.

On June 24, 2019, McConnell told Plaintiffs that the Ezells' agent, Stevens, had stated that the Ezells' builder finished the basement but did not say when.

24.

At that time, and continuing to the date of filing, Stevens has worked as an agent for Ansley.

25.

Later that day on June 24, 2019, Stevens revised his story and issued a new statement through McConnell that the Ezells' builder had finished the basement before closing and that the Ezells had paid for most of said cost outside of closing.

26.

On June 25, 2019, McConnell revised her explanation for a second time to say that the Ezells paid approximately \$100,000 for the builder to finish the basement, with half paid before closing and half paid after closing.

27.

McConnell did not initially explain whether the half paid before closing was a direct addition to the Ezell's purchase price.

28.

Finally, McConnell stated that the \$880,000 sales price “reflects approx. \$50k of the basement . . .” meaning that the Ezells had in fact paid roughly \$50,000 less for the Property than McConnell previously had led Plaintiffs to believe.

29.

In an attempt to resolve once and for all the matter regarding the timing and cost of the basement construction, Mr. Berny insisted on speaking directly with the Ezells and requested their phone number from McConnell. In fact, Mr. Berny stated that he would not close on the sale if he could not speak to the Ezells.

30.

On June 28, 2019, Mr. Berny spoke with Mr. Ezell regarding the basement, and Mr. Ezell knowingly and falsely represented that the Ezells paid well over half the cost to finish the basement after closing.

31.

Mr. Ezell further misrepresented that the basement was not completed at the time of closing, as either the bathroom or bedroom had not been finished.

32.

McConnell also took additional actions to misrepresent the value and/or suitability of the Property.

33.

For instance, McConnell excluded a comparable property which Plaintiffs had viewed previously in the same subdivision from a comp report she had, apparently because it was listed at a lower price despite being comparable.

34.

Initially, McConnell explained this omission away as excluding the cheaper property because it lacked a finished basement, yet, as Plaintiffs pointed out, three other houses on the report also had unfinished basements.

35.

McConnell also omitted square footage from the comps on the report, apparently because (i) the Property was smaller than most of the comps; and (ii) omitting square footage made the Property seem more appealing.

36.

Plaintiffs had also made their intention to install a pool clear to McConnell.

37.

Regarding a previous property Plaintiffs viewed, McConnell explained that a drainage easement on the property made it a less desirable pool lot.

38.

However, McConnell failed to explain that the Property itself actually included a retention pond, which would make pool installation all that much more difficult.

39.

The retention pond also proved to be a breeding ground for pests, and Plaintiffs' son, who is particularly susceptible to insect stings and bites, was bitten by mosquitos at least ten times on the day Plaintiffs moved in alone.

40.

Plaintiffs closed on the purchase of the Property on July 26, 2019.

41.

After moving into the Property, Mr. Berny learned from a neighbor, Lee Kramer, that Kramer had paid only \$702,000 for his home, including \$45,000 in upgrades.

42.

Another neighbor, Ron Schaffman, purchased his home, with a finished basement, for only \$825,000 despite it being 900 square feet larger than the Property.

43.

Mr. Berny asked Mr. Ezell for evidence of the post-closing basement payment, but Mr. Ezell refused to provide any such document.

44.

Mr. Berny later learned that Stevens had also served as the Ezells' broker when they purchased the Property.

45.

Mr. Berny spoke with Stevens on or about September 17, 2019, and Stevens stated that the Ezells would not, as a matter of practice, have paid any portion of the price for the basement after closing, at which point Mr. Berny definitively became aware of the fraud which had occurred.

46.

Upon information and belief, and based on the statement of Stevens, the Ezells did not pay anything outside of closing for the finished basement.

**CAUSES OF ACTION**

**COUNT I**

**FRAUD**

**(McConnell and Coldwell Banker)**

47.

Plaintiffs restate and incorporate Paragraphs 1 – 46 of this Complaint as if fully stated herein.

48.

During all periods relevant to this action, a relationship of trust and confidence existed between Plaintiffs and McConnell.

49.

Upon information and belief, McConnell knowingly misrepresented (a) whether the finished basement was included in the Ezells' original purchase price; (b) the value of the Property; and (c) by omission, the presence of the retaining pond and the suitability of the Property for a pool.

50.

McConnell made such misrepresentations with the intent to induce Plaintiffs to purchase the Property, and at a higher price than what they would have otherwise paid in order to increase McConnell's commissions on the sale.

51.

Plaintiffs reasonably relied on McConnell's representations in purchasing the Property.

52.

McConnell was, at all relevant times, acting as an agent of Coldwell Banker.

53.

Plaintiffs have been damaged by McConnell's fraud in an amount to be proven at trial.

**COUNT II**  
**VIOLATION OF THE BROKERAGE RELATIONSHIPS**  
**IN REAL ESTATE TRANSACTIONS ACT (BRRETA)**  
**(McConnell and Coldwell Banker)**

54.

Plaintiffs restate and incorporate Paragraphs 1 – 46 of this Complaint as if fully stated herein.

55.

O.C.G.A. § 10-6A-7 requires that brokers "promote the interests of the buyer by . . . [d]isclosing to the buyer adverse material facts of which the broker has actual knowledge concerning the transaction [and] Advising the buyer to obtain expert advice as to material matters which are beyond the expertise of the broker . . ."

56.

Despite these duties, upon information and belief, McConnell knowingly misrepresented (a) whether the finished basement was included in the Ezells' original purchase price; (b) the value of the Property; and (c) by omission, the presence of the retaining pond and the suitability of the Property for a pool.

57.

Even assuming McConnell did not realize the retaining pond existed, McConnell failed to advise Plaintiffs to consult with an expert.

58.

McConnell was, at all relevant times, acting as an agent of Coldwell Banker

59.

Plaintiffs have been damaged by McConnell's violation of BRRETA in an amount to be proven at trial.

**COUNT III**  
**FRAUD**  
**(Mr. Ezell and Ms. Ezell)**

60.

Plaintiffs restate and incorporate Paragraphs 1 - 46 of this Complaint as if fully stated herein.

61.

The Ezells knowingly misrepresented whether the Property's finished basement was included in the Ezells' original purchase price.

62.

The Ezells made such misrepresentations with the intent to induce Plaintiffs to pay a higher purchase price for the Property.

63.

Plaintiffs reasonably relied on the Ezells' representations in purchasing the Property.

64.

Plaintiffs have been damaged by the Ezells' fraud in an amount to be proven at trial.

**COUNT IV**  
**FRAUD**  
**(Stevens and Ansley)**

65.

Plaintiffs restate and incorporate Paragraphs 1 - 46 of this Complaint as if fully stated herein.

66.

Stevens knowingly misrepresented whether the Property's finished basement was included in the Ezells' original purchase price.

67.

Stevens made such misrepresentations with the intent to induce Plaintiffs to pay a higher purchase price for the Property.

68.

Plaintiffs reasonably relied on Stevens's representations in purchasing the Property.

69.

At all relevant times, Stevens was acting as an agent of Ansley.

70.

Plaintiffs have been damaged by Stevens's fraud in an amount to be proven at trial.

**COUNT V**  
**CIVIL CONSPIRACY**  
**(All Defendants)**

71.

Plaintiffs restate and incorporate Paragraphs 1 - 46 of this Complaint as if fully stated herein.

72.

Defendants entered into a conspiracy with the common design and purpose to solicit a higher purchase price from Plaintiffs through their fraudulent misrepresentations.

73.

Upon information or belief, Defendants conspired to defraud Plaintiffs by misrepresenting both (i) the value of the Property; and (ii) when the Ezells paid for their finished basement.

74.

Upon information or belief, Defendants each performed, participated, and/or assisted in such fraud with the agreement, understanding, and intent to cause injury to Plaintiffs.

75.

Defendants' conspiracy has caused Plaintiffs to suffer damages in an amount to be proven at trial.

**COUNT VI**  
**ATTORNEYS' FEES**  
**(All Defendants)**

76.

Plaintiffs restate and incorporate Paragraphs 1 - 46 of this Complaint as if fully stated herein.

77.

Defendants have acted in bad faith, been stubbornly litigious, and/or have caused Plaintiffs unnecessary time, trouble, and expense.

78.

As a result, pursuant to O.C.G.A. § 13-6-11, Plaintiffs are entitled to costs and attorney's fees due to Defendants' breach.

**WHEREFORE**, having fully stated their complaint against Defendants, Plaintiffs respectfully pray that the Court grant the following relief:

- 1) Pursuant to Counts I, II, III, IV, and V, judgment in favor of Plaintiff against Defendants and damages in an amount to be determined at trial;
- 2) Pursuant to Count VI, attorneys' fees and costs;
- 3) Trial by jury on all issues so triable; and
- 4) Such other and further relief as the Court may deem just and proper.

This 14th day of September, 2023.

/s/ Stephen M. Parham

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Georgia Bar No. 878084

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# EXHIBIT A



## **Exclusive Buyer Brokerage Agreement**

***State Law requires a Broker representing a Buyer as a client to first enter into a written agreement with Buyer under O.C.G.A. § 10-6A-1 et. seq.***

For and in consideration of the mutual promises contained herein and other good and valuable consideration, **Velena Beth Berny**, as Buyer (hereinafter referred to as "Buyer" or "Client"), and Coldwell Banker Residential Brokerage, as broker and its affiliated licensees (hereinafter collectively referred to as "Broker") do hereby enter into this Exclusive Buyer Brokerage Agreement ("Agreement") on the terms set forth below.

1. **Exclusive Brokerage Agreement.** Buyer hereby appoints Broker to act as Buyer's exclusive real estate broker and agent to assist Buyer in locating and negotiating the purchase or exchange of real property. Buyer has not entered into a buyer brokerage agreement with any other real estate broker or any previous buyer brokerage agreement has been terminated.
2. **Term.** The term of this Agreement shall begin on the date of **April 29**, 20 **19** and shall continue through the date of **July 31**, 20 **19** at 11:59 p.m. unless otherwise terminated in accordance with this Agreement.
3. **Independent Contractor Relationship.** This Agreement shall create an independent contractor relationship between Broker and Buyer. Broker shall at no time be considered an employee of Buyer. Buyer acknowledges that the real estate licensees affiliated with Broker are independent contractors of Broker, and are not Broker's employees.
4. **Broker's Duties to Buyer.** Broker's sole duties to Buyer shall be to:
  - a. attempt to locate property suitable to Buyer for purchase;
  - b. assist to the extent requested by Buyer in negotiating the terms of and filling out a pre-printed real estate purchase and sale agreement, and
  - c. comply with all applicable laws in performing its duties hereunder including the Brokerage Relationships in Real Estate Transactions Act, O.C.G.A. § 10-6A-1 et. seq.
5. **Commission.**
  - a. **Broker's Entitlement to Commission.** If during the term of this Agreement (or during the Protected Period as defined in paragraph 6 below) Buyer enters into a contract for the purchase and sale (including a Lease/Purchase Contract), option (including a Lease/Option Contract), or exchange of real property, with the seller thereof, Buyer agrees that Broker shall be entitled to the following commission ("Commission"):  
[Select one or more of the following sections below. The sections not marked shall not be a part of this Agreement]:  
**3** percent (%) of the sales price plus \$195 Broker only commission to be paid by Buyer at closing.  
\$ \_\_\_\_\_  
While not required, the custom in Georgia is for the seller to pay most of the commissions of the real estate brokers. This obligation is usually created in a listing agreement between the seller and the listing broker. Generally, these agreements require the listing broker to share the commission it receives with the selling broker working with or representing the buyer in the transaction. Therefore, except as provided below, the Commission shall be paid by the Seller. In the event Seller does not pay the Broker the full amount of the Commission, Buyer shall pay Broker the difference at closing between Broker's Commission and the commission actually paid to Broker.
  - b. **Separate Commission on Lease.** Notwithstanding the above, if Buyer leases property or enters into a lease/purchase contract during this Agreement, Buyer shall also pay Broker a separate leasing commission (except where the commission is paid by the Landlord) in the amount of \_\_\_\_\_ and as follows: \_\_\_\_\_  
Notwithstanding any provision to the contrary contained herein, the payment of a leasing commission (including in lease purchase transactions) shall not relieve either Seller or Buyer from paying any sales commission they may owe in a purchase and sale transaction.
  - c. **Commission on Property Sold For Sale By Owner ("FSBO").** In the event Buyer purchases property that is being sold by owner ("FSBO") without a broker and the owner is unwilling to pay Broker its Commission at or before the closing, Buyer agrees to pay Broker its Commission at or before the closing.
  - d. **Buyer Default.** Buyer agrees to immediately pay Broker its Commission in the event any of the following occur:
    1. Buyer defaults under a contract to purchase (or exchange) real property under which Broker would have been paid a commission had the transaction closed;
    2. Without the prior consent of Broker, Buyer agrees with a seller to mutually terminate a contract to purchase or exchange real property under which Broker would have been paid a commission had the transaction closed; or
    3. Buyer defaults under this Agreement resulting in Broker not being paid a commission to which Broker would otherwise have been entitled.
6. **Protected Period and Commission.** In the event that during the Protected Period, as that term is defined below, Buyer purchases, contracts to purchase or exchange, leases or lease purchases any property which during the term of this Agreement was submitted to, identified or shown to Buyer by Broker or for which Broker provided information about to Buyer, then notwithstanding any provision to the contrary contained herein, Buyer shall pay Broker at closing or the commencement of any lease, if applicable, the commission or commissions set forth in paragraph 5 above. The term "Protected Period" shall refer to the \_\_\_\_\_ day period (180 days if left blank) following the earlier of either: (a) the expiration of this Agreement; or (b) the date that the Agreement is terminated upon the mutual, written consent of the Broker and Buyer. In addition, if this Agreement is terminated by Buyer without the express, written consent of Broker, the Protected Period shall be equal to the time period referenced above plus the number of days then remaining on the term of the Agreement at the time it was terminated early without the express written consent of Broker. In such event, the Protected Period shall commence on the date this Agreement was terminated early without the express, written consent of Broker. For purposes of this paragraph, the term "Buyer" shall include Buyer, all members of the Buyer's immediate family, any legal entity in which Buyer or any member of Buyer's immediate family owns or controls, directly or indirectly, more than ten percent (10%) of the shares or interests therein, and any third party who is acting for the benefit of or under the direction or control of any of the foregoing parties.
7. **Survival.** The commission rights of Broker and the commission obligations of Buyer set forth herein, and paragraphs 9, 12(f), 19(d) (e) (f) and (g) shall survive termination or expiration of this Agreement.
8. **Extension.** If during the term of this Brokerage Agreement, Buyer and a prospective seller enter into a real estate sales contract which is not consummated for any reason whatsoever, then the termination date set forth in paragraph 2 shall automatically be extended for the number of days that the property was under contract.
9. **No Imputed Knowledge.** Buyer acknowledges and agrees that with regard to any property in which Buyer develops an interest, there shall be no knowledge imputed between Broker and Broker's licensees or between the different licensees of Broker. Broker and each of Broker's licensees shall be deemed to have only actual knowledge of such properties.
10. **Required State Law Disclosures.**
  - a. Broker agrees to keep confidential all information which Buyer asks to be kept confidential by express request or instruction unless the Buyer permits such disclosure by subsequent word or conduct or such disclosure is required by law.

- b. Broker may not knowingly give customers false information.
  - c. In the event of a conflict between Broker's duty not to give customers false information and the duty to keep the confidences of Buyer, the duty not to give customers false information shall prevail.
  - d. Unless specified below, Broker has no other known agency relationships with other parties which would conflict with any interests of Buyer (except that Broker may represent other buyers, sellers, tenants and landlords in buying, selling or leasing property).
11. **Disclosure of Potentially Fraudulent Activities.**
- a. To help prevent fraud in real estate transactions, Buyer does hereby give Broker permission to report any suspicious, unusual and/or potentially illegal or fraudulent activity (including but not limited to mortgage fraud) to:
    - 1. Governmental officials, agencies and/or authorities and/or
    - 2. Any mortgage lender, mortgage insurer, mortgage investor and/or title insurance company which could potentially be harmed if the activity was in fact fraudulent or illegal.
  - b. Buyer acknowledges that Broker does not have special expertise with respect to detecting fraud in real estate transactions and Buyer therefore acknowledges that:
    - 1. Activities which are fraudulent or illegal may be undetected by Broker; and
    - 2. Activities which are lawful and/or routine may be reported by Broker as being suspicious, unusual or potentially illegal or fraudulent.
12. **Limits on Broker's Authority and Responsibility.** Buyer acknowledges and agrees that Broker:
- a. may show property in which Buyer is interested to other prospective buyers;
  - b. shall not be responsible to advise Buyer 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; mold; 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 acknowledges 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 acknowledges that Broker shall not be responsible to monitor or supervise any portion of any construction or repairs to any property and that such tasks clearly fall outside the scope of real estate brokerage services;
  - c. shall owe no duties to Buyer nor have any authority on behalf of Buyer other than what is expressly set forth in this Agreement;
  - d. may make all disclosures required by law;
  - e. shall not be responsible for ensuring that Buyer complies with the duties and deadlines contained in any purchase agreement entered into by Buyer and that Buyer shall be solely responsible to do so; and
  - f. shall be held harmless by Buyer from any and all claims, causes of action, or damages arising out of or relating to:
    - 1. inaccurate and/or incomplete information provided by Seller to Buyer;
    - 2. earnest money handled by anyone other than Broker; or
    - 3. any injury to persons on any property and/or loss or damage to the property or anything contained therein;
  - g. shall have no authority to bind Buyer to any contract or agreement.
13. **Broker's Policy on Agency.** Unless Broker indicates below that Broker is not offering a specific agency relationship, the types of agency relationships offered by Broker are seller agency, buyer agency, designated agency, dual agency, landlord agency, and tenant agency. Broker does not offer sub-agency.
14. **Dual Agency Disclosure.** *[Applicable only if Broker's agency policy is to practice dual agency].* If Buyer and a prospective seller are both being represented by the same Broker, Buyer is aware that Broker will be acting as a dual agent in that transaction and consents to the same. Buyer has been advised 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 and actually known to the dual agent to all parties in the transaction except for information made confidential by request or instructions from either client which is not otherwise required to be disclosed by law.
  - c. Buyer does not have to consent to dual agency and, the consent of Buyer to dual agency has been given voluntarily and Buyer has read and understands the brokerage engagement agreement.
  - d. Notwithstanding any provision to the contrary contained herein, Buyer hereby directs 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 Buyer's negotiating position.
  - e. Broker or Broker's affiliated licensees will timely disclose to each client the nature of any material relationship with other clients other than that incidental to the transaction. A material relationship shall mean any actually known personal, familial, or business relationship between Broker and a client which would impair the ability of Broker to exercise fair and independent judgment relative to another client. The other party whom Broker may represent in the event of dual agency may or may not be identified at the time Buyer enters into this Agreement. If any party is identified after the Agreement and has a material relationship with Broker, then Broker shall timely provide to Buyer a disclosure of the nature of such relationship.
15. **Designated Agency Disclosure.** *[Applicable only if Broker's agency policy is to practice designated agency].* Buyer does hereby consent to Broker acting in a designated agency capacity in transactions in which Broker is representing Buyer and a prospective seller. With designated agency, the Broker assigns one or more of its affiliated licensees exclusively to represent a prospective seller and one or more of its other affiliated licensees exclusively to represent Buyer.
16. **Buyer's Duties.** Buyer agrees to:
- a. be reasonably available to see property with Broker or property for which Broker has arranged for Buyer to see;
  - b. timely respond to communications from Broker;
  - c. provide Broker with accurate and complete information;
  - d. inspect and become familiar with any potentially adverse conditions and conditions of special concern to Buyer relating to the physical condition of any property in which Buyer becomes interested, any improvements located thereon and the neighborhood surrounding such property;
  - e. become familiar with the terms of any purchase agreement and other documents which Buyer may sign and comply with the duties and deadlines contained therein;
  - f. work exclusively with Broker (and not with any other real estate broker or licensee) in identifying, previewing and seeing property for purchase by Buyer (since if Buyer identifies, previews or sees property with another broker or fails to disclose to the listing broker that Buyer is working with Broker) a commission will likely not be paid to Broker by the listing broker and Buyer shall be responsible to pay Broker the Commission;
  - g. disclose to Broker in writing at the commencement of this Agreement whether Buyer previously worked with any other real estate broker and the addresses of the properties, if any, Buyer was introduced to by such other broker, and whether any offers were submitted by or on behalf of Buyer; and
  - h. not contact or see a property listed For Sale By Owner ("FSBO") without first giving Broker a reasonable opportunity to contact the owner and attempt to enter into an agreement with the owner to pay Broker a commission should Buyer purchase the owner's property.

17. **Referrals.**

(a) Buyer (1) authorizes Broker to refer Buyer to another real estate licensee for other brokerage or relocation services; (2) acknowledges that Broker may receive a referral fee from that licensee if Buyer consummates a real estate transaction with that licensee. Referral fees may vary, but typically range from 10% to 40% of the transaction side being referred and will be paid to Broker by the other licensee from the other licensee's commission.

(b) If Buyer was referred to Broker by another real estate licensee, Broker is paying the following referral fee from its commission:

\_\_\_\_\_  
Recipient

\_\_\_\_\_% OR \$ \_\_\_\_\_

Referral Fee

\_\_\_\_\_  
Recipient

\_\_\_\_\_% OR \$ \_\_\_\_\_

Referral Fee

18. **Early Termination.** Broker shall have the right to terminate this Agreement at any time by giving Buyer written notice seven (7) days in advance; however, such termination shall not limit Broker's remedies under paragraphs 5 and 6.

19. **Miscellaneous.**

a. **GAR Forms.** The Georgia Association of REALTORS®, Inc. ("GAR") makes certain standard real estate forms available to its members. These GAR forms are frequently provided to the parties in real estate transactions by the REALTORS® with whom they are working. No party is required to use any GAR form. Since these forms are generic and written with the interests of multiple parties in mind, they may need to be modified to meet the specific needs of the parties using them. If any party has any questions about his or her rights and obligations under any GAR form, he or she should consult an attorney. The parties hereto agree that the GAR forms may only be used in accordance with the licensing agreement of GAR. While GAR forms may be modified by the parties, no GAR form may be reproduced with sections removed, altered or modified unless the changes are visible on the form itself or in a stipulation, addendum, exhibit or amendment thereto.

b. **Notices.**

1. **Communications Regarding Real Estate Transactions.** Buyer acknowledges that many communications and notices in real estate transactions are of a time sensitive nature and that the failure to be available to receive such notices and communications can have adverse legal, business and financial consequences. During the term of this Agreement, Buyer agrees to remain reasonably available to receive communications from Broker.

2. **Notices between Broker and Buyer Regarding this Agreement.** Buyer and Broker agree that communications and notices between them regarding the terms of this Agreement (and excluding real estate transactions with which the parties may be involved) shall be in writing, signed by the party giving the notice, and may be delivered in person or to any address, e-mail address and/or facsimile number to the person to whom the communication or notice is being given specifically set forth in this Agreement. It is the intent of the parties that those means of transmitting notices for which a party has not provided an address or number shall not be used for receiving notices and communications. For example, if a party has not provided an e-mail address in this Agreement, it shall mean that the party is not accepting notices or communications sent by this means.

3. **Buyer contact Information.** Buyer(s) contact information is set forth in the signature block of this Agreement and is expressly incorporated herein. Buyer agrees to promptly provide Broker written notice of any change in such contact information.

4. **Fraudulent Wiring Instructions.** Criminals/hackers are targeting email accounts of various parties involved in a real estate transaction (e.g., lawyers, title agents, mortgage brokers, real estate agents). Among other concerns, this has led to fraudulent wiring instructions being used to divert funds to the criminal's bank account. These emails may look like legitimate emails from the proper party. **Broker strongly recommends that Buyer, Buyer's lawyers and others working on a transaction, should refrain from placing any sensitive personal and financial information in an email, directly or through an email attachment. If Buyer needs to share Social Security numbers, bank accounts, credit card numbers, wiring instructions or similar sensitive information, Broker strongly recommends using more secure means, such as providing the information in person, over the phone, or through secure mail or package services, whenever possible. In addition, before Buyer wires any funds to any party (including a lawyer, title agent, mortgage broker, or real estate agent) Buyer should personally call them to confirm it is legitimate (i.e., confirm the ABA routing number or SWIFT code and credit account number) at a number that Buyer personally obtains (e.g., the sales contract, their website, etc.) and not use the phone number in the email in order to be sure that Buyer is contacting a legitimate party.**

c. **Affiliated Business Relationship.** Broker's Affiliated Business Arrangement Disclosure Statement is attached hereto and incorporated herein by this reference.

d. **Coldwell Banker Residential Brokerage Acting As Escrow Agent.** If Coldwell Banker Residential Brokerage is acting as escrow agent, it will deposit funds received on Buyer's behalf ("Deposit") in a non-interest bearing account ("Account") at Suntrust Bank ("Bank"), a federally-chartered bank that is insured by the Federal Deposit Insurance Corporation ("FDIC"). FDIC deposit insurance coverage applies to a maximum amount of \$250,000 per depositor for deposits held in the same legal ownership category at each bank ("FDIC Limit"): For example, the Deposit will be combined with any individual accounts held directly by Buyer at the Bank. Buyer is responsible for monitoring the total amount of deposits that Buyer owns, directly or indirectly, in the Bank. If Buyer has any questions about FDIC deposit insurance, contact financial or legal advisors or go to [www.fdic.gov/deposit/deposits/index.html](http://www.fdic.gov/deposit/deposits/index.html). Broker does not guarantee the solvency of any bank into which funds are deposited and assumes no liability for any loss Buyer may incur due to the failure, insolvency or suspension of operations of any bank or the \$250,000 FDIC Limit.

e. **Liability Limitation.** Broker shall, under no circumstances, have any liability greater than the amount of the real estate commission paid hereunder to Broker (excluding any commission amount paid to a cooperating real estate broker, if any); or, if no real estate commission is paid to Broker, then a sum not to exceed five hundred dollars.

f. **Governing Law.** This Agreement may be signed electronically and in counterparts and shall be governed by and interpreted pursuant to the laws of the State of Georgia.

g. **Entire Agreement.** This Agreement constitutes the sole and entire agreement between the parties. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto. This Agreement and the terms and conditions herein may not be amended, modified or waived except by the written agreement between Buyer and Broker. The failure of the parties to adhere strictly to the terms and conditions of this Agreement shall not constitute a waiver of the right of the parties later to insist on such adherence.

20. **Fair Housing.** Buyer acknowledges that Broker is committed to providing equal housing opportunities to all persons. While Broker may show Buyer properties of a type or in any specific geographical area requested by Buyer, Broker may not steer buyers to particular areas based upon race, color, religion, national origin, sex, familial status, disability, sexual orientation or gender identity.

21. **Special Stipulations:**

**Buyer is a Broker to Broker referral.**

BY SIGNING THIS AGREEMENT, BUYER ACKNOWLEDGES THAT: (1) BUYER HAS READ ALL PROVISIONS AND DISCLOSURES MADE HEREIN; (2) BUYER UNDERSTANDS ALL SUCH PROVISIONS AND DISCLOSURES AND HAS ENTERED INTO THIS AGREEMENT VOLUNTARILY; AND (3) BUYER IS NOT UNDER A BUYER BROKERAGE AGREEMENT WITH ANY OTHER BROKER.

RECEIPT OF A COPY OF THIS AGREEMENT IS HEREBY ACKNOWLEDGED BY BUYER,  
The above Agreement is hereby accepted, 12:12 PM EDT o'clock       .m. on the        day of 06/05/2019, 20      

**Velena Beth Berny**

Buyer Name

Business Telephone

*Velena Beth Berny*

Signature

06/05/2019

Date

Home Telephone

**404-849-7366**

Cell Phone

Address for Receiving Notice

**5419 Vinings Lake Vw Southwest**

**Mableton, GA 30126**

Facsimile Number

**velenabeth@yahoo.com**

Email Address

Buyer Name

Business Telephone

Signature

Date

Home Telephone

Address for Receiving Notice

Cell Phone

Facsimile Number

Email Address

**COLDWELL BANKER RESIDENTIAL BROKERAGE**

Broker

Address: **3800 MANSELL ROAD**

**Alpharetta, GA 30022**

CBRB

**H-59730**

MLS Office Code

Brokerage Firm License Number

Broker's Phone# **770-642-0399**

&

FAX# **770-594-2010**

By: *Melinda McConnell* Broker or Broker's Affiliated Licensee

**Melinda McConnell**

Print or Type Name

**276493**

Agent's Georgia Real Estate License Number

Email Address: **melinda.mcconnell@coldwellbankeratlanta.com**

**VBB**

(rev. 10/16)